



# The Indian Society of International Law

## NEWSLETTER

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For members only

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### INSIDE

Recent Activities .....	2-5
Recent Developments in International Law .....	5-8
Forthcoming Event .....	7
Current Issue of IJIL .....	8

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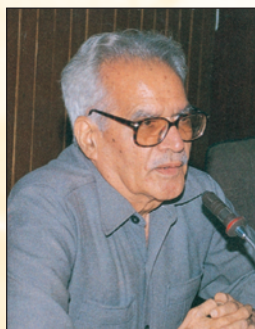
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### Editorial



Bangladesh gave notice to India and Myanmar on October 2009 about initiating arbitration under the United Nations Convention on Law of the Sea (UNCLOS) seeking, delineation of the boundary of continental shelf in the Bay of Bengal. As the initiator, Bangladesh first nominated Alan Vaughan Lowe, a former Chichele Professor of Public International Law in the Oxford University. Thereafter, India nominated P. Sreenivasa Rao, a former legal advisor to the Ministry of External Affairs and former member of the International Law Commission. Both countries are yet to agree on a third arbitrator. In fact, Bangladesh raised concerns on some aspects of the UNCLOS which has established the formula to determine base line and also the equidistant/equitable principle to delimit the continental shelf between opposite and adjacent States. Bangladesh is contending that India has trained the river upstream to

divert the flow of the Hariabhanga River, west of New Moore Island (South Talpatti). Hence, Bangladesh argues that the baseline should be determined by the depth rather than objects on the coast. Bangladesh is also advocating the application of equitable principle, applicable in disputed areas (surrounding the New Moore Island-Sunderban-Bay of Bengal). India relied on Article 15 of UNCLOS regarding "delimitation of the territorial sea between States with opposite or adjacent coasts". It states that "where the coasts of two States are opposite or adjacent to each other, neither of the two States is entitled, failing agreement between them to the contrary, to extend its territorial sea beyond the median line every point of which is equidistant from the nearest points on the baselines from which the breadth of the territorial seas of each of the two States is measured." India argues that the above provision, however, does not apply, where it is necessary by reason of historic title or other special circumstances to delimit the territorial seas of the two States in a way which is at variance therewith." In brief, it is obvious that if no treaty exists otherwise (as in the case of India-Bangladesh), the equidistant line should be considered as the boundary. India also explained that there are neither any historic title, nor special circumstances exist between these two countries. Nor Bangladesh was able to draw sea base line in the disputed sea areas. Hence, India believes that technically their claim will get priority over the Bangladesh claim since India follows the equidistant principle. India is also relying on the judgment of the ICJ in the *North Sea Continental Shelf case* (1969) that appeared to treat the equidistant principle as a general rule to which "special circumstances rule will follow". Some scholars reviewed state practice covering the period between 1945 and 1983 and concluded that "in large majority of cases States have been satisfied that the median or equidistant line leads to an equitable solution or result."

India has so far delimited maritime boundary with Maldives, Sri Lanka, Thailand, Myanmar and even with Indonesia. India has, between 1974 and 1979, concluded eleven Agreements with five of its neighbours, namely Sri Lanka, Maldives, Indonesia, Myanmar and Thailand. The boundary negotiations with Bangladesh commenced in October 1974 and have not yet been concluded. In fact, India had already presented a submission on May 11, 2009 to the Commission on the Limits of the Continental Shelf on its claims on the continental shelf beyond 200 nautical miles in only three areas – the eastern offshore region in the Bay of Bengal, western offshore region of the Andaman Islands and the western offshore region in the Arabian Sea. Since 1970's, India has already carried out seismic survey and made Bangladesh aware about it. However, recent developments in the exploration of Bay of Bengal involved interest of foreign oil companies granted licence by the Bangladesh. India's policy, nevertheless, in this matter seems to suggest to resolve maritime dispute amicably with Bangladesh through negotiation.

Ram Niwas Mirdha



# RECENT ACTIVITIES

## ONE WEEK COMPULSORY TRAINING COURSE FOR THE INDIAN FOREST SERVICE OFFICERS ON POLICY AND LEGAL ISSUES IN FORESTRY

The ISIL organized one week compulsory training course on Policy and legal Issues in Forestry on August 3 – 7, 2009. The training course comprised of a series of lectures on a variety of aspects of law and policy governing India's forests. The lectures covered both international and national legal instruments that govern protection and preservation of India's forests. The training course was participated by nineteen Indian Forest Service officers drawn from different parts of the country.

We had four classes daily followed by discussion. The inaugural lecture was delivered by Prof. Rahmatullah Khan, Secretary General ISIL, on *General Principles of International Environmental Law*. Prof. Khan spoke on the emergence of state system aftermath of the treaty of Westphalia. He outlined how state became sovereign of all the natural resources existing within its jurisdiction. He also discussed state entering into treaty with another state for the extraction of natural resources.

Ms. Meena Panicker, lecturer at the Delhi University Campus Law Centre, presented an overview of the *Rio Forest Principles*. Though the principles are legally non-binding, it serves as source of law-making in many countries and future negotiations at multilateral forum. She spoke on the issues of equity, which is the heart and soul of the Rio Forest principles. The first lecture of the first day's post lunch session was given by Prof. C. K. Varshney on the topic titled *Growing Importance of Forests in Shaping Environmental Policy for Sustainable Development*. He focused on the contribution of forests in the ecological processes.

The last lecture of the first day was given by Dr. Anwar Sadat, Assistant Professor, ISIL, on the theme *Climate Change and Forests*. He discussed in the lecture how forests have been dealt with in the climate change regime. He began his lecture discussing role of forests in greenhouse gas mitigation and its role in emission of greenhouse when forests are destroyed as a result of harvest, fires or pest attacks. He discussed the kind of shape forest related issues are taking in the post-Kyoto phase.

The second day (August 4, 2009) was entirely devoted to the legal instruments responsible for conservation of biological diversity. Professor S. K. Verma, Director ISIL, initiated the discussion on the Convention on Biological Diversity 1992.



She discussed the objectives of the Convention and critically analysed all those provisions in the Convention bearing on the issues of intellectual property rights.

Second lecture of the second day was given by Ms. Meena Panicker on the Biological Diversity Act 2002. Lecture was replete with those provisions which are meant for conservation of biological diversity, sustainable use of it and benefit sharing. She discussed the role of National Biological Diversity Authority of India.

Two lectures of the post lunch session of the second day were devoted to one theme *Biotechnology, Biodiversity and Sustainable Development*. Prof. B. N. Prasad, Head of the Department of Microbiology Amity University, spoke on the subject. He strongly underlined the importance of biotechnology in the production of food. How varieties of rice could become possible with the help of biotechnology?

The first two lectures of the third day (August 5, 2009) of the training course were devoted to Contribution of Indian Judiciary in the Protection of Environment and Principle of Sustainable Development and Forests. Sanjay Parikh, eminent lawyer, spoke on both the themes. He cited all the relevant cases which enumerate relevant principles of environmental law and sustainable development. He underlined the need that people will have to assert that natural resources are the common property and it should be protected and sustainably used.

The last two lectures of the day were devoted to *Tribal and Protected Areas: Law and Policy Aspect*. Madhu Sarin, one of the leading activists for the cause of tribal welfare with the help of forests, spoke on the subject. She traced

the evolution of the forest policy since the British times till today. She pointed out that the Britishers are first responsible for drawing demarcation lines between forests and tribals. The same policy was reflected in the Indian Forest Act 1927 and the Forest Act of 1980 with minor alterations. She substantiated her argument with the wealth of information on how tribals have been dealt with by the forest officials. The second part of her lecture was based on Forest Act 2005.

The first two lectures of the fourth day were on the theme *Concept of Protected Areas & Forests in India and Protected Areas and Wildlife Protection Act 1972* respectively. Mrs. Vishaish Uppal, Senior Coordinator Sustainable livelihoods Programme at World Wide Fund for Nature (WWF), spoke on both the themes. She discussed the role of protected areas in the preservation of forests. She also discussed India Eco-development project, which was funded by Global Environment Facility (GEF) and International Development Association (IDA). The second part of her lecture was on theme *Protected Areas and Wildlife Protection Act 1972*. There is synergy between protected areas and conservation of wild animal. Her lectures were well received by the audience. The post lunch session of the day was meant for panel discussion. The topic of the panel discussion was *Improvement in the Working of Forest Departments-Need for Career Development through Training and Improvement of Skills*. The following were the panelists R.B. Singh, Prof. of Geography at Delhi School of Economics, Kashmir Singh Dehal, Principal Chief Conservator of Forests, Tamil Nadu and Prof. B.N. Prasad). Kashmir Singh Dehal, being the

seniormost member among the participants, chaired the session. The discussion was initiated by Prof. R.B.Singh. He made a comprehensive presentation about improvement in the working condition of forest department. In his power point presentation, Prof. Singh covered a wide range of issues aimed at improvement in the working condition of the department. He said how forest fires are being dealt with in different countries. How eco-tourism can be made effective source of revenue spinner and it can be promoted for career development.

Prof. B. N. Prasad furthered the panel discussion. He shared his experience of Nepal with the Indian Forest Service officers. He also concurred with the opinion of eco-tourism as one of the means to promote career development. Kashmir Singh Dehal, who was chairing the session, summed up the discussion very well. After the end of the discussion, the IFS officials visited Supreme Court of India.

The last day of the training course (07-08-09) came to an end with two lectures in the first session. The first lecture was delivered by Prof. R. B. Singh on the theme *Forest Ecosystem-Monitoring and Management*. The last lecture of the training course on the theme Intellectual Property Rights and Forests was given by Dr. V. G. Hegde, Associate Professor at the Centre for International Legal Studies JNU. He linked traditional knowledge in the IPR with the issues of forests. He said rights of those people who are protecting traditional knowledge must be protected. The lecture was immediately followed by certificate distribution ceremony. The certificates were given to IFS officers by Prof. R. P. Anand, Executive President, ISIL.

## LECTURE ON "GENERAL AGREEMENT ON TRADE IN SERVICES AND INVESTMENT AGREEMENT" BY SUFIAN JUSOH, NCCR RESEARCH FELLOW, THE WORLD TRADE INSTITUTE, BERN, SWITZERLAND

Indian Society of International Law (ISIL) organised a special lecture on "*General Agreement on Trade in Services and Investment Agreement*" on 11 August 2009 at its premises. Prof. R. P. Anand, Executive President, ISIL introduced the speaker Mr. Sufian Jusoh, NCCR Research Fellow, The World Trade Institute, Bern, Switzerland. The Lecture witnessed lively exchange of views with the audience on his presentation.

## A SPECIAL LECTURE ON "UN ACTION AGAINST TERRORISM" BY DR. ROHAN PARERA, LEGAL ADVISOR, MINISTRY OF FOREIGN AFFAIRS, SRI LANKA

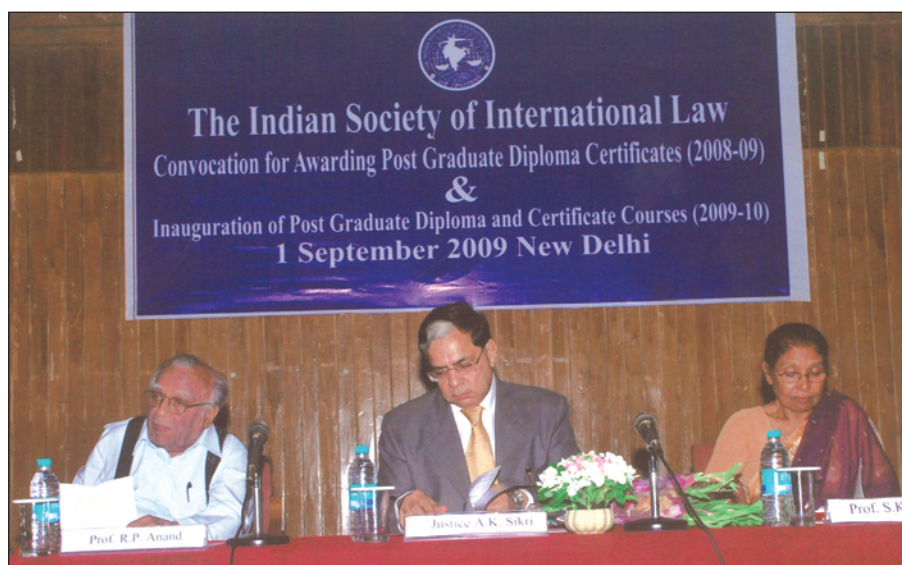
Indian Society of International Law (ISIL) organised a special lecture on "*UN Action against Terrorism*" on 7 September 2009 at its premises. Dr. M. Gandhi, Director, L&T Division, MEA, Government of India introduced the speaker Dr. Rohan Parera, Legal Advisor, Ministry of Foreign Affairs, Sri Lanka. He discussed the political view of criminal act of civilized society and the progress of comprehensive response of criminal approach. The response to terrorism from international community can be divided into three stages: 1. Early phase of 1970; 2. 1990's phase; 3. Comprehensive Convention on International Law.

Early phase of 1970's underlined where political factors like debates on terrorism figured. Emotional debates and convention in 1970's did not result in an effective instrument or yielded to any legal framework for terrorism. However, this phase witnessed 6<sup>th</sup> Commission of 1972, where Saudi Arab suggested title for international instrument as measures to eliminate international terrorism. It was proclaimed that terrorist occupied nation should be liberated from terrorist and foreign occupation and pure legislative approach should be adopted through political means. Second phase underscores adoption of the Geneva Convention of 1996 which gave emphasis to curb terrorist financing. Final phase yields ad hoc committees to elaborate on international terrorism which dealt with 1- Specific offences; 2 - Creditable threats; 3 - Refugee status; 4 - Treaty provisions conventional form; 5 - Operation of training

campus; 6 - Collateral damages. The Lecture witnessed lively exchange of views with the audience on his presentation. Prof. S. K. Verma gave vote of thanks.

## CONVOCATION AND INAUGURAL 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 Academic Session (2008-09)* on 1<sup>st</sup> September 2009. The ceremony was also marked to inaugurate Post Graduate Diploma and Certificate Courses for the 2009-2010. Prof. S. K. Verma, Director, ISIL, welcomed and introduced the chief guest Hon'ble Justice A. K. Sikri, Judge, High Court of Delhi and invited him to give inaugural address. Hon'ble Justice Shri Sikri distributed certificates to students of ISIL. Mr. Manish Kumar Yadav received V. K. Krishna Menon Memorial Prize for securing the highest marks in the Post Graduate Diploma Course in International Law and Diplomacy; Mr. Nishant Garg received K. Krishna Rao Memorial Prize for securing the highest marks in the Post Graduate Diploma Course in International Trade and Business Law; Dr. Ish Kumar 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 Mr. Nipun Bhatia received M. K. Nawaz Memorial Prize in the Certificate Course on International and National Intellectual Property Rights.





# RECENT ACTIVITIES/ RECENT DEVELOPMENT

## LECTURE ON "PROGRESSIVE DEVELOPMENT OF INTERNATIONAL LAW AND ROLE OF INTERNATIONAL LAW EXPERTS FROM THIRD WORLD" BY DR. P. S. RAO, FORMER JUDGE, ICJ

Indian Society of International Law (ISIL) organised a special lecture on "*Progressive Development of International Law and Role of International Law Experts from Third World*" on 25 September 2009 at its premises. Prof. R. P. Anand, Executive President, ISIL, introduced the speaker Dr. P. S. Rao, Former Judge, ICJ, Former Legal Advisor, MEA, Government of India. He highlighted the efforts of first generation third world scholars, to challenge the hegemony of mainstream scholars which paved the way for the second generation scholars to establish programme of new international economic order. He made a number of observations on the writings of eminent scholars of third world of those days in the development of international law. The Lecture witnessed lively exchange of views with the audience on his presentation. Dr. M. Gandhi, Director, L&T Division, MEA, Government of India gave vote of thanks.

## NINTH HENRY DUNANT MEMORIAL MOOT COURT COMPETITION

ISIL and the International Committee of the Red Cross (ICRC), New Delhi organized the Ninth Henry Dunant Memorial Moot Court Competition

at its premises from 10<sup>th</sup> to 13<sup>th</sup> September 2009. Prof. R. P. Anand, Executive President, 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 day which equip the students to develop skills and create asset for the bar of the country. Mr. Yahia Alibi, Deputy Head of the 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 48 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 Madan Lokur, Judge, Delhi High Court, His Excellency, Prof. Dr. Rahmat Bin Mohamad, Secretary General, AALCO, New Delhi and Hon'ble Justice Dr. S. Muralidhar, Judge, Delhi High Court, were the final round judges. School of Law in Excellence, The Tamil Nadu Dr. Ambedkar Law University, Chennai and NALSAR, Hyderabad, were the winner and runner up of the Competition respectively. Smirthi Ramesh, School of Excellence in Law,

Dr. Ambedkar Law University, Chennai was adjudged the Best Advocate, Ms. Rasleen Kaur Dua, Rajiv Gandhi National University of Law, Patiala won the Best Researcher award, and Law Centre - I, Delhi University, Delhi won Best Memorial award in this Competition. Hon'ble Justice Lokur gave valedictory address on the occasion.

## VISIT OF STUDENTS

A delegation of 35 students from Durgapur Institution of Legal Studies, Burdwan, visited ISIL on 13 August 2009. Prof. R. P. Anand, Executive President, ISIL, and Prof. S. K. Verma, Director, ISIL spoke to 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.

## RECENT DEVELOPMENT

### AGREEMENT ON PORT STATE MEASURES TO PREVENT, DETER AND ELIMINATE ILLEGAL, UNREPORTED AND UNREGULATED FISHING (IUU)

91 countries (FAO members) have agreed to the final text of a United Nations-brokered treaty aimed at combating illegal, unreported and unregulated (IUU) fishing on 1 September 2009. This will be the first ever legally-binding global pact that commits governments to prevent, deter and eventually eliminate illegal, unreported and unregulated (IUU) fishing by taking steps to guard their ports against ships engaged in such illicit practices and consequently preventing their catch from entering international markets. Eleven FAO members – Angola, Brazil, Chile, the European Commission, Indonesia, Iceland, Norway, Samoa, Sierra Leone, the United States and Uruguay signed the treaty immediately following its approval by the agency's Governing Conference. The "Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing" will enter into force once 25 countries have ratified it.

In the Agreement, countries agreed to take a number of steps to harden their ports against IUU fishers. Key points of the treaty include: Foreign fishing vessels wishing to dock will be required to request permission from specially



designated ports ahead of time, transmitting information on their activities and the fish they have on board - this will give authorities an opportunity to spot red flags in advance; the treaty commits countries to regular inspections and outlines a set of standards that will be used during those inspections. Reviews of ship papers, surveys of fishing gear, examining catches and checking a ship's records can often reveal if it has engaged in IUU fishing; Signatories must ensure that ports and inspectors are adequately equipped and trained; When a vessel is denied access, port states must communicate that information publicly and national authorities from the country whose flag the vessel is flying must take follow-up action; The treaty calls for the creation of information-sharing networks to let countries share details on IUU-associated vessels, and also contains provisions intended to assist resource-strapped developing countries meet their treaty obligations; Regular monitoring of compliance will take place, with a major review scheduled to occur four years after the Agreement takes effect.

## ICJ ON NAVIGATIONAL AND RELATED RIGHTS (COSTA RICA V. NICARAGUA)

ICJ, on 13 July 2009, delivers the following Judgment on Navigation and related rights. The facts of the case as follow: On 29 September 2005 the Republic of Costa Rica (hereinafter "Costa Rica") filed in the Registry of the Court an Application of the same date, instituting proceedings against the Republic of Nicaragua (hereinafter "Nicaragua") with regard to a "dispute concerning navigational and related rights of Costa Rica on the San Juan River". In its Application, Costa Rica seeks to find the jurisdiction of the Court on the declaration it made on 20 February 1973 under Article 36, paragraph 2, of the Statute, as well as on the declaration which Nicaragua made on 24 September 1929 under Article 36 of the Statute of the Permanent Court of International Justice and which is deemed, pursuant to Article 36, paragraph 5, of the Statute of the present Court, for the period which it still has to run, to be acceptance of the compulsory jurisdiction of this Court. Costa Rica also seeks to found the jurisdiction of the Court on the Tovar-Caldera Agreement signed between the Parties on 26 September 2002. In addition, Costa Rica invokes as a basis of the Court's jurisdiction the provisions of Article XXXI of the American Treaty on Pacific Settlement, officially designated, according to Article LX thereof, as the "Pact of Bogotá".

Taking account of the subject of the dispute and of the Parties' submissions and arguments, the Court proceeded in the following manner. It first determined the extent of Costa Rica's right of free navigation on the San Juan river. It next ascertained whether, and to what extent, within the ambit of the right thus defined, Nicaragua has the power to regulate navigation by Costa Rican boats and whether the specific measures it has decided and put into effect to this end during the period of the dispute are compatible with Costa Rica's rights. It then considered the question of the right which Costa Rica claims for inhabitants of the Costa Rican bank of the river to engage in subsistence fishing. Finally, in the light of its reasoning on the preceding points, it considered the Parties' claims as presented to it in their final submissions, in respect in particular of the appropriate remedies.

The ICJ, with regards to Costa Rica's navigational rights on the San Juan river under the 1858 Treaty, where navigation is common, unanimously, finds that Costa Rica has the right of free navigation on the San Juan river for purposes of commerce. It also unanimously, finds that the right of navigation for purposes of commerce enjoyed by Costa Rica includes the transport of passengers. It also, unanimously, finds that the right of navigation for purposes of commerce enjoyed by Costa Rica includes the transport of tourists. By nine votes to five, ICJ finds that persons travelling on the San Juan river on board Costa Rican vessels exercising Costa Rica's right of free navigation are not required to obtain Nicaraguan visas. It, unanimously, finds that persons travelling on the San Juan river on board Costa Rican vessels exercising Costa Rica's right of free navigation are not required to purchase Nicaraguan tourist cards. By thirteen votes to one, ICJ finds that the inhabitants of the Costa Rican bank of the San Juan river have the right to navigate on the river between the riparian communities for the purposes of the essential needs of everyday life which require expeditious transportation.

By twelve votes to two, ICJ finds that Costa Rica has the right of navigation on the San Juan river with official vessels used solely, in specific situations, to provide essential services for the inhabitants of the riparian areas where expeditious transportation is a condition for meeting the inhabitants' requirements.

ICJ, unanimously, finds that Costa Rica does not have the right of navigation on the San Juan river with vessels carrying out police functions. ICJ, unanimously, finds that Costa Rica does not have the right of navigation on the San Juan

river for the purposes of the exchange of personnel of the police border posts along the right bank of the river and of the re-supply of these posts, with official equipment, including service to arms and ammunition.

ICJ with regard to Nicaragua's right to regulate navigation on the San Juan river, in that part where navigation is common, unanimously, finds that Nicaragua has the right to require Costa Rican vessels and their passengers to stop at the first and last Nicaraguan post on their route along the San Juan river. It, unanimously, finds that Nicaragua has the right to require persons travelling on the San Juan river to carry a passport or an identity document. It, unanimously, finds that Nicaragua has the right to issue departure clearance certificates to Costa Rican vessels exercising Costa Rica's right of free navigation but does not have the right to request the payment of a charge for the issuance of such certificates. It, unanimously, finds that Nicaragua has the right to impose timetables for navigation on vessels navigating on the San Juan river. It, unanimously, finds that Nicaragua has the right to require Costa Rican vessels fitted with masts or turrets to display the Nicaraguan flag.

ICJ, with regard to subsistence fishing, by thirteen votes to one, finds that fishing by the inhabitants of the Costa Rican bank of the San Juan river for subsistence purposes from that bank is to be respected by Nicaragua as a customary right.

ICJ with regard to Nicaragua's compliance with its international obligations under the 1858 Treaty, by nine votes to five, finds that Nicaragua is not acting in accordance with its obligations under the 1858 Treaty when it requires persons travelling on the San Juan river on board Costa Rican vessels exercising Costa Rica's right of free navigation to obtain Nicaraguan visas.

ICJ, unanimously, finds that Nicaragua is not acting in accordance with its obligations under the 1858 Treaty when it requires persons travelling on the San Juan river on board Costa Rican vessels exercising Costa Rica's right of free navigation to purchase Nicaraguan tourist cards.

ICJ, unanimously, finds that Nicaragua is not acting in accordance with its obligations under the 1858 Treaty when it requires the operators of vessels exercising Costa Rica's right of free navigation to pay charges for departure clearance certificates. ICJ, unanimously, rejects all other submissions presented by Costa Rica and Nicaragua.



## FLORENCE HARTMANN GUILTY OF CONTEMPT OF TRIBUNAL

The Specially Appointed Chamber on 14 September 2009 convicted Florence Hartmann of contempt of the Tribunal for disclosing confidential information in knowing violation of a court order. She was sentenced to pay a fine of 7,000 Euros, in two installments of 3,500 Euros each, to be paid by 14 October and 14 November 2009 respectively. Hartmann, a one-time spokesperson for a former Tribunal Prosecutor, disclosed the contents, purported effect and confidential nature of two Appeals Chamber Decisions from the Slobodan Milošević case in a book as well as an article authored by her in 2007 and 2008.

## VOJISLAV ŠEŠELJ SENTENCED OF IMPRISONMENT FOR CONTEMPT OF COURT

Trial Chamber II on 24 July 2009 convicted Vojislav Šešelj of contempt of the Tribunal and sentenced him to 15 months' imprisonment for disclosing the name and other personal details of protected witnesses in a book he authored. Šešelj, the leader of the Serbian Radical Party, is on trial before the Tribunal for alleged crimes committed in Bosnia and Herzegovina and Croatia between 1991 and 1994.

On 21 January 2009 the chamber issued an order in lieu of indictment charging the accused with having knowingly and willfully interfered with the administration of justice by disclosing confidential information of three witnesses who had been granted protective measures in his war crimes trial.

Šešelj admitted he was the author of the book which was published after decisions granting protective measures were made but pleaded not guilty to charges of contempt at his initial appearance on 6 March. The trial took place on 29 May.

Trial Chamber II found that Šešelj disclosed confidential information "intentionally, with the knowledge that by doing so, he was violating Trial Chamber orders".

## THREE PERMANENT JUDGES SWORN IN ICTY

Three permanent judges were sworn in on 2<sup>nd</sup> September 2009 before the Tribunal, replacing

three outgoing judges from Belgium, the United Kingdom and the Caribbean. Judges Guy Delvoie (Belgium), Howard Morrison (United Kingdom) and Sir Burton Hall (The Bahamas) were appointed by the UN Secretary-General in accordance with Article 13bis of the ICTY Statute. Their appointments are effective as of 1 September, 31 August and 7 August, respectively, until 31 December 2010 or until the completion of the cases to which they will be assigned if sooner. The three new Judges replace Judges Christine Van Den Wyngaert, Lord Iain Bonomy and Mohamed Shahabuddeen who have resigned from the ICTY. The Tribunal has 16 permanent judges, as well as 12 ad litem judges who are appointed to sit on a specific trial.

## MILAN LUKIC AND SREDOJE LUKIC CONVICTED OF WAR CRIMES IN VIŠEGRAD

Trial Chamber III today convicted Milan Lukić and Sredoje Lukić, to life and 30 years' imprisonment respectively, for crimes against humanity and war crimes committed in eastern Bosnian town of Višegrad during the 1992-1995 conflict. The two cousins were charged with murder, torture and extermination committed mostly during the early months of the war. Milan Lukić has been found guilty of persecutions, murder, extermination, cruel treatment, and inhumane acts, as crimes against humanity and war crimes, in relation to six discrete incidents. He was convicted for the killing of five Muslim civilian men at the Drina river on or about 7 June 1992 and the killing of seven Muslim civilian men at the Varda factory in Višegrad town on or about 10 June 1992. Milan Lukić was also found guilty of the murder of Hajra Korija. He was additionally found guilty of beating Muslim detainees in the Uzamnica detention camp. In addition Milan Lukić was found responsible for the murder of 59 Muslim women, children and elderly men in a house on Pionirska Street in Višegrad. On 14 June 1992, the victims were locked into one room of the house which was then set on fire. Milan Lukić was found to have placed the explosive device into the room, which set the house ablaze. Milan Lukić shot at people trying to escape from the burning house.

Sredoje Lukić was also found guilty of aiding and abetting the commission of the crime of persecutions inhumane acts, murder and cruel treatment. Specifically, he was found guilty of Uzamnica camp beatings and the Pionirska street fire, Judge Patrick Robinson dissenting with regards to the latter charge. He was found

not guilty, Judge Pedro David dissenting, of charges pertaining to Bikavac house fire.

The Trial of Milan and Sredoje Lukić began on 9 July 2008 and the Prosecution completed its case-in-chief on 11 November 2008 after calling a total of 46 witnesses. Sredoje Lukić's Defence case commenced on 1 December 2008 and concluded on 2 December 2008 after calling a total of three witnesses. Milan Lukić's Defence case commenced on 17 December 2008 and concluded on 21 April 2009 after calling a total of 28 witnesses. The Trial Chamber called a total of four witnesses. Closing arguments were heard on 19 and 20 May at which the Prosecution asked for both Accused to be sentenced to spend the remainder of their lives incarcerated while the Defence asked for both of them to be acquitted on all charges. Milan Lukić and Sredoje Lukić were initially indicted together with Mitar Vasiljević. He was arrested in January 2000 and sentenced to 15 years' imprisonment by Appeals Chamber judgement rendered on 25 February 2004.

Since its establishment the Tribunal has indicted 161 persons for serious violations of humanitarian law committed on the territory of the former Yugoslavia between 1991 and 2001. Proceedings against 120 have been concluded.

## UNITED NATIONS FACT FINDING MISSION ON THE GAZA CONFLICT

Head of the UN Fact Finding Mission Justice Richard Goldstone presented the report of the Mission to the Human Rights Council in Geneva on 29 September 2009, urging the Council and the international community as a whole to put an end to impunity for violations of international law in Israel and the Occupied Palestinian Territory. International Independent Fact Finding Mission was established by the President of the Human Rights Council, on 3 April 2009, with the mandate "to investigate all violations of international human rights law and international humanitarian law that might have been committed at any time in the context of the military operations that were conducted in Gaza during the period from 27 December 2008 and 18 January 2009, whether before, during or after."

Following its 3-month investigation, the four-person Mission (Justice Richard Goldstone, Hina Jilani, Professor Christine Chinkin and Beit Hanoun) concluded that serious violations of international human rights and humanitarian law were committed by Israel in the context of its

military operations in Gaza from December 27, 2008 to January 18, 2009, and that Israel committed actions amounting to war crimes, and possibly crimes against humanity. The Mission also found that Palestinian armed groups had committed war crimes, as well as possibly crimes against humanity.

The Mission recommends that the Security Council set up a body of independent experts to report to it on the progress of the Israeli and Palestinian investigations and prosecutions. If the experts' reports do not indicate within six months that good faith, independent proceedings are taking place, the Security Council should refer the situation in Gaza to the ICC Prosecutor.

The report concluded that the Israeli military operation was directed at the people of Gaza as a whole, in furtherance of an overall and continuing policy aimed at punishing the Gaza population, and in a deliberate policy of disproportionate force aimed at the civilian population. The Report states that Israeli acts that deprive Palestinians in the Gaza Strip of their means of subsistence, employment, housing and water, that deny their freedom of movement and their right to leave and enter their own country, that limit their rights to access a court of law and an effective remedy, and could lead a competent court to find that the crime of persecution, a crime against humanity, has been committed.

## UNITED STATES SIGNED DISABILITY CONVENTION

On 31 July 2009, the United States signed UN Convention on the Rights of Disabilities to protect and promote the rights of the world's estimated 650 million people with disabilities. The total number of signatories to the Disabilities Convention became 141 states. So far the treaty has been ratified by 60 countries. In addition, the Convention's Optional Protocol allows individuals to petition an international expert body with grievances.

## REGIONAL CENTRE FOR INTELLECTUAL PROPERTY DISPUTES IN SINGAPORE

Asia's first centre for dealing with disputes related to intellectual property including trademarks, copyright and patent issues will open in Singapore, the United Nations World Intellectual Property Organization (WIPO) reported on 28 July 2009. An agreement signed by WIPO and the Singaporean Government will pave the way

for training and advice on procedures and provide a dedicated dispute resolution facility in the region, according to a joint communiqué. The new centre is designed to complement the mediation work carried out by WIPO's Geneva office, which was set up in 1994 and has handled a caseload of over 30,000 disputes since then with the amounts in dispute ranging from tens of thousands to hundreds of millions of dollars. Any parties may avail themselves of the dispute resolution procedures offered by the centre, regardless of nationality or domicile. They may be held anywhere in the world, in any language and under any law chosen by the parties.

## CZECH REPUBLIC BECOMES STATE PARTY TO INTERNATIONAL CRIMINAL COURT

The Czech Republic has become the 110<sup>th</sup> country to ratify the Rome Statute, the pact that established the International Criminal Court (ICC). The Czech Government deposited its instrument of ratification to the Statute on 21 July 2009. The Statute will enter into force for the Czech Republic on 1 October 2009. All 27 European Union members are now States Parties.

## UN COMMITTEE DISCUSSES NEW FORMS OF DISCRIMINATION AGAINST WOMEN

On 21 July 2009, the United Nations Committee on CEDAW asked countries about the impact of the financial crisis on women is basic social services, including women's salaries and women's unemployment. The Committee is also considering the "scourge" of trafficking in women, and the impact on women of diseases including outbreak of influenza. The Committee on the Elimination of Discrimination Against Women (CEDAW) has various means of influencing countries' behaviour, including the publication of its observations, with recommendations to be followed up. All the committee's findings go to the UN High Commissioner for Human Rights in Geneva, and form part of the Universal Periodic Review process, which involves a review of the records of all 192 UN Member States once every four years. At 21<sup>st</sup> July 2009 meeting of the Committee's 22 independent experts will review the situation of women in Azerbaijan, Bhutan, Denmark, Guinea-Bissau, Laos, Japan, Liberia, Spain, Switzerland, Timor-Leste and Tuvalu.

## UN TREATY ON MARITIME GOODS TRANSPORTATION SET TO BE SIGNED IN ROTTERDAM

A new United Nations treaty the (UN Convention on Contracts for International Carriage of Goods Wholly or Partly by Sea, also known as the "Rotterdam Rule") governing the movement of commercial cargo by sea is slated to be signed on 22<sup>nd</sup> September 2009 in Rotterdam. The Convention, adopted by the UN General Assembly in December 2008, creates a set of contemporary and uniform rules for the transportation of containers that include an international sea leg, but is not limited to port-to-port shipping of goods. Describing the rights and obligations of all parties involved in shipping of goods by sea, the treaty aims to bring clarity regarding who is responsible and liable for what, when, where and to what extent. Among the innovations contained in the Convention, which updates and replaces three obsolete treaties, are provisions covering electronic transport records and container shipping as well as regulations for combined sea and land transport.

## REPUBLIC OF KOSOVO JOINS ICSID

The Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention) was signed by the Republic of Kosovo on June 29, 2009. Before signing the ICSID Convention, the Republic of Kosovo became a member of the International Monetary Fund (IMF) and of the International Bank for Reconstruction and Development (IBRD). The Republic of Kosovo also joined the International Development Association (IDA), the International Finance Corporation (IFC), and the Multilateral Investment Guarantee Agency (MIGA). The Republic of Kosovo also deposited its Instrument

## FORTHCOMING EVENT

*Compulsory One Week Training Programme on Trade and Intellectual Property Rights for Indian Forest Service Officers on 5-9 October 2009*

*A Special Lecture on "International Law and Social Transformation" by Prof. P. Ishwar Bhat, Professor of Law, University of Mysore, on 23 October 2009.*

*India-Australia Dialogue on International Law jointly organising by the Indian Society of International Law (ISIL) and Australian and Zealand Society of International Law, on 5-6 December 2009.*

of Acceptance of the ICSID Convention with the World Bank, which acts as the depositary of the Convention. The ICSID Convention will enter into force for the Republic of Kosovo on July 29, 2009, following the completion of all requirements for ICSID membership.

## DENUNCIATION OF THE ICSID CONVENTION BY ECUADOR

On July 6, 2009, the World Bank received a written notice of denunciation of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the ICSID Convention) from the Republic of Ecuador. In accordance with Article 71 of the ICSID Convention, the denunciation will take effect six months after the receipt of Ecuador's notice, i.e., on January 7, 2010.

## RECENT DEVELOPMENT IN HCCH

Hague Intercountry Adoption Convention is soon to be in force for 81 States. Nepal, Greece, Cape Verde and the Republic of Togo joined the *Hague Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Inter-country Adoption* on 28 April 2009, 2 September 2009, 4 September 2009 and 12

October 2009 respectively. The Convention will enter into force for Greece and Cape Verde on 1 January 2010, for Togo on 1 February 2010.

*The Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children* was signed and ratified by Switzerland and the Republic of Croatia on 27 March 2009 and 4 September 2009. The Convention will enter into force for the Switzerland on 1 July 2009 and for the Republic of Croatia on 1 January 2010.

*The Hague Convention of 5 July 2006 on the Law Applicable to Certain Rights in Respect of Securities held with an Intermediary* was ratified by Switzerland on 14 September 2009. Two more ratifications or accessions are needed in order for the Convention, which is open for signature by all States, to enter into force.

*The Hague Convention of 30 June 2005 on Choice of Court Agreements* was signed by the US and the European Community on 19 January 2009 and 1 April 2009 respectively.

## INDIA-ASEAN RELATIONS

Recently, India finalized text of Trade-in-Goods Agreement under a Free Trade Agreement (FTA) with the ASEAN block, which will ensure

lowering of duties and free flow of trade in goods. India-ASEAN relations have deepened and intensified significantly in recent years. India became sectoral dialogue partners of ASEAN in 1992. In 1996, this was upgraded to full dialogue partnership. Since 2002, India have annual Summits with ASEAN – along with China, Japan and Republic of Korea. With this in mind India looks forward to the India-ASEAN Ministerial Meeting on 22nd July, 2009 to be held in Thailand and the 7th India-ASEAN Summit proposed to be held in Thailand in October, 2009.

## SOUTH KOREA, INDIA SIGN BILATERAL TRADE PACT

South Korea and India signed a comprehensive free trade agreement on 7 August 2009 that will slash tariffs, encourage mutual foreign investment, and facilitate the exchange of professional workers between the two countries. In 2007, South Korea signed a bilateral free trade agreement with the United States but that pact has yet to be ratified by the legislatures in both countries. However, South Korea already has a free trade agreement with the Association of Southeast Asian Nations (ASEAN).

## Current Issue of Indian Journal of International Law July-September 2009, Vol. 49, No. 3

### CONTENTS

#### ARTICLES

Legal and Ethical Issues in Physicians' 'Right' of Conscientious Objection in Healthcare Service Delivery: A Comparative Reflection

Yusuff Abdulwasiu Ojo Akorede

The Human Right to Health, Access to Drugs and Global Medical Patents

B. C. Nirmal

Deep Seabed Enactments: In Demise or With Delusion to Sustain

M. Habibur Rahman

Regional Trade Agreements: Legal Interpretations and Suggested Proposals

Vinai Kumar Singh

#### SHORTER ARTICLE

Critical Issues Relating to Intellectual Property Rights (IPR) in Biotechnology: Developing Countries' Perspective and India

Amit Singh

#### OFFICIAL DOCUMENTS

India-ASEAN Relations, July 2009

Agreement on Dispute Settlement Mechanism under the Comprehensive Economic Cooperation between the Republic of India and the Association of Southeast Asian Nations, July 2009

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Dr. (Mrs.) Harpal Kaur Khehra (ed.), *Law in India: Emerging Trends*

G. S. Sachdeva

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