



The Indian Society of International Law

NEWSLETTER

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For members only

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Editorial



The crime of piracy is considered a breach of jus cogens, a conventional peremptory international norm that States must uphold. In fact, piracy in international law is the earliest invocation of the concept of universal jurisdiction. Those committing thefts on the high seas, inhibiting trade, and endangering maritime communication are considered by sovereign States to be *hostis humani generis* (enemies of humanity). Maritime piracy remains a serious concern in whole world due to its threat to international commerce and human safety. Most disturbed is the route off West Africa, Somalia's and South East Asia, which are major international shipping lane where there have been 199 piracy attacks reported in the first nine months of 2008, nearly a third of which were in the coastal waters off Somalia; never before have Somali pirates

been successful in seizing such a large ship so far out to sea. These recent increase in piracy has sparked debate as to how the international community should respond. The modern international law governing piracy is the 1982 UN Convention on the Law of the Sea (UNCLOS), which gets strengthened through institutional support of International Maritime Organisation (IMO). Maritime security is an integral part of IMO's responsibilities that led a number of amendments to the 1974 Safety of Life at Sea Convention (SOLAS). It is sad commentary on the present status of public international law that the oldest crime curbed by norms of international law and universally accepted has not yet been implemented. UNCLOS defines piracy as illegal acts of violence, detention, or depredation (plundering, robbing or pillaging) committed for private ends by a private ship on the high seas, i.e. outside the jurisdiction of any country. International agreements that deal with piracy and other acts of maritime violence, such as UNCLOS and the Rome Convention, have been found inadequate as a legal basis to protect the sea from such acts. Endless efforts, spending many years, made by international community to evolve UNCLOS have not been able to punish those involved in piracy. There were attempts of several nations for counter piracy operations viz., Combined Task Force 151 (CTF-151), Combined Joint Task Force-Horn of Africa (CJTF-HOA). In spite of these, the pirates continue to increase their level of audacity and have extended their reach to hundreds of miles off shore. In reaction to the Somali situation, the UN Security Council passed a resolution in June 2008 and December 2008 allowing countries with the consent of Somalia's transitional federal government to enter Somali waters to repress acts of piracy and armed robbery at sea, and to use, in a manner consistent with international law, all necessary means to repress acts of piracy and armed robbery. Recently on 30 January 2009, Indian Ocean and Red Sea countries have adopted a code of conduct where States pledge to co-operate in seizing, investigating and prosecuting pirates off the coast of Somalia. These efforts show that countries in the region are willing to act concertedly. This is high time, United Nations should consider establishment of international force to tackle this great menace. Efforts should also be made to evolve domestic laws that severely punish pirates committing crime in the high seas and taking thereafter shelter in the territorial water of any other States.

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V.K. Krishna Menon Bhawan,
9, Bhagwan Dass Road,
New Delhi-110001 (INDIA)
Tel.: 23389524, 23384458-59 Fax: 23383783
E-mail: isil@iasdl01.vsnl.net.in
Website: www.isil-acg.org

Ram Niwas Mirdha

RECENT ACTIVITIES

GOLDEN JUBILEE CONCLUDING SESSION: SIXTH INTERNATIONAL CONFERENCE

In this 50th year since it was founded, the Indian Society of International Law (ISIL) is in the midst of year-long Golden Jubilee celebrations which commenced on 4th February 2008 and concluded with its Sixth International Conference from 1 to 4 February 2009. The year-long Golden Jubilee celebrations have witnessed a number of special lectures by eminent scholars of international law, seminars, round table discussions, symposia, etc. The highlight of these activities is the Sixth International Conference on International Law in the Contemporary World which was attended by eminent international law scholars from a number of countries. The following themes were discussed (1) The present state and relevance of Public International Law (2) Issues in Private International Law (3) The significance and impact of the World Trade Organisation (WTO), (4) the expanding regime of Intellectual Property Rights, and (5) International Arbitration.

The Golden Jubilee concluding celebration, on 1 February 2009, began with the bestowing of the ISIL Honorary Membership to eminent scholars namely Prof. Richard Falk, Prof. Ian Brownlie, Prof. George Abi-Saab, Shri Barry Sen, Prof. Rudiger Wolfrum, Prof. Edith Brown Weiss, Prof. M. Sornarajah and Justice P. N. Bhagwati. Hon'ble Justice L. M. Singhvi, Judge, Supreme Court presented scroll and memento to these eminent persons. The programme was also marked with the bestowing of Life Time Teacher Award to Prof. R. P. Anand, Prof. Rahmatullah Khan and Prof. V. C. Govindaraj. Dr. P. S. Rao, Judge Adhoc, International Court of Justice summed up the programme. In the evening, a colourful cultural programme was performed by the artists of Sahitya Kala Parishad, New Delhi.

Hon'ble Dr. Hamid Ansari, Vice-President of India inaugurated the Sixth International Conference (Golden Jubilee) on 2 February 2009 at the Plenary Hall, Vigyan Bhawan. In his speech, he highlighted the importance of international law and recalled the objectives of the United



Nations and its role and also its ramifications. Mr. Christiaan Kröner, Secretary-General, Permanent Court of Arbitration, The Hague, The Netherlands gave a key note address on this occasion. Prof. R. P. Anand, Executive President, ISIL also addressed the session. Prof. (Dr.) Rahmat Mohammad, Secretary General, AALCO shared the dais with Dr. Ansari. Prof. Rahmatullah Khan, Secretary-General, ISIL welcomed the guests and also proposed a vote of thanks. On this occasion, the ISIL was proud to have been able to distribute conference papers in two volumes to each delegate.

Eighth sessions were organized to discuss the five themes. The first session was on the 'The present state and relevance of Public International Law' and was divided into two parts. First part chaired by Prof. R. P. Anand, Professor Emeritus, JNU, New Delhi and Co-chaired by Shri Narinder Singh, Member, International Law Commission. Second part was chaired by Professor Ian Brownlie, C.B.E., Q.C. Chichele Professor of Public International Law (Emeritus), Oxford and co-chaired by A.K. Ganguli, Senior Advocate, Supreme Court of India. Eminent panelists namely Professor Richard Falk, Professor Emeritus of International Law at Princeton University, Professor Edith Brown Weiss, Professor of Law, Georgetown University School of Law, Washington D.C., Lisa Yarwood, Lecturer, Law School, University of Exeter, United Kingdom, Professor Ian

Brownlie, Chichele Professor of Public International Law (Emeritus), Oxford, Robert Barnidge, Lecturer in Law, School of Law, University of Reading, Dr. Alice De Jonge, Senior Lecturer, Monash University, Australia presented paper on "Legality, Legitimacy and Justice: The Long Struggle for Palestinian Self-Determination", "Future of International Law", "Holding States to Account: the Evolution from State Responsibility to State Accountability", "The Politics of Human Rights in Relation to the Rule of Law", "International Law as an Inevitably Imperialist Enterprise?" and "Unequal Treaties and the International Law of Treaties" respectively.

The second session based on the theme "Climate Change" was chaired by Professor Edith Brown Weiss, Professor of Law, Georgetown University School of Law, Washington and co-chaired by Lalit Bhasin, President, Society of Indian Law Firms. Professor Rudiger Wolfrum, Max Planck Institute, Heidelberg; Judge, International Tribunal for Law of the Sea gave key note address on topic "Solidarity Amongst States: An Emerging Structural Principle of International Law". Eminent panelists namely Professor Ved P. Nanda, Professor of Law, University of Denver, U.S.A., Dr. Luther Rangrezi, Legal Officer, MEA, Legal and Treaties Division, Paulo Jorge T Cavares Cavelas de Castro Associate Professor, Faculty of Law, University of Macao, China presented papers on "Climate Change; Developing



Countries and Human Rights: An International Perspective”, *Legal Implications for Climate Change, Post Bali*” and *Recent Developments of International and European Water Law*” respectively.

The third session’s theme was the *“WTO: Recent Development in Law and Policy”*, which was chaired by Shri H. S. Puri, Secretary, Economic Relations, MEA, Government of India. Prof Georges Abi-Saab, Professor Emeritus of International Law, Graduate Institute of International Studies gave keynote address on *“WTO Law and General International Law”*. Eminent panelists namely Professor Miyazai Takashi, Professor at the Graduate School of Law, Nagoya Keizi University, Nagoya, Japan, Professor Surya P. Subedi, Professor of International Law, University of Leeds, Professor S.K. Verma, Former Director, Indian Law Institute, Dr. Krista Nadataveukaren, Senior Research Fellow, World Trade Institute, Bern, Harssh A. Poddar, BCL, University of Oxford and Pallavi Kishore, Advocate, presented papers on *“The Formation of WTO Case Law?”*, *“What Next for the WTO after the Collapse of the Doha Round?”*, *“The Doha Declaration, Access to Medicines by Countries without Manufacturing Capacity and India’s Preparedness”*, *“Dancing with the Devil: a (Limited) Defence of Protectionism”*, *“India and Anti-Dumping in the WTO System”* and *“A Critical Analysis of the WTO to*

Dispute Settlement Systems in the Light of India’s Cases”, respectively.

Fourth session organized on the theme *“International Arbitration”* was chaired by Justice A. M. Ahmadi, Former Chief Justice of India and co-chaired by Ashok Desai, Senior Advocate, Supreme Court of India. Eminent panelists namely Shri A. K. Ganguli, Senior Advocate, Supreme Court of India, Christiaan Kröner, Secretary-General, Permanent Court of Arbitration, The Hague, The Netherlands, Amit Kapur, Advocate and Partner, J Sagar Associates and Ranjit Malhotra, Advocate, Punjab and Haryana High Court presented papers on *“Arbitration Law in India”*, *“The Role of the Permanent Court of Arbitration in the Development of International Law and Dispute Resolution”*, *“Facilitating and Protecting International Participation in Indian Infrastructure – The Evolving Policy and Legal Framework”* and *“Enforcement of Foreign Judgments and Foreign Arbitral Awards in the Indian Civil Jurisdiction”* respectively.

Fifth session based on the theme on *“Space Law”* was chaired and co-chaired by Hon’ble Justice Markandey Katju, Judge, Supreme Court of India and Dr. J. C. Batra, Advocate, Supreme Court of India respectively. Eminent panelists namely Dr. M.Y.S. Prasad, ISRO, Professor V. S. Mani, Director, School of Law and Governance, Jaipur National University, Jaipur, C. Jayaraj, Advocate,

Supreme Court of India; Member Executive Council ISIL, G.S. Sachdeva, Visiting Faculty, JNU presented papers on *“Recent Issues in Space Law”*, *“Need for International Regulation for Harnessing Resources on the Moon and Other Celestial Bodies”*, *“Liability Regime under Outer Space Law”* and *“Weaponisation of Outer Space: Faultlines in Law”* respectively.

Sixth session was organized on the theme *“International Law in the Contemporary World”*. The session was chaired and co-chaired by Professor Rahmatullah Khan, Secretary General, ISIL and Professor Yogesh K. Tyagi, Dean, School of International Studies, JNU, respectively. Professor M. Sornarajah, Faculty of Law, National University of Singapore gave keynote address on *“Human Security and the Right to Development: Restructuring International Law after Neo-Conservatism”*. Eminent panelists namely Dr. Rosemary Abi-Saab, Senior Research Officer, Independent Commission on International Humanitarian Issues, Geneva, Dominika Svarc, Researcher, Institute for Comparative Law, University of Ljubljana, Frederike Stikkelbroeck, Office of the Secretary-General of the Hague Conference on Private International Law, Dr. Rebecca Everly, Visiting Scholar, JNU, Practicing Attorney at Law and Dr. Kishore Singh, Programme Coordinator, Right to Education, UNESCO, Paris, presented papers on *“The Widening Gap between the Recent Developments in Humanitarian Law and its Implementation in Practice”*, *“The Role of International Law in Contemporary International Politics”*, *“Current and Future Work of the Hague Conference in an Age of Globalisation and Regional Integration”*, *“Involvement of the UN and other International actors in Governing Territory and Problems with Responsibility for Human Rights Violations”* and *“Contemporary International Law and Right to Education as an Overarching Human Rights”* respectively.

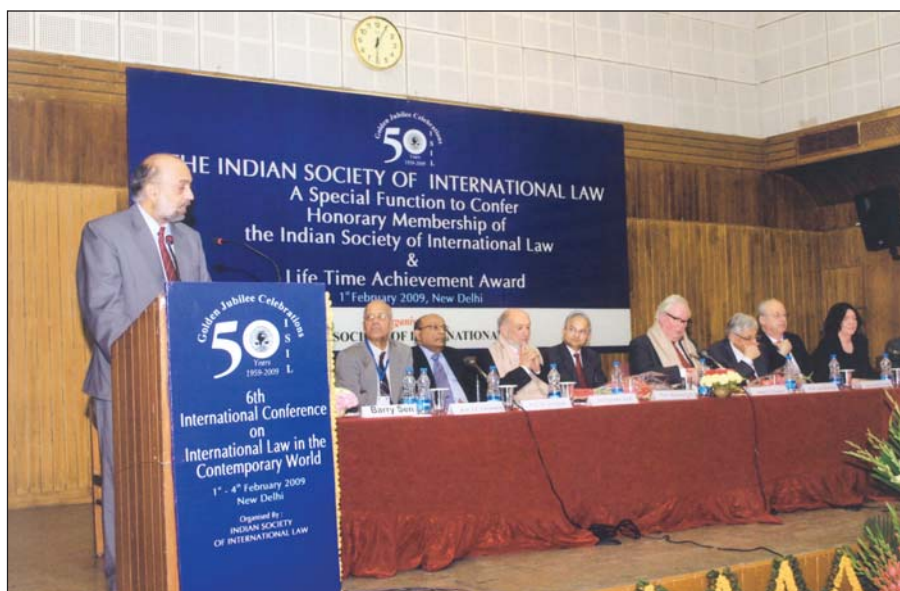
Seventh session organized on the theme *“International Commercial Contact: Investment Laws”* was chaired and co-chaired by Dr. A. Jayagovind, Vice-Chancellor, National Law School of India University, Bangalore, and Professor (Mrs.) Lakshmi Jambholkar, former Professor of Law, University of Delhi

respectively. Eminent panelists namely Mr. William English, US Attorney, Dr. Sandeep Gopalan, Reader, University of Reading, U.K., Amir S. Pasrich, Advocate; International Law Affiliates and Leila Choukroune, Assistant Professor, Law Department, HEC Paris Business School presented papers on *"International Corporate Governance"*, *"Demandeur-centricity in Transnational Commercial Law"*, *"International Commercial Contracts – An Indian Perspective"* and *"When Public and Private Interests Meet : A Human Rights Clause in Business Contracts"* respectively.

Eighth session was organized on *"Nuclear Energy: Uses and Abuses"*. The session was chaired and co-chaired by Shri Ashok Parthasarthy, Former Scientific Adviser to the Prime Minister of India, and Dr. V. G. Hegde, Associate Professor, Center for Legal Studies, School of International Studies, JNU respectively. Eminent panelists namely Dr. R. K. Dixit, Former Joint Secretary, Legal & Treaties Division, MEA & Treasurer, Indian Society of International Law, Ms. Valeria Eboli, International Lawyer, Italy, Fatemeh Eslami, Legal Scholar presented papers on *"Use of Force and Modern International Law"*, *"Nuclear Energy and European Union"* and *"Impact of Nuclear Weapons on Human Rights: Need for an Effective International Order"*. Finally, Prof. R. P. Anand, Executive President, ISIL gave concluding remarks and Shri R. K. P. Shankardass, Advocate, Supreme Court gave vote of thanks.

On this occasion, Prof. Richard Falk, Professor Emeritus of International Law at Princeton University released two books titled *"International Criminal Jurisprudence: Issues and Challenges"* and *"International Law: Issues and Challenges"* Vol. – I & II edited by Dr. R. K. Dixit, Shri R. K. P. Shankardass, Shri C. Jayaraj and Dr. Manoj Kumar Sinha.

Nearly 400 delegates of whom 50 from abroad participated in the Conference. The delegates had come from various backgrounds such as international institutions, governmental ministries, touched 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.



GOLDEN JUBILEE SPECIAL LECTURE BY PROF. RICHARD FALK ON "FUTURE OF INTERNATIONAL LAW"

ISIL organised a Golden Jubilee Special Lecture on *"Future of International Law"* on 7 February 2009 at its premises. Prof. Rahmatullah Khan, Secretary General, ISIL, introduced Hon'ble Prof. Richard Falk, Professor Emeritus of International Law at Princeton University. Prof. Falk initiated his discussion with the contribution of Grotian movement in the development of International Law. He described Grotian movement of International Law a credible exposition of historical change. It provides to European a legal structure. He analysed post Westphalian system in that background and witnessed transition towards UN system and which ultimately gave legal expression. He argued that several developments made a way for new Grotian movement for new global movement (climate change, regulatory authority in financial matters etc) which ultimately will bring global governance system. He predicted decline of US power and gradually move to undertake various other force having impact on military superiority in a political successors, world universalized European system, collapse of political economy of international financial system which is a foundation for world economy, decline relevance of socialism and capitalism, rise of regionalism, European will involve in a violent methodology to keep its influence in

international relations, regional security zone, regional democracy, rise of global society, need more robust rule of law. In brief, he concluded that new Grotian movement provides a synthesis to various development to form a new world order between law and justice and law and effective control. The Lecture witnessed lively exchange of views with the audience on his presentation.

UGC REFRESHER COURSE IN INTERNATIONAL LAW

ISIL organized Sixth UGC Refresher Course on International Law for law teachers from 9th to 28th February 2009. Eleven law teachers participated in this UGC Refresher Course. Eminent professors and scholars from prestigious universities, institutions and international organizations delivered lectures on a variety of themes of international law. Dr. A. S. Reddy, Member, Executive Council, ISIL, delivered valedictory address and distributed certificates to the participants.

VISIT OF STUDENTS

A delegation of around 30 students with Dr. Vijay N. Ghormade, Principal of Gopaldas Jhamatmal Advani Law College, Bandra, Mumbai visited ISIL on 5 February 2009. Shri Vinai Kumar Singh, Assistant Professor, ISIL welcomed the students and described the activities of ISIL to the visitors and discussed the importance of international law and career prospect in international law.

RECENT DEVELOPMENT

CASE CONCERNING MARITIME DELIMITATION IN THE BLACK SEA

(ROMANIA v. UKRAINE)

The dispute between Romania and Ukraine concerns the establishment of a single maritime boundary delimiting the continental shelf and exclusive economic zones between the two States in the Black Sea. The two States, when they concluded on 2 June 1997 the Treaty on Good Neighbourliness and Co-operation, agreed also through the Additional Agreement (see paragraph 1 above), that they "shall negotiate an Agreement on the delimitation of the continental shelf and the exclusive economic zones in the Black Sea" (Additional Agreement, para. 4). Negotiations for the conclusion of such Agreement were to start "as soon as possible, during a period of three months from the date of the entering into force of the Treaty on Good Neighbourliness and Co-operation" (Additional Agreement, para. 4 (g)). The Treaty entered into force on 22 October 1997, the negotiations on the delimitation of the continental shelf and exclusive economic zones opened in January 1998, but despite their 24 rounds, the last being held in September 2004, as well as ten rounds at an expert level, no delimitation agreement was reached.

On 16 September 2004, Romania instituted proceedings against Ukraine concerning the delimitation of the continental shelf and the exclusive economic zones of Romania and Ukraine in the Black Sea. In its Application, Romania seeks to find the jurisdiction of the Court on the provisions of paragraph 4 (h) of the Additional Agreement constituted by an exchange of letters of 2 June 1997 between the Ministers for Foreign Affairs of Romania and Ukraine. The Additional Agreement was concluded with reference to Article 2 of the Treaty on the Relations of Good Neighbourliness and Co-operation between Romania and Ukraine, signed on 2 June 1997 (hereinafter the "Treaty on Good Neighbourliness and Co-operation").

Both instruments entered into force on 22 October 1997.

In its Application, the following claims were made by Romania: "Reserving the right to complement, amend or modify the present request in the course of the proceedings, Romania requests the Court to draw in accordance with the international law, and specifically the criteria laid down in Article 4 of the Additional Agreement, a single maritime boundary between the continental shelf and the exclusive economic zones of the two States in the Black Sea."

The Parties are in agreement that all the conditions for the Court's jurisdiction were satisfied at the time of the filing of the Application and that the Court accordingly has jurisdiction to decide the case. However, they differ as to the exact scope of the jurisdiction conferred upon the Court. However, Ukraine claims that the Court is excluded from drawing a line dividing the territorial sea of one State from the continental shelf and exclusive economic zone of the other State. For this reason, Ukraine contends, the Court has no jurisdiction "for the drawing of a delimitation line as claimed by Romania between the so-called points F and X along a 12-nautical mile segment of arc around Serpent' Island, since that portion of [the] line would delimit Ukraine's territorial sea and Romania's alleged areas of continental shelf and EEZ". Ukraine respectfully submits that the Court adjudge and declare that the delimitation of the continental shelf and exclusive economic zones between the Parties is a delimitation line the course of which, employing the Pulkovo datum (i.e., using the Krasovsky ellipsoid). The Court has no jurisdiction to delimit the territorial seas of the Parties. Its jurisdiction covers the delimitation of their continental shelf and the exclusive economic zones. However, contrary to what has been suggested by Ukraine, nothing hinders that jurisdiction from being exercised so that a segment of the line may result in a delimitation between, on the one hand, the exclusive economic zone and the continental shelf of one State, and, on the other hand, the territorial sea of the other State at its seaward limit.

On 3rd February 2009, the Court, unanimously, decided that starting from

Point 1, as agreed by the Parties in Article 1 of the 2003 State Border Régime Treaty, the line of the single maritime boundary delimiting the continental shelf and the exclusive economic zones of Romania and Ukraine in the Black Sea shall follow the 12-nautical-mile arc of the territorial sea of Ukraine around Serpents' Island until Point 2 (with co-ordinates 45° 03' 18.5" N and 30° 09' 24.6" E) where the arc intersects with the line equidistant from Romania's and Ukraine's adjacent coasts. From Point 2 the boundary line shall follow the equidistance line through Points 3 (with co-ordinates 44° 46' 38.7" N and 30° 58' 37.3" E) and 4 (with co-ordinates 44° 44' 13.4" N and 31° 10' 27.7" E) until it reaches Point 5 (with co-ordinates 44° 02' 53.0" N and 31° 24' 35.0" E). From Point 5 the maritime boundary line shall continue along the line equidistant from the opposite coasts of Romania and Ukraine in a southerly direction starting at a geodetic azimuth of 185° 23' 54.5" until it reaches the area where the rights of third States may be affected.

ICTR CONVICTED FORMER RWANDAN CHAPLAIN

On 27 February 2009, a former chaplain in Rwanda's armed forces was sentenced to 25 years for the abduction, murder and sexual assault of Tutsi civilians by the International Criminal Tribunal of Rwanda (ICTR) which was set up to deal with the mass killings that engulfed the tiny African country in 1994. In fact, Mr. Emmanuel Rukundo, who served as a parish priest in his native Gitama prefecture before becoming a chaplain in 1993, was arrested in Geneva in 2001, at the request of the ICTR. ICTR found Mr. Rukundo, with soldiers of the Rwandan army, abducted and killed a woman referred to as Madame Rudahunga, severely beating her children as well in mid-April 1994. The Trial Chamber also found without reasonable doubt that Rukundo was present during the commission of the crime and the soldiers acted under his authority. It was also established that on at least four occasions Mr. Rukundo was found to have an integral role in the abduction and subsequent killings of Tutsi refugees from the St. Leon Minor Seminary, and, on one occasion, to have sexually assaulted a

young Tutsi woman. In sentencing Mr. Rukundo to 25 years, with credit for the time already spent in prison, ICTR decided that it considered his stature as a priest and an educated person as aggravating factors, stressing that "the accused was found to have abused his moral authority and influence."

ICTY CONVICTED FIVE SERBIAN OFFICIALS OF WAR CRIMES IN KOSOVO

On 26 February 2009, the International Criminal Tribunal for the former Yugoslavia (ICTY) convicted five former high-ranking Yugoslav and Serbian officials for crimes against humanity, while former Serbian president Milan Milutinovic was acquitted of all charges. The judgment is the first of ICTY for crimes by Yugoslav and Serbian forces against Kosovo Albanians during the 1999 conflict in Kosovo. In fact, ICTY courtroom Prosecutors charged the six defendants with crimes committed during a campaign of terror and violence that aimed to change the ethnic balance in Kosovo to ensure Serbian authorities' control through criminal means, including deportations, murder and forcible transfers. Former Yugoslav Deputy Prime Minister Nikola Sainovic, Yugoslav Army General Nebojša Pavkovic and Serbian police General Sreten Lukic were each sentenced to 22 years in prison for crimes against humanity and for violating the laws or customs of war. Meanwhile, Yugoslav Army General Vladimir Lazarevic and Chief of the General Staff Dragoljub Ojdanic were found guilty of aiding and abetting the commission of a number of charges of deportations and forcible transfer of the Albanian population, for which they each received 15-year sentences. The trial chamber found, after analyzing evidence, that there was a broad violence campaign against Albanian civilians in Kosovo during NATO airstrikes in Yugoslavia that began on 24 March 1999. ICTY also found this campaign was carried out by army and Interior Ministry police forces, under the control of Yugoslav and Serbian authorities. Judge Iain Bonomy, ICTY decided that it was the deliberate actions of these forces during this campaign that caused the departure of at least 700,000 Kosovo Albanians from Kosovo in the short

period of time between the end of March and beginning of June 1999. The violence against Kosovo Albanians was intended to force them to leave their homes "in order for the state authorities to maintain control over Kosovo". It was former Yugoslav president Slobodan Milošević, not Mr. Milutinovic, who had direct individual control over the Yugoslav Army during the NATO campaign, the ICTY found, acquitting the latter on all counts.

BELGIUM TAKES SENEGAL TO ICJ OVER PROSECUTION OF FORMER CHADIAN PRESIDENT

On 20 February 2009, Belgium has instituted proceedings in the International Court of Justice (ICJ) against Senegal, for the prosecution of a former Chadian president Hissène Habré accused of mass torture and other human rights abuses. Belgium asked the ICJ to weigh in on its demand that Senegal prosecute or extradite former Chadian president Habré, who is now under house arrest in the West African country. The European State, which issued an international arrest warrant for Mr. Habré in 2005, also requested the International Court of Justice of provisional measures, pending a ruling, to ensure that the former president remains in custody in the meantime. Mr. Habré ruled Chad from 1982 to 1990, when he was overthrown and went into exile in Senegal, and it is alleged that during his rule thousands of Chadians were tortured and unlawful killings and other serious human rights violations took place. He was charged in February 2000 by a lower court in Dakar, the Senegalese capital, but an appeals court later ruled that Senegalese courts did not have the legal competence to try such cases if they were perpetrated in another country. In April 2008, however, Senegal's National Assembly adopted an amendment to the constitution that together with previous changes allowed the country's legal system to deal with such cases. However, Belgium's complaint pointed out that since then Senegal has cited financial difficulties preventing it from bringing Mr. Habré to trial. Belgium alleged that "Senegal's failure to prosecute Mr. Habré, if he is not extradited to Belgium to answer for the

acts of torture that are alleged against him, violates the Convention against Torture... [and] numerous texts of derived law (institutional acts of international organizations) and treaty law."

ICJ RULED AGAINST UNITED STATES ON EXECUTION OF MEXICAN

In the Case Concerning Avena and Other Mexican Nationals (Mexico V. United States of America), the International Court of Justice (ICJ), on 19 January 2009, found that the United States had breached its orders when Texas last year executed a Mexican national who had not been informed on arrest of his right to contact his consular representatives. The ICJ also found that the US was obliged to review and reconsider the convictions and sentences of other Mexican nationals whose rights under the 1963 Vienna Convention on Consular Representation may have been violated. José Ernesto Medellín Rojas was executed after being convicted of rape and murder. The ICJ also found that the US had specifically breached its obligation under an ICJ order of 16 July 2008 calling on it to "take all measures necessary to ensure" that Mr. Medellín and four other Mexicans not be executed pending judgment on a suit by the Mexican Government. The ruling stems from a 2004 ICJ finding that the US had breached its obligations under the Vienna Convention to Mexicans on death row in US jails when it did not inform them of their right to contact their consular representatives "without delay" after their arrest.

CHINA — MEASURES AFFECTING IMPORTS OF AUTOMOBILE PARTS (WT/DS342)

On 30 March 2006, the European Communities and the United States, and on 13 April 2006, Canada, requested consultations with China regarding China's imposition of measures that adversely affect exports of automobile parts from the European Communities, the United States and Canada to China. The measures include the following: (a) Policy on Development of Automotive Industry (Order No. 8 of the National Development

RECENT ARTICLES/ NEW ADDITIONS

and Reform Commission, 21 May 2004); (b) Measures for the Administration of Importation of Automotive Parts and Components for Complete Vehicles (Decree No. 125), which entered into force on 1 April 2005); and, (c) Rules for Determining Whether Imported Automotive Parts and Components Constitute Complete Vehicles (General Administration of Customs Public Announcement No. 4), which entered into force on 1 April 2005; as well as any amendments, replacements, extensions, implementing measures or other measures related. The European Communities argues that, under the measures identified, imported automobile parts that are used in the manufacture of vehicles for sale in China are subject to charges equal to the tariffs for complete vehicles, if they are imported in excess of certain thresholds. The European Communities considers that the measures are inconsistent with: Articles II:1(a), II:1(b), III:2, III:4, III:5 of the GATT 1994, as well as with the principles contained in Article III:1; Articles 2.1 and 2.2 of the TRIMs Agreement in conjunction with paragraphs 1(a) and 2(a) of the Illustrative List annexed to the Agreement; Article 3 of the SCM Agreement. On 15 September 2006, the European Communities, the United States and Canada each requested the establishment of a panel. On 26 October 2006, the DSB established a single panel pursuant to Article 9.1 of the DSU. On 18 July 2008, the Panel reports were circulated to Members. With respect to the complaint by the European Communities (WT/DS339), the United States (WT/DS340) and Canada (WT/DS342), the Panel recommended that the DSB request China to bring these inconsistent measures as listed above into conformity with its obligations under the GATT 1994 and the WTO Agreement. On 15 September 2008, China notified its decision to appeal to the Appellate Body certain issues of law covered in the Panel reports and certain legal interpretations developed by the Panel. The Appellate Body recommended that the DSB request China to bring its measures, found in this Report, and in the EC Panel Report as upheld by this Report, to be inconsistent with the GATT 1994, into conformity with its obligations under that Agreement. On 12 January 2009, with respect to WT/DS339, the DSB adopted the Appellate

Body report and the Panel report, as upheld by the Appellate Body report. And with respect to WT/DS340 and WT/DS342, the DSB adopted the Appellate Body reports and the Panel reports, as modified by the Appellate Body reports.

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