



The Indian Society of International Law NEWSLETTER

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For members only

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Editorial



The Sudanese President Omar al-Bashir, who faces an International Criminal Court (ICC) arrest warrant issued from March 2009 for war crimes and crimes against humanity committed in Darfur continues to create major problems for the African Union. The planned attendance by Al-Bashir of the 19th AU Summit in Malawi coming July 2012 and the threat of the Malawi government to arrest him if he did attend has forced the African Union to move the summit to its headquarters in the Ethiopian capital of Addis Ababa. Earlier in 2011, during heads of state meeting of the Common Market for Eastern and Southern Africa (COMESA) Malawi refused to arrest al-Bashir despite its obligation as one of the signatories of the Rome Statute. Following al-Bashir's earlier visit Malawi reportedly suffered a substantial loss in western aid and this time around decided to pull out of hosting the summit if the African Union insisted on the attendance of the Sudanese president.

In total 33 African countries are parties to the Rome Statute. Several of them, like Chad, Djibouti and Kenya, have failed to arrest al-Bashir when al-Bashir was in their territory in the recent past. These countries have been referred to the UN Security Council for refusing to arrest Al-Bashir. Also the ICC Prosecutor has called for aid cuts to any country that allows al-Bashir in.

Although a few African countries like Botswana and Zambia are in support of Malawi and have said, that they would comply with the ICC arrest warrant if Al-Bashir would visit their countries. The fact that the majority of African leaders are still unwilling to arrest him. On the other side until now the AU has unsuccessfully lobbied for the al-Bashir arrest warrant to be deferred. They also criticize the ICC for unfairly targeting African countries as so far all ICC cases deal exclusively with Africa.

The critics of the African Union policy see the prosecution of the Sudanese president as a means to bring justice for the victims and would also make an important contribution to fight against impunity on the continent. Add to this many civil society organizations across Africa have called on their governments to support the ICC.

The ICC arrest warrant against al-Bashir, however, has led to further polarization of African opinion on the matter and the decision of Malawi to withdraw from hosting the summit has increased tensions among the AU member states.

The latest move of the African Union can be seen from Sudan its diplomatic victory. On going crisis in AU has led a reflection on the aspect of states co-operation with ICC and an acknowledgment that AU is under serious pressure on this matter.

Rahmatullah Khan

RECENT ACTIVITIES

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FELICITATION PROGRAMME IN HONOUR OF PROF. W. MICHAEL REISMAN, MYRES S. MCDUGAL PROFESSOR OF INTERNATIONAL LAW, YALE LAW SCHOOL

The ISIL organised a programme on 17 January 2012 at its premises to felicitate W. Michael Reisman, Myres S. McDougal Professor of International Law, Yale Law School. Prof. Reisman is faculty at the Yale Law School since 1965. He has been a visiting professor in Tokyo, Hong Kong, Berlin, Basel, Paris and Geneva. He is a Fellow of the World Academy of Art and Science and a former member of its Executive Council. He is a member of the Advisory Committee on International Law of the Department of State, Vice-Chairman of the Policy Sciences Center, Inc., a member of the Board of The Foreign Policy Association, a member of the Institute of World Business Law of the International Chamber of Commerce, and has been elected to the Institut de Droit International. Prof. Reisman was President of the Inter-American Commission on Human Rights of the Organization of American States, Vice-President and Honorary Vice-President of the American Society of International Law, Editor-in-Chief of the American Journal of International Law, and a member of the Eritrea-Ethiopia Boundary Commission. Prof. Reisman has published widely in the area of international law and has served as an arbitrator and counsel in many international cases. Some of his books are: *Foreign Investment Disputes: Cases, Materials and Commentary* (with Bishop and Crawford) (Kluwer Law International, 2005); *International Law in Contemporary Perspective* (with Arsanjani, Wiessner & Westerman) (Foundation Press, 2004); *Jurisdiction in International Law* (Ashgate, 1999); *Law in Brief Encounters* (Yale University Press, 1999), Chinese Translation, *Shenghuozhongde Weiguan Falu* (Microscopic Laws in Life) (Shangzhou Chubanshe, Taipei, 2001); and *The Reasons Requirement in International Investment Arbitration: Critical Case Studies* (with Aguilar Alvarez, eds.) (Martinus Nijhoff Publishers, 2008). A Chinese edition of his selected writings, *Understanding and Shaping International Law: Essays of W. Michael Reisman* was published by Law Press of

China in 2007.

Previous Appointments:

Associate Professor, Yale Law School, 1969;
Professor, Yale Law School, 1972-82;
Wesley Newcomb Hohfeld Professor of Jurisprudence, Yale Law School, 1982-98;
Myres S. McDougal Professor of International Law, 1998;
Board of Editors, American Journal of International Law, 1971-1983;
Board of Editors, American Journal of Comparative Law, 1971-1977;
Vice-President, American Society of International Law, 1984-86;
Board of Editors, Journal of Conflict Resolution, 1972-1987;
Board of Editors, Policy Sciences, 1984-88;

Prof. Reisman delivered a lecture on "*Collateral Damage: Who Should Pay?*" on his visit to ISIL. He expressed his gratitude to ISIL for organizing this lecture. On this occasion, ISIL conferred to him a Honorary Membership. Prof. Khan read citation of Prof. Reisman and presented a shawl and a memento. On the very occasion, Prof. Yogesh K. Tyagi, Dean, Faculty of Legal Studies, South Asia University, New Delhi garlanded Prof. Reisman and also addressed briefly and underlined the contributions of Prof. Reisman. Dr. V. G. Hegde, Treasurer, ISIL proposed a formal vote of thanks and congratulated him for his achievements.

EIGHTH INTERNATIONAL CONFERENCE OF ISIL

ISIL organized its Eighth International Conference on "Emerging Concerns in Public International Law" on 23-25 February 2012 at

its premises. Following four themes were for discussions: (I) Intervention and International Law, (II) ICC and the Crime of Aggression, (III) Prohibition on Torture and Enforced Disappearance, and (IV) Nagoya Protocol and ABS of Genetic Resources. Hon'ble Justice, Jasti Chelameshwar, Judge, Supreme Court of India inaugurated the Conference on 23 February 2012. Dr. Kishore Singh, UN Special Rapporteur on the Right to Education and H. E. Prof. Gudmundur Eiriksson, Ambassador of Iceland to India, special invitee also addressed the session. Prof. Rahmatullah Khan, 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 Justice Chelameshwar released the Conference Papers. Nearly 200 delegates including 10 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.

Four sessions were organized to discuss the above mentioned themes. The first session on the theme '*Intervention and International Law*' was chaired by Rahmatullah Khan, President, ISIL on 24th February 2012. Prof. V. S. Mani, President, Asian Society of International Law and Director, School of Law and Governance Jaipur National Law School, gave keynote address. Eminent panelists namely Prof. B. C. Nirmal, Professor, School



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of Law, BHU, Varanasi, Dr. M. Gandhi, Joint Secretary, L&T Division, MEA, Govt. of India, Ambassador Al Wahishi, Chief Representative, League of Arab State Mission, New Delhi and Mr. Vivek Kanwar, Assistant Professor, Centre on Public Law and Jurisprudence, Jindal Global Law School and Research Fellow, Insitute for International Law and Justice, New York University presented papers on "Responsibility to Protect: Political Doctrine or Legal Norm, With Special Reference to Libya and Syria", "Responsibility to Protect: An Critical Anaylsis", and "Spring Forward, Fall Back: How R2P Won the War and Lost the Law Somewhere Over Libya" respectively.

The second session based on the theme "International Criminal Court and the Crime of Aggression" was chaired by Prof. (Mrs.) Satpal Nalwa, Former Dean and Head, Faculty of Law, Punjabi University, Patiala and Member, EC, ISIL. The keynote address was delivered by H. E. Prof. Rahmat Mohammad, Secretary General, Asian African Legal Consutative Organization (AALCO), New Delhi. Eminent panelists namely H. E. Prof. Gudmundur Eiriksson, Ambassador of Iceland to India; Prof. (Mrs.) Harpal Kaur Khera, Dean, Faculty of Law, Punjabi University, Patiala; Dr. Srinivas Burra, Faculty of Legal Studies, SAU, New Delhi; Dr. Luther Rangreji, Assistant Professor, Faculty of Legal Studies, SAU, New Delhi and Dr. Anupam Jha, Senior Lecturer, Faculty of Law, University of Delhi presented papers on "Prosecution for Aggression before the Internatioanl Criminal Court, A Realsitic Appraisal"; *Agrgressions as an International Crime Historical Dimensions*

of its Definition"; "State Responsibility and/or Individual Responsibility Some Reflections on the Crime of Aggression"; "ICC and the Definition of Aggression: An Asian Perspective"; and *Security Council Ridden, Seven Headed Chariot of Aggression: A Reappraisal of Kampala's Achievements*" respectively.

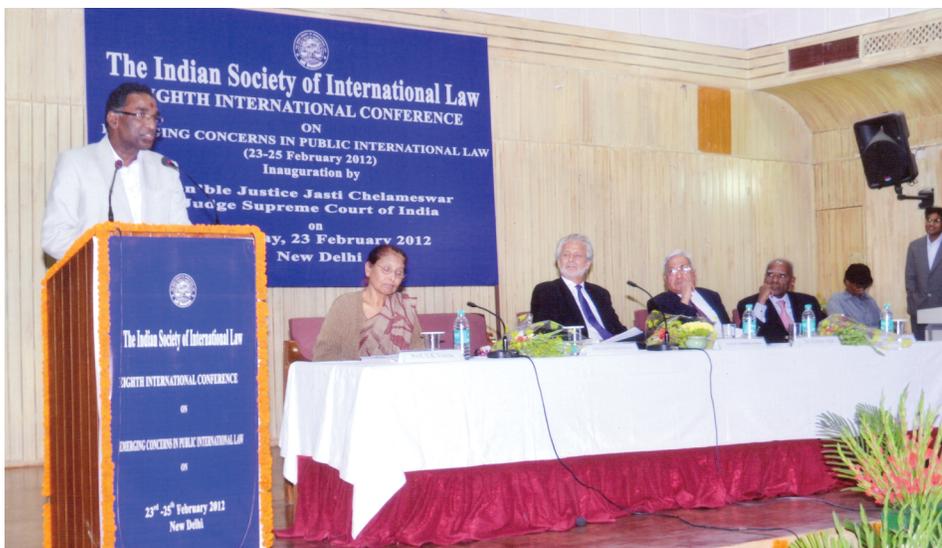
The third session held on 25th February 2012 was devoted to the theme the "Prohibition of Torture and Enforced Disappearance". Prof. J. L. Kaul, Professor-in-Charge, Faculty of Law, Delhi University chaired the session. Prof. B. C. Nirmal, School of Law, BHU, Varanasi gave keynote address. Eminent panelists namely Prof. V. Rajyalakshmi, Professor of International Law, Dr. B. R. Ambedkar College of Law, Andhra University, Visakhapatnam; Dr. U. C. Jha, Independent Reseracher; Nicolas Bachmann, Delegate, Restoring Family Links Programe, ICRC Regioanl Delegation, New Delhi; Prof. V. S. Shastri, Professor of Law, National Law University, Jodhpur and Dr. K. D. Raju, Assistant Professor, Rajiv Gandhi School of Law, IIT Kharagpur presented papers on "CAT's and its Friends' Entry into Extradition Domain-Implications to India"; "CAT: Dilemma for India"; "An Overview of the ICRC Missing Persons Project", "A Critical Evaluation of International Legal Perspectives and National Concerns in Relations to Prohibition of Enforced Disappearance"; and "Enforced Disappearance and Violation of International Human Rights Law: Implications for India" respectively.

The fourth session began with the book release function. The book released on the occasion titled Public International Law was authored by Prof. S. K. Verma, Director, ISIL.

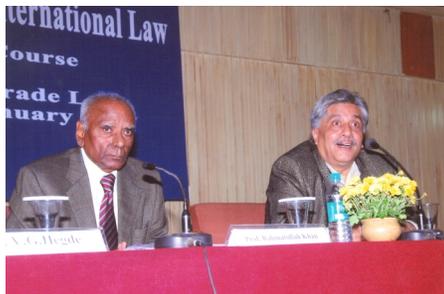
This book is revised in the year 2012 by author. The fourth session held on "Nagoya Protocol and Access to Benefit Sharing of Genetic Resources". Prof. S. K. Verma, Director, ISIL chaired the session. Mr. Farooqui, Additional Secretary, MoEF, Govt. of India gave key note address. Eminent panelists namely Prof. Abdul Hasseb Ansari, Professor of Law, Ahmad Ibrahim Faculty of Laws, International Islamic University, Kuala Lumpur, Malaysia; Dr. Luther Rangreji, Assistant Professor, Faculty of Legal Studies, SAU, New Delhi; Dr. T. C. James, Director, NIPO, New Delhi; and Dr. Himanshu, Assistant Professor, Faculty of Law, University of Delhi presented papers on "The Limitaitons of the Nagoya Protocol in Protecting Genetic Resources: An Evaluation of its Limitation and Impacts"; "Some Prefatory Remarks on Nagoya Protocol on Access and Benefit Sharing of Genetic Resources"; "Nagoya Protocol on Access to Benefit Sharing of Genetic Resources"; and "Intellectual Property in Bio-Resource and Nagoya Protocol: Overview of Access and Benefit Sharing Measures" respectively. The session was followed by valedictory address given by Prof. S. K. Verma, Director, ISIL.

SECOND WINTER COURSE ON INTERNATIONAL TRADE LAW

The ISIL organized its Second Winter Course. The subject chosen was the International Trade Law. The course was conducted at ISIL premises from 02 – 06 January 2012 and the Course received a good response with 250 participants from all parts of the countries. The Winter Course was intended to provide indepth understanding on international trade law and highlight contemporary issues to the participants. The Course was inaugurated by Prof. B. S. Chimni, Professor of International Law, Centre for International Legal Studies, JNU, New Delhi on 2 January 2012. He said, "I am delighted to be here at the Indian Society of International Law (ISIL) and address the students, members of this renowned place of learning and other guests present here. My greeting to you all. On this occasion, Prof. Chimni greeted the audience. In his address, he sketched the importance of trade law subject with the emergence of General Agreement on Tariffs and Trade (GATT). Later, he dealt at length on World Trade Organization (WTO). He touched upon development debate and issues of developing countries. Prof. Rahmatullah



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Khan, President, ISIL, in his welcome address, narrated the purpose and the importance of the course. Dr. V. G. Hegde, Treasurer, proposed a vote of thanks.

The substantive lectures of the Course were spread over one week. Lectures were delivered on vital and contemporary areas of international trade law, viz., Inaugural Address on Historical Evolution of the GATT/WTO and Its Agreements, Non Discrimination Provision in the WTO, Covered Agreements under the WTO: Trade in Goods, Economic Diplomacy, Dispute Settlement under the WTO, Safeguards Agreement and India's Legal and Institutional Machinery on Anti-Dumping, Exception to WTO Obligations: Trade and Environment, SPS and TBT, TRIPS: An Overview, Patent Regime under TRIPS, Copyright and Trade Marks, Geographical Indication, Trade in Services, International Sales Contract: CIF and FOB, International Commercial Arbitration, Political Economy of IMF and World Bank and Regional Trade Agreements. The resource persons who took classes on the above mentioned topics are the following: Prof. B. S. Chimni, Professor, JNU; Dr. Ravindra Pratap, Assistant Professor, GGSIP University, Delhi; Prof. C. Mahapatra, Professor, SIS, JNU, New Delhi; Shri Bipin Kumar, Consultant, IIFT; Dr. Archana Negi, Assistant Professor, SIS, JNU, New Delhi; Dr. V. G. Hegde, Treasurer, ISIL; Shri T. C. James, Director, NIPO; Ms. Kasturi Das, Consultant, RIS; Dr. Selvi G., Legal Counselor, German Embassy; Prof. J. L. Kaul, Professor, Delhi University, Delhi, and Shri Rajinder Kumar, Deputy Director, Ministry of Commerce and Industry, Govt. of India. Panel discussion on "*Recent Issues in the International Trade Negotiations and Domestic Progress in India*" was also organized on the last day of the Course. It was chaired by Shri Vinai Kumar Singh, Assistant Professor, ISIL. The other panelists were Shri Rajinder Kumar, Deputy Director, Ministry of Commerce and Industry, Govt. of

India and Shri Bipin Kumar, Consultant, IIFT. The Course witnessed lively interactions and discussion by the participants.

ISIL CONDOLED THE DEATH OF PROF. T. S. RAMA RAO

ISIL organized a condolence meeting on 5 July 2012 on the demise of Prof. T. S. Rama Rao. Professor Rahmatullah Khan condoled to the loss to the world community at the sudden and untimely demise of Prof. T. S. Rama Rao who passed away in July 2011, and paid tribute to his dedication to the development of international law. A resolution was adopted by the Indian Society of International Law at its meeting to condole the sad demise of the iconic teacher and editor of the Indian Yearbook of International Law, Prof. T. S. Rama Rao. "The sad and sudden death of our beloved friend, Prof. T. S. Rama Rao has shocked the Indian scholars. Prof. Rama Rao had inspired the Society, his colleagues/students for decades, employing his interpretative skills acquired over years with dedication. His contribution to the development of international law is appreciated by one and all. We will miss you gentle giant in our personal and professional lives which you have immensely enriched. May his soul rest in peace. May God give his family the strength to bear the tremendous loss." The members and staffs of the ISIL observed two minutes silence in the memory of the departed soul. The members of Legal & Treaties Division, Ministry of External Affairs, Government of India also joined the condolence meeting.

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GUATEMALA RATIFIES CTBT

On 13 January 2012, Guatemala has ratified the Comprehensive Nuclear-Test-Ban Treaty (CTBT), bringing the number of State parties to 156. Out of a total listed number of 195 States, 182 have so far signed the Comprehensive Nuclear-Test-Ban Treaty (CTBT). For the treaty to enter into force ratification is required from the so-called Annex 2 States. Of these China, the Democratic People's Republic of Korea (DPRK), Egypt, India, Iran, Israel, Pakistan, and the United States have yet to ratify it. The Indonesian parliament took the decision to ratify the treaty on 6 December 2011. Among the 33 States in the Latin America and the Caribbean region, 31 have now ratified the CTBT, with Cuba and Dominica being the only countries that have not yet signed or ratified.

UNESCO URGES MARITIME RESTRICTIONS FOR WORLD

HERITAGE SITES IN ITALY

The UN Educational, Scientific and Cultural Organization (UNESCO) called on Italy, on 23 January 2012, to restrict maritime access to its most culturally and ecologically sensitive areas, including the lagoon city of Venice. In the wake of the recent Costa Concordia cruise ship disaster, the UN Educational, Scientific and Cultural Organization (UNESCO) urged the Italian Government to quickly develop alternative plans for seafaring traffic around the World Heritage site of Venice. The Northern Italian city is a renowned tourist destination and is visited by almost 300 large cruise ships each year. On 13 January 2012, the hull of the Italian cruise ship Costa Concordia was torn open after it ran aground off the coast of Tuscany's Giglio Island. According to media reports, 15 people died and at least 18 are still missing. The ship was also carrying a reported 2,400 tonnes of fuel, prompting widespread concerns about a potential environmental disaster. The tragic accident reinforces longstanding concern over the risk that large cruise liners pose to sites inscribed on UNESCO's World Heritage List, particularly the Venice Lagoon and the Basin of San Marco. The regular cruise liner traffic in Venice has contributed to damaging the fragile structure of the city, according to the UNESCO. The massive ships cause water tides that erode the foundations of buildings and contribute to polluting the natural environment of the surrounding lagoon.

DESPITE GLOBAL ECONOMIC TURMOIL, FOREIGN DIRECT INVESTMENT INCREASED IN 2011-UN

24 January - In spite of the economic turmoil that shook countries in 2011, global foreign direct investment (FDI) rose by 17 per cent, according to a United Nations report released on 24 January 2012, which predicts it will continue to increase this year but warns of the risks posed by the frail economic climate. The report, authored by the UN Conference on Trade and Development (UNCTAD), highlights the increase in FDI in both developed and developing countries as well as transition economies. "Developing and transition countries continued to account for half of global FDI in 2011 as their inflows reached a new record high, driven mainly by investments in Latin America (up 35 per cent) and in transition economies (up 31 per cent),"

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the report states. After three years of consecutive decline, inflows to developed countries rose last year, reaching an estimate \$753 billion, up 18 per cent from 2010, largely due to cross-border mergers and acquisitions. However, FDI declined in Africa, the region with the highest number of least developed countries. The report shows that the share of inflows to Africa dropped by 0.6 per cent, to a total of 3.6 per cent of global FDI flows. UNCTAD estimates that FDI flows will continue to climb moderately in 2012 to around \$1.6 trillion, but will remain short of the all-time peak of \$2 trillion reached in 2007. It also warned that economic uncertainty could negatively affect FDI growth. More comprehensive results and analysis of FDI for the year will be provided in the World Investment Report, which will be released in July 2012.

IRAQ RATIFIES OF CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

The Convention on the Rights of Persons with Disabilities, ratified, on 30 January 2012 by the Iraqi Government, covers a number of key areas such as accessibility, personal mobility, health, education, employment, habilitation and rehabilitation, participation in political life, and equality and non-discrimination. "The ratification of this convention by Iraq marks a historic step in ensuring that persons living with disabilities enjoy full participation in the Iraqi society and can contribute to the community to their full potential," said Francesco Motta, chief of the human rights unit of the UN Assistance Mission for Iraq (UNAMI) and Representative of the UN High Commissioner for Human Rights (OHCHR) in Iraq.

COUNTRIES ADOPT MANILA DECLARATION TO PROTECT MARINE ENVIRONMENT

Delegates from 65 countries attending four days the Global Conference on Land-Ocean Connections (GLOC), co-organized by the Government of the Philippines and the United Nations Environment Programme (UNEP) held in the Philippines have agreed to step up efforts to protect the world's oceans from land-based activities, stressing the marine environment's central role in the transition to a low-carbon, resource-efficient green economy. The Manila Declaration was adopted on 27 January 2012. The four-day event brought together environment

ministers, marine scientists, non-governmental organizations, representatives from financial institutions and other interested bodies, aiming to formulate new policies and actions to improve the sustainable management of oceans and coastal areas. Signatories to the declaration reaffirmed their commitment to developing policies to reduce and control wastewater, marine litter and pollution from fertilizers. The agreement contains a total of 16 provisions focusing on actions to be taken between this year and 2016 at international, regional and local levels. Among them is a call for countries to develop guidance and policies on the sustainable use of nutrients to improve the efficiency of fertilizers such as nitrogen and phosphorous. Doing so would bring economic benefits for farmers, while mitigating negative environmental impacts such as algal blooms caused by agricultural run-off.

Signatories to the Manila Declaration underlined the importance of healthy oceans and coasts in supporting livelihoods and food security – especially in Small Island Developing States. The declaration calls for collaborative action to reduce the vulnerability of coastal communities to climate change and to tackle biodiversity loss, persistent organic pollutants (POPs) and ocean acidification resulting from land-based activities. Prior to the signing of the Declaration, UNEP and partners launched the "Green Economy in a Blue World" report, which outlines ways for a green economy transition across six marine-based economic sectors. The report argues that the health and productivity of marine and coastal ecosystems, which are currently in decline across the globe, can be boosted by shifting to a more sustainable economic paradigm that taps their natural potential – from generating renewable energy and promoting eco-tourism, to sustainable fisheries and transport. Recommendations include targeted financial support from governments for marine-based renewable energy projects, such as wind and wave power, to harness the considerable opportunities for green job creation in the sector.

ICJ RULES AGAINST ITALY IN CASE OVER NAZI COMPENSATION CLAIMS

The United Nations International Court of Justice (ICJ) ruled, on 3 February 2012, that Italy has violated its obligation to respect Germany's immunity under international law by allowing civil claims seeking reparations for Nazi war crimes to be brought against it in Italian courts. Germany filed the case in

December 2008 after a court in Italy ordered Berlin to compensate an Italian civilian sent to a German labour camp in 1944. Germany had claimed that the ruling failed to respect the jurisdictional immunity that it has a right to under international law. It had also claimed that it had already paid reparations under international treaties with Italy and argued that as a sovereign State it has immunity in Italian courts. At the same time, it fully acknowledged the untold suffering inflicted on Italians during the war. "The Italian Republic has violated its obligation to respect the immunity which the Federal Republic of Germany enjoys under international law by allowing civil claims to be brought against it based on violations of international humanitarian law committed by the German Reich between 1943 and 1945," the ICJ, stated in its judgment.

Italy has also violated Germany's immunity by taking measures of constraint against Villa Vigoni, German State property situated in Italian territory, and by declaring enforceable in Italy decisions of Greek civil courts based on violations of international humanitarian law committed in Greece by Nazi Germany. The Court added that Italy must ensure that the decisions of its courts and those of other judicial authorities infringing on Germany's immunity "cease to have effect." Germany has paid tens of millions of dollars in reparations, under various agreements, for crimes committed during the Second World War.

ICJ ELECTS PRESIDENT AND VICE-PRESIDENT FOR THREE YEAR TERMS

The International Court of Justice (ICJ), the principal judicial organ of the United Nations, on 6 February 2012, elected a new President and Vice-President, who will each serve a term of three years. Judge Peter Tomka (Slovakia) was elected as President and Judge Bernardo Sepúlveda-Amor (Mexico) as Vice-President of the tribunal, which was established in 1945 and is based in The Hague in the Netherlands.

The Security Council recently decided to hold concurrent elections along with the General Assembly on 27 April to elect a successor to Awn Shawkat Al-Khasawneh (Jordan), who resigned from the 15-member court in December 2011.

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UN SPECIAL RAPPORTEUR AND OHCHR EXPRESS CONCERN ABOUT TRIAL AND PUNISHMENT OF PROMINENT SPANISH JUDGE

A series of independent United Nations human rights experts, on 8 February 2012, voiced concern about the impact of the trial of a prominent Spanish judge on his independence, particularly his efforts to investigate more than 100,000 allegations of enforced disappearances during the country's civil war and then under the regime of Francisco Franco. Judge Baltasar Garzón is currently on trial in Spain, charged with "knowingly exceeding his jurisdiction" by admitting and investigating complaints related to crimes against humanity regarding allegations of enforced disappearances between 1936 and 1951. These cases are allegedly inadmissible because of a Spanish amnesty law introduced after General Franco's death and the expiration of the statute of limitations, and last week the country's Supreme Court rejected a prosecution request to dismiss the case against Judge Garzón. In a joint statement, Gabriela Knaul, the UN Special Rapporteur on the independence of judges and lawyers, and the five member UN Working Group on Enforced or Involuntary Disappearances, said it was "regrettable that Judge Garzón could be punished for opening an investigation which is in line with Spain's obligations to investigate human rights violations in accordance with international law principles." Ms. Knaul noted in the statement that "supposed errors in judicial decisions should not be a reason for the removal of a judge and, even less, for a criminal proceeding to be launched," adding that "autonomy in the interpretation of the law is a fundamental element in the role of a judge and for progress in human rights." The Working Group, for its part, underlined that enforced disappearance is a continuing offence and human rights violation as long as the fate or whereabouts of the victim remain unclarified. "Reconciliation between the State and the victims of enforced disappearances cannot happen without the clarification of each individual case, and an amnesty law should not allow an end to a State's obligation to investigate, prosecute and punish those responsible for disappearances." The Working Group, set up in 1980 to help families determine the fate or whereabouts of disappeared relatives, is currently comprised

of Jeremy Sarkin (Chair-Rapporteur), Olivier de Frouville (Vice-Chair), Ariel Dulitzky, Jasminka Dzumhur, and Osman El-Hajjé.

Also the Office of the High Commissioner for Human Rights (OHCHR), on 10 February 2012, voiced concern at the trial of Judge Baltasar Garzón for probing alleged atrocities committed during Spain's civil war, noting that the country is obliged under international law to investigate past serious human rights violations.

Spain is obliged under international law to investigate past serious human rights violations, including those committed during the Franco regime, and to prosecute and punish those responsible. It was also recalled that, after reviewing the report presented by Spain, the UN Human Rights Committee in 2009 informed the country that it should repeal its amnesty law, which was not in conformity with international human rights law. In its concluding observations that same year, the Committee also recommended that Spain consider taking the necessary legislative measures to guarantee recognition by the domestic courts of the non-applicability of a statute of limitations to crimes against humanity.

ECHR JUDGMENT ON RESPONSIBILITY TO MIGRANTS AT SEA

The European Court of Human Rights, on 23 February 2012, found Italy was wrong to intercept and return a boatload of African migrants without first determining whether this would jeopardize their lives is a turning point regarding national responsibilities to migrants. The UN High Commissioner for Refugees (UNHCR) issued a statement welcoming what it called the "landmark" judgment of the European Court of Human Rights, sitting in Strasbourg, France, in the case known as *Hirsi Jamaa and Others v Italy*, in which the agency acted as an intervener.

The court ruled that Italy's decision to intercept and return the boatload of migrants to Libya in 2009, without examining whether this constituted a real risk to their lives, violated its obligations under the European Convention of Human Rights. A group of Somali and Eritrean passengers on the boat had taken the case to the court. The judgment provides important guidance to European States in their border control and interception practices, representing a turning point regarding State responsibilities and the management of mixed migration flows. During the case, UNHCR had highlighted the obligation of States to not forcibly return people where they face persecution or serious harm –

otherwise known as the "non-refoulement principle." The agency told the court that, given the situation prevailing in Libya in 2008, so-called "push-back" policies undermined this principle. "UNHCR appreciates the challenges that irregular migration poses to Italy and other EU [European Union] countries and acknowledges the significant efforts made by Italy and other States to save lives in their search and rescue operations," the statement stressed. "UNHCR advises that people rescued or intercepted at sea are, very often, more vulnerable than other asylum-seekers, both physically and psychologically, and therefore unable to declare their intention to apply for asylum immediately after their interception at sea. UNHCR recommends that border control measures should provide for access to the territory of persons in need of international protection."

Also the OHCHR on 24 February 2012 added its voice in support of a European court ruling that found it is wrong for a country to collectively expel migrants intercepted on the high seas without first determining whether this would place their lives at risk.

BOTH PRO- AND ANTI-QADHAFI FORCES COMMITTED WAR CRIMES IN LIBYA – UN PANEL

The United Nations-mandated commission of inquiry that probed human rights abuses in Libya reported, on 2 March 2012, that crimes against humanity and war crimes were committed by both the troops loyal to the former ruler, Muammar al-Qadhafi, and the forces that fought to oust him. "Acts of murder, enforced disappearance and torture were perpetrated within the context of a widespread or systematic attack against a civilian population," according to the summary of the findings of the International Commission of Inquiry on Libya, which comprised Philippe Kirsch, Cherif M. Bassiouni and Asma Khader.

"The Commission found additional violations including unlawful killing, individual acts of torture and ill-treatment, attacks on civilians, and rape. The Commission further concluded that the *thumar* (anti-Qadhafi forces) committed serious violations, including war crimes and breaches of international human rights law, the latter continuing at the time of the present report." Violations included unlawful killing, arbitrary arrest, torture, enforced disappearance, indiscriminate

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attacks, and pillage. Anti-Qadhafi fighters particularly targeted members of the Tawergha community and other groups for attack. The panel was established by an emergency session of the UN Human Rights Council on 25 February, 2011 and mandated to investigate all alleged violations of international human rights law in Libya, establish the facts and circumstances of such violations and of the crimes perpetrated.

It was also asked, where possible, to identify those responsible, make recommendations on accountability measures to ensure that those responsible for human rights violations are held accountable. The commission also concluded that the North Atlantic Treaty Organization (NATO) conducted a highly precise campaign with a demonstrable determination to avoid civilian casualties. On limited occasions, it confirmed civilian casualties and found targets that showed no evidence of military utility. "The Commission was unable to draw conclusions in such instances on the basis of the information provided by NATO and recommends further investigations," it says in the report. The report states that Libya's interim Government faces many challenges in overcoming a legacy of more than 40 years of serious human rights violations and deterioration of the legislative framework, judicial and national institutions. It took note of the transitional Government's expressed commitment to human rights, saying authorities have taken positive steps to establish mechanisms for accountability. The panel said the Libyan Government is gradually restoring the judiciary by reopening courts and recalling judges, and there has been some progress in the transfer of detainees to central Government control. Nevertheless, it voiced concern over the failure to hold accountable members of the *thumar* who committed serious human rights violations. The Commission is scheduled to present its report to the current session of the Human Rights Council in Geneva on 9 March.

FIVE NEW JUDGES OF INTERNATIONAL CRIMINAL COURT SWORN IN

Five new judges of the International Criminal Court (ICC) were sworn in, on 9 March 2012, following their election last December at the last session of the assembly of States Parties to the Rome Statute, the treaty that established the court. Judges Howard

Morrison of United Kingdom, Anthony T. Carmona of Trinidad and Tobago, Olga Herrera Carbuca of Dominican Republic, Robert Fremr of Czech Republic and Chile Eboe-Osuji of Nigeria will serve nine-year terms in the court, which is based in The Hague. Judge Miriam Defensor-Santiago of the Philippines, who was also elected in December, was not available to take the oath of office today and will be sworn in at a later date.

REVISED UN CONVENTION SEEKS TO ENCOURAGE INVESTMENT, COMBAT CORPORATE TAX EVASION

The United Nations announced, on 14 March 2012, that it has updated a set of guidelines to prevent double taxation between countries, as well as to avoid tax evasion, which costs countries \$3.1 trillion every year. The UN Model Double Taxation Convention between Developed and Developing Countries (the UN Model) is used by countries as a basis for negotiation of their bilateral tax treaties. Double tax treaties are agreements to prevent taxing income twice by allocating taxing rights over this income between two countries. These types of treaties play a key role in encouraging investment and technology transfer, while allowing governments to retain taxing rights over the money that comes from those investments.

It is also noted that international law places very few limits on the taxation sovereignty of countries. It has been added that income from cross-border investments may be taxable in both investor and recipient countries, something which can be prevented by setting adequate measures in place.

It is expected that "Double tax treaties play a key role in encouraging investment while allowing governments to retain appropriate taxing rights over the income deriving from those investments," said Mr. Trepelkov. Armando Lara Yaffar, Chairperson of the Committee of Experts on International Cooperation in Tax Matters, stressed that "the main objective of the revision of the UN Model has been to take into account recent developments in the areas of international tax policies relevant for both developed and developing countries." Mr. Lara Yaffar emphasized that one of the key elements of the UN Model is its aim to facilitate entry into bilateral tax treaties by developing countries, which would contribute to attaining their development goals.

The revised model, which had not been

updated since 2001, also provides recommendations on how to combat corporate tax evasion as well as a set of rules for countries seeking to invest in developing countries.

UN EXPERT CALLS ON INDIA TO FIGHT IMPUNITY FOR EXTRAJUDICIAL EXECUTIONS

While commending India's generally high level of commitment to human rights, a United Nations expert, on 30 March 2012, urged the Government to continue to fight impunity for extrajudicial executions, and communal and traditional killings. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, said he recognized the size, complexity, security concerns and diversity of India - however, he remains concerned that the challenges with respect to the protection of the right to life in the country are still considerable.

"Evidence gathered confirmed the use of so-called 'fake encounters' in certain parts of the country. Where this happens, a scene of a shoot-out is created, in which people who have been targeted are projected as the aggressors who shot at the police and were then killed in self-defence," he told reporters in New Delhi at the end of a two week mission to India. He added, "Moreover, in the north-eastern states, and Jammu and Kashmir, the armed forces have wide powers to employ lethal force."

This is exacerbated, the expert said, by the high level of impunity that the police and armed forces enjoy, due to the requirement that any prosecutions require sanction from the central government - something that is rarely granted. "The main difficulty in my view has been these high levels of impunity," stressed the Special Rapporteur, who reports to the UN Human Rights Council in an independent and unpaid capacity. He called for the establishment of a commission of inquiry, consisting of respected lawyers and other community leaders, to further investigate all aspects of extrajudicial executions, as a first step to addressing concerns. He also recommended the immediate repeal of the laws providing for immunity from prosecution of the police and the armed forces, as well as the ratification of a number of international treaties, including those related to torture and enforced disappearance. The full report of his visit will be submitted to the Geneva-based Council in 2013.

RECENT DEVELOPMENTS/NEW ACQUISITION IN ISIL LIBRARY

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FORTHCOMING EVENTS

1. 41st Annual Conference of the ISIL, 13 & 14 April 2012
2. Election of Executive Council of the ISIL, 14 April 2012

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