



# The Indian Society of International Law NEWSLETTER

VOL. 7, NO. 3, July-September 2008

For members only

**President**  
Ram Niwas Mirdha

**Executive President**  
Prof. R. P. Anand

**Vice Presidents**  
Narinder Singh  
V. C. Govindaraj  
C. K. Chaturvedi

**Treasurer**  
R. K. Dixit

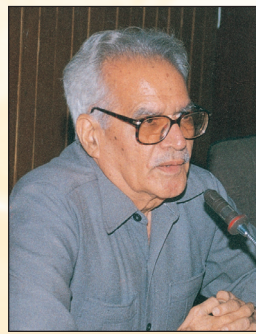
**Secretary General**  
Rahmatullah Khan

**Director**  
Manoj Kumar Sinha

## INSIDE

ISIL Activities .....	2,4
Recent Developments in International Law .....	5,7
Recent Articles .....	7,8
New Additions in ISIL Library .....	8
Current Issue of IJIL .....	8

## Editorial



The verdict delivered on 7 August 2008 by the jurors of the Military Commission Act (MCA), constituted by the United States of America to try the *Guantanamo* prisoners, found Osama bin Laden's former driver Salim Hamdan guilty of providing material support to terrorism and awarded him 5 years and 6 months imprisonment. The case, the first US war crimes trial since World War II, will be seen as an important test of the controversial military commission system that has been widely criticized as unfair by human rights groups. The Court itself was as much on trial as Hamdan. In the spring of 2006,

Hamdan's lawsuit *Hamdan v. Rumsfeld* reached the Supreme Court, which gave Hamdan and his lawyers a sweeping victory. The Court struck down the Bush Administration's military tribunals. In a 5-3 decision of 29 June 2006, reversing the Court of Appeals (D.C. Circuit) decision in *Hamdan v. Rumsfeld*, the Court upheld the Geneva Conventions of 1949 as enforceable under US law. The Supreme Court justice demonstrated how fundamental tenets of international law amplify American values, which are deeply embedded in US law. In response to this decision, the Bush administration redoubled its efforts, pressing Congress to authorize the military tribunals, which it did by passing the MCA on 28 September 2006. MCA was created to prosecute non-U.S. citizens on terrorism charges outside the civilian and military court system.

This is to be seen whether defense lawyers will go for appeal against the decision, in light of the lighter sentenced awarded to Salim by the jurors of MCA, which he almost served by spending same period in the *Guantanamo* prisons. The Military Commissions have faced repeated legal challenges and Hamdan's appeal could have far-reaching consequences.

Hamdan's case was the first case before the Military Commission at *Guantanamo* to proceed to a full trial. More than 260 detainees remain in *Guantanamo*, most of whom have been held for over six years. The decision in the first US war crimes trial could be a troubling sign for military prosecutors as they prepare to try about 80 other *Guantanamo* detainees on terrorism charges.

Published by:  
**The Indian Society of International Law**  
V.K. Krishna Menon Bhawan,  
9, Bhagwan Dass Road,  
New Delhi-110001 (INDIA)  
Tel.: 23389524, 23384458-59 Fax: 23383783  
E-mail: isil@iasdl01.vsnl.net.in  
Website: www.isil-aca.org

Ram Niwas Mirdha



# ISIL ACTIVITIES

## **SPECIAL LECTURES ON A NEW BINDING INTERNATIONAL TREATY ON CLUSTER MUNITIONS: WHERE WE STAND NOW BY LOU MARESCA, LEGAL ADVISER, ICRC LEGAL DIVISION, AND AN INITIATIVE RELATED TO THE REGULATION OF PRIVATE MILITARY COMPANIES AND PRIVATE SECURITY COMPANIES BY CORDULA DROEGE, LEGAL ADVISER, ICRC LEGAL DIVISION**

Indian Society of International Law (ISIL) organised a special lecture on “A New Binding International Treaty on Cluster Munitions: Where We Stand Now” and “An Initiative Related to the Regulation of Private Military Companies and Private Security Companies” on 1 July 2008 at its premises. Prof. Lakshmi Jambholkar, EC member. ISIL, introduced the speakers Lou Maresca and Cordula Droege, Legal Advisers, ICRC Legal Division and invited them to deliver the lectures. Maresca highlight the primary effects caused by these weapons—the effects that underlie the calls for new regulations. During the war in Indochina, tens of millions of submunitions are believed to have been dropped in Lao People’s Democratic Republic, and there are estimates that 8–25 million of them may have failed to explode as intended. Significant numbers of submunitions were also used and failed to explode in Afghanistan, Iraq, Kosovo and other recent conflicts. Predictably, these submunitions have caused large numbers of civilian casualties and posed serious challenges for organizations involved in the clearance of explosive remnants of war. He presented the content of the Treaty on Cluster Munition that prohibited the use, production, stockpiling, and trade of cluster munitions. On the same occasion, Cordula Droege analysed the legal status of private contractors in humanitarian law, a question that is of crucial importance as it defines rights and obligations of the person in question. The Lecture witnessed lively exchange of views with the audience on her presentation. Dr. Manoj Kumar Sinha, Director, ISIL, gave vote of thanks.



## **TWO DAYS TRAINING PROGRAMME FOR SENIOR GOVERNMENT OFFICERS OF MINISTRY OF ENVIRONMENT & FORESTS**

ISIL has successfully conducted *Two-days Training Programme on Forest Land and Other Related Rights of Tribal - Adequacy of National Provisions in the Forest Policy for Indian Forest Service Officers* at its premises on 3 and 4 July 2008. ISIL undertook following themes for discussion in the Programme: 1. Forest Land and Rights of Tribal; 2. Forestry and Sustainable Development; 3. National Forest Policy and Its Efficacy; 4. Bio Diversity and Natural Resources; 5. The Role of Community Forestry in Sustainable Development. Dr. Bachittar Singh, Joint Secretary, Ministry of Tribal Affairs, Government of India inaugurated this programme and spoke on the topic “*Implementation of Forest Rights Act, 2006*”. Dr. Singh highlighted main features of the Act, laying down a procedure for recognition and vesting of forest rights in forest dwelling tribes and gave emphasis on the protection of the rights of tribal so that conservation of the forest should be strengthened with their participation in the management of the forests. This lecture laid foundation for participants to understand the origin and development of tribal rights in the management of forests and its implications. This approach has been taken further by Dr. Avanish Kumar, Associate Professor, School of Public Policy and Management, Management and Development

Institute, Gurgaon, while addressing the topic “*Forests Land and Rights of Tribal*”. Dr. Avanish began with the analysis of “Erosion of Land or Traditional Rights of the Tribal?”. He discussed the rights of tribals in the background of any individual rights in forests under Indian legal framework, where 13 listed forest rights include rights to land, usufructs and grazing, including the right to protect, regenerate and/or conserve/manage, settlement of disputed claims, pattas/leases, and conversion of forest villages to revenue villages, rights over minor forest produce, intellectual property rights on traditional knowledge, habitat and habitation rights of primitive tribal groups and pre-agricultural communities. These rights are heritable but not alienable, subsistence and livelihood purpose and not for exclusive commercial use. He also analysed how forest, forest land and tribes should be empowered through the process. He also underlined target and definitional challenges viz., who is Tribe?, what should be the lowest unit viz., Gram Panchayat etc. He suggested for a system which should constitute participatory, preventive and predictive with proper policy, institutions, technology and action. Training Programme has not only covered theoretical aspects of rights of tribal but also expanded its reach to procedural aspects by taking a topic “*Role of Commission of ST and Rights of Tribal with Specific Reference to Forest Rights Act*”. The discussant was Shri R. C. Durga, Director, National Commission of ST, Government of India. He analysed the power and function of Commission in the background of perpetrated violation of tribal rights in day-

to-day activities. He provided guidelines to Forest Officers how to ensure the rights of tribal in forest department. Training Programme has also ensured critical discussion on the theme. Programme progressed with the discussion by Prof. Shekhar Singh, Former Director, Centre Equity Studies on the topic “*Sociological Dimensions of the Protected Area Network in India with reference to the Forest Right Act*”, highlighted the need to ensure tribal rights in the management of the Forest. He emphasized their right for the historical wrong done to tribals and other forest dwellers who were never given titles to their holdings within legally designated forests. His presentation was an attempt to assess Forest Rights Act in terms of some of its potential impact on the ecosystem and biodiversity of India’s forests and wilderness areas, specifically those contained in the protected area network, and on the people dependent on these resources. He made an attempt to highlight those parts of the law that are ineffective or counter-productive. Lecture was then followed with the discussion on the topic of “*Sustainable Development and Natural Resource Management: Contribution of the Indian Judiciary*”. The commentator was Shri Sanjay Parikh, Senior Advocate, Supreme Court of India. He mainly explained principles viz., “Common Concern of Mankind”, “Common but Differentiated Responsibility”, “Precautionary Principle”, “Polluter Pays Principle”, “Public Trust Doctrine” which is core of realizing the “Sustainable Development” and its importance and applicability in increased globalised society. “*International Environmental Law: Sustainable Development After Kyoto Protocol on Forests*” was next topic for discussion. Shri Shiju M. V., Lecturer, TERI University, New Delhi highlighted historical nature of international law dominated by industrialized countries and its implications on smaller and developing countries and continued dominance of powerful countries in ongoing talk in Post-Kyoto. Diplomacy of European countries in the laying down international rules historically and its continuance is unstoppable. He emphasised the role from forest officers for proactive role in the development of international environmental law pertaining to forests related matters. Programme ended with the discussion on “*Protection of Environment: Armed Forces*” by Major General Nileendra Kumar, Judge Advocate General, Government of India. He highlighted the armed forces initiative to save forest in India. Efforts of Indian Armed Forces in the management of forest were interesting features of the discussion.



### LECTURE ON RULE OF LAW IN INTERNATIONAL LAW: IS IT ILLEGAL? BY PROF. UGO MATTEI, UNIVERSITY OF CALIFORNIA

ISIL organised a lecture on “*Rule of Law in International Law: Is It Illegal?*” on 25 July 2008 at its premises. Prof. Rahmatullah Khan, Secretary General, ISIL, introduced the speaker Prof. Ugo Mattei, University of California and invited him to deliver the lecture. The Lecture witnessed lively exchange of views with the audience on his presentation. Dr. Manoj Kumar Sinha, Director, ISIL, gave vote of thanks.

### CONVOCATION AND INAUGURATION OF P. G. DIPLOMA AND CERTIFICATE COURSES OF THE INDIAN ACADEMY OF INTERNATIONAL LAW, ISIL, NEW DELHI

ISIL organized the *Convocation for Awarding of Post Graduate Diploma Certificates* on 8<sup>th</sup> September 2008. The ceremony was also marked to inaugurate Post Graduate Diploma and Certificate Courses 2008. Prof. Rahmatullah Khan, Secretary General, ISIL welcomed and introduced the chief guest Hon’ble Justice, J. S. Verma, Former Chief Justice, Supreme Court of India and invited him to give inaugural address. Hon’ble Justice Verma also distributed certificates to students of ISIL. Mr. Prakash Chandra received *V. K. Krishna Menon Memorial Prize* for the securing highest marks in the Post Graduate Diploma Course in International Law and Diplomacy. For the first time, Academy also instituted three more prizes in other courses of the Academy.

Mr. Ashok Kumar received *K. Krishna Rao Memorial Prize* for securing highest marks in the Post Graduate Diploma Course in International Trade and Business Law and Ms. M. Imkongla Jamir received *Judge Nagendra Singh Memorial Prize* for securing highest marks in the Post Graduate Diploma Course in Human Rights, International Humanitarian and Refugee Law and Ms. Firduse Qutub Wani received *M. K. Nawaz Memorial Prize* in Certificate Course in International and National Intellectual Property Rights Law.

### SPECIAL LECTURE BY PROF. VED P. NANDA, PROFESSOR OF LAW, DIRECTOR, INTERNATIONAL LEGAL STUDIES, PROGRAMME LAW SCHOOL, UNIVERSITY OF DENVER ON THE TOPIC OF DAFRUR AND THE RESPONSIBILITY TO PROTECT

ISIL organised a lecture on “*Darfur and the Responsibility to Protect*” on 6 August 2008 at its premises. Prof. Rahmatullah Khan, Secretary General, ISIL, introduced the speaker Prof. Ved P. Nanda, Professor of Law, Director, International Legal Studies, Programme Law School, University of Denver and invited him to deliver the lectures. He took referral of Darfur situation to reflect the relatively recent but fundamental shift in international law towards recognition of the rights and duties of States. He advocated to progress in codifying the State’s responsibilities’ to individuals and relied on the theory of sovereignty as responsibility. In brief, he substantiated views of some progressive scholars and governments who argue that a state’s claim to sovereignty is dependent upon



the state effectively shouldering its primary responsibilities. The Lecture witnessed lively exchange of views with the audience on his presentation. Dr. Manoj Kumar Sinha, Director, ISIL, gave vote of thanks.

### **SPECIAL LECTURE BY DR. KISHORE SINGH, SENIOR PROGRAMME SPECIALIST, RESPONSIBLE FOR RIGHT TO EDUCATION, UNESCO, PARIS, SECRETARY, JOINT EXPERT GROUP, UNESCO(CR)/ECOSOC (CESCR) ON THE MONITORING OF THE RIGHT TO EDUCATION ON THE TOPIC OF INTERNATIONAL LAW AND RIGHT TO EDUCATION**

ISIL organised a special lecture on *International Law and Right to Education* on 14 August 2008 at its premises. Dr. Manoj Kumar Sinha, Director, ISIL, welcomed and introduced the chief guest, Dr. Kishore Singh, Senior Programme Specialist, Responsible for the Right to Education, UNESCO, Paris Secretary, Joint Expert Group, UNESCO(CR)/ECOSOC (CESCR) on the Monitoring of the Right to Education. Prof. Rahmatullah Khan, Secretary General, ISIL gave vote of thanks.

### **A ROUND TABLE CONFERENCE ON INTERNATIONAL CHILD ABDUCTION – PARENTAL REMOVAL CHAIRED BY HON'BLE DR. JUSTICE A. R. LAKSHMANAN, CHAIRMAN, LAW COMMISSION OF INDIA**

ISIL organised a *Round Table Conference on International Child Abduction – Parental Removal* on 28 July 2008 at its premises. On this occasion, Dr. Justice A. R. Lakshmanan, Chairman, Law Commission of India gave inaugural address and highlighted the importance of the International Convention on Civil Aspects of International Child Abduction, 1983 in the background of increased number of abduction and child custody disputes. He argued apart from signing the Convention, the law in India also requires amendment to ensure that it gives equal rights to women. Prof. Lakshmi Jambholkar, EC Member, ISIL provided full spectrum of decisions of Indian judiciary and highlighted the principle that the primary consideration for deciding child custody cases has to be the welfare of the child. The Conference witnessed lively



interventions by participants.

### **EIGHTH HENRY DUNANT MEMORIAL MOOT COURT COMPETITION**

ISIL and the International Committee of the Red Cross (ICRC), New Delhi organized the Eighth Henry Dunant Memorial Moot Court Competition at its premises from 11<sup>th</sup> to 14<sup>th</sup> September 2008. Prof. Rahmatullah Khan, Secretary General, ISIL, gave welcome address. On this occasion Hon'ble Justice Dalveer Bhandari, Judge, Supreme Court of India gave inaugural address. He appreciated team members participations and underlined the importance of the event in the present days which equip the students to develop skills and create asset for the bar of the country. Mr. Jan Nicolas Schuett, Deputy Head of Regional Delegation, ICRC, New Delhi also addressed the gathering and spoke about the importance of the subject of the moot court competition and highlighted the contribution of the ICRC in development of international humanitarian law. Sixty two law universities and/ colleges participated in the Competition.

The Competition was concluded in four stages, preliminary, quarter-final, semi-final and final rounds. The participants were judged on the basis of written memorials, appreciation of facts and law, advocacy skills, use of authorities and citations, general impression and court manners. Eminent professors, legal officers and international law scholars judged the teams in preliminary, quarter-final and semi-final rounds.

Hon'ble Justice Rajinder Sacher, Former Chief Justice, Delhi High Court, Prof. Dr. Rahmat Mohammad, Secretary General, AALCO, and Prof. V. S. Mani, Director, Jaipur National University, Jaipur, were the final round judges. Gujarat National Law University, Gujarat and D. E. S. Law College, Pune were the winner and runner up of the Competition respectively. Mr. Avinash Jha, National Law Institute, Bhopal

was adjudged the Best Advocate, Ms. Gurjit K. Dhillon, University Institute of Laws, Regional Center, Ludhiana won the Best Researcher award, and Hidayatullah National Law University, Raipur won Best Memorial award in this Competition. Hon'ble Justice Sacher gave valedictory address on the occasion.

### **VISIT OF STUDENTS**

A delegation of 35 students from Law Department of Hoogly Mohsin College, Burdwan, West Bengal visited ISIL on 4 September 2008. Dr. Manoj Kumar Sinha, Director, ISIL welcomed the students and described the activities of ISIL to the visitors and also discussed the importance of international law and career prospect in this area.

### **FORTHCOMING EVENTS**

Golden Jubilee, Fourth South Asian Henry Dunant Memorial Moot Court Competition, 17-19 October 2008

UGC Refresher Course in Human Rights and Social Justice, International Humanitarian and Refugee Law, 3 - 22 November 2008

Training Programme on International Humanitarian Law, 19-26 November 2008

A Special Function to Confer Honorary Membership of the Indian Society of International Law to Hon'ble Judge C. G. Weeramantry, Former Judge of the International Court of Justice, The Hague, The Netherlands, 9 December 2008

International Conference on "Indian Judge and International and Comparative Law" Jointly Organizing by the HEC, Paris Business School and the Indian Society of International Law, 13-14 December 2008

## RECENT DEVELOPMENTS

### Request for Interpretation of the Judgment of 31 March 2004 in the Case Concerning Avena and Other Mexican Nationals (Mexico v. United States of America)

The ICJ started proceedings on 16 July 2008 with regard to the Application filed in the Registry of the Court on 5 June 2008 by Mexico, whereby Mexico requested the Court to interpret paragraph 153(9) of the judgment delivered by the Court on 31<sup>st</sup> March 2004 in the Case concerning Avena and other Mexican Nationals (*Mexico v. United States of America*) (hereinafter the "Avena Judgement"). In its application, Mexico claims that, since the Court delivered its judgment in the Avena Case, only one state court has provided the required review and consideration, in the case of Osvaldo Torres Aguilera", adding that, in the case of Rafael Camargo Ojeda, the State of Arkansas agreed to reduce Mr. Camargo's death sentence to life imprisonment in exchange for his agreement to waive his right to review and reconsideration under the Avena Judgement"; and whereas according to Mexico", all other efforts to enforce the Avena judgement have failed.

In its application, Mexico stated that the Court found that the appropriate reparation in this case consists in the obligation of the United States of America to provide, by means of its own choosing, review and reconsideration of the convictions and sentences of the Mexican nationals" mentioned in the judgment. The US is obliged under Article 36 of the Vienna

Convention on Consular Relations and paragraphs 138 to 141 of the Judgment to reconsider and review convictions and sentences of the Mexican nationals.

Mexico has sought indications of provisional measures from the Court thereby prohibiting US from carrying out sentences with regard to Mexican nationals unless the individual affected has received review and reconsideration. The Court found that the submission by the US seeking the dismissal of the Application filed by the United Mexican States cannot be upheld.

### UN General Assembly's High Level Meeting on Millennium Development Goals (MDGs)

On 25 September 2008, the UN Secretary-General and the President of the General Assembly convened a High-level event on the Millennium Development Goals (MDGs), which evaluated progress towards achieving the goals at the halfway point towards the 2015 target. The High-level event on the MDG brought together heads of state, ministers, business and foundation representatives, non-governmental organizations and civil society representatives to evaluate progress and challenges in meeting the MDGs. UN Secretary-General Ban-ki-Moon said that the gathering exceeded his most optimistic expectations, noting that it generated an estimated US \$ 16 billion in funding, including over US \$4.4 billion for education and approximately \$1.6 billion to enhance food security.

Among the initiatives launched at the event were: a global campaign to reduce malaria deaths to near zero by 2015, with initial commitments of over US \$ 3 billion; and a task force on maternal mortality.

### World Trade Organization

From 21 July to 29 July, roughly 40 ministers met in a Ministerial Green Room in a bid to help find consensus on agriculture and industrial goods trade, while discussing the best way forward in future negotiations on services, rules and intellectual property. Meetings of the Trade Negotiations Committee (TNC) were also held from 21 July to 30 July. The TNC comprises representatives of all 153 members of the WTO. It is chaired by the WTO Director-General Pascal Lamy and has oversight of the whole Doha Round.

### Georgia Instituted Proceeding against the Russian Federation at the European Court of Human Rights and the International Court of Justice

On 11 August 2008, Georgia instituted proceedings before the European Court of Human Rights alleging that the Russian Federation was violating the European Convention on Human Rights. Georgia alleged that the Russian Federation violated the following rights applicable pursuant to the European Convention on Human Rights: Right to life (article 2 of the Convention); Prohibition of inhuman and degrading treatment (article 3 of the Convention); Protection of property (article 1 of Protocol No. 1 to the Convention). And on 12 August 2008, Georgia instituted formal proceedings against the Russian Federation at the International Court of Justice, alleging violations of the Convention on the Elimination of All Forms of Racial Discrimination, and reserving the right to allege violations of the Genocide Convention at a later date. The Convention on the Elimination of All Forms of Racial Discrimination provides for automatic jurisdiction of the ICJ in contentious cases, even when a State Party has not accepted the full compulsory jurisdiction of the ICJ. Georgia alleged that the Russian Federation violated the following rights applicable pursuant to the Convention on the Elimination of All Forms of Racial Discrimination: Racial discrimination (article 2 of the Convention); Racial segregation (article 3 of the Convention); Promotion or justification of racial hatred and discrimination (article 4 of the Convention); Failure to prohibit or eliminate racial discrimination (article 5 of the Convention); Failure to ensure an effective protection or remedy against racial discrimination (article 6 of the Convention).

### Appellate Body Issued Report Regarding the Panel Reports on "United States - Measures Relating to Shrimp from Thailand" (DS343) and on "United States - Customs Bond Directive for Merchandise Subject to Anti-Dumping/Countervailing Duties" (DS345)

On 1 August 2008, the Dispute Settlement Body adopted the Panel and Appellate Body reports in the cases filed by Thailand and India concerning the US measure known as

### ISIL FACULTY VISIT

Dr. Anwar Sadat, Assistant Professor, ISIL participated in *Session on Implementation of Environmental Law* organized by the *Hague Academy of International Law* from 18<sup>th</sup> August - 5<sup>th</sup> September 2008. He presented a paper titled "Compliance Mechanism in the Kyoto Protocol".

Shri D. Sridhar Patnaik, Assistant Professor, ISIL participated in the *Advanced Training Course on International Humanitarian Law for University Teachers* in Geneva from 25-30 August 2008. The course is organized by the Geneva Academy of International Humanitarian Law and Human Rights and the ICRC.



the “enhanced continuous bond requirement” on imports of shrimp. In fact, the Appellate Body, on 16 July 2008, issued its report regarding the panel reports on “United States - Measures Relating to Shrimp from Thailand”, (DS343) and on “United States - Customs Bond Directive for Merchandise Subject to Anti-Dumping/ Countervailing Duties” (DS345). These Panel reports examined complaints lodged by Thailand and India, respectively. In respect of the appeal of Panel Report, US – Shrimp (Thailand), for the reasons set out in this Report, the Appellate Body: (a) upholds the Panel’s finding, in paragraph 7.130 of the Panel Report, that the application of the EBR falls within the temporal scope of the Ad Note, in the sense that the Ad Note authorizes the imposition of security requirements during the period following the imposition of a United States anti-dumping duty order; (b) declares of no legal effect the interpretation developed by the Panel that the cash deposits required under United States law following the imposition of an antidumping duty order are not anti-dumping duties governed by Article 9 of the Anti-Dumping Agreement; (c) upholds the Panel’s finding, in paragraph 7.150 of the Panel Report, that the additional security requirement resulting from the application of the EBR to subject shrimp is not “reasonable” within the meaning of the Ad Note; (d) reverses the legal interpretation made by the Panel, in footnote 184 to paragraph 7.142 of the Panel Report, that, in the context of the application of the EBR, there is no obligation under the Ad Note to assess the risk of default by individual importers; and (e) upholds the Panel’s finding, in paragraph 7.192 of the Panel Report, that the EBR, as applied to subject shrimp, is not “necessary” within the meaning of Article XX(d) of the GATT 1994. Consequently, the Appellate Body upholds the Panel’s conclusion, in paragraph 8.1 of the Panel Report, that the application of the EBR to subject shrimp is inconsistent with Article 18.1 of the Anti-Dumping Agreement because it is inconsistent with the Ad Note to Article VI:2 and 3 of the GATT 1994. The Appellate Body recommends that the DSB request the United States to bring its measure, found in this Report and in the Panel Report, US – Shrimp (Thailand), as modified by this Report, to be inconsistent with the Anti-Dumping Agreement and the GATT 1994, into conformity with its obligations under those Agreements.

In respect of the appeal of Panel Report, US – Customs Bond Directive, for the reasons set out in this Report, the Appellate Body: (a) upholds the Panel’s finding, in paragraph 7.107 of the Panel Report, that the application of the EBR falls within the temporal scope of

the Ad Note, in the sense that the Ad Note authorizes the imposition of security requirements during the period following the imposition of a United States anti-dumping duty order; (b) declares of no legal effect the interpretation developed by the Panel that the cash deposits required under United States law following the imposition of an antidumping duty order are not anti-dumping duties governed by Article 9 of the Anti-Dumping Agreement; (c) upholds the Panel’s finding, in paragraph 7.128 of the Panel Report, that the additional security requirement resulting from the application of the EBR to subject shrimp is not “reasonable” within the meaning of the Ad Note; (d) reverses the legal interpretation made by the Panel, in footnote 148 to paragraph 7.119 of the Panel Report, that, in the context of the application of the EBR, there is no obligation under the Ad Note to assess the risk of default by individual importers; (e) upholds the Panel’s finding, in paragraphs 7.236-7.238 and 8.1 of the Panel Report, that the Amended CBD, by virtue of which the EBR is imposed, is not inconsistent “as such” with Articles 1 and 18.1 of the Anti-Dumping Agreement and Articles 10 and 32.1 of the SCM Agreement; (f) upholds the Panel’s finding, in paragraphs 7.161, 7.263, 7.264, and 8.1 of the Panel Report, that the Amended CBD, by virtue of which the EBR is imposed, is not inconsistent “as such” and “as applied” with Articles 9.1, 9.2, 9.3, and 9.3.1 of the Anti-Dumping Agreement and that it is not inconsistent “as such” with Articles 19.2, 19.3, and 19.4 of the SCM Agreement; (g) finds it unnecessary, for purposes of resolving this dispute, to make an additional finding on India’s claims that the Amended CBD is “as such” inconsistent with Article 18.4 of the Anti-Dumping Agreement and Article 32.5 of the SCM Agreement; (h) upholds the Panel’s finding, in paragraph 7.196 of the Panel Report, that Section 1623 of the Tariff Act and Section 113.13 of the United States Regulations were not within its terms of reference; (i) finds that the Panel did not breach its obligation to make an objective assessment of the matter under Article 11 of the DSU, since it did not make a prima facie case for the United States when it included, in its analysis under Article XX(d) of the GATT 1994, certain laws and regulations other than those specifically cited by the United States for purposes of its defence under that provision; and (j) upholds the Panel’s finding, in paragraph 7.313 of the Panel Report, that the EBR, as applied to subject shrimp, is not “necessary” within the meaning of Article XX(d) of the GATT 1994; and, therefore, does not express a view on the question of whether

a defence under Article XX(d) of the GATT 1994 was available to the United States. Consequently, the Appellate Body upholds the Panel’s conclusion, in paragraph 8.2(i) of the Panel Report, that the application of the EBR to subject shrimp is inconsistent with Article 18.1 of the Anti-Dumping Agreement because it is inconsistent with the Ad Note to Article VI:2 and 3 of the GATT 1994. The Appellate Body recommends that the DSB request the United States to bring its measure, found in this Report and in the Panel Report, US – Customs Bond Directive, as modified by this Report, to be inconsistent with the Anti-Dumping Agreement and the GATT 1994, into conformity with its obligations under those Agreements.

## Panel Reports Issued on Auto parts Disputes

On 30 March 2006, the European Communities and the United States, and on 13 April 2006, Canada, requested consultations with China regarding China’s imposition of measures that adversely affect exports of automobile parts from the European Communities, the United States and Canada to China. The measures include the following: (a) Policy on Development of Automotive Industry (Order No. 8 of the National Development and Reform Commission, 21 May 2004); (b) Measures for the Administration of Importation of Automotive Parts and Components for Complete Vehicles (Decree No. 125), which entered into force on 1 April 2005); and, (c) Rules for Determining Whether Imported Automotive Parts and Components Constitute Complete Vehicles (General Administration of Customs Public Announcement No. 4, which entered into force on 1 April 2005; as well as any amendments, replacements, extensions, implementing measures or other measures related.

The European Communities argues that, under the measures identified, imported automobile parts that are used in the manufacture of vehicles for sale in China are subject to charges equal to the tariffs for complete vehicles, if they are imported in excess of certain thresholds. The European Communities considers that the measures are inconsistent with: Articles II:1(a), II:1(b), III:2, III:4, III:5 of the GATT 1994, as well as with the principles contained in Article III:1 and Articles 2.1 and 2.2 of the TRIMs Agreement in conjunction with paragraphs 1(a) and 2(a) of the Illustrative List annexed to the Agreement and Article 3 of the SCM Agreement and China’s obligations under its Access Protocol, in particular Part I, para. 7.3 of the Accession

## RECENT ARTICLES

Protocol, and in para. 203 of the Working Party Report on the Accession of China (WP Report) in conjunction with Part I, para. 1.2 of the Accession Protocol, and para. 342 of the WP Report.

The European Communities also considers that China had nullified or impaired the benefits accruing to the European Communities under the Accession Protocol, in particular para. 93 of the WP Report, in conjunction with Part I, para. 1.2 of the Accession Protocol, and para. 342 of the WP Report. The United States argues that the measures identified appear to penalize manufacturers for using imported auto parts in the manufacture of vehicles for sale in China. In the United States' opinion, although China bound its tariffs for auto parts at rates significantly lower than its tariff bindings for complete vehicles, China would be assessing a charge on imported auto parts equal to the tariff on complete vehicles, if the imported parts are incorporated in a vehicle that contains imported parts in excess of thresholds. The United States considers that these measures are inconsistent with the following provisions: Article 2 of the TRIMs Agreement; Articles II (including para. 1) and III (including paras. 2, 4 and 5) of the GATT 1994; Article 3 (including paras. 1 and 2) of the SCM Agreement; The Protocol of Accession (WT/L/432) (including Parts I.1.2 and I.7.3, and paras. 93 and 203 of the Working Party Report). The United States also considers that China had nullified or impaired the benefits accruing to the United States, directly or indirectly, under the cited agreements.

Canada argues that the measures identified above impose different charges on vehicles manufactured in China depending on the domestic content of the automobile parts used in the manufacture, thus providing domestic manufacturers with an advantage if they use domestic parts. Canada considers that the measures at issue are inconsistent with: The Protocol of Accession (WT/L/432) (including Parts I.1.2 and I.7.3, and paras. 93 and 203 of the Working Party Report); Articles II (including para. 1) and III (including paras. 2, 4 and 5) of the GATT 1994; Article 2 of the TRIMs Agreement; Article 2 of the Agreement on Rules of Origin, specifically paras. (b), (c) and (d); Article 3 of the SCM Agreement. Canada considers that, in addition, China's measures may nullify or impair benefits accruing to Canada under the cited agreements.

In dispute WT/DS340, Australia, Canada, the European Communities, Japan and Mexico requested to join the consultations. In dispute WT/DS342, Australia, the European Communities, Japan, Mexico and the United States requested to join the consultations. At its meeting on 26 October 2006, the DSB established a single panel pursuant to Article 9.1 of the DSU. Argentina, Australia, Japan, Mexico and Chinese Taipei reserved their third-party rights. Subsequently, Brazil and Thailand reserved their third-party rights. On 18 July 2008, Panel issued the reports that had examined, respectively, complaints by the European Communities, the United States and Canada regarding "China - Measures Affecting Imports Of Automobile Parts" (DS339, DS340 and DS342). The Panel recommends that the Dispute Settlement Body request China to bring these inconsistent measures as listed above into conformity with its obligations under the GATT 1994.

### WTO Issued Arbitration Report on Tyres Dispute

On 17 December 2007, the Dispute Settlement Body (the "DSB") adopted the Appellate Body Report and the Panel Report, as modified by the Appellate Body Report, in Brazil - Measures Affecting Imports of Retreaded Tyres. (for more details see ISIL Newsletter no. 4, 2007) The DSB held on 15 January 2008, Brazil stated that it intended to comply with the recommendations and rulings of the DSB in this dispute, and that it would need a reasonable period of time in which to do so. On 4 June 2008, the European Communities informed the DSB that consultations with Brazil had not resulted in an agreement on the reasonable period of time for implementation. The European Communities therefore requested that such period be determined through binding arbitration pursuant to Article 21.3(c) of the Understanding on Rules and Procedures Governing the Settlement of Disputes (the "DSU"). Yasuhei Taniguchi, Arbitrator, determined that the reasonable period of time for Brazil to implement the recommendations and rulings of the DSB in this dispute is 12 months from the date of adoption of the Panel and Appellate Body Reports. The reasonable period of time will thus end on 17 December 2008.

### Panel report issued on Mexico-EC Dispute Concerning Olive Oil

A WTO dispute panel issued on 4 September 2008 its report on the EC's complaint

concerning Mexico's final countervailing measures on olive oil from the European Communities (DS341). On 31 March 2006, the European Communities requested consultations with Mexico concerning the imposition by Mexico of definitive countervailing measures on imports of olive oil from the European Communities. The European Communities claims that the initiation and conduct of the investigations in this case, as well as the imposition of definitive countervailing measures are inconsistent with Mexico's obligations under, inter alia, Article VI of GATT 1994; Articles 1, 10, 11, 12, 13, 14, 15, 16, 19, 22 and 32 of the SCM Agreement; Articles 13 and 21 of the Agreement on Agriculture. On 23 January 2007, the DSB established a panel. Canada, China, Norway and the United States reserved their third party rights. Subsequently, Japan reserved its third party rights. The DSU, having found that Mexico has acted inconsistently with provisions of the SCM Agreement as set out above, and recommended that Mexico should bring its measures into conformity with that Agreement.

## RECENT ARTICLES

Klabbers, Jan, "Reflections on Soft International Law in a Privatized World", *Finish Yearbook of International Law*, vol. 16 (2005), pp. 313-329.

Lovoy, Peter R., "India in 2006: Anew Emphasis on Engagement", *Asian Survey*, vol. XLVII, no. 1 (2007), pp. 113-124.

Kapur, S. Paul and Ganguly, Sumit, "The Transformation of U.S. - India Relations: An Explanation for the Rapprochement and Prospects for the Future", *Asian Survey*, vol. XLVII, no. 4 (2007), pp. 642-656.

Saez, Lawrence, "U.S. and Energy Security in South Asia: Economic Prospects and Strategic Implications", *Asian Survey*, vol. XLVII, no. 4 (2007), pp. 657-678.

French, D., "From Seoul With Love' - The Continuing Relevance of the 1986 Seoul ILA Declaration on Progressive Development of Principles of Public International Law Relating to a New International Economic Order", *Netherlands International Law Review*, vol. 55, no. 1 (2008), pp. 3-32.

Durojaye, E., "Compulsory Licensing and Access to Medicines in Post Doha Era: What Hope for Africa?", *Netherlands International Law Review*, vol. 55, no. 1 (2008), pp. 33-72.

Farasat, Sadan, "India's Quest for Regional Trade Agreements: Challenges Ahead",

# NEW ADDITIONS IN ISIL LIBRARY

*Journal of World Trade*, vol. 42, no. 2 (2008), pp. 433-460.

Das, Kasturi, "Select Issues and Debates around Geographical Indications with Particular Reference to India", *Journal of World Trade*, vol. 42, no. 2 (2008), pp. 461-508.

Dalal, Milan, "India's New Constitutionalism: Two Cases That Have Reshaped Indian Law", *Boston College International and Comparative Law Review*, vol. 31, no. 25 (2008), pp. 257-276.

Stiglitz, Joseph E., "Regulating Multinational Corporation: Towards Principles of Cross-Border Legal Frameworks in a Globalized World Balancing Rights with Responsibilities", *American University International Law Review*, vol. 23, no. 3 (2008), pp. 451-558.

## NEW ADDITIONS

Ajayi, J. F. Ade. (ed.), *General History of Africa: Africa in the Ninetieth Century until the 1980s*, Vol. 6. (Heinemann UNESCO, California, 1989).

Anderson, David, *Modern Law of the Sea: Selected Essays* (Martinus Nijhoff, Leiden, 2008).

Bare Act., *The Negotiable Instruments Act, 1981* (Universal, New Delhi, 2008).

Bhargava, R., *Justice: Political, Social, Juridical* (Sage Publications, New Delhi, 2008).

Boahen, A. Aow (ed.), *General History of Africa: Africa under Colonial Domination 1980-*

*1935*, Vol. 7 (Heinemann UNESCO, California, 1985).

Bowring, Bill, *The Degradation of the International Legal Order* (Rutledge - Cavendish, New York, 2008).

Brazier, Jana Evans, *Diaspora: An Introduction* (Blackwell, USA, 2008).

Elfasi, M. (ed.), *General History of Africa: Africa from the Seventh to the Eleventh Century*, Vol. 3 (Heinemann UNESCO, California, 1988).

Falk, Richard, *International Law & the Third World: Reshaping Justice* (Rutledge, USA, 2008).

Harrison, James, *The Human Rights Impact of the World Trade Organizations* (Hart Publishing, USA, 2007).

Kaul, J. L. and M. K. Sinha, *Human Rights & Good Governance: National and International Perspective* (Satyam Law International, New Delhi, 2008).

Ki-Zerbo, J. (ed.), *General History of Africa: Methodology and African Prehistory*, Vol. 1, (Heinemann UNESCO, California, 1981).

Kumar, Nagesh (ed.), *Asia's New Regionalism and Global Role: Agenda for the East Asia Summit* (Research and Information System, New Delhi, 2008).

Lester, Simon and Others, *World Trade Law: Text, Materials and Commentary* (Hart Publishing, USA, 2008).

MaAdam, Jane (ed.), *Forced Migration, Human Rights and Security* (Hart Publishing, USA, 2008).

Mapp, Susa, C., *Human Rights and Social Justice in a Global Perspective* (Oxford University, New York, 2008).

Marjit, Sugata, *International Trade and Economic Development: Essays in Theory and Policy* (OUP, ND, 2008).

Maskus, Keith E. (ed.), *Intellectual Property Growth and Trade*, 1<sup>st</sup> edn (Elsevier, United Kingdom, 2008).

Mazrui, Ali A. (ed.), *General History of Africa: Africa since 1935*, Vol. 8 (Heinemann UNESCO, California, 1993).

Mokhtar, J. (ed.), *General History of Africa: Ancient Civilizations of Africa*, Vol. 2. (Heinemann UNESCO, California, 1981).

Nair, P. M., *The Kalam Effect: My years with the President* (Harber Lollins, New Delhi, 2008).

Najam, Adil and Others, *Envisioning a Sustainable Development Agenda for Trade and Environment* (Palgrave, Macmillan, New York, 2007).

Ndiaye, T. M. and R. Wolfrum (ed.), *Law of the Environmental Law and Settlement of Dispute* (Martinus Nijhoff, Leiden, 2007).

Niane, D. T. (ed.), *General History of Africa: Africa from the Twelfth to the Sixteenth Century*, Vol. 4, (Heinemann UNESCO, California, 1984).

Normand, R., *Human Rights at the UN: The Political History of Universal Justice* (Indiana University Press, USA, 2008).

## Current Issue of Indian Journal of International Law July - September 2008, Vol. 48, No. 3

### CONTENTS

#### ARTICLES

The Struggle for Upholding Human Dignity of Victims of Enforced Disappearance: Some Reflections on the Normative and Institutional Framework

K. I. Vibhute

Liability for the Damage Resulting from the Carriage of Hazardous and Noxious Substances by Sea

R. Bhanu Krishna Kiran

The Application of International Law in Municipal Systems: An Assessment of the Impact of Universal Declaration of Human

Rights on National and International Courts

R. Subramanya

Draft National Biotechnology Regulatory Bill (India), 2008- A Forgettable Effort

Sanu M. K.

#### SHORTER ARTICLE

International Child Abduction- Parental Removal

Dr. Justice AR. Lakshmanan

Indo - U.S. Treaty on Peaceful Nuclear Co-operation, 2007: Should This Baby of Indo-U.S. Love Affairs be Aborted?

Anupam Jha

#### OFFICIAL DOCUMENTS

#### BOOK REVIEW

#### SELECT ARTICLES AND NEW ACQUISITIONS

New Acquisitions to the ISIL Library from July to September 2008