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Editorial



Kosovo is back in news albeit for different reasons. NATO's attacks in the Balkans in 1991 challenged the precepts of international law relating to use of force. The war ended with the establishment of an international administration in Kosovo. By resolution 1244 of 10 June 1999, the UN Security Council established the UN Interim Administration in Kosovo, and approved NATO's presence in the region, in the name of military deployment for protection of human rights. At the crux of the Kosovo crisis is the issue of self-determination. It is important to determine to what extent Kosovars can exercise the right to self-determination. The diplomatic processes, political squabbling between Russia, US and other Western countries and NATO's pretensions towards of working for peace and security in the region, created a situation that was not in the interest of Kosovars.

Recent attempts of the United States to separate Kosovo from Serbia raise serious questions over the political status of Kosovo. There is a protracted political and territorial conflict between Serbia and Kosovo's largely ethnic-Albanian population. The American move weakens Serbia and snaps the last link that Russia has in the Balkans. Interestingly, the Russian President Vladimir Putin, stated in the aftermath of the G8 summit in Heiligendamm that Russia believes in finding a solution to the Kosovo problem based on international law by respecting the territorial integrity of Kosovo and by taking Serbia's consent. Security Council Resolution 1244 reaffirms Serbia's sovereignty over Kosovo. Serbia rejected the option of an independent Kosovo. For Serbs, Kosovo is an ancestral homeland and they fear that redrawing boundaries on ethnic lines might impinge on the integrity of the borders of Macedonia, Montenegro and Bosnia. But the ground realities of the conflict between ethnic Albanians and the Serbs and the mandate of the Security Council's Resolution 1244 pushed Mathi Ahtisaari to come up with his own proposal for determining the political status of Kosovo under international supervision.

Another reason for the widespread attention to this strife torn region is the International Court of Justice (ICJ) ruling in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*. The ICJ ruled that Serbia was not responsible for the 1995 Srebrenica massacre. However, the Court stated that Serbia could have done more to prevent it. It means Serbia cannot be exonerated of its moral responsibility. When situations are normal, we hold a paradoxical belief that rule of law and world order is intact. But the real challenge arises in contempt circumstances. In brief, nations should reconcile their differences for triumph of international law.

The international legal community should engage in a serious debate whether the proper approach for maintaining peace and stability in the world should be self-determination or integrated living with full safeguards for minorities; religious, ethnic or otherwise. Every corner of the world has minorities of various types and one has to decide how far the concept of self determination can be pushed. An independent Kosovo will also have to face this problem.

Ram Niwas Mirdha

ISIL ACTIVITIES

A Special Lecture on Issues and Challenges to Tackle Refugee Problems in Europe by Geoffrey Care, International Association of Refugee Law Judges, Netherlands

ISIL organised a special lecture on "Issues and Challenges to Tackle Refugee Problems in Europe" on 11th April 2007. This lecture was inaugurated by Hon'ble Justice Markandey Katju, Judge, Supreme Court of India. Mr. Geoffrey Care critically analysed the practices of European Countries to tackle refugees problems in Europe and illustrated the possibility of more influx of refugees in the European countries. He argued for a proactive role of European Commission globalised society. The lecture witnessed lively exchange of views with the audience on his presentation.



A Special Lecture on Trends in International Law on Liability for Environmental Damage by Prof. Rene Lefeber, Legal Counsel, Ministry of Foreign Affairs, Netherlands

ISIL organised a special lecture on "Trends in International Law on Liability for Environmental Damage" on 9th May 2007. The lecture was initiated by Prof. Rahmatullah Khan, Secretary General, ISIL. introduced the speaker, Prof. Rene Lefeber, Legal Counsel, Ministry of Foreign Affairs, Netherlands. Prof Lefeber highlighted in his talk the *Importance of Liability* being recognised in the international sphere but was

left out in scope of its importance for two reasons. The first reason being that priority was not given to liability but to prevention, as prevention was considered more important for the reason that if damage can be prevented then there is no scope for liability to come up. The second reason being *conceptual difficulty* which Prof. Lefeber addressed in the latter part of his discussion. He emphasised the recent trend of liability lying with the operator rather than resting on the State. Recent principles of the resolution like primary liability to be channeled on the operator and the State to provide adequate compensation for the damage were pointed out during the course of the discussion. The lecture was followed by question and answer session.

Seminar on Human Rights and Good Governance Jointly Organised by the ISIL and All India Law Teachers Congress (AILTC)

ISIL and AILTC organised a seminar on "Human Rights and Good Governance" on 19th May 2007 at ISIL premises. More than 100 law teachers from different parts of the country participated in the seminar. Prof. J. L. Kaul, President, AILTC, while welcoming the distinguished teachers, mentioned about the significance of the seminar and the need for participating in such a conference. Hon'ble Justice J. S. Verma, Former Chief Justice, Supreme Court of India in his inaugural address, emphasised that over the years, the role and participation of teachers in the law making and its interpretation have been found tremendously progressive and also the way they were encouraging the students to participate in various activities to develop their skills and personalities. He was happy to know about AILTC's role in establishing relationship between bar, benches and teachers to promote the knowledge of international law. The seminar conducted four sessions namely, Good Governance, Democracy and Rule of Law, The Role of Civil Society and Challenges to Good Governance, Good Governance and Emerging Trends, Eminent law teachers from different part of the country presented papers in the Seminar.





Training Programme for Indian Forest Service Officers on Role of Forestry in Sustainable Development

ISIL conducted a Training Programme for Indian Forest Service Officers on Role of Forestry in Sustainable Development organized by the Ministry of Environment and Forest, Government of India at ISIL premises on 15th –16th May 2007. Shri Ram Niwas Mirdha, President, ISIL, inaugurated the programme and highlighted the importance of subject 'Role of Forestry in Sustainable Development' in increased industrialised and globalised economies of countries. Prof. Rahmatullah Khan, Secretary General, ISIL gave an introductory lecture to the Officers. There were lectures and presentations on a variety of themes 'Role of Forestry in Sustainable Development. Eminent scholars and practitioners delivered lectures in the training programme.

National Seminar to Mark the 30th Anniversary of the 1977 Additional Protocols to the Geneva Conventions of 1949

The ISIL and International Committee of the Red Cross (ICRC), New Delhi organised a National Seminar to Mark the 30th Anniversary of the 1977 Additional Protocols to the Geneva Conventions of 1949 on 8 and 9 June 2007 at the India Habitat Centre, New Delhi. More than 200 delegates including teachers, researchers, students and lawyers from different parts of the country and representatives from several embassies and ministries participated in the Conference. Mr. Vincent Nicod, Head of Regional Delegation, ICRC, New Delhi, while welcoming the distinguished guests and the delegates, mentioned about the significance of the National

Seminar and the need for participating in such a seminar. In his presidential address, Shri Ram Niwas Mirdha, President, ISIL, mentioned about ICRC's efforts in mitigating the ill effects of the war. The 1949 Geneva Conventions and the 1977 Additional Protocols are the manifestation of such efforts. The inaugural address was delivered by Justice S. Rajendra Babu, Chairperson, NHRC, New Delhi who in course of his speech made a proposition that the 1949 Geneva Conventions and the 1977 Additional Protocols must be regarded as customary international law. He proposed that though the Geneva Conventions were flexible enough to encompass all kinds of wars, the international community must come up with more effective mechanisms for protection in the wake of modern elementary warfare since the present protection is unsustainable for the modern hi-tech warfare where biological chemical and nuclear weapons are used for mass destruction. Commemorating the keynote address, Dr. Yves Sandoz pointed

out how the 1949 Geneva Conventions and the 1977 Additional Protocols complimented the U.N Charter and UDHR (Universal Declaration on Human Rights) by offering protection to the victims of war. He further elaborated upon the two broad categories of victims in the Second World War. The first category is person within the enemy territory and the second is civilians within the territories of the war in parties. The concluding remarks were given by Prof. Rahmatullah Khan, Secretary General, ISIL. He thanked all the speakers especially Justice S.Rajendra Babu, Ram Niwas Mirdha and Dr. Yves Sandoz and concluded with special thanks to International Committee of the Red Cross. Five sessions were organised to discuss the themes viz., *The 1977 Additional Protocols: An Important Contribution to IHL, Selected Operational Issues in International Humanitarian Law under the 1977 Additional Protocols, Special Protection for Vulnerable Groups in Armed Conflicts, Contemporary Issues in International Humanitarian Law, Debate: Should India Become Party to the 1977 Additional Protocols?* Eminent scholars presented papers on the themes mentioned above. Hon'ble Justice J.S. Verma gave valedictory address and evaluated the Geneva Conventions and the Additional Protocols and also referred to the contemporary challenges before it.

Sixth Summer Course on International Law

The ISIL organised its Sixth Summer Course on International Law at its premises from 18 June – 29 June 2007. Student from all over India, including Bangladesh participated in the summer course. The Course was inaugurated by Hon'ble Justice Shri Vikramjit Sen, Judge, High Court of Delhi. He emphasised the importance of international law and its impact on national laws and institutions.



RECENT DEVELOPMENTS

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, Introduction to Private International Law, International Institutions, International Human Rights, Role of NGO's in Human Rights, International Humanitarian and Refugee Law, International Criminal Law, Maritime Law, Public International Trade Law, National and International Commercial Arbitration, International Environmental Law and Sustainable Development.

Eminent international law scholars delivered lectures in the summer course. The Course witnessed lively interactions and discussions by the participants.

Training Programme for Indian Economic Service (Officer-Trainee)

ISIL conducted a Training Programme for Indian Economic Services on International and National Economic Law organised by the Ministry of Finance, Government of India at ISIL premises from 25 June to 29 June 2007. Shri Ram Niwas Mirdha, President, ISIL, inaugurated the

programme and highlighted the importance of international economic law in increased globalised world. Prof. Rahmatullah Khan, Secretary General, ISIL, delivered an introductory lecture to the Trainees Officers. There were lectures and presentations on a variety of themes of international and national economic law. The faculty of the orientation course consisted of eminent international law scholars.

Eighth V. K. Krishna Menon Memorial Lecture by Hon'ble Justice Shri Vijender Jain, Chief Justice, Punjab and Haryana High Court

In the memory of its founder President late Shri V. K. Krishna Menon, the ISIL organised Eighth V. K. Krishna Menon Memorial Lecture on 29th June 2007 at ISIL premises. Dr. Manoj Kumar Sinha, Director, ISIL introduced the guests sitting on dais. Shri Ram Niwas Mirdha, President, ISIL welcomed the chief guest Hon'ble Justice Shri Vijender Jain, Chief Justice, Punjab and Haryana High Court and the distinguished gathering. Chief Justice Shri Jain delivered a lecture on the topic

"Relevance of Krishna Menon in Contemporary World" and recalled his association with him as a lawyer. He highlighted contribution of Krishna Menon in strengthening the defence forces and defence establishments and factories in India, so as to make the country self-reliant in manufacturing defence equipment. It was Krishna Menon who was emphasized to then Prime Minister that India should be self-reliance in defence equipment. More than 100 participants attended the lecture.

FORTHCOMING EVENTS

UGC Refresher Course on Human Rights and Social Justice, International Humanitarian and Refugee Laws, 9 July – 28 July 2007

One Week Training Programme for Indian Forest Officers, 6-10 August 2007

Convocation and Inaugural of P.G. Diploma Course, 3 September, 2007

UGC Refresher Course on International Law, 3-22 September 2007

Seventh Henry Dunant Memorial Moot Court Competition (National Round), 13-16 September 2007.

RECENT DEVELOPMENTS IN INTERNATIONAL LAW

General Assembly Elects New Members to the United Nation Commission on International Trade Law (UNCITRAL)

On 22 May 2007, the 61st plenary of the General Assembly elected 30 countries to the UNCITRAL. They are Armenia, Bahrain, Benin, Bolivia, Bulgaria, Cameroon, Canada, Chile, China, Egypt, El Salvador, France, Germany, Greece, Honduras, Japan, Latvia, Malaysia, Malta, Mexico, Morocco, Namibia, Norway, Republic of Korea, Russian Federation, Senegal, Singapore, South Africa, Sri Lanka and United Kingdom. All these countries will begin their six years term on 25 June 2007. UNCITRAL was originally composed of 29 States. Its membership was expanded in 1973 to 36 States and again in 2004 to 60 States. The membership is representative of various geographic regions and the principal economic and legal systems of the world.

Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Railway Rolling Stock Adopted

The Luxembourg Protocol to the Convention on International Interests in Mobile Equipment on

Matters Specific to Railway Rolling Stock (hereinafter the Rail Protocol) was adopted at a Diplomatic Conference organised under the auspices of the International Institute for Unification of Private Law (UNIDROIT) and the Intergovernmental Organisation for International Carriage by Rail (OTIF). The Rail Protocol opened for signature on 23 February 2007. As of 12 June 2007, four countries (Italy, Ghana, Switzerland and Luxembourg) had signed the Protocol. The Rail Protocol is expected to benefit many parties in the railway industry by improving access to private capital and by creating security interests.

International Atomic Energy Agency (IAEA) and Nuclear Non-Proliferation Treaty

The Preparatory Committee for the 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons held its first session from 30 April to 11 May at Vienna. Discussions were held on matters relating to non-proliferation, nuclear weapon free zones, safeguards and peaceful uses of nuclear energy. Also discussed were *inter alia* nuclear disarmament, regional issues, including the resolution on the Middle East adopted by the 1995 Review Conference. This is the first of three sessions of the Preparatory Committee that will be held prior to the 2010 Review Conference.

Nairobi International Convention on Removal of Wrecks 2007 Adopted

A new International Convention on Removal of Wrecks (hereinafter the Convention) was adopted in Nairobi, Kenya. The Convention was adopted at Diplomatic Conference held from 14 to 18 May 2007 in the United Nations Office at Nairobi (UNON). The Nairobi International Convention on Removal of Wrecks will provide legal basis for coastal States to remove, or have removed, from their coastlines, wrecks that pose a hazard to the safety of navigation or to the marine and coastal environments, or both. The Convention will also make ship owners financially liable and will require them to provide insurance or with other financial security to cover the costs of wreck removal. It will also provide States with a right of direct action against insurers. The Convention will open for signature from 19 November 2007 until 18 November 2008. It will enter into force twelve months following the date on which ten States have either signed it without reservation as to ratification, acceptance, approval or accession with the Secretary-General.

9th Session of the Intergovernmental Panel on Climate Change (IPCC) and 26th Session of the IPCC Held on 30 April – 4 May 2007

The 9th session of the Intergovernmental Panel on Climate Change (IPCC) Working Group III (WGIII) met at the UN Conference Center in Bangkok from 30 April – 4 May 2007. This session was followed by the 26th session of the IPCC on 4 May 2007. Participants included representatives from the Government, UN agencies, non-governmental agencies, academia and industry. The meeting resulted in the acceptance of WGIII's contribution to the IPCC's Fourth Assessment Report (AR4), titled "Climate Change 2007: Mitigation of Climate Change". The purpose of the IPCC is to assess scientific, technical and socio-economic information relevant to understanding the risks associated with human-induced climate change. Since its inception, the IPCC has prepared series of comprehensive assessments, special reports and technical papers on issues relating to climate change. This information played a vital role in negotiations under the UN Framework Convention on Climate Change (UNFCCC). The 26th Session of the IPCC opened in Bangkok on 4 May 2007. Participants discussed *inter alia* issues relating to further work of the IPCC on emission scenarios, admission of observer organizations and the future work programme of the IPCC Task Force on National Greenhouse Gas Inventories.

Marine Genetic Resources and the Law of the Sea

Importance of Marine Genetic Resources (MGR) assumes tremendous importance when biotechnology has reached its advanced stage. Deep-sea bed remains one of the areas, which need to be further explored keeping in view millions of people suffering from hunger and malnutrition. The eighth meeting of the UN Open-ended Informal Consultative Process on Oceans and the Law of the Sea discussed the issues relating to MGR from 27th to 29th June 2007. The European Union called for the development of a comprehensive and practical framework for the preservation, exploration and exploitation of MGRs in areas beyond national jurisdiction, within the United Nations Convention on the Law of the Sea framework, including for access and benefit-sharing. South Africa said the EU's proposal represented a "convergence of ideas". For many developing countries, Marine Genetic Resources are the common heritage of mankind; they emphasized that all activities affecting the Area should be conducted under the principle of the common heritage of mankind.

Legal Framework for International Public Health Security

The International Health Regulations (2005) or IHR (2005) of the World Health Organisation (WHO) entered into force on 15 June 2007. The International Health Regulations are legally binding regulations adopted by most countries to contain threats from diseases that are contagious and spread from one country to another. Such diseases include emerging infections like SARS or a new human influenza virus. These new regulations further include all diseases and health events that may constitute a public health emergency of international concern. IHR 2005 are an update of IHR 1969, which addressed only four diseases viz cholera, plague, yellow fever and small pox. They were focused on the control at borders, with relatively passive notification and control measures. The revision of the health regulations in 2005 led to an international public health agreement to contain health emergencies at the source. Under the WHO Constitution, all WHO Member States are automatically bound by the new International Health Regulations (2005). The IHR (2005) have been agreed upon by consensus among Member States with a commitment to prevent international spread of disease. Further, IHR 2005 requires States to notify WHO of all events that may constitute a public health emergency of international concern and to respond to requests for verification of information regarding such events. The International Health Regulations 2005 also provide for cooperation between WHO and other relevant international organizations in the implementation of these regulations.

United Nations Security Council Resolution 1757 of 30 May 2007

The United Nations Security Council, on 30 May 2007 adopted Resolution 1757 for establishment of a Special Tribunal for Lebanon. The Agreement between Lebanese Republic and the United Nations on the establishment of a Special Tribunal for Lebanon (herein after The Agreement) is appended to the Resolution. The Agreement enters into force on 10 June 2007 unless Lebanon notifies the Security Council before the date. The Agreement establishes a Special Tribunal for Lebanon to prosecute those responsible for the 14 February 2005 assassination of former Lebanese Prime Minister Rafiq Hariri. The Agreement will remain in force for three years from the date the Special Tribunal begins its operations. The Statute of the Special Tribunal is also appended to the Agreement.

International Tribunal for Law of the Sea (ITLOS) Forms a Special Chamber to Deal with Maritime Delimitation Disputes

During the 23rd session of International Tribunal for Law of the Sea (ITLOS) which was held from

5 to 16 March 2007, a resolution was adopted to form a Special Chamber to deal with maritime delimitation disputes, pursuant to Article 15 paragraph 1 of Statute of the ITLOS. Article 15 (1) of the Statute states that the Tribunal may form special chambers to deal with specific categories of disputes. This Chamber for Maritime Delimitation Disputes will be available to deal with maritime delimitation disputes, which the parties agree to submit to it concerning the application of any provision of the United Convention on the Law of the Sea.

Prosecutor of the International Criminal Court Opens Investigation in Central African Republic

On 22 May 2007, Luis Moreno-Ocampo, Prosecutor of the International Criminal Court (ICC) announced the decision to open an investigation into alleged crimes in the Central African Republic (CAR). The decision was based on the gravity of the alleged crimes, which include large-scale sexual crimes and killings. This is the first time the Prosecutor is opening an investigation in which allegation of sexual crimes far outnumber alleged killings. The alleged crimes occurred in the context of an armed conflict between the Government and the rebel forces.

The CAR Government referred the situation to the Office of the Prosecutor on 22 December 2004. The country's highest judicial body confirmed that the national justice system failed to carry proceedings necessary to investigate and prosecute the alleged crimes. To open an investigation, the Prosecutor's office reviewed the information provided by the government and other relevant information reported by international agencies and NGOs. The investigation was opened in accordance with Article 53 of the Rome Statute of the ICC.

The Special Court for Sierra Leone Issues Its First Convictions

On 20 June 2007, the Special Court for Sierra Leone has convicted three former leaders of Sierra Leone's former Armed Forces Revolutionary Council (AFRC). They were found guilty for war crimes, crimes against humanity and other serious violations of international humanitarian law, including the recruitment and use of child soldiers. These crimes were committed during Sierra Leone's decade long civil war. This judgment is the first to be handed down at the Special Court for Sierra Leone. The trial marks for the first time that an international tribunal has ruled on the charge of recruitment of child soldiers and on the crime of forced marriage in an armed conflict.

International Court of Justice (ICJ): Case Concerning Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)

The ICJ, on 24 May 2007 delivered a Judgment on the preliminary objections raised by the Democratic Republic of Congo (DRC) in the case concerning Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of Congo). DRC requested the ICJ to declare the application of Guinea inadmissible on the grounds that Republic of Guinea lacks standing to exercise diplomatic protection to Sadio Diallo and also on the grounds of non-exhaustion of local remedies available in the Congolese legal system by Mr. Diallo. ICJ declares the application of the Republic of Guinea to be admissible in so far as it concerns protection of Mr. Diallo's rights as an individual. Ahmadou Sadio Diallo, a Guinean citizen, moved to Zaire in 1974. The present Democratic Republic of Congo (DRC) was called as Zaire prior to 1997. After moving to Zaire, Diallo founded two companies viz Africom-Zaire and Africontainers-Zaire. On 31 October 1995, the Prime Minister of Zaire issued an expulsion order for Diallo, because his presence breached the public order. Zaire then deported Diallo to Guinea on 31 January 1996. In December 1998, Guinea applied to the ICJ alleging that the DRC detained Diallo secretly and denied him of his rights under the Vienna Convention on Consular Relations. Guinea sought to exercise its diplomatic protection over Diallo in his capacity as an individual.

World Trade Organisation (WTO) Dispute Settlement: DS352: India-Measures Affecting the Importation and Sale of Wines and Spirits from the EC

The Dispute Settlement Body of the WTO establishes a panel on 24 April 2007 to examine India's import duties on European wine and spirits.

DS360: India-Additional and Extra Additional Duties on Imports from the US

The Dispute Settlement Body of the WTO established a panel on 20 June 2007 to examine the US complaint against India's additional and extra-additional import duties on US products including wines and spirits.

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