



# The Indian Society of International Law

## NEWSLETTER

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For members only

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### Editorial



Although international law clearly prohibits secret detention, the practice is widespread and “reinvigorated” by the so-called global war on terror. In a 222-page study presented to the UN Human Rights Council, the experts conclude that “secret detention is irreconcilably in violation of international human rights law, including during those adopted state of emergency.” Likewise, it is in violation of international humanitarian law during any form of armed conflict. The study was done by the Special Rapporteur on the promotion and protection of human rights while countering terrorism (Martin Scheinin); the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment (Manfred Nowak); the Working Group on arbitrary detention (represented by its Vice-Chairperson, Shaheen Sardar Ali); and the Working Group on enforced or involuntary disappearances (represented by its Chairperson, Jeremy Sarkin). Working in an independent and *pro bono* capacity, they all are appointed by, and report to, the Human Rights Council. The study, which took almost a year to complete, involves responses from 44 States to a detailed questionnaire, as well as interviews with 30 individuals – or their family members or their legal counsels – who were victims of secret detention, and in many cases may also have been subjected to torture. Secret detention as such may constitute torture or ill-treatment for the victims as well as their families. But the very purpose of secret detention is to facilitate and, ultimately cover up torture and inhuman and degrading treatment used either to obtain information or to silence people. While in some cases, elaborate rules are put in place authorizing “enhanced” techniques that violate international standards of human rights and humanitarian law, mostly secret detention is used as a kind of opaque shield to avoid any scrutiny and control – and make it impossible to learn about treatment and conditions during detention. The general fear of secret detention and its corollaries such as torture and ill-treatment tend to effectively result in limiting the exercise of a large number of human rights and fundamental freedoms. The Experts conclude, with concrete recommendations, to contain these practices including that the States should ratify and implement the International Covenant on Civil and Political Rights and the Convention against Torture (CAT). Given that the Optional Protocol to the Convention against Torture (OPCAT) requires the setting up of monitoring systems covering all situations of deprivation of liberty, adhering to this international instrument adds a layer of protection. States should ratify the CAT and OPCAT and create independent national preventive mechanisms that are in compliance with the Paris Principles, and ratify the International Convention for the Protection of All Persons from Enforced Disappearance. The National Human Rights Commission of India has also recommended ratification of the CAT. In fact, Indian government is likely to bring an anti-torture law to ratify a UN Convention against torture and other cruel and inhuman treatment or punishment. Recently, the Union Cabinet has approved a proposal to introduce the Prevention of Torture Bill, 2010 in the Parliament. This is a step towards ratification of the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment of Punishment adopted by the UN General Assembly in 1984. India had signed the Convention in October, 1997. The matter was examined at length in consultation with the Law Commission of India and the then Attorney General of India. As the matter is in the Concurrent List of the Seventh Schedule of the Constitution, the views of the state governments were also sought. Much still must be done to refine the international and national rules and to implement them domestically.

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**The Indian Society of International Law**  
V.K. Krishna Menon Bhawan,  
9, Bhagwan Dass Road,  
New Delhi-110001 (INDIA)  
Tel.: 23389524, 23384458-59 Fax: 23383783  
E-mail: [isil@giasdli01.vsnl.net.in](mailto:isil@giasdli01.vsnl.net.in)  
Website: [www.isil-academy.org](http://www.isil-academy.org)

R. P. Anand

# RECENT ACTIVITIES

## A PUBLIC LECTURE ON “COMPARING LEGAL CULTURES THROUGH FILMING TRIALS” BY HON’BLE JUSTICE ANTOINE GARAPON

Indian Society of International Law (ISIL) organised a public lecture on “Comparing Legal Cultures Through Filming Trials” on 11<sup>th</sup> January 2010 at its premises. Dr. V. G. Hegde, Treasurer, ISIL introduced the speaker Hon’ble Justice Antoine Garapon, Secretary General of the Institut des Hautes Etudes sur la Justice (IHEJ). Justice Garapon said, “Culture is not contagious. Studying law books of a different legal culture is not the quickest way to ‘catch’ or understand this culture and indeed might lead to serious misunderstandings. Comparing legal cultures requires one to not only study overt differences but also to attend to underlying terms/concepts that appear to be the same: does an American judge really perform the same task as his or her French colleague? It is not only a matter of jurisdictions but of different cultural identities. If culture is the set of answers to questions nobody bothered to ask, we must first find the questions! Through filming trials, the project seeks to have a better access to cultures.” Images of trials in France, the US and China were presented with commentary by Judge Garapon.

## SEVENTH INTERNATIONAL CONFERENCE ON LEGAL REGIMES OF SEA, ANTARCTICA, AIR AND SPACE, 15-17 JANUARY 2010

The Seventh International Conference identified three themes: (I) Maritime Regime, (II) Legal Regime of Antarctica, (III) International Legal Regime of the Air and Outer Space Regime. The Seventh International Conference on “Legal Regimes of Sea, Antarctica, Air and Space” held on 15-17 January 2010. Hon’ble Shri Prithviraj Chavan, Minister of State of Earth and Sciences inaugurated the Conference on 15 January 2010 at ISIL Auditorium. Prof. R. P. Anand, Executive President, ISIL also addressed the session. Shri Ram Niwas Mirdha, the then President, ISIL welcomed the guests. At this occasion, the ISIL was able to distribute compendium of conference papers to each delegate. Chief Guest released the Conference Papers and two books authored by Dr. Manoj Kumar Sinha and Dr. S. R. S. Bedi respectively. In the evening a colourful cultural programme was performed by the artists of Sahitya Kala Parishad, New Delhi. Nearly 300 delegates including 14 from abroad participated in the Conference. The delegates had come from various backgrounds such as international institutions, government ministries, universities, law colleges and non-governmental organizations. The Conference witnessed lively



interventions by delegates during all sessions. Altogether 40 papers were presented by experts from India and abroad.

Three sessions were organized to discuss the above mentioned themes. The first session held on 16<sup>th</sup> January 2010 on the theme ‘Legal Regime of the Sea’ was chaired by Prof. R. P. Anand, Executive President, ISIL. Dr. M. Gandhi, Director, L&T Division, MEA, Government of India gave keynote address. Eminent panelists namely Prof. Sandeep Gopalan, University of Ireland; Rear Admiral O. P. Sharma; Mr. Robert C. Bakwel, Director, Centre for International Law, Singapore; Prof. J. L. Kaul, Professor of Law, Delhi University and Prof. (Mrs.) Harpal Khera, Department of Law, Punjabi University, Patiala presented papers on “Pirates of the Aden: A Tale of Law’s Impotence”, “Maritime Security and the UN Convention on the Law of the Sea 1982”, “Submarine Cables and UNCLOS”, “Piracy and International Law” and “Regulating Environmental Hazards of Ship Breaking: Role of Judiciary in India” respectively.

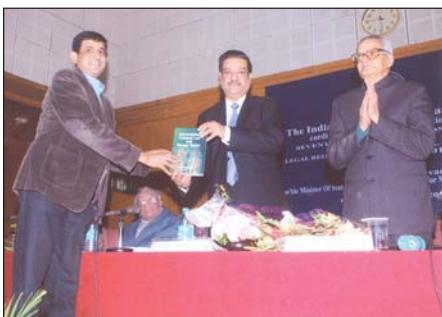
The second session based on the theme “Legal Regime of Antarctica” was chaired by Professor Yogesh K. Tyagi, Dean and Professor of International Law, SIS, JNU, New Delhi. The keynote address was delivered by Dr. Shailesh Nayak, Secretary, Ministry of Earth Sciences, Government of India & Chairman of Earth Commission. Eminent panelists namely Prof. Sanjay Chaturvedi, Department of Political Science, Chandigarh University, Chandigarh; Dr. Luther Rangreji, Legal Officer, L&T Division, MEA, Government of India; Prof. Manoj Kumar Sinha, Professor of Law, NUJS, Kolkata and Dr. Sandeep Bhatt, NUJS, Kolkata presented papers on “Geopolitics-Law Interface in the

Antarctica: Continuity and Change”, “Fifty Years of Antarctica Treaty: Legal Challenges, Implementation of the Madrid Protocol (1991) on the Environmental Protection of Antarctica in the Indian Legal System”, “Why Moratorium and Why not Common Heritage of Mankind for the Exploitation of the Antarctica Mineral Resources?” respectively.

The third session held on 17<sup>th</sup> January 2010 has been divided into two parts. First part discussed on the theme the “Legal Regime of Air”. Prof. Ram Jakhu, Associate Professor, Institute of Air and Space Law, Faculty of Law, McGill University, McGill chaired the session. Shri Vivek Pattanayak, Former Secretary & Former Indian Representative at ICAO gave keynote address. Dr. G. S. Sachdeva, Former Legal Counsellor, German Embassy in India presented paper titled “Air Carrier’s Liability: A New Perspective”.

Second part of the session on the “Legal Regime of Space” was divided into two segments. First segment ‘Uses and Abuses of Outer Space’ was chaired by Prof. S. K. Verma, Director, ISIL, New Delhi. Second segment ‘Remote Sensing Satellites and State Jurisdiction’ was chaired by Professor V. S. Mani, Professor, School of Law and Governance, Jaipur National University, Jaipur. Dr. M. Y. S. Prasad, Associate Director of Satish Dhawan Space Centre, SHAR, Department of Space gave keynote address. Eminent panelists namely Dr. G. S. Sachdeva, Former Legal Counsellor, German Embassy; Dr. Hakeem Ijaiya, Lecturer, Faculty of Law, University of Ilorin, Kwara State of Nigeria; Wg Cdr K. K. Nair, Command Space Operations Officers at Headquarters, Southern Air Command, Trivandrum; Dr. Ram Jakhu, McGill University, McGill; Prof. B. C.

# RECENT ACTIVITIES/ RECENT DEVELOPMENTS



Nirmal, Professor of Law, Banaras Law School, BHU, Varanasi; Shri K. R. Sridharmurthi, Managing Director, Antrix and Dr. V. Seshiah Shastri, Associate Professor, NLS, Jodhpur presented papers on "New Ethics for Space Commerce", "The International Legal Regime Regulating Environmental Aspects of Outer Space", "Examining Space Law and Its Military Implication", "International Liability Issues of Iridium - Cosmos Collision of 10 February 2009", "Remote Sensing Satellite and State Jurisdiction", "Satellite based Remote Sensing and Dissemination of Resolution Data", and "Deployment of Remote Sensing Space Technology & State Liability for Impact on Environment – An International Perspective" respectively. The session was followed by valedictory address given by Prof. R. P. Anand, Executive President, ISIL. Prof. Rahmatullah Khan made concluding remarks and Dr. V. G. Hegde proposed a formal vote of thanks.

## ISIL PAID TRIBUTES TO SIR IAN BROWNIE

At the start of the meeting of the International Conference, Professor Rahmatullah Khan gave expression to the loss to the world community at the sudden and untimely demise of Sir Ian

Brownlie who passed away on January 3, 2010, and paid tribute to his dedication to the development of international law. Thereupon the members of the ISIL and participants of the Conference observed two minutes silence in the memory of the departed soul. Brownlie was Chichele Emeritus Professor of Public International Law at Oxford University and a Fellow of the All Souls College. He was a member of Blackstone Chambers from 1983 until his death and through the course of his career had appeared before numerous international courts and tribunals. His writings were widely published in international law journal and authored the authoritative textbook Principles of Public International Law. Brownlie was a member of ASIL since 1969 and in 2004 was the recipient of ASIL's Honorary Member award. He was recently conferred Honorary Membership of the Indian Society of International Law. In his message, Prof. Khan, said Brownlie's demise has created a deep void in the life of international community with which he was actively associated since 1962. He may no longer be physically with us to give us guidance, but his example will live on, to inspire us in the tasks he had set before us. Professor Brownlie combined excellence in both practice and scholarship. Most of us learned international law from his books.

## A SPECIAL LECTURE ON “TOWARDS A PROPER UNDERSTANDING OF GENERAL INTERNATIONAL LAW, CUSTOMARY INTERNATIONAL LAW, AND THE JUDICIARY IN GLOBAL SOCIETY” BY PROF. YASUAKI ONUMA

Indian Society of International Law (ISIL) organised a special lecture on 5<sup>th</sup> March 2010 at its premises on "Towards A Proper Understanding of General International Law, Customary International Law, and the Judiciary in Global Society" by Prof. Yasuaki Onuma, Professor of Law, Meiji University, Japan. Prof. Onuma analysed the contribution of International Court of Justice (ICJ) in the development of international law. In response to the rapid developments, there are numerous sources through which international law developed. In light to this, ICJ is required to contribute more to the progressive development of international law. The lecture witnessed lively interaction.

## A SPECIAL LECTURE ON “WEAPONIZATION OF SPACE AND INTERNATIONAL LAW” BY DR. RAM JAKHU

Indian Society of International Law (ISIL) organised a special lecture on "Weaponization of Space and International Law" on 12<sup>th</sup> March

2010 at its premises. Prof. S. K. Verma, Director, ISIL introduced the speaker Dr. Ram Jakhu, Associate Professor Institute of Air and Space Law, Faculty of Law, McGill University, Canada and invited him to deliver the lecture.

## VISIT OF STUDENTS

A delegation of 30 students from Department of Law, The University of Burdwan, Burdwan visited ISIL on 8<sup>th</sup> February 2010. Prof. R. P. Anand, Executive President, ISIL, Prof. Rahmatullah Khan, Secretary General, 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 DEVELOPMENTS

### MALAYSIAN ENVOY ELECTED TO LEAD UN ECONOMIC AND SOCIAL COUNCIL FOR 2010

The Malaysian diplomat Hamidon Ali was elected, on 19 January 2010, to serve as the next President of the United Nations Economic and Social Council (ECOSOC). Mr. Ali, who succeeds Ambassador Sylvie Lucas of Luxembourg, is a career diplomat and has twice been Malaysia's Ambassador to the UN. On the very meeting, ECOSOC elected its vice-presidents, Heraldo Muñoz of Chile, Somduth Soborun of Mauritius, Alexandru Cujba of the Republic of Moldova, and Morten Wetland of Norway.

### UN FORUM FOCUSES ON IMPROVING MONITORING OF CLIMATE CHANGE IMPACT

Some 150 experts from 84 countries participated in the 15th session of the Commission for Climatology (CCI) of the World Meteorological Organization (WMO), from 19 to 24 February 2010 held at Antalya, Turkey. Delegates discussed improved climate products and services, including the establishment of an Open Panel of Experts that will focus on thematic areas including climate data management, global and regional climate monitoring and assessment and climate information for adaptation and risk management. During his opening remarks, WMO Secretary-General Michel Jarraud pointed out that the agency, through the CCI, has been improving climate system monitoring on various timescales, in particular by incorporating knowledge access and tools for climate change index analysis. He also highlighted the agency's contribution to the Intergovernmental Panel on Climate Change (IPCC) report which earned the 2007 Nobel Peace Prize. Meanwhile, a newly

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released study by the WMO says that while global warming could cause the number of tropical cyclones worldwide to decrease by the end of the century, the storms that do form probably will be more intense. The term "tropical cyclones" encompasses all tropical storms, hurricanes, typhoons and cyclones. The study – Sunday published online by Nature Geoscience, a journal of Britain's Nature Publishing Group – was led by Tom Knutson and colleagues from WMO. The findings are based on an analysis of past storm data as well as computer models that project future storm activity out to the year 2100.

## BULK OF EMITTERS SUBMIT CLIMATE PLEDGES TO UN CONVENTION

On 2 February 2010, some of the world's biggest emitters of carbon dioxide have formally submitted to the United Nations their national targets to cut and limit greenhouse gases by 2020 – abiding by the 31 January deadline specified in the Copenhagen Accord produced at November's UN Summit in Denmark. The United Nations Framework Convention on Climate Change (UNFCCC) said that by the deadline, it had received specific pledges from 55 countries that together account for 78 per cent of global emissions from energy use. The countries that signed on to the Copenhagen Accord include the United States and EU, the two largest emitters, along with the Australia, Japan, China and India. The pledges are purely voluntary and there are no enforcement provisions for the signing countries. The sixteenth conference of parties to UNFCCC is scheduled for 29 November 2010 in Mexico City. The next round of formal negotiations is scheduled to be in Bonn, Germany at the end of May 2010. Recently, the United Nations, on 31 March 2010, announced that 75 nations have submitted their pledges to cut or limit emissions of greenhouse gases by 2020, following last year's climate change conference in Copenhagen. Those countries together account for more than 80 per cent of global emissions from energy use, the secretariat of the UN Framework Convention on Climate Change (UNFCCC) said in its report of the results of the Conference. Some 41 industrialized countries have formally communicated their economy-wide targets to the Convention's secretariat, while 35 developing countries have communicated information on the nationally appropriate mitigation actions they are planning to take, provided they receive the appropriate support in terms of finance and technology, according to the report. The report contains the text of the Copenhagen Accord and lists the 112 Parties – 111 countries and the European Union – that have indicated their support for the Accord. With 194 Parties, UNFCCC has near universal membership and is the parent treaty of the 1997 Kyoto Protocol.

## DRAFT BIODIVERSITY ACCORD FINALIZED AT UN MEETING IN COLOMBIA

After a week of intensive discussions and six weeks of preparation, a draft international agreement on access to the Earth's genetic resources and the fair and equitable share in benefits from their use has been finalized at a United Nations meeting in Cali, Colombia held on 30 March 2010. "Parties and their partners have agreed on a draft Nagoya Protocol, as well as on the road map from Cali to Nagoya and beyond.". The draft will be on the agenda for adoption at the Nagoya Biodiversity Summit to be held in October 2010 in Japan. More than 500 participants from governments, indigenous and local communities, civil society, research institutions and business contributed to the document. The draft protocol, which has not been publicly released, addressed the issue of "access and benefit-sharing" (ABS), which has historically been a source of tension between developing countries and companies in sectors such as pharmaceuticals, agriculture, horticulture and biotechnology. ABS refers to the way genetic resources – whether plant, animal or microorganism – are accessed, and how the benefits that result from their use by various research institutes, universities or private companies are shared with the people or countries that provide them. Prior to the Nagoya Summit, the UN General Assembly will hold a high-level thematic meeting devoted to biodiversity in September 2010, to coincide with the high-level General Debate in New York.

## GOVERNMENTS AGREED TO PROTECT ENDANGERED SHARKS UNDER CMS

According to the UN Environmental Programme (UNEP), a landmark agreement, the United Nations supported wildlife treaty, to protect shark species threatened with extinction was reached, on 16 February 2010. The 113 countries that are party to the UNEP-administered Convention on the Conservation of Migratory Species of Wild Animals (CMS) agreed to prohibit the hunting, fishing and deliberate killing of sharks species covered in an appendix to the CMS – the great white, basking, whale, porbeagle, spiny dogfish, shortfin and longfin mako sharks. The CMS agreement, concluded at a gathering of government representatives in the Philippines, aims to restore the longterm viability of populations of migratory sharks, which are also set to benefit from greater enforcement of existing laws on illegal fishing and trade. UNEP noted that over-fishing, fisheries by-catch, illegal trade, habitat destruction, depletion of prey species, pollution with a high risk of mercury intoxication, boat strikes and the impact of climate change on the marine environment all seriously threaten sharks.

Gestation periods of up to 22 months, a life expectancy of up to 100 years, relatively low reproductive rates, migratory patterns, and low natural mortality combine to make the protection of some species and their habitat difficult and make sharks particularly vulnerable with little chance to recover if over-fished. In addition, whale shark meat has been increasingly considered as a high-grade, exotic product since the late 1980s, and according to TRAFFIC – a wildlife trade monitoring network – prices have skyrocketed to \$7,000 for 2,000 kilograms in Taiwan, for example. According to the UN Food and Agricultural Organization (FAO), up to 900,000 tons of sharks have been caught every year for the last two decades, and calculating for illegal, unreported, unregulated fishing and missing data, the actual catch figure is estimated to be at least twice as high. Studies show that shark populations collapsed in both in the Gulf of Mexico and in the Mediterranean Sea by 90 per cent, and by 75 per cent in the north-western Atlantic Ocean in the 15 years, said UNEP.

## APPOINTMENT OF THE PROSECUTOR AND REGISTRAR OF THE SPECIAL COURT FOR SIERRA LEONE (SCSL)

A United States attorney, Ms. Brenda Joyce Hollis, who leads the prosecution against former Liberian president Charles Taylor, has been named, on 22<sup>nd</sup> February 2010, by Secretary-General Ban Ki-moon as the new Prosecutor of the SCSL to try the worst acts committed during the decade-long brutal civil war in Sierra Leone. Also, on the same day, Mr. Ban named Binta Mansaray, a Sierra Leonean national, appointed as the Special Court's Registrar. Appointed as Deputy Registrar in 2007, she has served as Acting Registrar since last June. The Special Court is an independent tribunal established jointly by Sierra Leone's Government and the UN in 2002. It is mandated to try those who bear the greatest responsibility for atrocities committed in Sierra Leone after 30 November 1996.

## ICTR SENTENCES FORMER RWANDAN SOLDIER TO 15 YEARS IN PRISON

International Criminal Tribunal for Rwanda (ICTR) tasked with trying atrocities committed during the 1994 massacre in Rwanda of ethnic Tutsis and moderate Hutus handed down a 15-year prison sentence to a former soldier, Mr. Tharcisse Muvunyi. The decision was rendered on 11 February 2010. This decision follows Tharcisse Muvunyi's retrial after he was found guilty of several acts of genocide, direct and public incitement to commit genocide, and other inhumane acts and sentenced to 25 years in prison by the International Criminal Tribunal for Rwanda (ICTR) in 2006. In 2008, the tribunal's appeals chamber set aside the conviction and

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sentence, but ordered a retrial that began in June 2009 on an allegation of direct and public incitement to commit genocide related to a speech. Muvunyi gave in Butare prefecture in May 1994, in which he called for the killing of Tutsis, whom he referred to as snakes. Mr. Muvunyi, 57, was formerly a lieutenant colonel in the Rwandan army. He was arrested in the United Kingdom in 2000 and transferred to the UN detention facility in Arusha, Tanzania, where the ICTR is based. The Security Council authorized the creation of the tribunal in late 1994 in response to the genocide, in which an estimated 800,000 ethnic Tutsis and moderate Hutus were killed.

## ICC DISMISSES CHARGES AGAINST DARFURIAN REBEL LEADER FOR LACK OF EVIDENCE

The International Criminal Court (ICC), on 8 February 2010, declined to confirm the charges made against Bahar Idriss Abu Garda, a rebel leader, accused of directing the September 2007 attack that killed a dozen African Union peacekeepers in Sudan's strife-torn Darfur region, citing lack of evidence. The Court's pre-trial chamber "was not satisfied that there was sufficient evidence to establish substantial grounds to believe that Abu Garda could be held criminally responsible either as a direct or as an indirect co-perpetrator for the commission of the crimes," according to a news release issued by the ICC. Mr. Abu Garda, who commands a splinter group of the rebel Justice and Equality Movement (JEM), was the first person to appear voluntarily before the Court, which is based in The Hague, in response to a summons. He was charged with three war crimes – murder, attacks against a peacekeeping mission and pillaging – allegedly committed when 1,000 rebels attacked the Haskanita camp in South Darfur state on 29 September 2007. The attack killed 12 peacekeepers serving with the African Union Mission in Sudan (AMIS) and wounded eight others. AMIS was the predecessor to the joint UN-AU peacekeeping mission (UNAMID), which is tasked with quelling the violence in Darfur, where an estimated 300,000 people have died and another 3 million displaced as a result of fighting that began in 2003 between Government forces and allied Arab militiamen, known as the Janjaweed. The Court noted that this decision does not preclude the prosecution from subsequently requesting the confirmation of the charges against Mr. Abu Garda "if such request is supported by additional evidence," or appealing the decision on the confirmation of charges.

## ICC CHAMBER ORDERED TO RULE AGAIN ON GENOCIDE CHARGE AGAINST SUDANESE LEADER

The pre-trial chamber of the International Criminal Court (ICC), on 3 February 2010, was ordered

to reconsider adding the charge of genocide to the arrest warrant for Sudanese President Omar al-Bashir issued last year. Mr. al-Bashir became the first sitting head of State to be indicted by the Court, which charged him with two counts of war crimes and five counts of crimes against humanity in March 2009. But the chamber at that time rejected Prosecutor Luis Moreno-Ocampo's application to charge the Sudanese leader with genocide, ruling that there was insufficient evidence. The ICC's appeals chamber found the standard of proof set by the pre-trial chamber to be too demanding at the arrest warrant stage, amounting to an "error of law", according to a news release issued by the court, which is based in The Hague. The pre-trial chamber has been directed to decide anew whether or not Mr. al-Bashir should be charged with genocide. The United Nations estimates that an estimated 300,000 people have been killed and another 2.7 million forced from their homes since fighting erupted in 2003 in Darfur, pitting rebels against Government forces and allied Janjaweed militiamen. In December 2009, the ICC Prosecutor told the Security Council that indiscriminate bombings, rape and other crimes are continuing in Darfur, with the Government of Sudan still refusing to cooperate with his office and its indicted President and other suspects remaining at large. Soon after the arrest warrant for Mr. al-Bashir was issued, authorities expelled 13 international non-governmental organizations (NGOs) and revoked the permits of three local groups, giving a blow to humanitarian efforts in the region.

## ICC GRANTED INVESTIGATION IN KENYA POST-ELECTION VIOLENCE

The International Criminal Court (ICC), on 31 March 2010, granted the prosecutor's request to investigate crimes against humanity allegedly committed in Kenya in post-election ethnic violence two years ago, when some 1,000 people were killed and 300,000 others forced to flee their homes. In November 2009, prosecutor Luis Moreno-Ocampo sought authorization to open an investigation into the violence after the disputed December 2007 polls in which President Mwai Kibaki was declared winner over the opposition leader Raila Odinga, who is now Prime Minister. Earlier in the same month in a sealed list to the ICC, he named 20 people who were most responsible. "The information available provides a reasonable basis to believe that crimes against humanity have been committed on Kenyan territory," the ICC's Pre-Trial Chamber II found in a majority decision of two to one issued in The Hague, where the Court is based. "The majority moreover found that all criteria for the exercise of the Court's jurisdiction were satisfied, to the standard of proof applicable at this stage." Judge Hans-Peter Kaul, dissenting, held that the crimes in Kenya do not qualify as crimes against humanity under the jurisdictional ambit of the Rome Statute,

which established the court, and which Kenya ratified in 2005. He concluded that there was no reasonable basis to believe that the crimes in Kenya were committed in an attack against a civilian population pursuant to or in furtherance of a policy stemming from a State or an organization. The majority decision by Judges Ekaterina Trendafilova and Cuno Tarfusser cited the low threshold applicable at this stage of the proceedings. When he sought the authorization, Mr. Moreno-Ocampo said Mr. Kibaki and Mr. Odinga, who agreed to serve in a power - sharing administration following the violence, had promised to cooperate with any investigation.

## ICTR RENDERS JUDGMENTS IN APPEALS BY TWO CONVICTED RWANDANS

International Criminal Tribunal for Rawanda (ICTR), on 18 March 2010, affirmed the conviction and 15-year sentence of a famous Rwandan singer and composer for his role during the mass killings that engulfed the country in 1994, and reduced the sentence handed down against a top official after reversing a number of his convictions. Simon Bikindi, a former singer, composer and leader of a ballet troupe, was found guilty by the ICTR in 2008 of a single count of direct and public incitement to commit genocide based on public exhortations to kill Tutsis, which he made on the Kivumu-Kayove road in Gisenyi prefecture in late June 1994. The Appeals Chamber of the Tribunal, which is based in the Tanzanian city of Arusha, on 18 March 2010, dismissed the appeals of both Mr. Bikindi and the Prosecution and affirmed his conviction and sentence of 15 years in prison. The Appeals Chamber also reversed a number of convictions of Siméon Nchamihigo, a former deputy prosecutor in Cyangugu Prefecture, and reduced his sentence to 40 years instead of life imprisonment. Reversed were Mr. Nchamihigo's conviction for genocide and murder as a crime against humanity for aiding and abetting the killing of Joséphine Mukashema, Hélène and Marie, as well as his conviction for genocide in relation to instigating the killings of refugees taken from Kamarampaka stadium on 16 April 1994 and for instigating the killings at Shangi parish and Hanika parish. The court further reversed his convictions for genocide and extermination as a crime against humanity in relation to instigating the massacre at Mibilizi parish and hospital and the massacre at Nyakanyinya school. Both men will remain in the UN Detention Facility in Arusha pending their transfer to the countries in which they will serve their sentence.

## BANGLADESH JOINS INTERNATIONAL CRIMINAL COURT

Bangladesh has become the first South Asian country to ratify the pact that established the International Criminal Court (ICC) and gave it a

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mandate for trying people accused of genocide, crimes against humanity and war crimes. The Bangladeshi Government ratified the 1998 Rome Statute, on 23 March 2010. When the statute enters into force for Bangladesh on 1 June, the South Asian country will become the 111<sup>th</sup> nation worldwide to become a State Party to the ICC. The court was set up in 2002 after the Statute took effect that year when it passed a total of 60 ratifications.

## UGANDA RATIFIED THE AU CONVENTION

Uganda ratified the African Union (AU) Convention for the Protection and Assistance of Internally Displaced Persons (IDPs) in Africa on 19 February 2010. First legally binding international treaty to provide legal protection and aid to millions of people displaced within their own countries by conflicts and natural calamities was adopted in October 2009 in Kampala, the Ugandan capital. "This first ratification, coming within the first four months of the Convention's adoption, is an important milestone". 25 nations – or nearly half of AU Member States – have now signed the treaty, which needs 15 ratifications to come into force, a goal the AU has set for the end of 2010 year. At the beginning of last year, an estimated 11.6 million people were internally displaced by conflict in Africa, which is nearly 45 per cent of the world's internally displaced persons (IDPs).

## UN-BACKED PACT AGAINST CLUSTER MUNITIONS TO TAKE EFFECT FROM AUGUST

Burkina Faso and Moldova both submitted, on 16 February 2010, their instruments of ratification of the Convention on Cluster Munitions at UN Headquarters in New York, ensuring that the pact prohibiting explosive remnants of war known as either cluster munitions or unexploded ordnance (UXO) becomes part of international law. After the ratification by Burkina Faso and Moldova, the Convention banning the use of cluster munitions will enter into force on 1 August 2010 which required 30 ratifications for its entry into force.

## NEW ARMS PACT BETWEEN RUSSIA AND THE UNITED STATES

Agreement has been reached between Russia and the United States, on 26 March 2010, to reduce their arsenals. Negotiations between the two nations on a successor agreement to the 1991 Treaty on the Reduction and Limitation of Strategic Offensive Arms, better known as START, wrapped up recently. It is expected that the new pact will require both sides to cut their deployed nuclear warheads, missiles and launchers. It will also re-establish a verification mechanism to replace the one that expired with START December 2009.

## UN HUMAN RIGHTS COUNCIL CALLS FOR INDEPENDENT INQUIRY INTO GAZA CONFLICT

The United Nations Human Rights Council, on 25 March 2010, echoing the General Assembly, called on the Israeli Government and the Palestinian side to carry out independent and credible investigations into the deadly conflict in the Gaza Strip that ended early last year. Those inquiries, the Council said in Geneva, must look into the serious violations of international humanitarian and human rights law reported by the fact-finding mission into the Operation Cast Lead, the three-week Israeli military offensive starting at the end of 2008 that had the stated aim of ending rocket attacks by militants operating in the area. The fighting left more than 1,400 people dead, injured 5,000 others and reduced homes, schools, hospitals and marketplaces to rubble. The Goldstone Report, as it has become known, found that both Israeli forces and Palestinian militants were guilty of serious human rights violations and breaches of humanitarian law during the Gaza conflict, which began in late December 2008. The General Assembly has endorsed the mission's findings. The four-member fact-finding team headed by former UN war crimes prosecutor Justice Richard Goldstone, set up at the request of the Human Rights Council, called on the two sides to carry out independent investigations into their actions during the conflict. The Human Rights Council, on 25 March 2010, also called on the High Commissioner for Human Rights, Navi Pillay, to look into setting up an escrow fund to provide reparations to Palestinians who suffered losses as a result of unlawful Israeli actions during the conflict. It also decided to establish a committee of independent experts to monitor the independence, effectiveness and genuineness of the investigations and their conformity with international standards. The General Assembly also appealed for independent investigations by Israel and the Palestinians in March 2010, reiterating a call by Secretary-General Ban Ki-moon in a follow-up report to the Goldstone Report that they must conform with "international standards into the serious violations of international humanitarian and international human rights law reported by the fact-finding mission, towards ensuring accountability and justice."

## REPUBLIC OF KOREA GRANTS REFUGEE CITIZENSHIP FOR THE FIRST TIME

For the first time since it adopted the 1951 Refugee Convention almost two decades ago, the Republic of Korea (ROK) has granted a recognized refugee citizenship on 23 March 2010. The new citizen is a 38-year-old Ethiopian man who fled persecution in his home country and arrived in the ROK in 2001. The ROK recognized its first refugee in 2001. Since its

Government began receiving refugee claims in 1994, it has recognized 175 refugees and given humanitarian status to an additional 93 people who were found not to be refugees but still requiring international protection. Between 1994 and the end of 2009, the country has received nearly 2,500 applications and 321 are still pending.

## NEW TEXT COULD PROPEL SECURITY COUNCIL REFORM NEGOTIATIONS

On 3 March 2010, Intergovernmental Negotiations on Security Council Reform, the official overseeing negotiations on reforming the United Nations Security Council says that Member States will contribute by next week to a text that will focus the next round of discussions and could help wrap up a process that has been ongoing for 17 years. The membership of Security Council was last increased in 1963 from 11 to 15. Five permanent members hold veto power – China, France, Russia, United Kingdom and United States – and 10 non-permanent members, with no veto, are elected for a two-year terms. Some countries have argued that this structure does not represent the realities of today's world. Key issues under discussion are the category of membership, the question of veto, regional representation, the size of an enlarged Council, and the Council's working methods and its relationship with the General Assembly. Mr. Tanin, who is also the Permanent Representative of Afghanistan to the UN, had requested Member States as groups to submit in writing by 5 March 2010 their position on the key issues. It is noted that the Assembly is for moving the process forward from an open-ended working group, first established in 1994, to intergovernmental negotiations that will ultimately make the decision on reform.

## PANEL RULES ON DISPUTE OVER US ANTI-DUMPING MEASURES ON THAI PLASTIC BAGS

On 26 November 2008, Thailand requested consultations with the United States with respect to the application by the United States of the practice known as "zeroing" of negative dumping margins in the United States' determination of the margins of dumping in its anti-dumping investigation of Polyethylene Retail Carrier Bags from Thailand. Specifically, Thailand requested consultations concerning the USDOC's use in the Final Determination and Amended Final Determination of the practice of "zeroing" negative anti-dumping margins in calculating overall weighted-average margins of dumping in this investigation. Thailand alleged that the effect of this practice was to create artificial margins of dumping where none would otherwise have been found or, at a minimum, to inflate margins of dumping. Thailand considers the USDOC's use

# RECENT DEVELOPMENTS/ RECENT ARTICLES/ NEW ADDITIONS

of this practice of "zeroing" in the Final Determination, the Amended Final Determination, and the Order to be inconsistent with the United States obligations under Article VI of the GATT 1994, and, in particular, under Article 2.4.2 of the Anti-Dumping Agreement. On 9 March 2009, Thailand requested the establishment of a panel. At its meeting on 20 March 2009, the DSB established a panel. Argentina, the European Communities, Japan, Korea and Chinese Taipei reserved their third-party rights. On 20 August 2009, the panel was composed. On 22 January 2010, the panel report was circulated to Members. The Panel found that the United States acted inconsistently with Article 2.4.2, first sentence, of the Anti-Dumping Agreement by using "zeroing" in the Final Determination, as amended, and the Order to determine the dumping margins for individually investigated Thai exporters whose margins of dumping were not based on total facts available. The Panel recommended that the DSB request the United States to bring its measures into conformity with its obligations under the Anti-Dumping Agreement. On 18 February 2010, the DSB adopted the panel report. In light of the above findings, Appellate Body (AB) concluded that the United States acted inconsistently with Article 2.4.2, first sentence of the Anti-Dumping Agreement by using "zeroing" in the Final Determination, as amended, and the Order to determine the dumping margins for individually investigated Thai exporters whose margins of dumping were not based on total facts available. Under Article 3.8 of the DSU, in cases where there is an infringement of the obligations assumed under a covered agreement, the action is considered *prima facie* to constitute a case of nullification or impairment of benefits under that agreement. Accordingly, AB concluded that, to the extent the United States has acted inconsistently with the provisions of the Anti-Dumping Agreement, it has nullified or impaired benefits accruing to Thailand under that Agreement. AB therefore recommended that the Dispute Settlement Body request the United States to bring its measures into conformity with its obligations under the Anti-Dumping Agreement.

## UNITED NATIONS GENERAL ASSEMBLY ELECTS NEW UNCITRAL MEMBERS

The General Assembly, on 3 November 2010, held elections to fill vacancies in the United Nations Commission on International Trade Law (UNCITRAL). The outgoing members whose terms of office will expire on 20 June 2010 are: Algeria, Australia, Austria, Belarus, Colombia, Czech Republic, Ecuador, Fiji, Gabon, Guatemala, India, Iran, Israel, Italy, Kenya, Lebanon, Madagascar, Mongolia, Nigeria, Pakistan, Paraguay, Poland, Serbia, Spain, Switzerland, Thailand, Uganda, United States, Venezuela and Zimbabwe. The Assembly

elected the following 28 States members of UNCITRAL for a six-year term beginning on 21 June 2010: Algeria, Argentina, Australia, Austria, Belarus, Brazil, Colombia, the Czech Republic, Fiji, Gabon, India, Iran, Israel, Italy, Jordan, Kenya, Mauritius, Nigeria, Pakistan, the Philippines, Poland, Spain, Thailand, Turkey, Uganda, Ukraine, the United States of America and Venezuela. Two more vacancies are to be filled: one from the Group of African States and one from the Group of Latin American and Caribbean States. The Assembly will hold elections for the remaining seats upon notification by interested Member States from these two regions. The term of the following 30 States members of the Commission continues until 2013: Armenia, Bahrain, Benin, Bolivia, Bulgaria, Cameroon, Canada, Chile, China, Egypt, El Salvador, France, Germany, Greece, Honduras, Japan, Latvia, Malaysia, Malta, Mexico, Morocco, Namibia, Norway, Republic of Korea, Russian Federation, Senegal, Singapore, South Africa, Sri Lanka and the United Kingdom.

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## FORTHCOMING EVENTS

Annual Conference of the Indian Society of International Law, 24-25 April 2010

One Week Training Course for the Indian Economic Service Officers on International and National Economic Law, 17-21 May 2010

Visit of Delegation from School of Law, University of Edinburgh and A Special Lecture on "Moral Rights and New Technology" by Smita Kheria, School of Law, University of Edinburgh, Old College, South Bridge, Edinburgh, 20 May 2010

Summer Course on International Law, 24 May - 05 June 2010

V. K. Krishna Menon Memorial Lecture by Prof. Upendra Baxi on "Mission Impossible?: - Some Thoughts Towards UN Charter Reform", 28 May 2010

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R Rajesh Babu

### SHORTER ARTICLES

The Fundamental Right to Primary Education in India: A Critical Evaluation.

Anuradha Saibaba Rajesh

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Joint Declaration on Scientific and Technological Co-operation between the Republic of Turkey and Republic of India, 9 February 2010

India-Republic of Korea Joint Statement Towards a Strategic Partnership, January 25, 2010

### BOOK REVIEW

Manoj Kumar Sinha, *International Criminal Law and Human Rights*

U.C. Jha

V K Ahuja, *Law relating to Intellectual Property Rights*

Ranjana Ferra

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New Acquisitions to the ISIL Library from January to March 2010