

## Indian Society of International Law – Address on 3<sup>rd</sup> September 2012



Dr. E M Sudarshana Natchiappan, eminent parliamentarian and statesman, Prof. Lakshmi Jambholkar, Dr. Dixit, Mr. Narinder Singh, Mr. Gill, the participants in the Convocation and invitees:

Convocation is a memorable event. Those who are taking diplomas are overwhelmed by the sense of achievement. For the institution which has moulded your student career, it is a day of immense satisfaction; it is also a day of introspection and resolve to work harder to achieve the goal of excellence. This renowned institution is dedicated to the lofty goal of disseminating knowledge in international law and building up the much needed human resources in the discipline

of international law. You look beyond the national frontiers here. You take a worldwide view of men and matters. Your study would have revealed that many national issues and affairs are intertwined to those in international arena. The global phenomena and global legal issues fill your mind and the thought process. Thereby, you develop a holistic and comprehensive outlook. The importance of study of international law both public and private is being immensely felt more than ever in the recent times. In the modern era, a range of issues on diverse matters could only find solutions within the legal framework and principles of international law.

The last decade of twentieth century and the beginning of this century have witnessed tremendous changes. Exciting developments in economic, financial and communication sectors have taken place. It is said that the midpoint of twentieth century is not the end of first fifty years, but the end of last ninety years. That is to say, the developments in India in the last ten years of 20<sup>th</sup> Century have far outweighed the developments in the last ninety years. The regime of economic reforms has been set in motion in the last decade of 20<sup>th</sup> Century to fall in line with global phenomena. There has been tremendous breakthrough in science and technology. The economic and business scenario of our country has radically changed. The trade barriers across the countries of the world have been removed and cross-border trading transactions including e-commerce have received a big boost. There has been fusion of world financial markets so much so that the economic factors in one part of the world are having an impact on the other part of the globe. Liberalisation, globalisation, market economy, consumerism and such

phrases are on the lips of everybody. An international knowledge hub has been built up, facilitating free flow of ideas. Even law and legal profession has become multi-disciplinary. The scientific understanding of the earth's interconnected biosphere has also given rise to the need for global coordination. International trade in all its dimensions is sought to be regulated by the unified and global legal regime instituted by the WTO. Consequently, the national legal frameworks relating to international trade in goods and services and intellectual property rights has been under a process of relook and revision. An era of tax treaties and conventions on matters of national and international importance have emerged on a big scale. With all these positive and constructive developments which have brought the world together, many new and unforeseen problems have also cropped up, as they are bound to. First, looking from a philosophical path, I must say, that the exciting new era of development and technological advances has had its effect on the mindset of the people and impacted our socio-cultural fabric. Globalization of economy and technological developments should not result in a drift from our own cultural ethos and social values. The fusion of values dear to human life into the development process is a necessary ingredient of progress in right direction. We have to adhere to certain values of life so as to sustain the rich heritage of our composite culture. Material progress is not to be mistaken for inner progress. In this context, it is apt to quote the words of Isaac Eissemore. He said: "the saddest aspect of life right now is that science gathers knowledge faster than wisdom." This is an occasion which forcefully reminds you of the values and the need to sustain our culture and constitutional ethos.

As you migrate from the old economy to new, legal issues involved in e-commerce which has spread across the globe have assumed importance. The quantum leap in global net accessibility has led to the current explosion of interest in e-commerce. A model law on e-commerce has been framed by UN Commission on International Trade Law. Is there proper regulatory framework for web contracts? Is there scope for refinement of law regarding the use of computer output in court proceedings? What are the legal tangles such as jurisdictional issues in seeking remedies for the breach of web contracts? Then, highly emotive and debatable issues in the realm of international law on foreign investment such as economic development agreements have come to the fore. We are reminded of the axiom *'Ideas rule the world'*, which is highly relevant in this globalised economy. The international trade regime under the auspices of WTO has accommodated the TRIPS Agreement within its own domain though it is qualitatively a different regime of its own. With the enforcement of TRIPS, etc., it is said that intellectual property has been reduced to the level of a commodity, thus raising ethical concerns. Patents, copyrights, trademarks, industrial designs, protection of undisclosed information and control of anti-competitive practices in contractual licences have all come under the pervasive umbrella of TRIPS. Indian laws on IPR are getting aligned with international IPR regime.

You must have studied the various principles and legal bars governing extradition and the extradition laws in India, UK and other countries. In UK, there is

an important statute titled, "International Cooperation Act, 2003" which provide for mutual assistance in criminal matters.

In the sphere of public international law, the international humanitarian law is a subject which makes an interesting study. As you know, the Intl humanitarian law lays down a set of rules aimed at protecting the people and restricting the means and methods of warfare. The captured combatants and civilians must be protected against all acts of violence or reprisal. They must be allowed free exercise of their personal rights – political, religious or cultural. The basic judicial guarantees must be available to one and all. Attacks other than those necessary to achieve military objectives should be avoided. Starting with the Geneva Convention of 1949, there have been a number of Conventions and protocols on the subject. While so, a problem which has now to be addressed by international humanitarian law is the situation in which a group of foreign countries intervene in the internal affairs of a sovereign state. Though a veil of justification for intervention exists, quite often, several puzzling questions related to human rights arise in the aftermath of intervention in an apparently humanitarian mission to liberate the oppressed people. Obviously, the objective, even if it is genuine, cannot be achieved by hook or crook. The means and methods of executing a plan of action – apparently legitimate, are equally important. There are practical difficulties in finding a legal solution to this problem.

Environmental concerns have assumed both national and global ramifications. International environmental law deals with issues of common concern to humanity among the nations, such as climate change, ozone

layer depletion, biological diversity, etc. There is a growing trend to give environmental protection constitutional status in many national legal systems either explicitly or by judicial interpretation of the constitutional guarantees just as it happened in India and many other countries. The environmental issues are being treated as human rights issues as well. As you are aware, during this century, the global awareness and concern about climate change is gaining ground at national and international levels. The intl. political response to this problem has gained sufficient momentum. The ultimate goal of the climate change regime is stabilization of green house gases to the level that it does not interfere with the climate system. This is a challenge to our modern civilization. It is very much necessary for the industrialised countries to take the lead in reduction of green house gases as per the well established principle of common but differentiated responsibilities and respective capabilities. At the same time, the developing countries who have major share in emission of green house gases will have to share the burden of mitigation if the goal of stabilization of green house gases is to be achieved. Climate Change Technology Transfer (CCTT) envisaged by UN Framework Convention on Climate Change is one of the ideas that is being widely debated. "A synergy of environmental and I P regime to walk hand-in-hand by having recourse to CCTT" is being aimed at. The responsibility and liability under intl. law for environmental damage has become an issue of seminal importance. Failure to control trans-boundary pollution and environmental harm caused by activities within the territories of respective states is a major challenge to human civilization. Trans-national enforcement of environmental law is an integral part of

International Environmental Law. The obstacles to such enforcement and the remedies, the machinery for enforcement, the choice of law in trans-boundary litigation are various facets of the problem. The use of intl. human rights law to assist in trans-national enforcement of environmental law is also gaining ground. The right to life has been a fruitful source of environmental jurisprudence in several national jurisdictions thereby, giving a human right dimension to environment. This is firmly recognised in our country right from 1985. The right to life in a healthy environment with a minimal disturbance of the ecological balance is considered to be a part of fundamental right in Article 21 of Indian Constitution. It has been observed that in the context of environmental problems, the way forward lies in the deployment of effective enforcement systems, fully integrated into the legal and administrative systems of individual states.

In order to ensure easy access to justice in situations of damage caused by reason of trans-national environmental violations, the Canadian and American Bar Associations have drafted a law known as 'Uniform Trans-boundary Pollution Reciprocal Access Act' which could be a model in this regard. There is also a Convention on Environmental Impact Assessment in a trans-boundary context. Legal frame-work for protecting the environment needs to be further developed. The International Law Commission has been playing a significant role in shaping the international law to cope up with emerging problems.

In the diploma course in International Trade and Business Law, you would have studied the IPR in the context of TRIPS regime and cross-border

trading and transfer of technology. Equally important is the international taxation issues that are connected with these transactions. There are many treaties for avoidance of double taxation. The provisions of Municipal Law cannot prevail over those of the Treaties designed to avoid double taxation. International tax planning has assumed significance in this context. Proper tax planning is essential in international business to reduce the distortions that arise due to the lack of harmonisation of tax system. Without tax planning, the problems of excess tax payments and additional tax compliance costs will persist. Tax planning helps to reduce the cumulative impact of taxation as the cross-border activities suffer a higher tax liability on a worldwide basis than a single country transaction.

Article 51 of the Constitution which is part of Directive Principles ordains that State shall endeavour to promote international peace and security, foster respect for international law and treaty obligations and to encourage the settlement of international disputes by arbitration. India has a well known record for maintaining harmonious international relations and compliance of treaty obligations. We have a plethora of international treaties, agreements and conventions on diverse topics of importance. We have absorbed the international law into our domestic law in several areas. The national laws on many subjects are so framed as to be consistent with international conventions and agreements. The Courts have been interpreting the laws of our country such as taxation law, human rights law, environmental law and IPR law in conformity with international treaties, conventions and obligations. Article 51 is being followed in our country in

letter and spirit. The law flowing from treaties and agreements vis-a-vis domestic law could be a subject-matter for research.

I have focussed very broadly on some intl. law issues that are arising in this era of globalization on this occasion and in this premises dedicated to intl. law.

Wishing a bright future