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For members only

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V.K. Krishna Menon Bhawan,

9, Bhagwan Das Road,

New Delhi - 110001 (INDIA)

Tel.: 23389524, 23384458-59 Fax: 23383783

E-mail: isil@iasdl01.vsnl.net.in

Website: www.isil-aca.org

Editorial



India filed its Request for the indication of provisional measures on 8 May 2017, and initiated proceedings against Pakistan in a dispute concerning alleged violations of Article 36 of the Vienna Convention on Consular Relations (VCCR) of 24 April 1963 with respect to an Indian national, Mr. Jadhav, sentenced to death in Pakistan. The Court begins by considering whether it has jurisdiction *prima facie* to hear the case. It recalls that India seeks to ground its jurisdiction in Article I of the Optional Protocol to the Vienna Convention, which provides that the Court has jurisdiction over “[d]isputes arising out of the interpretation or application of the Vienna Convention”. In this regard, the Court notes that the Parties do indeed appear to have differed, and still differ today, on the question of India’s consular assistance to Mr. Jadhav under the Vienna Convention. It further notes that the acts alleged by India, i.e., the alleged failure by Pakistan to provide the requisite consular notifications with regard to the arrest and detention of Mr. Jadhav, as well as the alleged failure to allow communication and provide access to him, appear to be capable of falling within the scope of the Convention. (1) In the view of the Court, this is sufficient to establish that it has *prima facie* jurisdiction under Article I of the Optional Protocol. The Court further observes that the existence of a 2008 bilateral Agreement between the Parties on consular relations does not change its conclusion on jurisdiction. (2) The Court then turns to the question whether the rights alleged by India are at least plausible. It observes that the rights to consular notification and access between a State and its nationals, as well as the obligations of the detaining State to inform the person concerned without delay of his rights with regard to consular assistance and to allow their exercise, are recognized in Article 36, paragraph 1, of the Vienna Convention, and that India has alleged violations of this provision. In the view of the Court, therefore, it appears that the rights alleged by India are plausible. (3) The Court then focuses on the issue of the link between the rights claimed and the provisional measures requested. It considers that the measures requested are aimed at ensuring that the rights contained in Article 36, paragraph 1, of the Vienna Convention, are preserved. Therefore, a link exists between the rights claimed by India and the provisional measures being sought. (4) The Court then examines whether there is a risk of irreparable prejudice and urgency. It considers that the mere fact that Mr. Jadhav is under a death sentence and might therefore be executed is sufficient to demonstrate the existence of a risk of irreparable prejudice to the rights claimed by India. The Court further observes that Pakistan has indicated that any execution of Mr. Jadhav would probably not take place before the month of August 2017. This means that there is a risk that an execution could take place at any moment thereafter, before the Court has given its final decision in the case. The Court also notes that Pakistan has given no assurance that Mr. Jadhav will not be executed before the Court has rendered its final decision. In those circumstances, the Court is satisfied that there is urgency in the present case. The Court concludes by indicating the following measures: Pakistan shall take all measures at its disposal to ensure that Mr. Jadhav is not executed pending the final decision in these proceedings and shall inform the Court of all the measures taken in implementation of the present Order. The Court also decides that, until it has given its final decision, it shall remain seised of the matters which form the subject-matter of this Order.

The Court was composed as follows: President Abraham; Judges Owada, Cañçado Trindade, Xue, Donoghue, Gaja, Sebutinde, Bhandari, Robinson, Crawford, Gevorgian; Registrar Couvreur. Judge Cañçado Trindade appends a separate opinion to the Order of the Court; Judge Bhandari appends a declaration to the Order of the Court.

Dr. E. M. Sudarsana Natchiappan

RECENT ACTIVITIES

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46th Annual Conference of the ISIL

The Indian Society of International Law (ISIL) organized its 46th Annual Conference on 29-30 April 2017 at its premises. More than 150 delegates comprising law faculty members, researchers, students and lawyers from different parts of the country and representatives from several embassies and the ministries participated in the Conference. Prof. B. C. Nirmal, Vice Chancellor, NUSRL, Ranchi inaugurated the Conference. Prof. Nirmal highlighted importance of identified themes of the Conference. He wished the Conference a great success. Dr. E. M. S. Natchiappan, President, ISIL welcomed the Chief Guest and the participants. Prof. S. K. Verma, Secretary General, ISIL briefly outlined the scheme of the Conference and proposed a formal vote of thanks.

Four sessions were organized to discuss four themes. The first session (morning) held on 29 April 2017 focusing on “50 Years of the Outer Space Treaty” was chaired by Dr. Luther Rangreji, Director, Legal and Treaties Division, MEA and Co-chaired by Dr. V. Gopalakrishnan, Policy Analyst, ISRO, Bangalore who also gave key note address in the session. Eminent panelists namely Dr. G. S. Sachdeva, Visiting Professor, NALSAR, Hyderabad, Dr. Benarji Ch., Symbiosis Law



School, Hyderabad, Dr. Sreejith S. G., Associate Professor, Jindal Global Law School, Sonapat and Capt. J. S. Gill, Ex Governing Body Member, ISIL presented their paper on “50 Years of OST Session”; “Protection of the Space Environment: The Legal Framework for Space Programmes of Tomorrow”; “Death of the Astronauts in Space Law”: and “High Seas Analogy and Outer Space” respectively. Second session of the Annual Conference was held on “Future of International Criminal Court” chaired by Prof. B. C. Nirmal, Vice Chancellor, NUSRL, Ranchi and Co-chaired by Prof. Manoj Kumar Sinha, Director, Indian Law Institute, New Delhi. Eminent panelists namely Dr. Srinivas Burra, Assistant Professor, SAU, New Delhi; Dr. Rashmi Salpekar, Dean, VIPS Law School, New Delhi, Dr. Ananya Chakraborty, Assistant Professor, NLU, Odisha and Vishal Sharma, Assistant Professor, Galgotia University, Greater Noida presented their papers “Is Individual Criminal Responsibility in Crisis?”;

“Complementary Jurisdiction and Future of ICC”; “India and International Criminal Court: A Relationship Not Feasible”; and “Challenges in Making ICC More Relevant: Addressing Sovereign Needs by Expanding Jurisdiction” respectively.

The third session was held on the theme “Indian Citizenship Amendment Bill 2016 and South Asian States” chaired by Dr. E. M. S. Natchiappan, President, ISIL and Co-chaired by Shri Sanjay Parikh, Advocate, Supreme Court of India. Eminent panelists namely, Prof. Abdul Rahim Vijapur, Professor, AMU, Aligarh, Dr. K. M. Parivelan, TISS, Mumbai and Dr. Daya Devi & Ms. Prabha Bhati, RNT Law College, Gandhinagar on following topics “Durable Solution to Refugees: Problem in India”; “Sri Lankan Refugees in India: Durable Solutions”; and “The Citizenship (Amendment) Bill 2016 and South Asian Refugees”. The fourth and last session was held on 30 April 2017 on the theme “Research and

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Teaching in International Law chaired by Prof. S. K. Verma, Secretary General, ISIL. Panelists including Prof. V. N. Jauhar, former Vice Chancellor, Agra University, Agra, Prof. B. C. Nirmal, Vice Chancellor, NUSRL, Ranchi, Prof. Lakshmi Jambholkar, former Professor, Delhi University, Delhi and Dr. Benarji Ch., Symbiosis Law School, Hyderabad presented their papers. Finally, Dr. E. M. S. Natchiappan, gave valedictory address and proposed a formal vote of thanks. The Annual Conference concluded with General Body Meeting held at 2.30 pm on 30 April 2017.

16th Summer Course on International Law

The ISIL organized its 16th Summer Course on International Law at its premises from 29 May – 9 June 2017 and the Course was attended by 300 participants from many parts of India. The Course was intended to update the knowledge of international law among students. The Course was inaugurated by Dr. Neeru Chadha,



Addl. Secretary (Retd.), MEA, Government of India on 9 June 2017. Hon'ble Justice Prathiba Singh, Judge, Delhi High Court gave valedictory address and also distributed the certificate to the participants.

Seminar on Philosophical Foundations of International Criminal Law: Its Intellectual Roots, Related Limits and Potential

The CILRAP the Centre for International Law Research and Policy co-organized with the Indian Law Institute, University of Delhi Campus

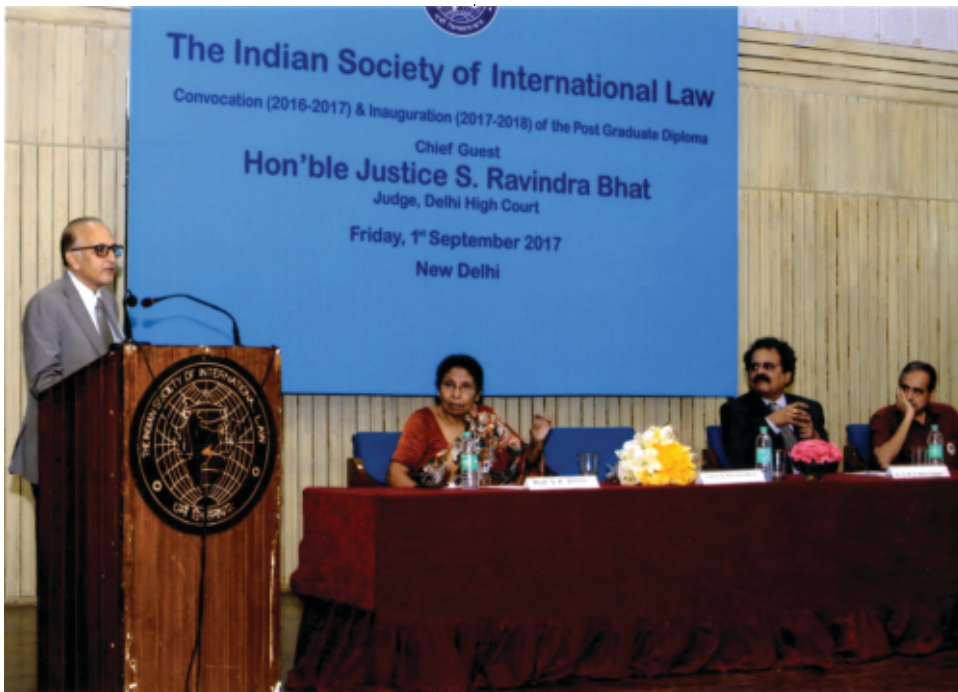
International Peace and Security Law, with funding from the Norwegian Ministry of Foreign Affairs and the International Nuremberg Principles Academy, organized seminar on "*Philosophical Foundations of International Criminal Law: Its Intellectual Roots, Related Limits and Potential*" at the Indian Law Institute on 25-26 August 2017. Hon'ble Justice Madan Lokur, Judge, Supreme Court of India, inaugurated the seminar.

Convocation and Inauguration of the P. G. Diploma Courses

ISIL organized the Convocation for awarding of Post Graduate Diploma Certificates on 1 September 2017. The ceremony was also marked to inaugurate the Post Graduate Diploma Courses academic session 2017-18 conducted by the Indian Academy of International Law and Diplomacy, a teaching wing of



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the Indian Society of International Law. The Chief Guest Hon'ble Justice S. Ravindra Bhat, Delhi High Court delivered the inaugural and convocation address. Ms. Sunethra Sathyanarayanan received V. K. Krishna Menon Memorial Prize for securing the highest marks in the Post Graduate Diploma Course in International Law and Diplomacy; Mrs. Indira Murthy Bhattiprolu received K. Krishna Rao Memorial Prize for securing the highest marks in the Post Graduate Diploma Course in International Trade and Business Law; Mr. Zahir Uddin Babur received Judge Nagendra Singh Memorial Prize for securing the highest marks in the Post Graduate Diploma Course in Human Rights, International Humanitarian and Refugee Law; Mr. Aditya Pushkal Khanna received M. K. Nawaz Memorial Prize in the Post Graduate Diploma Course on

Intellectual Property Rights Law; and Ms. Sukanya Singh topped and received certificate for securing highest marks in the P G Diploma Course on International Environmental Law.

Two Day Workshop on "New Vistas of Sports Law: Challenges and Opportunities"

ISIL and SGTB, Khalsa College, University of Delhi organized Two-day Workshop on "New Vistas of Sports Law: Challenges and Opportunities" on 9-10 September 2017. The Course was inaugurated by Mrs. Rekha Yadav, Secretary, Railway Sport Promotion Board, New Delhi. It was attended by 55 students. Valedictory address was given by Hon'ble Shri Prahalad Singh Patel, MP (Lok Sabha), President, Sports Law and Welfare Association of India.

17th Henry Dunant Memorial Moot Court Competition 2017

17th Henry Dunant Memorial Moot Court Competition 2017 was held on 21-24 September 2017 at the ISIL. The Competition was inaugurated by Hon'ble Justice Madan B. Lokur, Judge, Supreme Court of India. 61 teams participated in the Competition. The Competition was conducted in three stages, quarter-final, semi-final and final rounds. The participants were judged on the basis of written memorials, appreciation of facts and law, advocacy skills, use of authorities and citations, general impression and court manners. Eminent professors, legal officers and international law scholars judged the teams in preliminary, quarter-final and semi-final rounds. *Institute of Law, NIRMA University, Gujarat* and *GNLU, Gandhinagar, Gujarat* were the winner and runner up of the Competition respectively. *Mansvini Jain, National Law School of India University, Bangalore* was adjudged the Best Advocate; *Piyush Langade, Maharashtra National Law University, Mumbai* won the Best Researcher award and *National University of Study and Research in Law (NUSRL), Ranchi* won Best Memorial award in this Competition. Hon'ble Mrs. Jyotika Kalra, Member, NHRC gave the valedictory address on the occasion.

RECENT ACTIVITIES/DEVELOPMENTS

Monthly Discussion Forum

“Israel-Palestine Conflict and the Issue of Settlement/Land”, by Dr. Khinvraj Jangid, Assistant Professor, Jindal School of International Affairs, O. P. Jindal Global Universtiy, Sonipat, 7 April 2017

Discussion on “Doklam-China's Strategic Calculus: India's Options”, by Major General Dr. G. G. Dwivedi (Retd.), Faculty of International Studies, Aligarh Muslim university, on 08 September 2017

Visit of Law Students

46 students of LLB Final semester 2016 of Sunderdeep Law College, Gaziabad visited to ISIL on 29 September 2017.

74 students of the 5yrs BA/BBA/ B.COM LL.B Course AND 3yrs LL.B course, along with 2 faculty members of the Indian Institute of Legal Studies, Siliguri, Darjeeling, WB visited to the ISIL on 10 August 2017

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ECHR: Russia violated rights laws in 2004 hostage raid

The European Court of Human Rights (ECHR) on 13th April 2017 unanimously held that Russia violated European human rights laws when it raided a terrorist-held school in the Russian town of Beslan in 2004, leading to the death of more than 330 civilian hostages. More than 180 children were killed in the attack. Russia contended in

the suit that it should not be blamed for the admittedly tragic results, arguing the burden of compensation should not be placed on governments that reacted to terrorist attacks. The court held that Russia's authorities had specific information linked to a planned attack in the area, and failed to take reasonable preventive measures to protect schools. Further, authorities refused to give families of the victims access to important information after the tragedy. The court ordered Russia to pay nearly €3 million to the families of the victims.

Russia's human rights record has been troubling to international rights groups for some time. In February the ECHR ordered Russia to pay more than €63,000 to Alexander Navalny, a political opposition leader, for multiple arrests that infringed his right to peaceful assembly. In January the US sanctioned five Russian officials for human rights abuses stemming from the suspicious death of a Russian lawyer. Russia's response to terrorism attacks has also been troubling. In June 2016 the Russian Parliament passed a series of anti-terrorism laws that severely curtail certain religious activities and create fines for those who refuse to allow law enforcement officials to read private messages.

European Court of Justice rules sale of devices that make piracy easier may violate copyright law

The European Court of Justice on 26 April 2017 ruled that devices with pre-

installed software that make it easier to stream pirated content may violate an European Union (EU) copyright protection directive. The court determined that the sale of such multimedia players, often including popular so-called "streaming sticks," constitute a "communication to the public" that falls within the definition of the statute, which is prohibited. Because the purpose of the directive was to create a high level of protection for authors, the court held that "communication to the public" must be interpreted broadly. The court also found that even temporary acts of reproduction of copyrighted work by streaming on a third party website that offers the work without the copyright holder's consent cannot be exempted from the right of reproduction.

File-sharing sites and the sharing of copyrighted materials continue to be a global issue. Last month the US Supreme Court declined to hear an appeal from record companies that want to pursue a copyright infringement case against music site Vimeo for hosting music by classic artists. In February the Swedish Court of Patent Appeals and the Market Court, an appellate court with exclusive jurisdiction over intellectual property cases, ordered [judgment, PDF, in Swedish] an Internet service provider (ISP) to block access to the file-sharing site The Pirate Bay and the streaming site Swefilmer. In

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December the Federal Court of Australia ordered an ISP to block five named companies and all their related websites. The same issue was decided by Irish and Dutch courts in 2013 and 2014, where the courts came to different results.

US signs Climate Change Declaration

US Secretary of State Rex Tillerson signed the Fairbanks Declaration to affirm protection of the arctic climate on 12th May 2017. The move was a part of the 10th Arctic Council Ministerial Meeting with goals to maintain peace, stability and constructive cooperation in the Arctic. The signing of the declaration included reaffirming the threat of climate change and a promise to work together to solve issues facing the Arctic region. The Arctic is warming at more than twice the rate of the global average, note with concern that the pace and scale of continuing Arctic warming will depend on future emissions of greenhouse gases and short-lived climate pollutants, reiterate the importance of global action to reduce both greenhouse gases and short-lived climate pollutants to mitigate climate change, and call for the Arctic Council to undertake additional analyses to contribute to the assessment reports of the Intergovernmental Panel on Climate Change and continued collaboration with all levels of governments. The measure is not binding on the US or any partner.

Climate concerns and solutions are still a contested issue. The US rejected a measure that would rollback methane gas regulations. The Trump administration in March asked the US Court of Appeals for the District of Columbia Circuit to postpone ruling on the Obama administration's climate change regulations. Also in March, US President Donald Trump signed an executive order reforming the previous administration's energy policies. UN human rights experts called on global leaders in February to take urgent action on air pollution to ensure world citizens enjoy what the UN calls "the human rights to life and health in environments free from contamination.

India becomes 71st country to ratify UN International Convention on Road Transport (TIR):

India on 19th June has become the 71st country to ratify the United Nations TIR Convention, that will boost trade and regional integration across South Asia and beyond, fast-tracking the region's potential to become a strategic trade hub.

TIR is the global standard for goods customs transit managed and developed by International Road Transport Union (IRU) the world road transport organisation.

Speaking on India's Acceptance of the body IRU Secretary General Umberto de Pretto said, "I am delighted to welcome India into the TIR family of nations. This is an important step in

harmonising standards and boosting transport, trade and development across South Asia. China was the last TIR contracting party who acceded to the Convention. The accession to the TIR Convention is part of India's multi-modal transport strategy that aims to integrate the economy with global and regional production networks through better connectivity, IRU said in a statement.

TIR will help India to integrate with Myanmar and Thailand as well as Bangladesh, Bhutan and Nepal. It will also enable India to move cargo along the International North-South Transport Corridor via Chabahar port in Iran, to access land-locked Afghanistan and the energy rich Eurasian region. The United Nations has said the TIR Convention will come into force in India in six months and IRU will begin work with Indian partners on training, development and outreach efforts to facilitate prompt implementation.

India re-elected to United Nations Economic and Social Council

India has been re-elected to the UN's principal organ on economic, social and environmental issues for another three-year term on 15th June. India was among 18 nations to win election to the Economic and Social Council (ECOSOC). India obtained 183 votes, the second highest after Japan in the Asia Pacific category. India's re-election

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to ECOSOC came just a day after leading expert on international law Neeru Chadha won a crucial election to the International Tribunal for the Law of the Sea, becoming the first Indian woman to be elected as judge to the tribunal. Chadha got 120 votes, the highest in the Asia Pacific group and was elected in the first round of voting itself. India was seeking re-election to ECOSOC as its current term is set to expire this year. Pakistan, whose term on the council is expiring this year, too was seeking re-election to the UN body but lost as it got only one vote. Having obtained the required two-thirds majority, the nations elected members of ECOSOC for a three-year term beginning January 1, 2018 are Belarus, Ecuador, El Salvador, France, Germany, Ghana, India, Ireland, Japan, Malawi, Mexico, Morocco, Philippines, Spain, Sudan, Togo, Turkey and Uruguay. France, Germany, Ghana, Ireland and Japan were among nations seeking re-election. ECOSOC, one of the six main organs of the UN, is the principal body for coordination, policy review, policy dialogue and recommendations on economic, social and environmental issues, as well as for implementation of the internationally agreed development goals. The council's 54 member governments are elected by the General Assembly for overlapping three-year terms. Seats on the council are allotted based on geographical representation with

14 allocated to African states, 11 to Asian states, six to Eastern European states, ten to Latin American and Caribbean states and 13 to Western European and other states.

Dr. Nerru Chadha elected as the Judge of the ITLOS

Dr. Neeru Chadha, Life Member of the ISIL and Former Addl. Secretary, MEA, Govt of India has been elected as the Judge of the International Tribunal for the Law of the Sea (ITLOS), becoming the first Indian woman to be elected to ITLOS. On 14 June 2017 seven Members of the International Tribunal for the Law of the Sea were elected at the twenty-seventh Meeting of States Parties to the United Nations Convention on the Law of the Sea in New York. The States Parties re-elected the following two Members: Judge Boualem Bouguetaia (Algeria) and Judge José Luís Jesus (Cabo Verde). In addition, the Meeting elected five new judges taking up their seats on the 1st of October 2017 will be: Mr Oscar Cabello Sarubbi (Paraguay), Ms Neeru Chadha (India), Mr Kriangsak Kittichaisaree (Thailand), Mr Roman Kolodkin (Russian Federation), and Ms Liesbeth Lijnzaad (The Netherlands). Two of the seven judges elected are women Dr. Neeru Chadha and Ms Liesbeth Lijnzaad, An interesting development in the current ITLOS election is the failure of two serving judges to be re-elected: Judges Joseph Akl (Lebanon) and Rudiger

Wolfrum (Germany). As with the ICJ and the ICC, ITLOS judges serve for a term of 9 years.

PCA Arbitration between the Republic of Croatia and the Republic of Slovenia

On 4 November 2009, the Prime Ministers of Croatia and Slovenia signed an Arbitration Agreement, by which Croatia and Slovenia submitted their territorial and maritime dispute to arbitration. The Arbitration Agreement was subsequently ratified by Croatia and Slovenia in accordance with their respective constitutional procedures. Article 3 of the Arbitration Agreement tasks the Arbitral Tribunal to determine (a) “the course of the maritime and land boundary between the Republic of Slovenia and the Republic of Croatia”; (b) “Slovenia's junction to the High Sea”; and (c) “the regime for the use of the relevant maritime areas.”

An arbitral tribunal, constituted under the auspices of the Permanent Court of Arbitration, issued its final and unanimous award in the Croatia v. Slovenia case on 29 June 2017. The arbitration concerned a territorial and maritime dispute between Croatia and Slovenia. Major part of decision are placed here that related to the maritime delimitation issues.

The Arbitration Agreement is unique because it is the first intra-state arbitration agreement of its kind to

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be drafted under the auspices of the EU, earlier World Bank of the Indus Waters Treaty 1960, between India and Pakistan which is much more complex and not just a simple arbitration agreement.

(1) The tribunal gave “freedom of communication” “to all ships and aircraft, civil and military, of all flags or states of registration, equally and without discrimination on grounds of nationality, for the purposes of access to and from Slovenia, including its territorial sea and its airspace” (Section IV (B) (a)). This freedom consists in the “freedoms of navigation and overflight and of the laying of submarine cables and pipelines”, in addition to “other internationally lawful uses of the sea related to these freedoms, such as those associated with the operation of ships, aircraft and submarine cables and pipelines”. And here importantly: the freedom of communication “shall not be conditioned upon any criterion of innocence, shall not be suspendable under any circumstances, and shall not be subject to any duty of submarine vessels to navigate on the surface or to any

coastal State controls or requirements other than those permitted under the legal regime of the EEZ established by UNCLOS”.

The freedom of communication looks prima facie unlimited and unconditioned. Ships and aircraft exercising the freedom of communication “shall not be subject to boarding, arrest, detention, diversion or any other form of interference by Croatia while in the Junction Area”. Nevertheless, Croatia will remain entitled to adopt laws and regulations applicable to non-Croatian ships and aircraft in the in the Junction Area, giving effect to the generally accepted international standards in accordance with UNCLOS Article 39(2) and (3)”.

(2) Boundary in the Bay: Prima facie the arbitral tribunal seems to have given one quarter of the Bay to Croatia and 3 quarters to Slovenia. The arbitral tribunal, relying on Articles 74(1) and 83(1) of UNCLOS, adopted the three-stage approach espoused by the ICJ in its recent case-law (Maritime Dispute (Peru v. Chile), Judgment, I.C.J. Reports 2014, p. 3 at p. 66, para. 180, citing Maritime, Delimitation in the Black Sea (Romania v. Ukraine), Judgment,

I.C.J. Reports 2009, p. 61 at pp. 101-03, paras 115-22; Territorial and Maritime Dispute (Nicaragua v. Colombia), Judgment, I.C.J. Reports 2012, p. 624 at pp. 695-96, paras 190-93). Three stages are: (1) construction of equidistance line, (2) adjustment of the line to take into account special circumstances, (3) disproportionality test. The arbitral tribunal gave Cape Savudrija half-effect (para. 1014, final award), because the coastal configuration in the present case would produce an “exaggeratedly adverse effect if the strict equidistance line” were to be used, which would in turn exaggerate the “boxed-in” nature of Slovenia's maritime zone (para. 1011, final award). This finding is in line with a jurisprudence laid down in North Sea Continental Shelf cases, I.C.J. Reports 1969; Delimitation of the Maritime Boundary between Guinea and Guinea Bissau, Decision of 14 February 1985, R.I.A.A.; Dispute Concerning Delimitation of the Maritime Boundary between Bangladesh and Myanmar in the Bay of Bengal, (2012) ITLOS.

Forthcoming Events

1st Annual World Conference on Access to Medical Products and International Laws for Trade and Health in the Context of 2030 Agenda for the SDG Jointly

Organized by the ISIL, Ministry of Health and Family Welfare and WHO: **21-23 November 2017**.

International Conference on Certain Conventional Weapons jointly

organized by the ISIL and ICRC, New Delhi: **5-6 December 2017**.

7th Winter Course on International Maritime Law: **26-30 December 2017**.