

# The Indian Society of International Law

## NEWSLETTER

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For members only

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### *Editorial*



Dear members, as you all are well aware that the Indian Society of International Law was founded in year 1959 and was formally inaugurated by Pandit Jawaharlal Nehru the first Prime Minister of India. The principal objective of ISIL is to “foster nation wide, the study and development of International Law and to encourage the comparative study of the application of International Law in other States.” The ISIL has been publishing a journal the Indian Journal of International Law since its inception, which has attained a high standard and is held in great esteem the world over. The ISIL also has a specialised library, which is used by scholars from all over India. Its teaching wing, the Indian Academy of International Law & Diplomacy, runs Post Graduate Diploma and Certificate Courses in International Law & Diplomacy, International Trade and Business Law, and Human Rights, International Humanitarian and Refugee Laws and Certificate Course in

Intellectual Property Rights. Finally, and equally important, it conducts and promotes independent research on issues of International Law. Each year in the second week of June the ISIL organizes a summer course on International Law for students and teachers, the course has become very popular among the students. From its inception, ISIL has been organizing conferences and seminars on international legal issues of contemporary interest. Holding international conferences on diverse fields of contemporary concern has become a standard and popular feature of ISIL’s activities.

It gives me immense pleasure to inform you that the ISIL has decided to organize a year- long celebration to commemorate its establishment fifty years ago. The Golden Jubilee celebration began on 4 February 2008 and will finally conclude on the same date in the year 2009. Inaugural function of the Golden Jubilee was celebrated. On this occasion, Dr. B.S.N. Murthy, only surviving founder member of the ISIL was invited as Chief Guest. The office bearers of the ISIL honoured Dr. Murthy. Shri Anand Sharma, Minister of External Affairs, inaugurated the function and Professor Upendra Baxi, former President of the ISIL addressed the members. The Chief Guest also felicitated all surviving present and former office bearers of the ISIL.

To make this event a memorable one, the office bearers of ISIL wish to organize series of events throughout the year. Some activities planned for year include, the annual conference, special lectures by eminent scholars of international law, a moot court on public international law, publication of a book on the history of ISIL and an edited textbook on Public International Law. The activities will end with an international conference in February 2009. I am happy to inform you that Golden Jubilee lecture series and Golden Jubilee 37<sup>th</sup> Annual Conference of the ISIL, already attracted very eminent scholars of international law. All efforts are being made by the Secretariat of the ISIL to invite Chairmen of the International Law Commission, UN Legal Counsels, Judges of the International Court of Justice and Tribunals, academicians and administrators. It was also decided to make all efforts to involve international societies working in the field of international law for the Golden Jubilee Celebrations.

We feel very proud to highlight that over the years the ISIL has made a special place for itself in academic circles within and outside the country. Most of the law colleges in India keep sending their students and faculty members to participate in the activities of the ISIL. I urge particularly member of the Indian Society of International Law and in general scholars of international law to take keen interest in the activities mentioned above and also suggest us if you feel some more programme should be included in calendar of events planned by the ISIL.

Ram Niwas Mirdha

# ISIL ACTIVITIES

## A SPECIAL LECTURE ON “AN INTERNATIONAL RULE OF LAW?” BY PROF. SIMON CHESTERMAN, GLOBAL PROFESSOR OF LAW, DIRECTOR, NEW YORK SCHOOL OF LAW SINGAPORE PROGRAMME, SINGAPORE

ISIL organised a special lecture on “An International Rule of Law?” by Prof. Simon Chesterman, Global Professor of Law, Director, New York School of Law Singapore Programme, Singapore on 4<sup>th</sup> January 2008 at its premises. Prof. Chesterman critically analysed the formulation, elaboration and enforcement of the rule of law in international governance in the background of its historical jurisprudence and illustrated the dominant role played by the developed countries in the contemporary international relations and economic order. The Lecture witnessed lively exchange of views with the audience on his presentation.

## A SPECIAL LECTURE BY PROF. GEORGE (ROCK) PRING, PROFESSOR OF LAW, UNIVERSITY OF DENVER COLLEGE OF LAW

ISIL organised a Special Lecture on “Global Comparative Environmental Courts and Tribunals (ECT) Study” on 5 March, 2008, at its premises. Dr. Manoj Kumar Sinha, Director, ISIL, welcomed and introduced the chief guest, Prof. George (Rock) Pring, Professor of Law, University of Denver College of Law. Prof. Pring analysed the environmental laws of some countries and the decisions of its courts. Prof. Pring appreciated the dynamic and proactive role of the Indian Supreme Court in upholding environmental causes and justice. He also placed a model law on environment for discussion. The seminar witnessed a lively exchange of views with the audience on his presentation.

## A GOLDEN JUBILEE SPECIAL LECTURE ON INTERNATIONAL CRIMINAL COURT BY MS. FATOU BENSOUA, ICC DEPUTY PROSECUTOR, THE HAGUE

ISIL organised a Golden Jubilee special lecture on “International Criminal Court” on 15<sup>th</sup> February 2008 at its premises. Shri C. Jayaraj, Former Secretary General, and EC Member, ISIL presided over the proceedings and introduced the chief guest Ms. Fatou Bensouda, ICC Deputy Prosecutor, the Hague. Ms. Bensouda highlighted achievements of the ICC since its establishment and underlined challenges posed to it and also discussed the crucial role of prosecutors in the ICC owing to the prevailing complex conditions and situations of referred cases and sites. The lecture witnessed lively exchange of views with the audience on her presentation.

## INAUGURATION OF ONE YEAR CELEBRATION OF GOLDEN JUBILEE OF THE ISIL

Indian Society of International Law (ISIL) has decided to organize a year - long celebration to commemorate its establishment fifty years ago. The Golden Jubilee celebration began on 4 February 2008 and will finally conclude on the same date in the year 2009. The Golden Jubilee celebration was formally inaugurated on 4<sup>th</sup> February 2008 by the Honourable Chief Guest Shri Anand Sharma, Minister of State for External Affairs, Government of India, and Justice Vikramjit Sen, Judge, Delhi High Court. On this occasion, Dr. B.S.N. Murthy, the only surviving founder member of ISIL was invited as Chief Guest. Shri Anand Sharma, Minister, in his presidential address emphasised the need for team spirit for achieving better results. Shri Ram Niwas Mirdha, President, ISIL welcomed the guests and Prof. Rahmatullah Khan, Secretary General, ISIL listed the various programmes of the Golden Jubilee activities. The office bearers of the ISIL honoured Dr. Murthy. Professor Upendra Baxi, former President of the ISIL also addressed the members on this occasion. The Chief Guest also felicitated all surviving present and former office bearers of the ISIL.

To make this event a memorable one, the office bearers of ISIL wish to organize series



of events throughout the year. Some activities planned for the year include, the annual conference, special lectures by eminent scholars of international law, a moot court on public international law, publication of a book on the history of ISIL and an edited textbook on Public International Law. The activities will end with an international conference in February 2009. In brief, the period will be an occasion to celebrate our past achievements,

and embark on new initiatives. ISIL Golden Jubilee celebrations will be used as an opportunity to launch major new initiatives, celebrate successes of the past years, reflect on the past and plan for the future. All members of ISIL will be invited to participate including officials of the Government of India, Intergovernmental Bodies, alumni, students, faculty and the local community.

## A GOLDEN JUBILEE PUBLIC LECTURE ON BY PROF. SUSAN L. KARAMANIAN, THE GEORGE WASHINGTON UNIVERSITY LAW SCHOOL, US

ISIL organised a Golden Jubilee public lecture on "International Law and the US Federal System: The Perspective from the States" on 25 February 2008 at its premises. Prof. Rahmatullah Khan, Secretary General, ISIL introduced the chief guest Prof. Susan L. Karamanian, Associate Dean for International and Comparative Legal Studies and Professorial Lecture in Law, The George Washington University Law School, US and

invited her to deliver the lecture. Prof. Karamanian introduced provisions of US Constitutions and underlined its contribution in development of international law. Some decisions of the judges of the Circuit Courts and Federal Court, nevertheless, reflect their proactive approach to the development and interpretation of international law. The Lecture witnessed a lively exchange of views with the audience on her presentation.



## GOLDEN JUBILEE THIRTY SEVENTH ANNUAL CONFERENCE OF THE INDIAN SOCIETY OF INTERNATIONAL LAW

ISIL organized its Golden Jubilee 37<sup>th</sup> Annual Conference on 29-30 March 2008 at V. K. Krishna Menon Bhawan (ISIL), New Delhi. More than 200 delegates including law faculty members, researchers, students and lawyers from different parts of the country and representatives from several embassies and ministries participated in the Conference. Shri Ram Niwas Mirdha, 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. Justice V. S. Shivpurkar, Judge, Supreme Court of India in his inaugural address, emphasized that international law is gaining much importance in the national courts over the years. 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 as well. Prof. R. P. Anand, Executive President, ISIL in his address highlighted the absence of international law teachers during his days (1960's) and strongly emphasized on the need to train scholars in international law to counter the hegemony of western scholars' writing. He also stressed the need to highlight the current injustices perpetrated under the broad banner of globalization.

Three sessions were organized to discuss the two themes. The first and second session were on the 'Recent Developments in the Jurisprudence/Theories of International Law' and 'International Institutions in the Progressive Development of International Law' and chaired by Prof. V. S. Mani, Director,



School of Law and Governance, Jaipur National University, Jagatpura, Jaipur and Prof. R. P. Anand, Executive President, ISIL respectively. Eminent panelists namely Dr. M. Gandhi, Director, L&T Division, Ministry of External Affairs (MEA), Government of India, Dr. Luther M. Rangreji, Legal Officer, L&T Division, MEA, Government of India, Dr. Manoj Kumar Sinha, Director, ISIL, Dr. Ch. Benarjee, Legal Advisor, ICRC presented papers.

The third session was held on the theme 'Private International Law' and chaired by Shri T. K. Viswanthan, Department of Legal Affairs, Ministry of Law and Justice, Government of India and co-chaired by Shri Narinder Singh,

Joint Secretary, L&T Division, MEA, Government of India. Prof. Lakshmi Jambholkar, Executive Council Member, ISIL, Mrs P. Lakshmi, Assistant Professor, HNLU, Raipur, Dr. Nidhi Gupta, Assistant Professor, National Law University, Jodhpur spoke on various aspects of the theme namely, *International Child Abduction: India's Position*, *Inter-Personal Conflicts of Law*, *Enforcement of Foreign Arbitral Awards in India under 1996 Indian Arbitration Act*. Finally, Dr. Justice A. R. Lakshmanan, Chairman, Law Commission of India gave valedictory address. The Annual Conference ended with the General Body Meeting.

# RECENT DEVELOPMENTS

## MEETING WITH WEST AFRICAN LAWYERS AND PROFESSORS



Nine members of the delegation from West Africa (Ghana, Gambia, Senegal and Nigeria) visited ISIL to exchange notes on experiences in public interest law advocacy. On this occasion, Hon'ble Justice Madan B. Lokur, High Court, Delhi addressed on the origin of public interest litigation, advocacy, law reform and research work with regard to the Indian judicial system. Following were members of the delegation: Dr. Nana Tanko, Executive Director, Open Society Initiative for West Africa, Dakar, Senegal; Mr. Olawale Fapohunda, Managing Partner, Legal Resources Consortium, Nigeria; Prof. Maidor Fall, Lecturer, University of Dakar, Senegal; Ms. Nana Afadzinu, Country Director, Ms. Bosede Muibi, Programme Officer, both from Open Society Initiative for West Africa, Dakar, Senegal; and Ms. Janet Sallah-Njie, Chairperson, Gambian Women Lawyers Association, Banjul and others.

## VISIT OF STUDENTS

A delegation of students from Dayanand Law College, Kanpur, Bombay Law College, Bombay, Deekshabumi Law College, Nagpur and Aligarh Law College, Aligarh visited ISIL on 7 February, 28 February, 5 March and 14 March 2008 respectively. Dr. Manoj Kumar Sinha, Director, ISIL welcomed the students and described the activities of ISIL to the visitors and also discussed the importance of international law and career prospect in this area.

## FORTHCOMING EVENTS

Eighth V.K. Krishna Menon Memorial (Golden Jubilee) Lecture on "Food Security and National Sovereignty" by Prof. M. S. Swaminathan, Member, Rajya Sabha, 3 May 2008

Golden Jubilee Special Lecture by Ms Bridget Prentice, Parliamentary Under Secretary of State, UK, Ministry of Justice on "The Effects of Globalisation on Lawyers", 5 May 2008.

One Week Training Programme for Senior Government Officers of Ministry of Environment & Forests, 12-16 May 2008.

Golden Jubilee Summer Course on International Law, 16-27 June 2008.

## RECENT DEVELOPMENTS

### India Accepts HCCH Statute

On 13 March 2008, India deposited its instrument of acceptance of the Statute of the Hague Conference, and thus became the 69th Member of the Hague Conference on Private International Law. India is already a party to the following Hague Conventions: Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents; Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters; Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters; Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Inter-country Adoption.

### The Republic of Madagascar Ratifies the Rome Statute of the International Criminal Court

On 14 March 2008, the government of Madagascar deposited its instrument of ratification to the Rome Statute. The Statute will enter into force for Madagascar on 1 June 2008, bringing the total number of States Parties to the Rome Statute to 106.

### Colombia Ratifies the Comprehensive Nuclear-Test-Ban Treaty

On 29 January 2008, Colombia is one of the 44 States listed in annex 2 of the Treaty, the ratification of which is essential for the entry into force of the Treaty. This brings the number of ratifications of the Treaty to 144, including 35 ratifications of the annex 2 States. The remaining nine States which have not yet ratified are China, the Democratic People's Republic of Korea (DPRK), Egypt, India, Indonesia, Iran, Israel, Pakistan and the United States.

### The ICC Signs a Memorandum of Understanding with the AALCO

A memorandum of understanding (MoU) was signed between the International Criminal Court (ICC) and the Asian-African Legal Consultative Organisation (AALCO) on 5 February 2008. Signed on behalf of the ICC by President Philippe Kirsch and by H.E. Ambassador Dr Wafik Zaher Kamil, Secretary-General of the AALCO, the aim of the agreement is to formalise and reinforce co-

operation and assistance between the two organisations in matters of mutual concern including international criminal law. AALCO is an inter-governmental organisation whose primary purpose is to serve as an advisory body to its member governments in the field of international law and to provide a forum for co-operation in legal matters of concern to those member states. The agreement facilitates co-operation in areas such as promoting awareness of international criminal law, exchanges of information, and attendance at conferences, meetings and public hearings.

### WTO Members Adopt Dispute Panel Ruling on 'Salmon'

The WTO Dispute Settlement Body, which comprises all members, adopted on 15 January 2008 the panel report on Norway's complaint against the EU's anti-dumping measures on salmon (WT/DS337/R). The panel found the EC had committed a continuum of violations. The panel explicitly declined to use its discretionary power to recommend the revocation of the measure, despite repeated Norwegian calls for the panel to do so. Hong Kong (China) raised two legal issues contained in the report, one on the use of sampling in injury determination permitted under the Antidumping Agreement and one on the legality of excluding 'en bloc' non-producing exporters in sampling under dumping determination. Hong Kong (China) added it was disappointed with the panel's reasoning and ruling on these two points.

### DS367: Australia - Measures Affecting the Importation of Apples from New Zealand

On 21 January 2008, the DSB established a panel to examine Australia's measures affecting market access of New Zealand's apples into its market. At the previous meeting on 17 December 2007, New Zealand had claimed that these measures were not scientifically justified and were inconsistent with the Sanitary and Phytosanitary Agreement. Japan, US, Chinese Taipei, Chile and the EC reserved their third party rights.

### DS291: European Communities - Measures Affecting the Approval and Marketing of Biotech Products

At the DSB meeting on 19 February 2008, the principal parties in the GMO disputes reported on the state of play as part of the surveillance of implementation of DSB rulings. Thus, arbitration on US request for sanctions in GMO case suspended by parties while they

continue discussions to resolve the dispute. The facts were: on 8 February 2008, the US retaliation request in the GMO case was referred to arbitration following EC's challenge. The US introduced its request for authorization to impose sanctions (WT/DS291/39) in the GMO case by pointing out that, even though more than four and half years had passed since it brought the case to the WTO in May 2003, the dispute remained unresolved. The US recalled that the period of time for EC compliance had expired on 11 January 2008, and that on 14 January the US and the EC had reached an agreement (WT/DS291/38) concerning the procedure under Articles 21 and 22 of the Dispute Settlement Understanding (DSU). The US also said that in line with these procedures, the EC had objected to the level of sanctions and had claimed that the US had not followed the DSU principles or procedures in Article 22.3 (WT/DS291/40). Hence, the matter had been referred to arbitration under DSU Article 22.6. Meanwhile, the European Communities reported that they had made good progress in technical discussions with the three complainants (US, Canada & Argentina) to resolve all their relevant biotech-related issues. In recognition of the EC's efforts, Argentina and Canada had agreed to an extension of the reasonable period of time (RPT) for implementation of the DSB's rulings, respectively until 11 June 2008 (WT/DS293/32) and 30 June 2008 (WT/DS292/33).

### United States - Measures Relating to Shrimp from Thailand

The WTO, on 29 February 2008, issued panel reports on complaints by Thailand and India, respectively, against "United States - Measures Relating to Shrimp from Thailand" (DS343) and "United States - Customs Bond Directive for Merchandise Subject to Anti-Dumping/Countervailing Duties (DS345)". On 24 April 2006, Thailand requested consultations with the United States concerning anti-dumping measures on imports of frozen warm water shrimp. Thailand requested consultations on the United States' application in the Preliminary, Final and Amended Final Determinations of the practice known as "zeroing" negative dumping margins, the effect of which was to artificially create margins of dumping, and the consequent imposition of definitive anti-dumping measures on imports of certain frozen warm water shrimp from Thailand.

Thailand considers that through its use of "zeroing", the United States has failed to make a fair comparison between the export price and the normal value, and calculated distorted margins of dumping therefore violating:

Articles 1, 2.1, 2.4, 2.4.2, 3.1, 3.2, 3.3, 3.4, 3.5, 5.8, 9.2 and 9.3 of the Anti-Dumping Agreement, and Articles II, III, VI:1 and VI:2 of the GATT 1994. In addition, Thailand requested consultations on the United States' continuous bond requirement as such and on its application to imports of frozen warm water shrimp from Thailand which it considers may be inconsistent with Articles I:1, II, III, XI:1 and XIII:1 of the GATT 1994 and may not be justified under Article XX(d) of the GATT 1994.

India, China and Japan requested to join the consultations. At its meeting on 26 October 2006, the DSB established a panel. Brazil, Chile, China, the European Communities, India, Japan, Korea and Mexico reserved their third-party rights. Subsequently, Viet Nam reserved its third-party rights.

The Panel upheld Thailand's claims that the application of the EBR to subject shrimp from Thailand was inconsistent with Article 18.1 of the Anti-Dumping Agreement, and the Ad Note. The Panel rejected the United States' argument that the application of the EBR was justified under Article XX(d) of the GATT 1994. The Panel further upheld Thailand's claim that the United States acted inconsistently with Article 2.4.2 of the Anti-Dumping Agreement by using zeroing to calculate margins of dumping in respect of the Anti-Dumping Measure. The Panel declined to rule separately on Thailand's claims that the application of the EBR to subject shrimp from Thailand was inconsistent with Articles I, II:1(a), the first and second sentences of Article II:1(b), X:3(a), and XI:1 of the GATT 1994. Under Article 3.8 of the DSU, in cases where there was infringement of the obligations assumed under a covered agreement, the action was considered *prima facie* to constitute a case of nullification or impairment of benefits under that agreement. Accordingly, the Panel concluded that to the extent the United States had acted inconsistently with the provisions of the Anti-Dumping Agreement and the GATT 1994, it had nullified or impaired benefits accruing to Thailand thereunder. The Panel, therefore, recommended that the United States bring its measures into conformity with its obligations under the Anti-Dumping Agreement and the GATT 1994.

### WTO Issues Panel Reports on Hormones Disputes

The WTO, on 31 March 2008, issued panel reports on the complaints by the European Communities against "US - Continued Suspension of Obligations in the EC Hormones Dispute" (DS320) and "Canada - Continued Suspension of Obligations in the EC Hormones Dispute" (DS321), respectively. The summary of the case were as follows: On

8 November 2004, the European Communities filed a request for consultations with the United States asserting that the United States should have removed its retaliatory measures since the EC has removed the measures found to be WTO-inconsistent in the EC - Hormones case.

The issues which the EC raised in the consultations included, but were not limited to: the failure by the United States to remove the retaliatory measures despite the EC's removal of the WTO-inconsistent measures; the unilateral determinations by the United States that the new EC legislation was a continued WTO violation; and the failure of the United States to follow DSU Article 21.5 dispute settlement procedures to adjudicate the matter. The EC considered that the continued use by the United States and of retaliatory measures in this case, in the current circumstances, were violations of Articles I and II of GATT 1994, and Articles 21.5, 22.8, 23.1 and 23.2 (a) and (c) of the DSU.

Canada, Australia, and Mexico requested to join the consultations. At its meeting on 17 February 2005, the DSB established a panel. Australia, Canada, China, Mexico and Chinese Taipei reserved their third-party rights. Norway, Brazil, India and New Zealand also reserved their third party rights. The Panel concluded that, with respect to the claims of the European Communities concerning the violation of Article 23.2(a), read together with Articles 21.5 and 23.1 of the DSU, the United States made the following procedural violations: (I) by seeking, through the measure at issue – that is the suspension of concessions or other obligations subsequent to the notification of the EC implementing measure (Directive 2003/74/EC) - the redress of a violation of obligations under a covered agreement without having recourse to, and abiding by, the rules and procedures of the DSU, the United States has breached Article 23.1 of the DSU; (II) by making a determination within the meaning of Article 23.2(a) of the DSU to the effect that a violation had occurred without having recourse to dispute settlement in accordance with the rules and procedures of the DSU, the United States had breached Article 23.2(a) of the DSU.

In addition, having addressed the claims raised by the European Communities concerning Article 23.1 read together with Articles 22.8 and 3.7 of the DSU based on the considerations mentioned above, the Panel concluded that: (a) to the extent that the measure found to be inconsistent with the SPS Agreement in the EC - Hormones dispute (WT/DS26) had not been removed by the European Communities, the United States had not breached Article 22.8 of the DSU; (b) to the extent that Article 22.8 had not been

breached, the European Communities had not established a violation of Articles 23.1 and 3.7 of the DSU as a result of a breach of Article 22.8.

However, the Panel took into note Article 3.8 of the DSU which provides that “[i]n cases where there is an infringement of the obligations assumed under a covered agreement, the action is considered prima facie to constitute a case of nullification or impairment”. The United States failed to rebut this presumption. Therefore, to the extent the United States had acted inconsistently with its obligations under the DSU, it must be presumed to have nullified or impaired benefits accruing to the European Communities under that Agreement. Thus, in the light of those conclusions, the Panel recommended that the Dispute Settlement Body request the United States to bring its measure into conformity with its obligations under the DSU. Whereas it was for the Members to decide on the appropriate steps needed to bring measures found in breach of their WTO obligations into conformity, the Panel deemed it important to recall its conclusion in paragraph 7.251 as the parties had apparently diverging opinions as to how this report should be implemented by the respondent. As already mentioned, while the Panel performed functions similar to that of an Article 21.5 panel, this was done only in order to determine whether Article 22.8 of the DSU had been breached. This Panel was not called upon, nor did it have jurisdiction, to determine the compatibility of Directive 2003/74/EC with the covered agreements. In that context, the Panel suggests that, in order to implement its findings under Article 23 and in order to ensure the prompt settlement of this dispute, the United States should have recourse to the rules and procedures of the DSU without delay.

### **Peacebuilding Commission Adopts Conclusions and Recommendations on Situation in Burundi**

The Peacebuilding Commission on 20 March 2008 adopted proposed conclusions and recommendations on the situation in that East African country, expressing optimism about progress achieved in consolidating peace, while at the same time stressing that recent reports of violent incidents highlighted the need for vigilance and commitment in fulfilling the Strategic Framework for Peacebuilding there. Introducing the conclusions and recommendations (document PBC/2/BDI/L.1), Burundi configuration Chairman John Løvold (Norway) said he had taken part in a meeting of Special Representatives and Special Envoys on Burundi in Cape Town on 22 and 23 February, which had been convened by

South Africa in its capacity as Facilitator of the Burundi Peace Process. A “Programme of Action to Take Further the Burundi Peace Process” had been discussed and had now been presented to both the Burundi Government and to the Palipehutu-FNL (Forces nationales de libération).

The Programme of Action encompassed the 31 December timetable that the Regional Initiative for Peace in Burundi had extended for the mandate of the facilitation component. The Programme was aimed at comprehensively addressing the political, security and socio-economic reintegration dimensions of the peace process, to ensure early resumption and to prevent a collapse in the future. Carried out in two phases, the Programme will assure the safe return of all FNL leaders and combatants to Burundi. It will also define their political, economic and social integration, complete with close monitoring to ensure the security of FNL members and the proper functioning of systems catering to their integration. The Programme was predicated on the Government and the FNL bearing primary responsibility for full implementation of the Comprehensive Ceasefire Agreement and for conclusion of the peace process.

Slovenia’s representative, on behalf of the European Union, welcomed the Commission’s document. The Union had issued a statement expressing concern over the recent events in Burundi. He called for the consolidated address of the political, social and economic challenges confronting Burundi and for the participation of all members in furthering the peace process. Belgium’s representative said the document was an appropriate template that could be applied in the future. The conclusions basically concerned the role of the FNL. Further, he fully supported the holding of specific meetings on the land issue and on repatriation, while discussion of the national electoral commission should be postponed until authorities were more up to speed on the issues. While his embassy could not personally take part in the visit, it wanted to be in on the process as fully as possible. The representative of the Russian Federation echoed that view.

### **Security Council Approves Appointment of Additional Ad Litem Judges for Former Yugoslavia Tribunal**

In order to enable the International Criminal Tribunal for the Former Yugoslavia to conduct additional trials as soon as possible and meet its completion strategy, the Security Council on 20 February 2008 (Resolution 1800) gave the green light for the appointment of more ad litem judges than the 12 provided for in the court’s statute. Unanimously adopting

resolution 1800 and acting under Chapter VII of the United Nations Charter, the Council decided that the Secretary-General may appoint, within existing resources, additional ad litem judges to the Tribunal, notwithstanding the fact that the total number of ad litem judges appointed to the Chambers would, from time to time, temporarily exceed the maximum of 12 provided for in the Tribunal’s statute. The total number should not exceed 16 at any one time, returning to a maximum of 12 by 31 December 2008.

An ad litem judge is an “ad hoc” judge, appointed to participate only in a particular case or a limited set of cases. The completion strategy, as set out in paragraph 7 of resolution 1503, adopted unanimously on 28 August 2003 under Chapter VII of the United Nations Charter, aims at completing all trial activities in first instance by the end of 2008 and completing all work in 2010. (See Press Release SC/7859)

### **Zhiguo Gao of China Elected Judge of International Tribunal for the Law of the Sea**

On 3 March 2008, at a public ceremony, Mr Gao Zhiguo (China) was sworn in as a member of the Tribunal. Judge Gao was elected on 30 January 2008 at a Special Meeting of States Parties to the United Nations Convention on the Law of the Sea to fill the vacancy created by the resignation of Judge Xu Guangjian (China) on 15 August 2007. Judge Gao will serve the remainder of his predecessor’s nine-year term, which expires on 30 September 2011. He was elected in one round of secret balloting, garnering 136 votes and thus exceeding the necessary two-thirds majority (91) of the 136 States Parties that voted. The International Tribunal for the Law of the Sea was established in Hamburg, Germany, when the Convention entered into force on 16 November 1994. Consisting of 21 judges, each elected for a nine-year term, the Tribunal deals with disputes arising from the interpretation and application of the Convention.

Pursuant to the decision adopted by the seventeenth Meeting of States Parties (SPLOS/164, para. 111), the election to fill the positions of seven members of the Tribunal whose terms of office expire on 30 September 2008 will be held at the eighteenth Meeting of States Parties, which will take place from 13 to 20 June 2008 in New York. Following candidates are for the election of seven members of the Tribunal: Name and nationality Nominated by AKL, Joseph (Lebanon); Bamela Engo, Paul (Cameroon); Bouguetaia, Boualem (Algeria); Chandrasekhara Rao, P. (India); Elzaki, Ali

## RECENT ARTICLES

Mohamed (Sudan); França Van-dúnem, Fernando J. (Angola); Fomba, Salifou (Mali); Golitsyn, Vladimir Vladimirovitch (Russian Federation); Jesus, José Luis (Cape Verde); Kanu, Allieu Ibrahim (Sierra Leone); Marotta Rangel, Vicente (Brazil); Nandan, Satya N. (Fiji); Ntoutoume, Jean-marie (Gabon); Sanyaolu, Emmanuel Oladeinde (Nigeria); Wolfrum, Rüdiger (Germany).

### States Parties to CERD Elect Nine Members to Monitoring Body

On 17 January 2008, having received the required majority of 83 votes in one round of secret balloting, the following were elected to the Committee on the Elimination of Racial Discrimination: Dilip Lahiri of India (152 votes); Francisco Calitzay of Guatemala (144 votes); Alexi S. Avtonomov of the Russian Federation (143); Fatima Binta Victoire Dah Diallo of Burkina Faso (143 votes); Pierre-Richard Prosper of the United States (143 votes); Huang Yong'an of China (139 votes); Ion Diaconu of Romania (133 votes); Chris Peter Mania of the United Republic of Tanzania (131 votes); and Pastor Elías Murillo Martínez of Colombia (130 votes). The names of the nine members of the Committee who will continue to serve until 19 January 2010 are listed in Annex II of document CERD/SP/69. Also elected were Magdalena Grabianowska of Poland, Julio Peralta of Paraguay and Polly Ioannou of Cyprus as Vice-Chairpersons.

The Convention entered into force on 4 January 1969. The Convention's 18-member monitoring body considers reports from States Parties and if the State concerned has accepted the Convention's Optional Protocol considers petitions from individuals or groups alleging violations of the Convention. It was noted that the Committee, established in 1969, had so far held 71 sessions.

### Convention on Recognition, Enforcement of Foreign Arbitral Awards Completed Its 50 Years

On 1 February 2008, on the occasion of the fiftieth anniversary of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards UN GA conducted a special conference. This landmark instrument is one of the most successful treaties in the arena of international commercial law. It provided a basis for enforceable rights and binding commitments in international commercial agreements. It gave investors and companies confidence to do business in locations which they may have otherwise bypassed. And it quickly became a model for numerous other legislative texts on arbitration.

### Consensus Text on Priority Theme 'Promoting Full Employment and Decent Work for All' Approved by UN Commission on Social Development

Recognizing that a people-centred approach must be at the heart of economic and social development, the United Nations Commission on Social Development on 22 February 2008 concluded its forty-sixth session, calling on Governments to match their words with deeds in terms of eliminating poverty by ensuring decent employment for all. Approving a consensus text on its priority theme: "promoting full employment and decent work for all", the Commission recommended that the Economic and Social Council call on Governments "as a matter of priority" to continue efforts towards ratifying and fully implementing relevant International Labour Organization (ILO) conventions and core principles embodied by the "Decent Work Agenda". The Agenda brings together the goals of rights at work, employment and social protection in a coherent, development-oriented and gender-equitable vision to guide economic and social policy choices and, to that end, the resolution calls on Governments to work towards ensuring freedom of association, the effective recognition of the right to organize and bargain collectively and the elimination of all forms of forced or compulsory labour, as well as the effective elimination of child labour and discrimination in respect of employment and occupation.

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