



The Indian Society of International Law

NEWSLETTER

VOL. 9, NO. 3, July-September, 2010

For members only

President
R. P. Anand

Vice Presidents
Narinder Singh
C. K. Chaturvedi
R. Venkat Rao

Treasurer
V. G. Hegde

Secretary General
Rahmatullah Khan

Director
S. K. Verma

Editorial



The legitimacy of unilateral declaration of independence has generated heated debate. Asserting that right to self-determination and secession as an arm of the right, ICJ, on 22 July 2010, in its advisory opinion on Kosovo's unilateral declaration of independence, held that the unilateral declaration of independence by Kosovo did not violate general international law, nor did Resolution 1244 (1999) or the Constitutional Framework, nor any applicable rule of international law. The GA had posed the following question for advisory opinion of the ICJ: Is the unilateral declaration of independence by the Provisional Institutions of Self Government of Kosovo in accordance with International Law? ICJ reformulated the question: whether the unilateral declaration of independence by Kosovo was in accordance with international law; and not whether the declaration has established Kosovo's statehood or the legal consequences of the declaration. ICJ further emphasized that it has not been called upon to determine whether or not there is a rule of international law that entitles Kosovo or a unit of State to unilaterally declare independence.

Students of international law were expecting answers of the four fundamental and vital issues involved in the case: (i) scope and extent of the principle of self-determination, or in other words, does principles of equal rights and self determination of peoples allow for the dismemberment of an existing State without its consent; (ii) whether the principle of territorial integrity resist secession; (iii) whether or not there is an international law right to secession or whether there is a remedial right to secession? (iv) did declaration of February 17, 2008 violate Resolution 1244 or the Constitutional Framework?

Obviously, the reformulation of GA resolution prevented the ICJ to deliver judgment on issues viz., self-determination and whether there was a right of minorities to "remedial secession". The ICJ has emphatically ruled that the principle of territorial integrity does not apply to non-State actors like secessionist groups within a State. By ten votes to four, it, however, concluded that general international law does not prohibit declarations of independence (dissenting votes: Vice-President Tomka, Judges Koroma, Bennouna and Skotnikov). Consequently, the unilateral declaration of independence by Kosovo on February 17, 2008, did not violate general international law. The opinion contains interesting statements about the interpretation of Security Council resolutions. In its view Resolution 1244 was concerned with creating an interim regime for Kosovo and not with dealing with a final settlement of Kosovo's situation.

On preliminary objection to the jurisdiction of ICJ, it decided that (i) it has jurisdiction to give the opinion requested and (ii) its request for an advisory opinion is not in itself a 'recommendation' by the General Assembly 'with regard to dispute or situation'. On this issue, ICJ referred to the judgment given in the case of Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004 (I), p. 148, para. 25).

INSIDE

Recent Activities	2-4
Recent Developments in International Law	4-8
New Additions in ISIL Library	8
Current Issue of IJIL	8
Forthcoming Events	8

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@giasd01.vsnl.net.in
Website: www.isil-aca.org

R.P. Anand

RECENT ACTIVITIES

TWO-DAY TRAINING PROGRAMME ON INTELLECTUAL PROPERTY RIGHTS AND WTO ACCOUNTABILITY - SCOPE OF PATENTING FOR THE INDIAN FOREST SERVICE OFFICERS

Indian Society of International Law (ISIL) conducted *Two-days Training Workshop on Intellectual Property Rights and WTO Accountability – Scope of Patenting for Indian Forest Service Officers* at its premises on 5th and 6th July 2010. Seventeen IFS Officers participated in the workshop. ISIL undertook following themes in the Programme: 1. International and National Patent Laws; 2. WTO-TRIPS and Indian Cases in WTO and Its Implications; 3. TRIPS, Convention on Biological Diversity and Traditional Knowledge. There were lectures and presentations on the themes of international and national economic law. The faculty of the orientation course consisted of eminent international law scholars, namely, Dr. V. G. Hegde, Associate Professor, JNU, New Delhi, Dr. Ravindra Pratap, GGSIP University, Delhi, Dr. R. Saha, Director, Dr. Sudhir Kochar, Principal Scientist, ICAR, Dr. Malathi Lakshmikumar (Scientist) and Shri Vinai Kumar Singh, Assistant Professor, ISIL. The participants were taken for visit to Indian Patent Office, Dwarka, New Delhi where Dr. K. S. Kardam, Assistant Controller of Patents briefly discussed the work and functioning of the New Delhi Patent Office. He also distributed certificates to the participants.

LECTURE AT XIAMEN ACADEMY OF INTERNATIONAL LAW BY PROF. B. C. NIRMAL, MEMBER, EC, ISIL

Essentially based on the pattern of the Hague Academy of International Law, Xiamen Academy is devoted to the cause of the dissemination of international law and teaching and research in this fast growing branch of law of far reaching significance in today's globalized world. Prof. B. C. Nirmal, Member, Executive Council, ISIL delivered lecture on "The Development of International Criminal Law of Procedure



Through International Courts and Tribunals" at the summer programme of the Xiamen Academy held on 5th July to 9th July 2010 at Xiamen. The other eminent international law scholars who delivered lectures in the Xiamen Summer 2010 namely H.E. Judge Bruno Simma, International Court of Justice, The Hague - "Multilateral Rights and Obligations in Modern International Law"; Prof. Christine Chinkin, London School of Economics and Political Science, University of London, UK - "Peaceful Settlement of International Dispute Resolution"; Prof. W. Michael Reisman, Yale University, U.S.A. - "The Use of Force in International Law"; Prof. Lingliang Zeng, Macau University, China - "International Organizations, the International Rule of Law and Their Relevance to China"; Dr. Ralph Wilde, University College London, University of London, UK - "The Extraterritorial Application of Human Rights Law". Earlier in 2008, Prof. R. P. Anand, President, ISIL had delivered lecture at the summer programme of the Xiamen Academy.

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 1st September 2010. The ceremony was also marked to inaugurate Post Graduate Diploma and Certificate Courses 2010. Prof. S. K. Verma, Director, ISIL welcomed and introduced the chief guest Hon'ble Justice Sanjay Kishan Kaul, Judge, High Court of Delhi and invited him to give inaugural address. Hon'ble Justice Shri Kaul distributed certificates to students of ISIL. *Mr. Annporna K.* received *V. K. Krishna Menon Memorial Prize* for securing the highest marks in the Post Graduate Diploma Course in International Law and Diplomacy; *Ms. Priyanka Parashar* received *K. Krishna Rao Memorial Prize* for securing the highest marks in the Post Graduate Diploma Course in International Trade and Business Law; *Ms. Usha Grace Antony* received *Judge Nagendra Singh Memorial Prize* for securing the highest marks in the Post Graduate Diploma Course in Human Rights, International Humanitarian and Refugee Law; and *Ms. Pragati Aneja* received *M. K. Nawaz Memorial Prize* in the Certificate Course on International and National Intellectual Property Rights. This academic year 2010 also witnessed addition of Post Graduate Diploma Course on Environmental Law and also conversion of Certificate Course on IPR into Post Graduate Course on International and National Intellectual Property Rights Law.

VISIT OF DELEGATION FROM THE INSTITUTE OF LEGAL STUDIES, KANSAI UNIVERSITY AND A TALK ON "PROTECTION OF GENETIC RESOURCES AND TRADITIONAL KNOWLEDGE IN INDIA"

A delegation of three professors Prof. Takasaka M, Prof. Konno M, Prof. Shrestha M. L. of Institute of Legal Studies, Kansai University visited ISIL on 3 September 2010. And on this occasion, Prof. Shrestha delivered a lecture on "Protection of Genetic Resources and Traditional Knowledge in India". Prof. Shrestha made emphasis on the need of legal binding benefit sharing instrument among states to prevent misappropriation of biological resources and deter the ongoing piracy on genetic materials. He suggested to work on the line of African countries who recently concluded benefit sharing agreements with Japan. The Lecture witnessed lively exchange of views with the audience on his presentation.

TENTH HENRY DUNANT MEMORIAL MOOT COURT COMPETITION (NATIONAL ROUND)

ISIL and the International Committee of the Red Cross (ICRC), New Delhi

organized the Tenth Henry Dunant Memorial Moot Court Competition at its premises from 9th to 12th September 2010. Prof. R. P. Anand, President, ISIL, gave welcome address. On this occasion Hon'ble Justice Cyriac Joseph, Judge, Supreme Court of India gave inaugural address. He appreciated team members participations and underlined the importance of the event in the present day which equip the students to develop skills and create asset for the bar of the country. Mr. Francois Stamm, Head of the Regional Delegation, ICRC, New Delhi also addressed the gathering and spoke on the importance of the subject of the moot court competition and highlighted the contribution of the ICRC in the development of international humanitarian law. Participants from 59 law universities and colleges came to participate in the Competition. Prof. S. K. Verma, Director, ISIL gave a formal vote of thanks.

The Competition was conducted 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 Ravindra Bhat, Judge, Delhi High Court, His Excellency, Prof. (Dr.) Gudmundur Eiriksson, Ambassador of Iceland to India and Dr. M. Gandhi, Director, L&T Division, MEA,

Government of India were the final round judges. Hidayatullah National Law University, Raipur and National Law School, Dwarka, New Delhi were the winner and runner up of the Competition respectively. Ms. Venu Nanavaty, Institute of Law, NIRMA University, Ahmedabad was adjudged the Best Advocate, Mr. Aditya Bose, Dr. Ram Manohar Lohia National Law University, Lucknow, won the Best Researcher award, and National Law Institute, Bhopal won Best Memorial award in this Competition. Hon'ble Justice Bhat gave valedictory address on the occasion.

TRAINING PROGRAMME FOR PROBATIONERS OF INDIAN FOREIGN SERVICE ON INTERNATIONAL LAW

Indian Society of International Law (ISIL) conducted seven day *Training Programme on International Law* for probationers of Indian Foreign Service Officers at its premises on 21-29 September 2010. Twenty two probationers of IFS Officers participated in the programme. There were lectures and presentations on the themes of international law. The faculty of the orientation course consisted of eminent international law scholars. Prof. R. P. Anand, President, ISIL, gave concluding remarks and distributed certificates to the Officer-Trainees. Prof. Rahmatullah Khan, Secretary General, ISIL proposed a formal vote of thanks.

THE FELICITATION FUNCTION FOR DR. KISHORE SINGH, SPECIAL RAPPORTEUR IN THE HUMAN RIGHTS COUNCIL ON THE RIGHT TO EDUCATION

ISIL organised a programme on 31st August 2010 at ISIL premises to felicitate Dr. Kishore Singh, Former UNESCO Officer who has been recently appointed a Special Rapporteur on the Right to Education. Nominated by Government of India and jointly by Judge Yusuf and Judge Trindade of the International Court of Justice. Dr Kishore Singh has excellent academic record, with a Ph. D. in international law (1977) from the University of Paris. Having





been the coordinator for follow up to UNESCO's conventions and recommendations in the field of education as well as the Secretary of the Joint Expert Group UNESCO (CR)/ECOSOC (CESCR) on the Monitoring of the Right to Education, Dr Kishore Singh is highly experienced and competent in dealing with matters related to application of the right to education and its more effective monitoring. In a number of activities relating to this field, he has collaborated with the Office of the High Commissioner for Human Rights (OHCHR), and participated in the work of the UN human rights treaty bodies, especially CESCR. He has also represented UNESCO at the sessions of the Commission on Human Rights.

Being the Special Rapporteur on the Right to Education, Singh will be responsible for safeguarding and promoting the right to education worldwide. Apart from this, an annual global report will also have to be presented by him to the Human Rights Council. The report will consist of interactive dialogue, suggestions and recommendations for advancing the RTE. Shri Singh briefly mentioned his role and responsibility in the UNESCO and expressed his gratitude to ISIL. On this occasion, a shawl and memento was presented by Shri Narinder Singh, Member, International Law Commission. Prof. S. K. Verma, Director, ISIL gave a vote of thanks.

RECENT DEVELOPMENT

RATIFICATION OF SOME MULTILATERAL TREATIES BY COUNTRIES

On the occasion of the UN Treaty Event, 26 countries undertook 44 separate treaty into actions. On 28 September 2010, Malta ratifies a global treaty banning the sale of children, child prostitution and child pornography as a critical step towards protecting the rights of young people. Malta's ratification brings the number of State parties to the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography to 141. The treaty, one of two Optional Protocols to the Convention on the Rights of the Child, extends the obligations of States parties to guarantee the protection of children from sale, pornography and prostitution, through explicit prohibition of these acts in their laws. Among the other ratifications, on 28 September 2010, was that by Tunisia of the Convention on Cluster Munitions and the International Convention for the Suppression of Acts of Nuclear Terrorism, by the Netherlands of the Optional Protocol to the Convention against Torture, and by Togo of the Protocol against the smuggling of migrants. In addition, Ethiopia signed the Optional Protocol on children and armed conflict and Paraguay signed the International Tropical Timber Agreement of 2006.

SUMMARY OF THE WORK OF THE INTERNATIONAL LAW COMMISSION AT ITS SIXTY-SECOND SESSION

As regards the topic "Reservations to treaties", the Commission had before it addendum 2 to the fourteenth report (A/CN.4/614/Add.2) as well as the fifteenth and sixteenth reports (A/CN.4/624 and Add.1 and 2, and A/CN.4/626 and Add.1, respectively) of the Special Rapporteur. Addendum 2 to the fourteenth report and the fifteenth report considered the legal effects of reservations, acceptances of reservations and objections to reservations,

as well as the legal effects of interpretative declarations and reactions thereto.

Following a debate in plenary on these reports, the Commission referred 37 draft guidelines to the Drafting Committee. The sixteenth report considered the issue of reservations, objections to reservations, acceptances of reservations and interpretative declarations in relation to the succession of States. Following a debate in plenary, the Commission referred 20 draft guidelines, as contained in that report, to the Drafting Committee. The Commission provisionally adopted 59 draft guidelines, together with commentaries, including 11 draft guidelines which had been provisionally adopted by the Drafting Committee at the sixty-first session and which deal with the freedom to formulate objections and with matters relating to the permissibility of reactions to reservations and of interpretative declarations and reactions thereto. The Commission thus completed the provisional adoption of the set of draft guidelines (chap. IV).

Concerning the topic "Expulsion of aliens", the Commission had before it document A/CN.4/617, containing a set of draft articles on the protection of the human rights of persons who have been or are being expelled, revised and restructured by the Special Rapporteur in the light of the debate which had taken place in plenary during the sixty-first session of the Commission (2009). The Commission referred the revised draft articles 8 to 15, as contained in that document, to the Drafting Committee. The Commission also had before it the sixth report of the Special Rapporteur (A/CN.4/625 and Add.1), which considered collective expulsion, disguised expulsion, extradition disguised as expulsion, the grounds for expulsion, detention pending expulsion and expulsion proceedings. Following a debate in plenary, the Commission referred to the Drafting Committee draft articles A, 9, B1 and C1, as contained in the sixth report, and draft articles B and A1 as revised by the Special Rapporteur during the session. The Commission also had before it a new draft work plan with a view to restructuring the draft articles (A/CN.4/618), which had been presented by the Special Rapporteur to the Commission at its sixty-first session (2009),

as well as comments and information received thus far from Governments (A/CN.4/604 and A/CN.4/628) (chap. V).

As regards the topic "Effects of armed conflicts on treaties", the Commission commenced the second reading of the draft articles on the effects of armed conflicts on treaties (which had been adopted on first reading at its sixtieth session (2008)) on the basis of the first report of the Special Rapporteur (A/CN.4/627 and Add.1). Following a debate in plenary on the report of the Special Rapporteur, the Commission referred all the draft articles, and the annex, proposed by the Special Rapporteur to the Drafting Committee (chap. VI).

In relation to the topic "Protection of persons in the event of disasters", the Commission had before it the third report of the Special Rapporteur (A/CN.4/629), dealing with the humanitarian principles of neutrality, impartiality and humanity, as well as the underlying concept of respect for human dignity. The report also considered the question of the primary responsibility of the affected State to protect persons affected by a disaster on its territory, and undertook an initial consideration of the requirement that external assistance be provided on the basis of the consent of the affected State. Following a debate in plenary, the Commission decided to refer draft articles 6 to 8, as proposed by the Special Rapporteur, to the Drafting Committee. The Commission also adopted draft articles 1 to 5, which it had taken note of at its sixty-first session (2009), together with commentaries. The Commission subsequently took note of four draft articles provisionally adopted by the Drafting Committee, relating to the humanitarian principles in disaster response, the inherent human dignity of the human person, the obligation to respect the human rights of affected persons, and the role of the affected State, respectively (A/CN.4/L.776) (chap. VII).

As regards the topic "The obligation to extradite or prosecute (aut dedere aut judicare)", the Commission reconstituted the Working Group. The Working Group continued its discussions with the aim of specifying the issues to be addressed to further facilitate the work of the Special Rapporteur. It had before it a Survey of

multilateral conventions which may be of relevance for the Commission's work on the topic, prepared by the Secretariat (A/CN.4/630), and a working paper prepared by the Special Rapporteur (A/CN.4/L.774) containing some observations and suggestions based on the general framework proposed in 2009 and drawing upon the survey by the Secretariat (chap. VIII).

Concerning the topic "Immunity of State officials from foreign criminal jurisdiction", the Commission did not consider it in the course of the present session (chap. IX).

In relation to the topic "Treaties over time", the Commission reconstituted the Study Group on Treaties over time. The Study Group began its work on the aspects of the topic relating to subsequent agreements and practice, on the basis of an introductory report prepared by its Chairman on the relevant jurisprudence of the International Court of Justice and of arbitral tribunals of ad hoc jurisdiction. A variety of issues relating to the significance and role of subsequent agreements and practice in the interpretation of treaties, and possibly also in their modification, were touched upon in the discussions (chap. X).

As regards the topic "The Most-favoured-nation clause", the Commission reconstituted the Study Group on the Most-Favoured-Nation clause. The Study Group considered and reviewed the various papers prepared on the basis of the framework which had been agreed upon in 2009, including a catalogue of MFN provisions and papers on the 1978 draft articles, the practice of GATT and WTO, the work of OECD and UNCTAD on MFN, and the "Maffezini" issue, and set out a programme of work for next year (chap. XI).

In relation to the topic "Shared natural resources", the Commission once more established the Working Group on Shared natural resources. The Working Group continued its assessment on the feasibility of future work on oil and gas on the basis of a working paper (A/CN.4/621). The working group considered all aspects of the matter, taking into account the views of governments, including as reflected in the working paper, as well as in light of its

previous discussions. The Commission endorsed the recommendation of the Working Group that the Commission should not take up the consideration of the oil and gas aspects of the topic "Shared natural resources" (chap. XII).

Concerning "Other matters", the Commission, pursuant to its 2009 decision, devoted a discussion to "Settlement of disputes clauses". It had before it a Note on Settlement of disputes clauses, prepared by the Secretariat (A/CN.4/623). The Commission decided to continue debate on the issue under "Other matters" at its next session. It was also agreed that a member of the Commission would prepare a working paper for that purpose (chap. XIII, sect. A.1). The Commission set up the Planning Group to consider its programme, procedures and working methods (chap. XIII, sect. A). The Working Group on the Long-term programme of work was reconstituted (chap. XIII, sect. A.3). The Commission decided that its sixty-third session be held in Geneva from 26 April to 3 June and 4 July to 12 August 2011 (chap. XIII, sect. B).

ICC ORDERS RELEASE OF CONGOLESE LEADER LUBANGA

After suspending the case against a Congolese warlord on trial for allegedly enlisting child soldiers, the International Criminal Court (ICC), on 15 July 2010, ordered his release. Earlier, the ICC's trial chamber suspended proceedings against Thomas Lubanga Dyilo, founder and leader of the Union of Congolese Patriots in the Ituri region of the eastern Democratic Republic of the Congo (DRC), saying that prosecutors have refused orders to disclose information to his defence. Mr. Lubanga faces two counts of war crimes: conscripting and enlisting child soldiers into the military wing of his group and then using them to participate in hostilities between September 2002 and August 2003. His trial began at ICC on January 2010. Earlier, the trial chamber ordered to stay the proceedings, "considering that the fair trial of the accused is no longer possible due to non-implementation of the Chamber's orders by the Prosecution." The ICC judges said, on 15 July 2010, that defendants cannot be

held in preventative custody on a speculative basis, namely that the Thomas Lubanga Dyilo proceedings may resume at some point in the future. But the order will not be implemented for five days, giving the prosecution time to appeal.

UN EXPERTS REVIEW EFFORTS OF EIGHT NATIONS INCLUDING INDIA TO ELIMINATE DISCRIMINATION AGAINST WOMEN

A meeting of the United Nations committee on the elimination of discrimination against women opened in New York, on 12 July 2010, to look into the situation of women in eight countries, including Papua New Guinea, which will be reviewed for the first time, and India, which will be examined on an exceptional basis. Violence against women, political participation, discriminatory family law, eliminating gender stereotypes and preventing trafficking are some of the areas to be explored by the committee of experts charged with ensuring that governments eliminate discrimination against women. During its 19-day session at UN Headquarters, the Committee on the Elimination of Discrimination against Women (CEDAW) will review the status of women in Argentina, Fiji, Russia, Australia, Papua New Guinea, India and Albania. India will be reviewed on an exceptional basis, with the Committee considering the country's follow-up report on the impact of the 2002 Gujarat massacres on women. Following the eight reviews, the experts will make recommendations to each government about what more it should do to eliminate discrimination against women.

TREATY PROTECTING UN PERSONNEL ENTERED INTO FORCE

A 2005 Optional Protocol to the Convention on the Safety of UN and Associated Personnel that expands an international treaty aimed at protecting United Nations staff members and other humanitarian workers entered into force after the United Kingdom became the latest country to ratify it. The UK became party to the 2005 Optional Protocol to the Convention on the

Safety of UN and Associated Personnel, on 21 July 2010, joining 21 other countries which have already done so over the past four years. The optional protocol provides legal protection to staff delivering emergency humanitarian assistance and to those providing political and development assistance in peacebuilding situations. It extends the legal protection offered by the 1994 convention on the same subject, which only applies to personnel engaged in peacekeeping operations. In the year 2009 alone, 28 civilian UN staff members were killed, according to the UN Staff Union, and at least 97 aid workers were killed, while 60 others were wounded and 92 more were abducted.

BURKINA FASO AND NIGER REFER BORDER DISPUTE TO ICJ

On 21 July 2010, the West African countries of Burkina Faso and Niger have submitted a dispute over their common border to the United Nations International Court of Justice (ICJ) as part of a wider agreement by the two States to resolve the situation peacefully. In a joint letter filed, on 21 July 2010, the ICJ has been asked to delineate the border between the two nations from the Tong-Tong marker to the start of the Botou bend. The court has also been asked to observe the two countries' agreement on the results of the work of a joint technical commission set up by Burkina Faso and Niger on two other sections of their shared border. The decision to refer the matter to the ICJ is in line with a special agreement signed by the two countries last year in Niamey, the capital of Niger.

KOSOVO'S DECLARATION OF INDEPENDENCE

Kosovo's unilateral declaration of independence from Serbia in February 2008 did not violate international law, the International Court of Justice (ICJ) said in its advisory opinion on 22 July 2010. The ICJ was asked by the General Assembly to give its opinion on the legality of the independence declaration by the Provisional Institutions of Self-Government (PISG) of Kosovo. By 10 votes to four,

judges at the ICJ concluded that the declaration does not breach either general international law, a Security Council resolution from 1999 following the end of fighting in Kosovo, or the constitutional framework that was adopted by the Secretary-General's Special Representative on behalf of the UN Interim Administration Mission in Kosovo (UNMIK). UNMIK was established after Western forces drove out Yugoslav forces amid inter-ethnic fighting in 1999. Ethnic Albanians outnumber ethnic Serbs and other minorities by about nine to one in Kosovo.

GENERAL ASSEMBLY DECLARES ACCESS TO CLEAN WATER AND SANITATION IS A HUMAN RIGHT

Safe and clean drinking water and sanitation is a human right essential to the full enjoyment of life and all other human rights, the General Assembly declared, on 28 July 2010, voicing deep concern that almost 900 million people worldwide do not have access to clean water. The 192-member Assembly also called on United Nations Member States and international organizations to offer funding, technology and other resources to help poorer countries scale up their efforts to provide clean, accessible and affordable drinking water and sanitation for everyone. The Assembly resolution received 122 votes in favour and zero votes against, while 41 countries abstained from voting. The text of the resolution expresses deep concern that an estimated 884 million people lack access to safe drinking water and a total of more than 2.6 billion people do not have access to basic sanitation. Studies also indicate about 1.5 million children under the age of five die each year and 443 million school days are lost because of water- and sanitation-related diseases. The UN Human Rights Council's requested Catarina de Albuquerque, the UN Independent Expert on the issue of human rights obligations related to access to safe drinking water and sanitation, report annually to the General Assembly as well. Ms. de Albuquerque's report will focus on the principal challenges to achieving the right to safe and clean drinking water and sanitation, as well as on

progress towards the relevant Millennium Development Goals (MDGs). The MDGs, a series of targets for reducing social and economic ills, all by 2015, includes the goals of halving the proportion of people who cannot reach or afford safe drinking water and halving the number who do not have basic sanitation.

SEYCHELLES JOINED INTERNATIONAL CRIMINAL COURT

Seychelles ratified the 1998 Rome Statute, on 11 August 2010, which will enter into force for the country on 1 November 2010. Now 112 States are Parties to the ICC Statute.

UN HUMAN RIGHTS COUNCIL MISSION ON FLOTILLA INCIDENT DEPARTS FOR TURKEY, JORDAN

The United Nations Human Rights Council's (HRC), on 23 August 2010, decided to establish international independent fact finding mission of high-level experts looking into the Gaza flotilla incident on 31 May 2010. The mission visited Turkey and Jordan to interview witnesses and government officials. Technical and legal specialists also accompanied the three-person mission, chaired by Judge Karl T. Hudson-Phillips, a former judge with the International Criminal Court (ICC), on the two-week visit to the two countries. Its other members are Sir Desmond de Silva, a former chief prosecutor at the Special Court for Sierra Leone (SCSL), and Shanthy Dairiam, a member of the Gender Equality Task Force at the UN Development Programme (UNDP). The mission spent two weeks in Geneva, where it drafted its terms of reference and held talks with diplomats, including the ambassadors of Israel and Turkey. The 47-member, HRC voted on 2 June 2010 – with 32 votes in favour to three against, and nine abstentions – to dispatch the mission to inquire into incident regarding the flotilla, which had departed Turkey and was bound for the Gaza Strip.

TURKEY SIGNED INTERNATIONAL CONVENTION FOR THE SAFE AND ENVIRONMENTALLY SOUND RECYCLING OF SHIPS

On 27 August 2010, Turkey, one of the five major ship recycling nations in the world, has signed the International Convention for the Safe and Environmentally Sound Recycling of Ships promoting the environmentally friendly recycling of ships. The Hong Kong International Convention for the Safe and Environmentally Sound Recycling of Ships, adopted in May 2009, is aimed at ensuring that ships, when being recycled at the end of their operational lives, do not pose an unnecessary risk to human health and safety or the environment. The convention deals with all the major issues surrounding ship recycling, including the fact that ships sold for scrapping may contain environmentally hazardous substances such as asbestos, heavy metals, hydrocarbons, ozone-depleting substances and others. It also tackles concerns about the working and environmental conditions at many ship recycling locations. In addition, the convention regulates the design, construction, operation and preparation of ships so as to facilitate safe and environmentally sound recycling – without compromising the ships' safety and operational efficiency. It focuses on the operation of ship recycling facilities in a safe and environmentally sound manner, as well as on establishment of an appropriate enforcement mechanism for ship recycling – including certification and reporting requirements. The text of the convention was developed over a three-year period, with input from IMO Member States and relevant nongovernmental organizations (NGOs), in cooperation with the International Labour Organization (ILO) and the Parties to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal. It will enter into force 24 months after the date on which 15 States, representing 40 per cent of world merchant shipping by gross tonnage, have either signed it without reservation as to ratification, acceptance or approval, or

have deposited instruments of ratification, acceptance, approval or accession with the IMO Secretary-General. The combined maximum annual ship recycling volume of those States during the preceding 10 years must constitute not less than 3 per cent of their combined merchant shipping tonnage. To date, the Convention has been signed, subject to ratification or acceptance, by France, Italy, the Netherlands, Saint Kitts and Nevis and Turkey.

SWAKOPMUND PROTOCOL ON THE PROTECTION OF TRADITIONAL KNOWLEDGE AND EXPRESSIONS OF FOLKLORE ADOPTED BY AFRICAN STATES TO PROTECT AFRICAN FOLKLORE AND TRADITIONAL KNOWLEDGE

The Swakopmund Protocol on the Protection of Traditional Knowledge and Expressions of Folklore has been adopted on 31 August 2010 in Swakopmund, Namibia, by member states of the African Regional Intellectual Property Organization (ARIPO), which is designed to preserve and protect the use of Africa's diverse knowledge systems and cultures for the continent's sustainable development. It will enter into force following ratification by six ARIPO member states. Developed by African experts over a six-year period, the Swakopmund Protocol is a response to the misappropriation and misuse of the continent's traditional knowledge and traditional cultural expressions. It was developed in coordination with a similar instrument prepared over the same period by the 16 West African countries comprising the Organization Africaine de la Propriete Intellectuelle (OAPI), and adopted in July 2007. Meanwhile, WIPO's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore is working towards the development of a legal instrument for the effective protection of traditional knowledge and traditional cultural expressions that would be international in scope.

RECENT DEVELOPMENTS/ NEW ADDITIONS IN ISIL LIBRARY

NEW ADDITIONS

Carr, Indira, *International Trade Law*. 4th ed. (Routledge, London, 2010).

Charney, Jonathan I. (ed.), *International Maritime Boundaries* Vol. 3, 4, 5 (Martinus Nijhoff Publishers, Hague, 2002).

Crawford, James (ed.), *The Law of International Responsibility* (Oxford University Press, Oxford, 2010).

Gutter, Jeroen, *Thematic Procedures of the UN Commission on Human Rights and International Law in Search of a Sense of Community* (Intersentia, Oxford, 2006).

Harris, David, *Case and Materials on International Law* 7th ed. (Sweet and Maxwell, London, 2010).

Johnson, Lindy S., *Coastal State Regulation of International Shipping* (Oceana Publications, New York, 2004).

Kincaid, Harold and Don, Ross (eds.), *The Oxford Handbook of Philosophy of Economics* (Oxford University Press, Oxford, 2009).

Koul, Autar Krishen, *A Textbook of Jurisprudence* (Satyam Law International, Delhi, 2009).

Koul, Autar Krishen, *Guide to the WTO and GATT: Economic, Law and Politics* 2nd ed. (Satyam Law International, Delhi, 2010).

Lauterpacht, Elihu (ed.), *International Law: Collected Papers*, Volume 5 - Disputes, War and Neutrality Part IX-XIV (Cambridge University Press, United Kingdom, 2004).

MacClean, David and Beevers, Kisch, *Conflict of Laws* 7th ed., (Sweet and Maxwell, London, 2009).

Mahanty, Samareshwar, *Maritime Jurisdiction and Admiralty Law in India* (Universal Law Publications, Delhi, 2009).

Pennings, Frans (ed.), *International Social Security Standards: Current View and Interpretation matters* (Intersentia, Oxford, 2007).

Rehman, Javaid and Susan C. Breau (eds.), *Religion, Human Rights and International Law: A Critical Examination of Islamic State Practice* (Martinus Nijhoff Publishers, Leiden, 2007).

Solis, Gary D., *The Law of Armed Conflict: International Humanitarian: An Law in War* (Cambridge University Press, Cambridge, 2010).

Tanka, Yoshifumi, *Predictability and Flexibility in the Law of Maritime*

Delimitation (Hart Publishers, Oxford, 2006).

FORTHCOMING EVENTS

A Function to confer Honorary Membership on Prof. Francisco Orrego Vicuña, Professor of International Law at the University of Chile and A Special Lecture on 'New Issue for International Law Arising from the International Arbitration Practice in Latin America,' on 2 October 2010

Henry Dunant Memorial Moot Court Completion (South Asia Regional Round), 22 - 24 October 2010

UGC Refresher Course in Human Rights and Social Justice, International Humanitarian and Refugee Laws, 9 - 30 November 2010

Special Lecture on 'Towards Economic Recovery, the Role of International Commercial Arbitration' by Mr Adrian Winstanley, Director General, London Court of International Arbitration, 12 November 2010

First Winter Course on International Environmental Law, 13 - 17 December 2010

Current Issue of Indian Journal of International Law July-September 2010, Vol. 50, No. 3

CONTENTS

ARTICLES

What Goes Around Comes Around: The Return of Rejected Western Standards on Investment through Bilateral Investment Treaties

Amin George Forji

Optional Protocol to the International Covenant on Economic, Social and Cultural Rights: An Overview

B. C. Nirmal

The SPS Agreement, Risk Assessment and Science-in Troubled Waters?

Sanu M.K.

CURRENT DEVELOPMENTS

The National Green Tribunal Act, 2010: An Introductory Note

Shikhar Ranjan

NOTES AND COMMENTS

India, WTO and Shrimp II – Yet Interpretation Loss to India

Ravindra Pratap

The International Criminal Court Reaches A Milestone: Should India Continue to Stay Out?

Dilip Lahiri

OFFICIAL DOCUMENTS

BOOK REVIEW

Lukas H. Meyer, (ed.), *Legitimacy, Justice and Public International Law*

G. S. Sachdeva

SELECT BIBLIOGRAPHY AND NEW ACQUISITIONS

New Acquisitions to the ISIL Library from July to September 2010