Recent Developments in Jurisprudence/Theories of International Law - Report of the 37th Annual Conference of the Indian Society of International Law

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Session I: Recent Developments in the Jurisprudence/ Theories of International Law

Rapporteur’s Report

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**Recent Developments in the Jurisprudence/Theories of International Law**

**Introduction**

This report summarizes the proceedings of the first session of the Indian Society of International Law’s Annual Conference 2008. The topic for the first session on 29 March 2008 was *Recent Developments in the Jurisprudence/Theories of International Law*. It may be emphasized that international law is more relevant today and theoretical inquiries into the subject matter is imperative for understanding commitments and compliances of States to international law and differences there upon.

**Theme and Panel**

As mentioned in the foregoing *Recent Developments in the Jurisprudence/Theories of International Law* is one of the themes of this year’s Annual Conference. The session was chaired by Prof.V.S.Mani, Director, School of Law and Governance, Jaipur National University, Jaipur, who presented a paper on “Jurisprudential Developments in International Law in the 20th Century”. Dr.M.Gandhi, Director, Legal and Treaties Division of the Ministry of External Affairs, New Delhi read a paper on “Development of International Law Since the Second World War: Reflections on Development, Non-Development, Under Development and Skewed Development in International Law”. The paper on “The Evolving Liability and Redress Regime Under the Cartagena Protocol on Living Modified Organisms: Some Theoretical Issues” was presented by Dr.Luther M. Rangreji, Legal Officer, Legal and Treaties Division of the Ministry of External Affairs, New Delhi.

**Sessions**

Prof.V.S.Mani in his warm welcome address as the Chairperson of the session highlighted the need for active discussion and intervention from the participants of the conference in the conduct of the proceedings. Prof.Mani also read out congratulatory
message from Judge Hisashi Owada and Tan Cheng Han of the Asian Society of International Law, Singapore.

The first session of the day started with the presentation on “Development of International Law since the Second World War: Reflections on Development, Non-Development, Under Development and Skewed Development in International Law” by Dr. M. Gandhi. He articulated the developments of international law since the Second World War. The premise of his paper was that although there is a coexistence of traditional international law and modern international law, there is a conflict in the developments taking place in this context. Dr. Gandhi emphasized that revision of traditional principles of international law is taking place in horizontal manner instead of taking place in a vertical manner. Particularly in the post cold war period, attention has been on the market forces and arguments like the Permanent Sovereignty over Natural Resources (PSNR) and New international Economic Order (NIEO) which were made have now become arguments of the past. These concepts have developed and stopped later with no further progress. It is here Dr. Gandhi stresses on the third world approach to PSNR and NIEO. Further, his interesting presentation focused on the manner in which implementation of international law is linked to the politics of international law in areas like human rights and good governance, war on terror, collective security system.

This presentation was followed by Prof. V.S. Mani on the topic “Jurisprudential Developments in International Law in the 20th Century”. This presentation was based on Prof. Mani’s paper Centrifugal and Centripetal Tendencies in International Law: Some Reflections in Ronald St. John MacDonald and Douglas M. Johnston (Ed), Towards World Constitutionalism: Issues in the Legal Ordering of the World Community (Martinus Nijhoff, 2005). The debate concerning the definition of jus cogens is a 20th century development, which was introduced in the Vienna Convention on Law of Treaties in 1969. Significant developments of the concept of jus cogens were outlined in an erudite manner where in Prof. Mani drew attention to the implications of jus cogens and obligations erga omnes to modern international law. The emphasis was on the need to identify jus cogens from where derogation is not possible so as to establish obligations in
rem. In this context, Prof. Mani referred to the Barcelona Traction Case and other relevant cases like the SS Lotus Case, Wimbledon Case, Anglo Norwegian Fisheries Jurisdiction Case and put in perspective through these cases the nature of international law. Although expansion of concerns of international law contributed to the significance of *jus cogens*, it is questionable whether mere expansion is enough. It is here he expressed conceptual differences with areas like the WTO, IPR regime, which are the outcome of industrialized civilization and by accentuating the fact that there is no major development or contribution to the development of international law in this field and it is relevant to find out if these regimes can identify norms of *jus cogens*.

The last presentation of the session was made by Dr. Luther Rangreji on the topic “The Evolving Liability and Redress Regime under the Cartagene Protocol on Living Modified Organisms: Some Theoretical Issues”. It was a methodical and well structured presentation where in Dr. Rangreji discussed about the mandate and liability and redress regime under the Cartagene Protocol. He further summarized the elements of liability and redress regime namely damage, administrative approach, standards of liability/channeling and compensation scheme. In the course of the presentation, Dr. Rangreji raised the significance of definitional underpinnings and jurisprudential problems of the concept of damage in the liability and redress regime. He also brought to the attention of the floor the differentiation in understanding of the administrative approach of the liability and redress regime. The presentation was concluded with some reflections on the nature of a future legal regime with focus on whether a Treaty or Guidelines as feasible option for liability and redress regime. It was held that countries preferred the domestic law remedies. Dr. Luther Rangreji’s presentation is richly textured with his negotiating experiences as a member of the *Adhoc Working Group of Legal and Technical Experts on Liability and Redress in the context of Cartagena Protocol on Biosafety*.

**Significant Issues Highlighted in the Session**

Enthusiastic participation of the audience livened up the deliberations of the conference. Discussions took place on various aspects like developments of customary international
law in the aftermath of the Second World War, implementation of international law in the
domestic realm, functioning of the United Nations system in the present times and issues
relating to compensatory regime in the maritime field etc.

The session ended with compliments from the Chairperson Professor V.S.Mani.