



The Indian Society of International Law

NEWSLETTER

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The year 2010 marks, and is in fact a very proud moment for the Indian International Law scholarship, as the flagship publication of the Indian Society of International Law (ISIL) – *The Indian Journal of International Law* (IJIL) completes fifty years. Generations of Indian scholars have contributed to IJIL's glory that has enabled it to build its reputation and prestige as a leading voice of third world scholarship, in general, and the Indian scholarship in particular in the international law discourse. It is an occasion to cherish to commemorate, as also an opportunity to chart the path ahead.

The seeds for this long-journey were sown by Pandit Jawaharlal Nehru, our first Prime Minister and a leading statesman of his time. It was carefully nurtured for more than two decades by Shri V. K. Krishna Menon, the first and longest-serving President of the ISIL. Menon's successors, at ISIL, namely, Dr. Nagendra Singh, Justice R. S. Pathak, Prof. Upendra Baxi, Shri Ram Niwas Mirdha and Prof. R. P. Anand contributed to ensure that the seeds sown by the founding fathers grow into a full bloom tree.

The first issue of the Indian Journal of International Law was published in 1960, with *Radha Binod Pal*, as *Honorary Editor-in-Chief* and *C. J. Chako*, as the *Editor-in-Chief*. The Editorial Board members of the first volume were Nagendra Singh, Krishna Rao, E. E. Jhirad, R. S. Pathak, C. V. L. Narayan, Atul Setalvad, Harnam Singh and J. S. Bains. After the demise of Radha Binod Pal, K. Krishna Rao, an eminent international law practitioner, was the Editor-in-Chief of the Journal from 1966 to 1970. He continued the tradition set up by Radha Binod Pal and took this Journal to new heights. The Journal was then published under the able guidance of following Editor-in-Chiefs: V. K. Krishna Menon (1971-74); Nagendra Singh (1975-88) and R. S. Pathak (1989-91). I consider it a very great honour to assume charge of it from 1992 as the Editor-in-Chief.

Many eminent international law scholars have served as Editors and Editorial Board Members of the journal and all of them have contributed immensely to the growth of the Journal. We would like to record our deep appreciation to all these eminent scholars for their untiring efforts to make IJIL an important international law journal in the world.

The Journal had published a special issue in 1995 on the occasion of 50th Anniversary of the UN (Commemorative Volume) with *M. S. Rajan*, as *Special Editor*. It is not possible to publish good international law journals without the active and voluntary support of international law scholars who submitted their articles for publication. A large number of scholars have anonymously helped the Journal in this task. On behalf of the Editorial Board of the journal, it is my pleasant duty to record our deep appreciation to all these academicians and practitioners who helped during the last 50 years.

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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@giasd01.vsnl.net.in
Website: www.isil-aca.org

Rahmatullah Khan

RECENT ACTIVITIES

THIRTY NINTH ANNUAL CONFERENCE OF THE INDIAN SOCIETY OF INTERNATIONAL LAW

Indian Society of International Law (ISIL) organized its 39th Annual Conference on 24-25 April 2010 at V. K. Krishna Menon Bhawan (ISIL), New Delhi. More than 250 delegates comprising law faculty members, researchers, students and lawyers from different parts of the country and representatives from several embassies and ministries participated in the Conference. Prof. R. P. Anand, President, ISIL, while welcoming the distinguished guests and the delegates, mentioned the significance of the Annual Conference of ISIL and the need for participating in such a conference. He strongly emphasized on the need to train scholars in international law to counter the hegemony of western scholars' writing. He highlighted achievements of ISIL in bringing scholars from all over the world to one platform in the last 50 years. He said in his welcome address, that international law is gaining much importance in various ministries over the years. Hon'ble Dr. Justice B. S. Chauhan, Judge, Supreme Court of India, inaugurated the Conference. He strongly argued for increased emphasis on international law in the law schools and colleges and the need to appoint a proper faculty to teach this subject as the subject has wider ramifications and implications on many aspects of day-to-day activities. I am convinced that it is only congregations of this nature which is filled with international law experts could come out with some practical and workable ideas in this regard. I said earlier the challenges posed by the exponential growth in International law makes us to plan for the development of the human resources in international law so that the discipline and the nation will be better served. Perhaps the time has come for ISIL to take a serious look at the formidable challenges in this regard. I find the themes you have chosen for this year are very contemporary and relevant which have bearing upon India's national interest. I am sure your deliberations will complement the global negotiations on these topics. I wish the Conference a great success." H.E. Mr. Gudmundur Eiriksson, Ambassador of Iceland to India, Special Guest of Honour also addressed the gathering on this occasion. Prof. S. K. Verma, Director, ISIL briefly outlined the scheme of the Conference and proposed a formal vote of thanks.

Three sessions were organized to discuss three themes. The first session (morning) was on the



'Climate Change: Copenhagen and Beyond' which was chaired by Prof. Rahmatullah Khan, Secretary General, ISIL. Shri Sanjay Parikh, Advocate, Supreme Court of India gave the keynote address in this session. Eminent panelists namely Dr. Phillippe Cullet, Director, ICEL; Prof. Satish C. Shastri, Dean and Head, Modi Institute of Technology and Science; Dr. Luther M Rangrejji, Legal Officer, Legal & Treaties Division, Ministry of External Affairs; and Dr. Anwar Sadat, Assistant Professor, ISIL presented papers on *"Equity and South-North Negotiations for a Future Climate Regime – Rethinking Differential treatment"*, *"Issues in Climate Change Negotiations"*, *"Climate Change Negotiations: Copenhagen and Beyond"* and *"A Critical Review of Financial Commitment of the Copenhagen Accord"* respectively.

The second session (afternoon) was on the *'Forced Migration: Emerging Global Legal and Policy Issues'* chaired by Prof. B. C. Nirmal, Professor of Law, BHU, Varanasi. Shri Ravi Nair, Executive Director, South Asia Human Rights Documentation Centre gave the keynote address. Eminent panelists namely Ms. Kiran Kaur, Senior Protection Officer, UNHCR, New Delhi; Prof. Sanjay Chaturvedi, Professor, Department of Political Science, Chandigarh University, Chandigarh and Shri Y. S. R. Murthy, Executive Director, Jindal Global Law School, Sonapat presented papers on *"Challenges of Refugee Protection in the Context of Forced and Mixed Migration Flows"*, *"Climate Change and Displacements"* and *"Role of NHRC on Rights of Displaced Persons"* respectively.

The third session based on the theme *"Intellectual Property Rights: Implementation*

Issues" was chaired by Shri T. C. James, Director, National Intellectual Property Organisation. Shri G. R. Raghvender, Registrar of Copyrights Division, MHRD gave keynote address. Eminent panelists namely, Ms. Sunita K. Sreedharan, Advocate and Patent Agent, SKS Law Associates; Ms. Prathiba Singh, Advocate, Supreme Court of India; Dr. V. G. Hegde, Treasurer, ISIL; and Mr. Rodney Ryder, Advocate, Supreme Court of India presented papers on *"Biotechnology Innovations and Traditional Knowledge and Law of Patents"*, *"Recent Developments in Trade Marks"*, *"Traditional Knowledge and IPRs"*, and *"Copyright and the New Media – The Rights Holder and the Code"* respectively. Finally, Prof. R.P. Anand, President, ISIL gave valedictory address and Prof. Rahmatullah Khan, Secretary General, ISIL, made the concluding remarks. Dr. V. G. Hegde, Treasurer proposed a formal vote of thanks. The Annual Conference concluded with General Body Meeting held at 2.15 pm on 25 April 2010.

ONE WEEK TRAINING COURSE FOR THE INDIAN ECONOMIC SERVICE OFFICERS ON INTERNATIONAL AND NATIONAL ECONOMIC LAW

ISIL conducted a Training Programme for the officers of Indian Economic Services on International and National Economic Law sponsored by the Ministry of Finance, Government of India at its premises from May 17-21, 2010. Prof. R. P. Anand, President, ISIL, inaugurated the programme and highlighted the importance of international economic law in



increased globalised society. Prof. Anand gave an introductory lecture to the Officer-Trainees. There were lectures and presentations on a variety of themes of international and national economic laws. The faculty of the orientation course consisted of eminent international law scholars. Prof. Anand, gave concluding remarks and distributed certificates to the Officer-Trainees. Prof. S. K. Verma, Director, ISIL proposed a formal vote of thanks.

VISIT OF DELEGATION FROM SCHOOL OF LAW, UNIVERSITY OF EDINBURGH AND A SPECIAL LECTURE BY SMITA KHERIA, SCHOOL OF LAW, UNIVERSITY OF EDINBURGH, OLD COLLEGE, SOUTH BRIDGE, EDINBURGH

Delegation of three professors of School of Law, University of Edinburg, Old College, South Bridge, visited ISIL on 20 May 2010. On this occasion, Prof. Smita Kheria, School of Law, University of Edinburg, delivered a lecture on "Moral Rights and New Technologies". Prof. Smita examined the relevance of moral rights to the areas of new technology. She also explored the moral rights in new kinds of artistic works that make use of technological elements in their creation, performance, or exhibition. She suggested that some form of moral rights protection may well be appropriate to new technological works. The Lecture was followed by a lively exchange of views on her presentation.

NINTH SUMMER COURSE ON INTERNATIONAL LAW

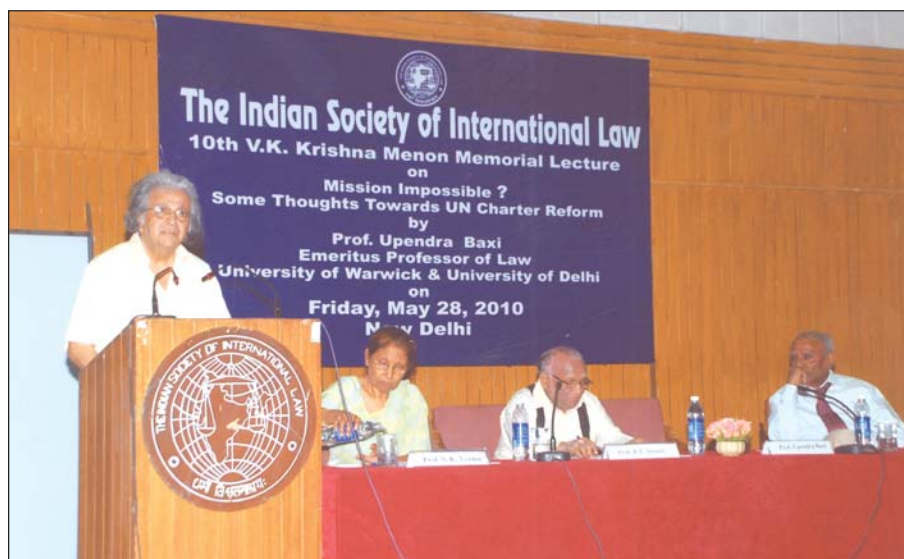
The ISIL organized its Ninth Summer Course on International Law at its premises from 24 May – 4 June 2010. The Course received a huge response of 350 participants from every part of India. The Summer Course was intended to introduce all branches of international law and highlight the contemporary issues to the participants. The Course was inaugurated by Hon'ble Dr. Justice Mukundakam Sharma, Judge, Supreme Court of India, on Monday, 24th May 2010. 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. The ISIL has been the source of enlightened learning for over 50 years now. The ISIL is well known for its international character, diversity and research, enriched by its

heritage and preparedness for future. It is a tribute to the qualities of academia, leadership and public service which the ISIL imparts that many eminent scholars are a product of the ISIL." Prof. R. P. Anand, President, ISIL, in his welcome address, narrated the purpose and the importance of the course. Prof. Rahmatullah Khan, Secretary General, ISIL highlighted significance of international law in increased globalized society. Prof. S. K. Verma, gave vote of thanks.

The substantive lectures of the Course were spread over two weeks. Lectures were delivered on vital and contemporary areas of international law, viz., General Principles of Public International Law, International Institutions, International Human Rights Law, International Humanitarian and Refugee Law, International Criminal Law, Maritime Law, Public International Trade Law, National and International Arbitration, International Environmental Law and Sustainable Development. The faculties for the Summer Course comprised of eminent international law experts. The Course witnessed lively interactions and discussion by the participants.

V. K. KRISHNA MENON MEMORIAL LECTURE BY PROF. UPENDRA BAXI ON "MISSION IMPOSSIBLE:- SOME THOUGHTS TOWARDS UN CHARTER REFORM"

In the memory of Shri V. K. Krishna Menon, former President and founder of the ISIL, the ISIL organized the Tenth V. K. Krishna Menon Memorial Lecture on 28 May 2010 at ISIL premises which was delivered by Prof. Upendra Baxi. Prof. Rahmatullah Khan, Secretary General, ISIL, highlighted and underlined the



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achievements of Prof. Upendra Baxi. Prof. R. P. Anand, President, ISIL welcomed the chief guest Prof. Upendra Baxi, Emeritus Professor of Law, University of Warwick and University of Delhi and the distinguished guests.

Prof. Baxi said, "It is an extraordinary privilege to be invited to deliver this Memorial Lecture. Vengalil Krishnan Krishna Menon, a legendary figure, articulated a distinctive vision of a post-Westphalian international law and order and he did so with a rare passion for India's future in the world."

Over the theme of the lecture, Prof Baxi stated: "Why Talk about the 'Reform' of the UN Charter? To this threshold question, three types of responses are possible. The first—a standard – response suggests that as an organic instrument of global governance, the UN Charter needs basic transformations in the 21st Century CE. The UN ought to now take more seriously the need for reform of powers and procedures that enable us to meet better not just the old concerns but more importantly the newly emergent ones. Call this the state-centric reform perspective.

A second response suggests that we—that is social movement and human rights activist folks— should not engage with the UN Charter reform discourse [UNCRD] not because amendments to the charter is difficult to attainment but rather because even when at some point of time backed by member-states will and consensus, no UN reform is likely to ameliorate the plight of the globally worst-off peoples and even their future generations. The UN, in this view, will continue to exist and may even be reformed but without making any substantial contribution to the elimination of structural causes of human suffering and rightless humans. I am tempted to name this as a nihilist position but I resist that description given my understanding of Nietzsche for whom nihilism consisted not merely in devaluation of established/imposed values but also creation of new values. Allow me then to name this then rather more accurately as an Argument of Justified Indifference (AOJI.) [3]

A third response constitutes what I may call as Argument for Constructive Engagement (AFCE) with UN Charter reform talk and action. I think this is what animated a few friends' excitement with my choice of the theme! AFCE advances the view that the UN reform talk and action is too serious a matter for human futures to be left to diplomats, international law persons, and 'statesmen' (a term I am unable to sufficiently feminize.) AFCE further points to a profound shift in the original position at Dumbarton Oakes where the UN Charter was framed; since then there has occurred a remarkable implosion of

global civil society activism that has critically engaged the UN action and inaction both as regards its prime function of maintaining international peace and security, global social development, and movement towards global justice. At a basic level, AFCE suggests ways in which the United Nations systems affects us all and therefore commends its reform agendum as a serious concern, even for human rights and social movement activists in the Global South." Then he addressed each of these responses in his lecture.

Taking note of the great contribution made by Prof Baxi in the field of international Law, ISIL conferred *Life Time Achievement Award for teaching and research in International Law* to him. Prof. S. K. Verma, Director, ISIL, gave a vote of thanks.

RECENT DEVELOPMENTS

ICC PROSECUTOR GOT DECISION TO MOVE FORWARD WITH KENYA PROBE

On November 2009, prosecutor Luis Moreno-Ocampo sought authorization to open an investigation into the violence in Kenya – claiming 1,000 lives and uprooting more than 300,000 others – that erupted after the disputed December 2007 polls in which President Mwai Kibaki was declared winner over opposition leader Raila Odinga, who is now Prime Minister. And in March 2010, following a request for additional information from the ICC, the Prosecutor named the 20 people are most responsible for the deadly post-election ethnic violence.

On 30 March, 2010, the ICC's Pre-Trial Chamber II found in a majority decision of two to one that "the information available provides a reasonable basis to believe that crimes against humanity have been committed on Kenyan territory." It noted that "the majority 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, under which the ICC operates. 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, which he said was required by

Article 7 of the Statute. The majority decision by Judges Ekaterina Trendafilova and Cuno Tarfusser cited the low threshold applicable at this stage of the proceedings.

BRITISH LAW TO STOP PREDATORY FINANCIAL FUNDS

On 20 April 2010, United Kingdom passed a landmark debt relief law, which limits the ability of so-called "vulture funds" to sue the world's poorest countries in British courts for repayment of debts, saying they could have ramifications for a recent court verdict involving Liberia. This law marks the first occasion on which a country has banned profiteering by vulture funds. Vulture funds buy up either all or a portion of debt of a weakened country. The funds often target governments that have received international debt relief, and then sue to recover the full amount of the debt, diverting precious financial resources saved from debt cancellation. One of the first impacts of the British law could be to block a November 2009 ruling by the London's High Court awarding \$20 million to two vulture funds that bought Liberia's debt at a fraction of the sum. The case dates back to 1978. Liberia, which is recovering from a 14-year civil war, does not have the funds to pay back the debt. At the time of the case, Liberia was taking part in the Heavily Indebted Poor Countries Initiative (HIPC) process, an internationally agreed debt relief measure designed to free up funds for poor countries to invest in developmental issues. The World Bank reported in 2008 that 54 lawsuits had been instituted by commercial creditors against 12 HIPCs over the past decade.

UN WORKING GROUP URGES SUPPORT FOR TREATY REGULATING PRIVATE MILITARY SECURITY COMPANIES

A United Nations expert body, on 30 April 2010, is urging broad support for the creation of a new global treaty to regulate the activities of private military and security contractors, stressing the need for strict control mechanisms for this "highly specific and dangerous trade." The five-member UN Working Group on the use of mercenaries, created in 2005, is currently drafting a possible new legally binding instrument that aims to set minimum global standards for States to regulate private military and security companies' activities at the international level. "It's high time to close the legal gap for private security contractors," said José Luis Gómez del Prado, who currently chairs the Working Group. The Working Group, which has been monitoring their impact on

human rights and their lack of accountability, stressed that there is a "clear gap" regarding the jurisdiction applicable to private military and security contractors. "Employees of private military and security companies cannot usually be considered as mercenaries, and their activities are not covered by the Geneva Conventions or the International Convention against the recruitment, use, financing and training of mercenaries," stated Mr. Gómez del Prado. Support for a legally binding treaty has been expressed by regional bodies, such as the Parliamentary Assembly of the Council of Europe, citing concerns at the lack of transparency and accountability of private military and security companies. The Working Group is calling for support for the treaty in a letter addressed to all Member States. It will submit its report on the progress achieved in elaborating the draft legal instrument to the Geneva-based UN Human Rights Council in September 2010.

GENERAL ASSEMBLY ELECTS 14 COUNTRIES TO SERVE ON UN HUMAN RIGHTS COUNCIL

Fourteen countries were elected to serve on the Human Rights Council (HRC) for three-year terms starting next month after one round of balloting, on 13 May 2010. Angola, Libya, Mauritania and Uganda were chosen to fill the four vacant African seats on the 47-member panel, according to a formula that allots seats among regions. The two seats from the Latin American and Caribbean region went to Ecuador and Guatemala. In the Eastern European category, the two available seats went to Poland and the Republic of Moldova; in Western Europe, to Spain and Switzerland. Four countries contested the positions distributed to Asian States, with Malaysia, Maldives, Qatar and Thailand winning the most votes to join the panel. The results were announced by the current President of the General Assembly, Ali Treki. Elected members will serve for three-year periods and cannot run for immediate re-election after two consecutive terms. Overall, the 47 members include 13 from Africa, 13 from Asia, six from Eastern Europe, eight from Latin America and the Caribbean, and seven from Western Europe and Other States.

TWO MORE NATIONS RATIFIED THE CTBT

The Central African Republic (CAR) and Trinidad and Tobago, on 26 May 2010, ratified the Comprehensive Nuclear-Test-Ban Treaty (CTBT) that prohibits all nuclear tests, bringing

the total number of countries bound by the global ban to 153. The Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO) is building a verification regime to monitor compliance with the treaty. When complete, 337 facilities around the world will monitor underground, the oceans and the atmosphere for any sign of a nuclear explosion. The CTBT, which opened for signature in 1996, has been called "a fundamental building block for a world free of nuclear weapons," by Secretary-General Ban Ki-moon. Of the 182 countries that have signed the treaty, 153 have ratified it, as of now. There are 44 countries that have to ratify the treaty for it to enter into force, of which 35 have already done so. The remaining nine are China, the Democratic People's Republic of Korea (DPRK), Egypt, India, Indonesia, Iran, Israel, Pakistan and the United States. Indonesia announced on 3 May 2010 that it had initiated the CTBT ratification process. In addition to Indonesia's announcement, Papua New Guinea said it is in the process of "formally ratifying the CTBT" and Guatemala expressed its wish to "promptly" ratify the treaty.

JUSTICE JON KAMANDA RE-ELECTED AS HEAD OF SPECIAL COURT FOR SIERRA LEONE (SCSL)

Justice Jon Kamanda of Sierra Leone, on 31 May 2010, has been re-elected to serve as President of the United Nations-backed war crimes tribunal set up to deal with the worst acts committed during the long and brutal civil war in the West African nation. This will be his second term as the Presiding Judge of the appeals chamber, a post which automatically makes him the President of the Special Court for Sierra Leone (SCSL). Justice Emmanuel Ayoola of Nigeria, who previously served as the court's President, also has been re-elected as Vice-President.

ENFORCEMENT OF JAIL TERMS IMPOSED BY INTERNATIONAL CRIMINAL COURT

Three European countries, on 1 June 2010, signed an agreement with the International Criminal Court (ICC) to enforce the tribunal judges' sentences of imprisonment, taking the number of countries that are willing to detain people convicted by the ICC to five. Representatives of Belgium, Denmark and Finland signed the agreement during a ceremony in Kampala, Uganda, where the review conference of the Rome Statute – which set up the ICC – took place. Austria and the United

Kingdom have previously entered into similar agreements with the court to enforce sentences.

ICC REVIEW CONFERENCE AT KAMPALA

More than 80 nations have reaffirmed their commitment to the Rome Statute, which led to the founding of the International Criminal Court (ICC), emphasizing the crucial role of justice in achieving sustainable peace. The so-called Kampala Declaration was adopted, on 1 June 2010, at the end of the general debate segment of the two-week long ICC review conference under way in the Ugandan capital. During the debate, 84 States, along with Palestine, international organizations and others, reiterated their support for the Court's mission of tackling impunity, bringing justice to victims and deterring future atrocities. In the Declaration, States underscored their determination to end impunity for perpetrators of the most serious crimes and pledged to enhance efforts to promote victims' rights under the Rome Statute.

Member States of the International Criminal Court (ICC) have also agreed on what constitutes the crime of aggression, a long-running source of contention in international law, after nearly one decade of discussion. Nations agreed to amend the Rome Statute, which set up the Court, to define the crime of aggression as "the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations." Under the resolution adopted at the end of the two-week-long ICC review conference in Kampala (Uganda) on 14 June 2010, blockades of ports or coasts of a State by armed forces of another State, as well as an invasion or attack by troops of one State on the territory of another, are considered as acts of aggression under the Statute. Nations agreed that the ICC can exercise jurisdiction over crimes of aggression, committed one year after 30 States Parties have ratified the newly-made amendment. This will, however, not happen until at least 2017, when States meet against to review the amendment, according to the new resolution adopted in Kampala. It also noted that if the ICC Prosecutor wishes to move forward with an investigation of possible cases, he or she will take the case to the Security Council. Once that body has determined that an act of aggression has taken place, the Prosecutor will move forward with a probe. So far 111 countries have become parties to the Statute, while 37 others have signed but not yet ratified it.

ICTY JAILS TWO BOSNIAN SERBS FOR LIFE OVER SREBRENICA MASSACRE

International Criminal Tribunal for the former Yugoslavia (ICTY), on 10 June 2010, handed out life terms in jail to two former top Bosnian Serb military officers after convicting them of genocide for their role in the 1995 massacre of nearly 8,000 Muslim men and boys in the UN safe haven of Srebrenica, the most notorious episode of the Balkan conflicts of the 1990s. In the largest ever case before the ICTY, judges also sentenced five other former military and police officers to lengthy terms in prison for their role in the killings at Srebrenica and another safe haven of •epa – events the court said were unprecedented in scale and brutality. The ICTY found that at least 5,336 people are confirmed to have been killed as a result of the fall of Srebrenica in July 1995, but that other evidence indicates the death toll could be as high as 7,826. Srebrenica and •epa had been declared safe havens for civilians by the UN two years before the massacres, but they were both overrun by the Bosnian Serb forces.

The attacks were carried out following the issuing of a “supreme command directive” in March 1995 by the then Bosnian Serb president Radovan Karadžić in which he set out the criminal plan aimed at forcing the Bosnian Muslims of Srebrenica and •epa to leave the enclaves. Mr. Karadžić is himself on trial for his role in the Balkan wars.

JOSEPH DEISS, FORMER SWISS LEADER, ELECTED AS NEXT PRESIDENT OF UN GENERAL ASSEMBLY

Joseph Deiss, a former leader of Switzerland and former economic professor, who was instrumental in his country joining the United Nations eight years ago was chosen, on 11 June 2010, by the world body’s 192 Member States to serve as the next President of the General Assembly. Joseph Deiss, 64, will succeed Ali Tarki when he takes over the presidency in mid-September as the General Assembly’s 65th session begins.

NEW PRESIDENT AND SPECIAL RAPORTEURS CHOSEN TO THE HUMAN RIGHTS COUNCIL

Sahasak Phuangketkeow, Thailand’s Ambassador to the United Nations Office in Geneva on 21 June 2010, was named as the new President of the UN Human Rights

Council. Sihasak Phuangketkeow becomes the fifth president of the 47-member Council, which replaced the earlier UN Commission on Human Rights amidst concerns about its effectiveness. He was the candidate of the panel’s Asian members. Mr. Phuangketkeow succeeds Alex van Meeuwen of Belgium as the Council’s President. Meanwhile, on 18 June 2010, the Council appointed several new special rapporteurs who will focus on monitoring human rights as they relate to certain issues or countries. Christof Heyns becomes the Special Rapporteur on extrajudicial, summary or arbitrary executions, succeeding Philip Alston; Heiner Bielefeldt replaces Asma Jahangir as the Special Rapporteur on freedom of religion or belief; and Kishore Singh takes over from Vernor Muñoz Villalobos as the Special Rapporteur on the right to education. Calin Georgescu is now Special Rapporteur on the adverse effects of the movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights, succeeding Okechukwu Ibeanu; Fatsah Ouguergouz replaces Akich Okola as the Independent Expert on the situation of human rights in Burundi; and Marzuki Darusman is the new Special Rapporteur on the situation of human rights in the Democratic People’s Republic of Korea (DPRK), taking over from Vitit Muntarbhorn. Special Rapporteurs and Independent Experts report to the Human Rights Council and serve as both in an independent and unpaid capacity.

UN APPOINTS NEW JUDGE FOR ICJ AND EXTENDS TERMS OF JUDGES FOR ICTY AND ICTR

The Security Council and the General Assembly, on 29 June 2010, elected Xue Hanqin to fill a vacancy in the International Court of Justice (ICJ), while the Council separately extended the terms of judges of the UN war crimes tribunals for the 1994 genocide in Rwanda and the 1990s conflicts in the former Yugoslavia. The Council and the General Assembly each voted to elect Ms. Xue, who comes from China, to succeed Shi Jiuyong, who resigned last month. Ms. Xue will hold office for the remainder of Judge Shi’s term, which expires on 5 February 2012.

Meanwhile, the terms of two permanent judges of the International Criminal Tribunal for Rwanda (ICTR) – Mehmet Güney of Turkey and Andréia Vaz of Senegal, who are members of the appeals chamber – were extended by the Security Council until 31 December 2012 or until the completion of the cases to which they are assigned. Five permanent judges and members of the trial chamber had their terms extended until

31 December 2011 or until they completed cases assigned to them. They are Charles Michael Denis Byron (Saint Kitts and Nevis), Khalida Rachid Khan (Pakistan), Arlette Ramaroson (Madagascar), William Sekule (Tanzania) and Bakhtiyar Tuzmulakhamedov (Russia). The Council also extended the terms of nine ad litem judges – who are limited to particular cases – who are members of the trial chamber until 31 December 2011 or until they completed their assigned cases. They are Aydin Sefa Akay (Turkey), Florence Rita Arrey (Cameroon), Solomy Balungi Bossa (Uganda), Vagn Joensen (Denmark), Gberdao Gustave Kam (Burkina Faso), Lee Gacugia Muthoga (Kenya), Seon Ki Park (Republic of Korea), Mparany Mamy Richard Rajohnson (Madagascar) and Emile Francis Short (Ghana).

Meanwhile, Council members also adopted a resolution extending the terms in office of 13 permanent and 10 ad litem judges with the International Criminal Tribunal for the former Yugoslavia (ICTY). The permanent judges whose terms were extended are: Carmel Agius (Malta), Liu Daqun (China), Theodor Meron (United States), Fausto Pocar (Italy), Patrick Robinson (Jamaica), Jean-Claude Antonetti (France), Guy Delvoie (Belgium), Burton Hall (the Bahamas), Christoph Flügge (Germany), O-Gon Kwan (Republic of Korea), Bakone Justice Moloto (South Africa), Howard Morrison (United Kingdom) and Alphons Orie (the Netherlands). The ad litem judges whose terms were extended are: Melville Baird (Trinidad and Tobago), Pedro David (Argentina), Elizabeth Gwaunza (Zimbabwe), Frederik Harhoff (Denmark), Flavia Lattanzi (Italy), Antoine Kesia-Mbe Mindua (Democratic Republic of the Congo), Prisca Matimba Nyambe (Zambia), Michèle Picard (France), Árpád Prandler (Hungary) and Stefan Trechsel (Switzerland).

ICJ DELIVERS JUDGMENT ON PULP MILLS ON THE RIVER URUGUAY (ARGENTINA V. URUGUAY)

On 4 May 2006, the Argentine Republic (hereinafter “Argentina”) filed in the International Court of Justice (ICJ) an application instituting proceedings against the Eastern Republic of Uruguay (hereinafter “Uruguay”) in respect of a dispute concerning the breach, allegedly committed by Uruguay, of obligations under the Statute of the River Uruguay (United Nations, Treaty Series (UNTS), Vol. 1295, No. I-21425, p. 340), a treaty signed by Argentina and Uruguay at Salto (Uruguay) on 26 February

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1975 and having entered into force on 18 September 1976 (hereinafter the "1975 Statute"). In the Application, Argentina stated that this breach arose out of "the authorization, construction and future commissioning of two pulp mills on the River Uruguay", with reference in particular to "the effects of such activities on the quality of the waters of the River Uruguay and on the areas affected by the river".

The ICJ in its judgment of April 2010 concluded that Uruguay breached its procedural obligations under the 1975 Statute. Argentina first requested the Court to find that Uruguay has violated the procedural obligations incumbent on it under the 1975 Statute and has thereby engaged its international responsibility. Argentina further requested the Court to order that Uruguay immediately cease these internationally wrongful acts. The Court considered that its finding of wrongful conduct by Uruguay in respect of its procedural obligations per se constitutes a measure of satisfaction for Argentina. As Uruguay's breaches of the procedural obligations occurred in the past and have come to an end, there is no cause to order their cessation.

Argentina nevertheless argued that a finding of wrongfulness would be insufficient as reparation, even if the Court were to find that Uruguay has not breached any substantive obligation under the 1975 Statute but only some of its procedural obligations. To this end, the Orion (Botnia) mill should be dismantled. According to Argentina, *restitutio in integrum* is the primary form of reparation for internationally wrongful acts.

Uruguay maintained that restitution would not be an appropriate form of reparation if Uruguay is found responsible only for breaches of procedural obligations. Uruguay argued that the dismantling of the Orion (Botnia) mill would at any rate involve a "striking disproportion between the gravity of the consequences of the wrongful act of which it is accused and those of the remedy claimed", and that whether or not a disproportionate burden would result from restitution must be determined as of when the Court rules, not, as Argentina claims, as of the date it was seized.

The Court recalled that customary international law provides for restitution as one form of reparation for injury, restitution being the re-establishment of the situation which existed before occurrence of the wrongful act. The Court further recalled that, where restitution is materially impossible or involves a burden out of all proportion to the benefit deriving from it, reparation takes the form of compensation or satisfaction, or even both (see *Gabèikovo-Nagyymaros Project*

(Hungary/Slovakia), Judgment, I.C.J. Reports 1997, p. 81, para. 152; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004 (I), p. 198, paras. 152-153; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, p. 233, para. 460; see also Articles 34 to 37 of the International Law Commission Articles on the Responsibility of States for Internationally Wrongful Acts).

Like other forms of reparation, restitution must be appropriate to the injury suffered, taking into account the nature of the wrongful act having caused it. As the Court has made clear, "[w]hat constitutes 'reparation in an adequate form' clearly varies depending upon the concrete circumstances surrounding each case and the precise nature and scope of the injury, since the question has to be examined from the viewpoint of what is the 'reparation in an adequate form' that corresponds to the injury" (*Avena and Other Mexican Nationals (Mexico v. United States of America)*, Judgment, I.C.J. Reports 2004 (I), p. 59, para. 119).

As Uruguay has not breached substantive obligations arising under the 1975 Statute, the Court is likewise unable, for the same reasons, to uphold Argentina's claim in respect of compensation for alleged injuries suffered in various economic sectors, specifically tourism and agriculture.

Argentina further requested the Court to adjudge and declare that Uruguay must "provide adequate guarantees that it will refrain in future from preventing the Statute of the River Uruguay of 1975 from being applied, in particular the consultation procedure established by Chapter II of that Treaty".

The Court fails to see any special circumstances in the present case requiring the ordering of a measure such as that sought by Argentina. As the Court has recently observed: "[W]hile the Court may order, as it has done in the past, a State responsible for internationally wrongful conduct to provide the injured State with assurances and guarantees of non-repetition, it will only do so if the circumstances so warrant, which it is for the Court to assess.

As a general rule, there is no reason to suppose that a State whose act or conduct has been declared wrongful by the Court will repeat that act or conduct in the future, since its good faith must be presumed. There is thus no reason, except in special circumstances . . . to order [the

provision of assurances and guarantees of non-repetition]."

Uruguay, for its part, requested the Court to confirm its right "to continue operating the Botnia plant in conformity with the provisions of the 1975 Statute". Argentina contends that this claim should be rejected, in particular because it is a counter-claim first put forward in Uruguay's Rejoinder and, as such, is inadmissible by virtue of Article 80 of the Rules of Court.

There is no need for the Court to decide the admissibility of this claim; it is sufficient to observe that Uruguay's claim is without any practical significance, since Argentina's claims in relation to breaches by Uruguay of its substantive obligations and to the dismantling of the Orion (Botnia) mill have been rejected.

Lastly, the Court pointed out that the 1975 Statute places the Parties under a duty to co-operate with each other, on the terms therein set out, to ensure the achievement of its object and purpose. This obligation to co-operate encompasses ongoing monitoring of an industrial facility, such as the Orion (Botnia) mill. In that regard the Court notes that the Parties have a long-standing and effective tradition of co-operation and co-ordination through CARU. By acting jointly through CARU, the Parties have established a real community of interests and rights in the management of the River Uruguay and in the protection of its environment. They have also co-ordinated their actions through the joint mechanism of CARU, in conformity with the provisions of the 1975 Statute, and found appropriate solutions to their differences within its framework without feeling the need to resort to the judicial settlement of disputes provided for in Article 60 of the Statute until the present case was brought before the Court.

The ICJ: By thirteen votes to one, finds that the Eastern Republic of Uruguay has breached its procedural obligations under Articles 7 to 12 of the 1975 Statute of the River Uruguay and that the declaration by the Court of this breach constitutes appropriate satisfaction.

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