

The Indian Society of International Law

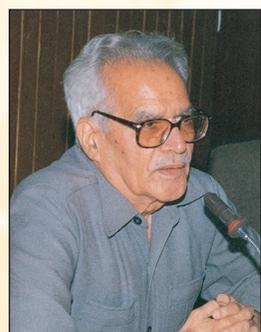
NEWSLETTER

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For members only

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Editorial



At present, we are witnessing a severe financial crisis, a crisis that many scholars and political commentators view as the worst since the Great Depression. In a little over a year, the mid-2007 subprime mortgage debacle in the United States of America has developed into a global financial crisis and started to move the global economy into a recession. Aggressive monetary policy initiatives and massive liquidity injections by the central banks of the major developed countries have been unable to avert this crisis. Most developed economies entered into recession during the second half of 2008, and the economic slowdown has spread to developing countries. Several major projects in developing countries have been abruptly discontinued because of lack of equity and debt capital. According to the United Nations baseline forecast, World Gross Product (WGP) is expected to slow to a meagre 1.0 per cent in 2009, a sharp deceleration from the 2.5 per cent growth estimated for 2008.

The key challenge before the policymakers in developed and developing countries is to resolve the financial crisis in a durable manner and to mitigate the impact of the crisis on global economic activity through comprehensive, coordinated and timely measures as may be appropriate. Measures must be designed not only to restore growth and financial stability, but also to minimize the negative social impact particularly in emerging and low-income countries. The stakes are high. For developing countries, maintaining strong economic growth is essential to generate the necessary resources to achieve the Millennium Development Goals (MDGs). While the developing countries are doing their best to achieve some of the goals, a corresponding responsibility of the developed countries is "to focus on stimulating action on aid, trade, debt relief, new technologies and investment flows", tardy, at best of the time hardly discharged, would suffer further. The challenges that have been posed by the recent financial-market turbulence are global in nature and require approaches that can be applied consistently at the global level. However, it is impossible to derive effective global solutions without the participation and ownership of all countries that have to implement them.

The crisis has demonstrated that the model of development followed by the West, and which they were prescribing and even pressurizing the developing countries to follow, has collapsed. A concept for free enterprise and its concomitant the rapacious greed, has turned out to be a false God. India has not suffered much because it had not liberalised its economy to the extent some person in the government and outside had wanted us to do. The policy of creating strong entities in the public sector in various sections of our economy has proved correct.

The Bretton Woods Institutions must be comprehensively reformed so that they can more adequately reflect changing economic scenario in the world economy and be more responsive to future challenges. Such reforms should also take into account the interests of the poorest countries. Emerging and developing economies should have greater voice in policy formation and implementation in these institutions.

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Ram Niwas Mirdha

RECENT ACTIVITIES

A SPECIAL LECTURE ON LAWS OF EUROPEAN UNION BY PROF. JIM HANLON, PRINCIPAL LECTURER LAW, FACULTY OF LAW, SHEFFIELD HALLAM UNIVERSITY, UK

ISIL organised a Special Lecture on *Law of European Union* on 14 October 2008, at its premises. Dr. Manoj Kumar Sinha, Director, ISIL, welcomed and introduced the chief guest, Prof. Jim Hanlon, Principal Lecturer Law, Faculty of Law, Sheffield Hallam University, UK. Prof. Hanlon analysed the process of harmonization of European business laws and its implications on the markets of other subcontinents. He said even the present recession would not be able to the sound principles which had laid the successful harmonization of business law. The lecture witnessed lively exchange of views with the audience on his presentation. Dr. Manoj Kumar Sinha, Director, ISIL, gave vote of thanks.

FOURTH SOUTH ASIAN HENRY DUNANT MEMORIAL MOOT COURT COMPETITION

ISIL and the International Committee of the Red Cross (ICRC) organized the Fourth South Asian Regional Henry Dunant Memorial Moot Court Competition at ISIL premises. Dr. R. K. Dixit, Treasurer, ISIL, made opening remarks and introduced the activities of the ISIL and Mr. Francois Stamm, Head of Regional Delegation, ICRC, also addressed on this occasion. His Excellency Prof. (Dr.) Rahmat Mohamad, Secretary General, Asian African Legal Consultative Organisation, New Delhi, gave inaugural address. He underscored the revival of importance of International Humanitarian Law (IHL) and necessity for non-state parties to become party of various IHL instruments. Dr. Luther Rangreji, Member, Executive Council, ISIL, gave concluding remarks. The Competition lasted for three days from 17th October till 19th October 2008. Countries of Bangladesh, Iran, Nepal, Pakistan, Sri Lanka and India had a National Rounds in their respective countries and winners of these National Rounds of Henry Dunant Memorial Moot Court Competition of each country participated in this Fourth South Asian Henry Dunant Moot Court Competition (Regional Round).

The Competition was conducted in three stages, Quarter-final, Semi-final and Final Rounds. The participants were judged on the basis of their written memorials, appreciation of facts and law, advocacy skills, use of authorities and citations, general impression and court manners. Eminent academicians, government officers and lawyers judged the teams in all rounds. Hon'ble Justice Madan B. Lokur, Justice S. Ravindra Bhat, and



Justice Dr. S. Muralidhar, Judges of Delhi High Court were the final round judges. *Gujarat National Law University, Gujarat, India and Pakistan* (a team comprising of students from from *Gillani Law College, Bahaudin Zikria University, Multan, University of Karachi, School of Law and Policy, Lahore*) were the winner and runner-up of the competition respectively. *Ms. Raneesha De Alwis, Faculty of Law, University of Colombo, Sri Lanka* was adjudged the Best Advocate, *Ms. Tanjina Sharmin, Department of Law, University of Dhaka* won the Best Researcher award, *Tehran University, Tehran*, won the Best Memorial Award in this competition. Justice Madan B. Lokur gave valedictory address.

UGC REFRESHER COURSE ON HUMAN RIGHTS AND SOCIAL JUSTICE, AND INTERNATIONAL HUMANITARIAN AND REFUGEE LAW

ISIL organized the Second UGC Refresher Course on Human Rights and Social Justice, and International Humanitarian and Refugee Law for international relations, law, and social science teachers from 3rd to 22nd November 2008. Shri Sankar Sen, Former Director, National Police Academy and Former Director-General, National Human Rights Commission of India inaugurated the Course. In his address, he highlighted significance of the subjects undertaken in the Course and underlined the need to follow the contemporary developments in human rights discourse where a significant impediment to the enforcement of international law is the notion of 'state sovereignty' or the principle that states have 'supreme authority within a territory'.

Eminent professors and scholars from prestigious universities and institutions, including International Committee of the Red Cross, New Delhi and United Nations High Commissioner for Refugee, New Delhi, delivered lectures on a variety of themes of human rights and social justice, and international humanitarian and refugee law. About 30 teachers participated in this UGC Refresher Course. Dr. A. Sudhakara Reddy, Member, Executive Council, ISIL, delivered valedictory address and distributed certificates to the participants.

12TH SOUTH ASIAN TEACHING SESSION ON IHL

The 12th South Asian Teaching Session on International Humanitarian Law was jointly organized by the ISIL, ICRC and, Andhra University, Visakhapatnam on 19-26 November 2008 at Vishakapatnam, Andhra Pradesh. Forty Delegates from Afghanistan, Bangladesh, Bhutan, India, Iran, Maldives, Nepal, Pakistan and Sri Lanka participated in the Session.

A SPECIAL FUNCTION TO CONFER HONORARY MEMBERSHIP OF THE INDIAN SOCIETY OF INTERNATIONAL LAW TO HON'BLE JUDGE C. G. WEERAMANTRY, FORMER JUDGE OF THE INTERNATIONAL COURT OF JUSTICE, THE HAGUE, THE NETHERLANDS

ISIL organised a special function to confer Honorary Membership of the Indian Society of International Law to Hon'ble Judge C. G.

RECENT ACTIVITIES/ RECENT DEVELOPMENTS



Weeramantry, Former Judge of the International Court of Justice, The Hague, The Netherlands on 9 December 2008, at its premises. Prof. R. P. Anand, Executive President, ISIL, welcomed and presented scroll of Honorary Membership to Judge Weeramantry. Born on 17 November 1926, Judge Weeramantry has had a most dazzling legal career spanning over 60 years; first as a lawyer and law lecturer in Sri Lanka and then as the youngest Supreme Court judge in the country. Thereafter, he joined Monash University as Sir Hayden Starke Professor of Law in Australia. He worked as Vice President of the International Court of Justice at The Hague. He was conferred the Sri Lanka's highest National Honour, the Sri Lankabhimanya (The Pride of Sri Lanka), by His Excellency the President of Sri Lanka on 1st December 2007. Judge Weeramantry addressed the gathering and underlined western dominance in the present international legal order and emphasized the importance of cross-cultural understanding; the lack of which is a prime cause of many of the tensions that exist in the world today. He draws attention to the vital contributions of Hindu Law, Buddhist Law and Islamic Law in the past as well as its potential for assisting towards a more just world in future. Dr. Manoj Kumar Sinha, Director, ISIL, gave vote of thanks.

A SPECIAL LECTURE ON PRINCIPLES OF LEGALITY UNDER INTERNATIONAL CRIMINAL LAW BY PROF. KENNETH S. GALLANT, WILLIAM H. BOWEN SCHOOL OF LAW, USA

ISIL organised a Special Lecture on *Principles of Legality under International Criminal Law* on 26

December 2008, at its premises. Dr. Manoj Kumar Sinha, Director, ISIL, welcomed and introduced the speaker, Prof. Kenneth S. Gallant, William H. Bowen School of Law, USA. Prof. Gallant argued that *nullum crimen sine lege* is a fundamental principle of criminal justice and a customary norm of international law that must be observed in all circumstances by national and international tribunals. He concluded that principle of *nullem crimen sine lege* does not prevent a court from interpreting and clarifying the elements of a particular crime. The lecture witnessed lively exchange of views with the audience on his presentation. Dr. Manoj Kumar Sinha, Director, ISIL, gave vote of thanks.

VISIT OF STUDENTS

A delegation of around 30 students from Midnapore Law College and 40 students of Baroda School of Legal Studies, Faculty of Law, the M. S. University of Baroda, Vadodara with faculty members Dr. Archana Gadekar, Ms. Namrata Solanki, Mr. Sanjay Solanki, Mr. Arun Dwivedi, Mr. Rajendra Chaudhari visited ISIL on 11 November 2008 and 16 December 2008 respectively. Dr. Manoj Kumar Sinha, Director, ISIL welcomed the students and described the activities of ISIL to the visitors and Dr. Luther Rangreji, Member, EC, ISIL, discussed the importance of international law and career prospect in this area.

FORTHCOMING EVENTS

Golden Jubilee Concluding Session: Sixth International Conference, 1-4 February 2009

UGC Refresher Course in International Law, 9-28 February 2009

Special Lecture by Richard Falk, 13 February 2009

RECENT DEVELOPMENTS

The International Law Commission held the first part of its sixtieth session from 5 May to 6 June 2008 and the second part from 7 July to 8 August 2008 at its seat at the United Nations Office at Geneva. The session was opened by Mr. Ian Brownlie, Chairman of the fifty-ninth session of the Commission. Consideration of topics on the agenda of the 60th session: **(1) Shared Natural Resources (chp. IV of the Report):** The Commission adopted two step approach (a) taking note of the draft articles to be annexed to its resolution and recommending that States concerned make appropriate bilateral and regional arrangements for the proper management of their transboundary aquifers on the basis of the principles enunciated in the draft articles; and (b) considering, at a later stage, the elaboration of a convention on the basis of the draft articles. Having adopted a two step approach, it was considered premature to address issues relating to relationship with other agreements and dispute settlement. **(2) Effects of armed conflicts on treaties (chp. V of the Report):** The Commission provisionally adopted, on first reading, a set of 18 draft articles and an annex (containing a list of categories of treaties the subject matter of which involves the implication that they continue in operation, in whole or in part, during armed conflict), together with commentaries thereto, on the effects of armed conflicts on treaties and decided, in accordance with Articles 16 to 21 of its statute, to transmit the draft articles, through the Secretary General to Governments for comments and observations, with a request that such comments and observations be submitted to the Secretary General by 1 January 2010. The draft articles, which apply to situations where at least one of the parties to a treaty is a party to an armed conflict whether international or non international, proceed on the premise of the basic principle of continuity of treaty relations: the outbreak of such armed conflict does not necessarily terminate or suspend the operation of treaties, and draw relevant expository consequences therefrom. **(3) Reservations to treaties (chp. VI of the Report):** The Commission adopted 23 draft guidelines dealing with formulation and withdrawal of acceptances and objections, as well as the procedure for acceptance of reservations, together with commentaries thereto. The main issues in the debate concerned the relation between conditional interpretative declarations and reservations, as well as the effects of silence as a reaction to an interpretative declaration. Given the dearth of practice with regard to reactions to interpretative declarations and the different opinions of the members of the Commission, the Commission would be grateful

if States would kindly respond to the questions below in their concrete practice: (a) Are there circumstances in which silence in response to an interpretative declaration can be taken to constitute acquiescence in the declaration? (b) If so, what would those circumstances be (specific examples would be very welcome)? (c) If silence does not per se constitute acquiescence in an interpretative declaration, should it play a part in the legal effects that the declaration may bring about? Taking into account that next year's report will deal with, inter alia, the consequences of interpretative declarations, what are the consequences of an interpretative declaration for: (a) Its author; (b) A State or international organization which has approved the declaration; (c) A State or organization which has expressed opposition to the declaration? More generally, what impact do the reactions - whether positive or negative - of other States or international organizations to an interpretative declaration have upon the effects that the declaration may produce (specific examples would be very welcome)?

(4) Responsibility of international organizations (chp. VII of the Report): The Commission provisionally adopted eight draft articles, together with commentaries thereto, dealing with the invocation of the international responsibility of an international organization, and constituting chapter I of Part Three of the draft articles concerning the implementation of the international responsibility of an international organization. It also took note of seven draft articles provisionally adopted by the Drafting Committee, focusing on countermeasures and constituting chapter II of Part Three of the draft articles concerning the implementation of the international responsibility of an international organization (A/CN.4/L.725/Add.1). The Commission would welcome comments and observations from Governments and international organizations on draft Articles 46 to 53, dealing with the invocation of the responsibility of an international organization. The Commission would also welcome comments on issues relating to countermeasures against international organizations, taking into account the discussion of these issues, as reflected in Chapter VII of its report to the General Assembly. **(5) Expulsion of aliens (chp. VIII of the Report):** The Commission considered the fourth report of the Special Rapporteur (A/CN.4/594), dealing with questions relating to the expulsion of dual or multiple nationals, as well as loss of nationality or denationalization in relation to expulsion, prepared in the light of the debate in 2007. Following the debate on the report, the Commission established a Working Group to consider the issues raised by the Special Rapporteur in his report and it determined that there was no need to have separate draft articles on the matter; the necessary clarifications will be made in the commentaries to the relevant draft

articles. The seven draft articles referred to the Drafting Committee in 2007 remain in the Drafting Committee until all the draft articles are provisionally adopted. See the oral progress report given by the Chairman of the Drafting Committee. **(6) Protection of persons in the event of disasters (chp. IX of the Report):** The Commission held a debate on the basis of the preliminary report of the Special Rapporteur (A/CN.4/598). It also had before it a memorandum of the Secretariat, focusing primarily on natural disasters (A/CN.4/590 and Add.1 to 3 (to be issued)). Among the many issues discussed were the main legal questions to be covered by the topic, including questions concerning the approach to the topic, as well as its scope in terms of the subject matter, personal scope, space and time. **(7) Immunity of State officials from foreign criminal jurisdiction (chp. X of the Report):** The Commission held a debate on the basis of the preliminary report of the Special Rapporteur (A/CN.4/601). Among the many issues discussed were the main legal questions to be considered when defining the scope of the topic, including the officials to be covered, the nature of the acts to be covered, as well as whether there are possible exceptions. **(8) The obligation to extradite or prosecute (aut dedere aut judicare) (chp. XI of the Report):** The Commission held a debate on the basis of the third report of the Special Rapporteur (A/CN.4/603). Among the issues discussed were the substantive questions related to the customary nature of the obligation, the relation with universal jurisdiction and international courts, as well as procedural aspects to be dealt with in future. **(9) Other decisions and conclusions of the Commission (chp. XII of the Report):** The Commission set up the Planning Group to consider its programme, procedures and working methods (chap. XII, sect. A). The Commission is most appreciative of the efforts undertaken during the two day event organized to commemorate its sixtieth anniversary session (chap. XII, sect. A.1). The Commission pursuant to resolution 62/70 of 6 December 2007 has commented on its current role in promoting the rule of law (chap. XII, sect. A.2). A Working Group on the Long term programme of work was reconstituted, under the chairmanship of Mr. Enrique Candioti (chap. XII, sect. A.4). The Commission decided to include in its current programme of work two new topics, namely "Treaties over time" on the basis of a revised and updated proposal by Mr. G. Nolte (see annex A of the Commission's report) and "The Most favoured Nation clause" on the basis of the report of the 2007 Working Group chaired by Mr. D.M. McRae on the subject (see annex B of the Commission's report). In this regard, it decided to establish at its session next year two study groups on the two topics (chap. XII, sect.

A.4). The Commission decided that its sixty first session be held in Geneva from 4 May to 5 June and 6 July to 7 August 2009.

THE FOURTEENTH CONFERENCE OF THE PARTIES MEETING AND FOURTH MEETING OF THE PARTIES SERVING AS CONFERENCE OF THE PARTIES TO THE KYOTO PROTOCOL FROM 1-12 DECEMBER 2008

The United Nations Climate Change Conference in Poznan, Poland, was held from 1-12 December 2008. The Conference involved a series of events, including Fourteenth Conference of the Parties (COP-14) and the Fourth Conference of the Parties serving as the meeting of the Parties to the Kyoto Protocol. In support of these two main bodies, four subsidiary bodies convened: the fourth session of the *Ad Hoc* Working Group on Long-term Cooperative Action under the Convention (AWG-LCA 4); the resumed sixth session of the *Ad Hoc* Working Group on Further Commitments for Annex I Parties under the Kyoto Protocol (AWG-KP 6); and the twenty-ninth sessions of the Subsidiary Body for Implementation (SBI 29) and Subsidiary Body for Scientific and Technological Advice (SBSTA 29). These meetings resulted in the adoption of COP decisions, COP/MOP decisions and a number of conclusions by the subsidiary bodies. These outcomes covered a wide range of topics, including the Adaptation Fund under the Kyoto Protocol, the 2009 work programmes of the AWG-LCA and AWG-KP, and outcomes on technology transfer, the Clean Development Mechanism (CDM), capacity building, national communications, financial and administrative matters, and various methodological issues.

The main focus in Poznań, however, was on long-term cooperation and the post-2012 period, when the Kyoto Protocol's first commitment period expires. In December 2007, negotiators meeting in Bali had approved the Bali Action Plan and Roadmap setting COP 15 in December 2009 as the deadline for agreeing on a framework for action after 2012. Poznań, therefore, marked the halfway mark towards the December 2009 deadline. While the Poznań negotiations did result in some progress, there were no significant breakthroughs, and negotiators face a hectic 12 months of talks leading up to the critical deadline of December 2009 in Copenhagen, Denmark.

One of the major breakthroughs of the Conference was the creation of the Adaptation

Fund. The developing countries would access financial help for meeting concrete adaptation measures. The World Bank serves as trustee for the Fund and it will provide secretarial service to the Fund.

THE APPEALS CHAMBER CONFIRMS THE STAY OF THE PROCEEDINGS AND REVERSES DECISION ON THE RELEASE OF THOMAS LUBANGA DYILO (DEMOCRATIC REPUBLIC OF THE CONGO: THE PROSECUTOR v. S. THOMAS LUBANGA DYILO)

On 21 October 2008, the Appeals Chamber delivered its judgments in respect of two appeals of the Prosecutor against the decision to stay the proceedings (on 13 June 2008); and his appeal against the decision ordering the unconditional release of Thomas Lubanga Dyilo (on 2 July 2008). The Appeals Chamber, by unanimity, dismissed the appeal and confirmed the decision on the stay of proceedings. On 13 June 2008, the Trial Chamber had decided to stay the proceedings in respect of Mr. Lubanga Dyilo. In the view of the Trial Chamber, there was no prospect that a fair trial could be because the Prosecutor was unable to disclose a large number of documents containing potentially exculpatory information and information relevant to the preparation of the defence. The prosecutor had obtained the documents in question from several information providers, in particular from the United Nations, on the condition of confidentiality, and these information providers had refused to consent to their disclosure to the defence and, in most instances, to the Trial Chamber. Further, the Appeals Chamber, by majority reversed the decision of the Trial Chamber I on the release of Thomas Lubanga Dyilo and decided to remand the matter to the Trial Chamber for new determination of the question of release of Mr. Lubanga Dyilo. The Trial Chamber will have to decide in light of today's judgment of the Appeals Chamber whether Mr. Lubanga Dyilo should remain in custody or should be released with or without conditions, taking into account all relevant actors.

SUBMISSION TO THE COMMISSION ON THE LIMITS OF THE CONTINENTAL SHELF

On 1 December 2008, the Republic of Mauritius and the Republic of Seychelles, and on 5 December 2008, 16 December 2008, the Republic of Suriname, the Union of Myanmar respectively submitted to the Commission on the

Limits of the Continental Shelf, in accordance with Article 76, paragraph 8, of the Convention, information on the limits of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of the territorial sea is measured. It is noted that the Convention entered into force for Myanmar on 20 June 1996, for Suriname on 8 August 1998, for the Republic of Mauritius on 4 December 1994 and for the Republic of Seychelles on 16 November 1994. The consideration of the submission made by the Republic of Mauritius and the Republic of Seychelles will be included in the provisional agenda of the twenty-third session of the Commission to be held in New York from 2 March to 9 April 2009. And the consideration of the submission made by Myanmar and Suriname will be included in the provisional agenda of the twenty-fourth session of the Commission to be held in New York from 10 August to 11 September 2009. Upon completion of the consideration of the submission, the Commission will make recommendations pursuant to Article 76 of the Convention.

JUDGE JOSÉ LUIS JESUS AND JUDGE HELMUT TUERK BECAME PRESIDENT AND VICE-PRESIDENT RESPECTIVELY OF THE INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

On 1 October 2008, Judge José Luis Jesus was elected as President of the International Tribunal for the Law of the Sea for the period 2008–2011 by the 21 members of the Tribunal. President José Luis Jesus has been a member of the Tribunal since 1999. Judge Helmut Tuerk (Austria) was on 2 October 2008 elected as Vice-President of the International Tribunal for the Law of the Sea by the judges of the Tribunal for the period 2008 to 2011. Vice-President Tuerk has been a Member of the Tribunal since 2005 and replaces Judge Joseph Akl. The newly-elected President of the Tribunal, José Luis Jesus, conducted the election.

“INDIA — ADDITIONAL AND EXTRA-ADDITIONAL DUTIES ON IMPORTS FROM THE UNITED STATES” (DS360)

The Appellate Body, on 30 October 2008, issued its report on “India — Additional and Extra-Additional Duties on Imports from the United States” (DS360), WT/DS360/AB/R. The Appellate Body: (a) rejected the United States' claim that the Panel limited the scope of the United States' challenge to the Additional Duty as imposed only through Customs Notification 32/

2003, and the Extra-Additional Duty as imposed only through Customs Notification 19/2006; (b) as regards the Panel's findings with respect to the interpretation of Articles II:1(b) and II:2(a): (i) found that the Panel erred in its interpretation that Article II:1(b) covers only duties or charges that “inherently discriminate against imports”; (ii) found that the Panel erred in interpreting the term “equivalent” in Article II:2(a) as requiring only a qualitative comparison of the relative function of a charge and internal tax, thereby incorrectly excluding quantitative considerations relating to their effect and amount; (iii) found that the Panel erred in finding that “consistency with Article III:2” is not a necessary condition in the application of Article II:2(a); and, consequently (iv) reversed the Panel's findings, in paragraphs 7.299, 7.394, 7.401, and 8.1 of the Panel Report, that the United States failed to establish that the Additional Duty and the Extra-Additional Duty are inconsistent with Articles II:1(a) and II:1(b) of the GATT 1994; (c) found, in the circumstances of this case, that the United States was required to present arguments and evidence that the Additional Duty and the Extra-Additional Duty are not justified under Article II:2(a), and that India, in asserting that those duties are justified, was required to adduce arguments and evidence in support of its assertion; (d) declined to make an additional finding on the United States' claim under Article 11 of the DSU; (e) considered that the Additional Duty would not be justified under Article II:2(a) of the GATT 1994 insofar as it results in the imposition of charges on imports of alcoholic beverages in excess of the excise duties applied on like domestic products; and, consequently, that this would render the Additional Duty inconsistent with Article II:1(b) to the extent that it results in the imposition of duties in excess of those set forth in India's Schedule of Concessions; (f) considered that the Extra-Additional Duty would not be justified under Article II:2(a) of the GATT 1994 insofar as it results in the imposition of charges on imports in excess of the sales taxes, value-added taxes, and other local taxes or charges that India alleges are equivalent to the Extra-Additional Duty; and, consequently, that this would render the Extra-Additional Duty inconsistent with Article II:1(b) to the extent that it results in the imposition of duties in excess of those set forth in India's Schedule of Concessions; and (g) found that the Panel did not act contrary to Articles 3.2, 11, and 19 of the DSU in providing “concluding remarks” in paragraph 8.2 of the Panel Report. Having reversed the Panel's findings in paragraph 8.1 of the Panel Report, and in view of its findings and conclusions above, the Appellate Body made no recommendation, in this case, to the Dispute Settlement Body pursuant to Article 19.1 of the DSU.

THE MAYOR AND COMMONALTY & CITIZENS OF THE CITY OF LONDON v. ASHOK SANCHETI

IN THE SUPREME COURT OF JUDICATURE
COURT OF APPEAL (CIVIL DIVISION) ON
APPEAL FROM CENTRAL LONDON CIVIL
JUSTICE CENTRE
HIS HONOUR JUDGE KNIGHT QC 6CL05967

Neutral Citation Number: [2008] EWCA Civ 1283; Case No: B2/2008/0489; Royal Courts of Justice, Strand, London, WC2A 2LL

By a lease dated September 16, 1998 the Corporation of London let the 4th Floor, 124 New Bond Street, London W1 to ALC Press Inc., a Japanese company, for a term of years expiring on March 24, 2003. By clause 4(4)(e) the lessors and the lessee “submit to the non-exclusive jurisdiction of the competent courts of England and Wales”, and the lease was to be construed in accordance with English law. On April 3, 2001, Mr Sancheti, a solicitor of Indian nationality, took an assignment of the unexpired term of the lease. Mr Sancheti established a solicitor’s practice at the premises. The lease enjoyed the protection of Part II of the Landlord and Tenant Act 1954 and came to an end by service of a notice served pursuant to section 25 of the 1954 Act. The lease came to an end on October 15, 2004, and Mr Sancheti continued to occupy until December 24, 2004, when Mr Sancheti vacated the premises. He is now in practice in the firm of Morgan Walker at 115A Chancery Lane. At that time, there was an outstanding rent review under the Lease. Clause 1(1) of the lease provided for a rent review as at March 24, 2002. In default of agreement the increase in rent was to be determined by a surveyor appointed by agreement or in default by the President of the RICS. In July 2002, the Corporation of London had put forward proposals for an increase in rent, but no agreement was reached. In due course, Mr Last FRICS was appointed by the President of the RICS in January 2005 to determine the increased rent. On March 15, 2005, Mr Last determined the amount of the full rack rental as £13,950 per annum with effect from March 25, 2002. The Corporation sought to recover the balance of the revised rent from Mr Sancheti, who refused to pay. The case was before Lord Justice Laws, Lord Justice Richards and Lord Justice Lawrence Collins.

On May 4, 2005, Mr Sancheti served a notice of disputes under the BIT on the Treasury Solicitor, seeking amicable negotiation of those disputes, and notifying the Treasury Solicitor of arbitration under Article 9(3)(c) (ad hoc arbitration under UNCITRAL rules) if settlement was not possible.

In paragraph 8 of this letter Mr Sancheti complained of “blatant discrimination by different organs and functions of the United Kingdom in their dealing with me in my capacity as an Inward Investor.” He complained of discrimination by the Home Office, the Law Society, and the judiciary. His complaints against the Corporation of London were of targeted harassment and racial discrimination, and misfeasance. On September 16, 2006 Mr Sancheti wrote to the Treasury Solicitor giving notice of arbitration. Mr Sancheti’s request for arbitration relied on Articles 3(2) and 4(1), and complaint that he had been a victim of racial discrimination in relation to his application for leave to remain in the United Kingdom indefinitely and in relation to his practice as a solicitor by the Law Society. His complaints in relation to the Corporation of London were that: (1) while occupying the premises as a tenant of the Corporation he had been the subject of targeted harassment and racial discrimination to the extent that he had to stop his legal practice to attend to their unreasonable demands, and as a result he was finally forced to move to other premises; and (2) the Corporation of London exercised influence on the local courts to have specific chosen judges to attend to his litigation.

The Tribunal consists of Justice Umesh Chandra Banerjee, a retired judge of the Indian Supreme Court (appointed by Mr. Sancheti); Professor Michael Reisman, a professor at Yale law school (appointed by UK Government) and an arbitrator on numerous investment treaty tribunals; and H.E. Dr. Fracisco Rezek (Chairman) a Brazilian judge and former member of the International Court of Justice. On November 18, 2004, Mr Sancheti had written to the Lord Mayor of London seeking to invoke the BIT procedures and alleging unfair treatment by the Corporation of London of Mr Sancheti as its tenant, and in particular racial discrimination and manipulation of rents. But this was plainly ineffective. Mr Swaroop, for Mr Sancheti, sought to argue that the request for arbitration in the proceedings against the United Kingdom should be read in the light of this document and should be interpreted to include a claim for manipulation of rents, but there is no basis for this argument. The court of appeal rejected Sancheti’s request on the grounds that the Corporation of London is not a party to the BIT arbitration, nor was a “mere affiliation” between the city of London and the government of the United Kingdom deemed sufficient to grant a stay of the court proceedings. “The fact that in certain circumstances a State may be responsible under international law for the acts of one of its local authorities ... does not make that local authority a party to the arbitration agreement,” writes Lord Justice Lawrence Collins. Notably, Lord Justice Collins explicitly rejected a 1978 judgment in Rousset-Uclaf v GD

Searle & Co Ltd, arguing that it was “wrongly decided and should not be followed.” In Rousset-Uclaf v GD Searle & Co Ltd a subsidiary of a pharmaceutical company was entitled to a stay of court proceedings through an arbitration agreement held by its parent firm.

GERMANY FILES SUIT AGAINST ITALY IN ICJ ON WAR REPARATIONS CLAIMS

On 24 December 2008, Germany has filed a complaint against Italy at the United Nations International Court of Justice (ICJ) over Italian judgments awarding damages to victims of Nazi war crimes on the grounds that it has already paid reparations under international treaties with Italy. It also argues that as a sovereign state it has immunity in Italian courts, and that of any Italian is therefore unenforceable. At the same time, it reiterated that Germany “fully acknowledges the untold suffering inflicted on Italian men and women” during World War II. “In recent years, Italian judicial bodies have repeatedly disregarded the jurisdictional immunity of Germany as a sovereign State,” the complaint filed with the ICJ in The Hague says, citing a ruling that Italy held jurisdiction on a claim by a person deported to Germany during the war to perform forced labour in the armaments industry. After this ruling, numerous other proceedings were instituted before Italian courts by others who had suffered injury due to the war, and enforcement measures have already been taken against German assets in Italy, including a “judicial mortgage” on a German-Italian cultural centre, the complaint said. It also cited “attempts by Greek nationals to enforce in Italy a judgment obtained in Greece on account of a massacre committed by German military units during their withdrawal in 1944.” Germany asked the ICJ to adjudge that Italy must ensure that all decisions of its courts and other judicial authorities infringing Germany’s sovereign immunity become unenforceable and that in the future Italian courts do not entertain legal actions against Germany founded on such occurrences.

SINGAPORE TREATY WILL ENTER INTO FORCE NEXT YEAR

On 17 December 2009, Australia became the tenth country to ratify the Singapore Treaty on the Law of Trademarks (“the Singapore Treaty”), which was adopted by member States of the UN World Intellectual Property Organization (WIPO) in March 2006. Thus, the Singapore Treaty will enter into force on 16 March 2009. The Treaty standardizes procedural aspects of trademark registration and licensing and is expected to enable owners of trademarks and national trademark authorities to take advantage

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of efficiencies in using modern communications technologies to process and manage evolving trademark rights.

UNITED NATIONS GENERAL ASSEMBLY AND SECURITY COUNCIL ELECT FIVE MEMBERS OF THE COURT

The General Assembly and the Security Council of the United Nations on 7 November 2008 elected five Members of the International Court of Justice (ICJ) for a term of office of nine years, beginning on 6 February 2009. Judges Awn Shawkat Al-Khasawneh (Jordan) and Ronny Abraham (France) were re-elected as Members of the Court. Messrs. Antônio Augusto Cançado Trindade (Brazil), Christopher Greenwood (United Kingdom of Great Britain and Northern Ireland), and Abdulqawi Ahmed Yusuf (Somalia) were elected as new Members of the Court.

RECENT ARTICLES

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Bothe, M., Environment, Development, Resources, *Recueil Des Course*, vol. 318 (2005), pp. 333-516.

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Kennedy, David, "Sovereignty: Responding to Anghie and Aravamudan", *Texas International Law Journal*, vol. 41, no. 3 (2006), pp. 465-468.

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