

CENTRE FOR ADVANCED STUDY IN INTERNATIONAL HUMANITARIAN LAW

EVENT REPORT: 2 credit certificate course on International Humanitarian Law

Guest Speaker: Prof. (Dr.) Prabhas Ranjan

The Center for Advanced Study in International Humanitarian Law (CASH), Rajiv Gandhi National University of Law organised Session 10 of the 3-credit certificate course on the topic, '*Interface between the International Investment law and International Criminal Law*'. The event was a huge success with around 50 participants including academicians, scholars and students from various law universities from across the south-East Asia.

Prof. Dr. commenced the session by giving a backdrop of area where these two aspects of International Law collaborate and clarified that there is a deep sense of interaction between these two branches as they cannot exist in isolation with each other. He substantiated the same with the help of an illustration on the 'Concept of Norm Conflict'. He discussed a situation of Non- armed conflict where a loss to the foreign investment has been caused as a result of the conflict between government and revolutionaries. Now, in such a situation the concept of Norm Conflict comes into picture. This particular situation may have distinct interpretation in different areas of International Law. Here, the state may not be held liable under IHL and ICL considering it a non- Armed Conflict. But under the Investment law, the question will be whether the state's failure to exercise reasonable due diligence in order to prevent killings which resulted in the loss to the foreign investment as well, be taken into consideration to make state liable and the state may be held liable under the provisions of International Investment Law. Hence, it is clear that these two areas have grown independent to each other and do not share much common characteristics like institutional commonalities and dispute resolution mechanisms.

After discussing the interface, he moved to the Introduction to International Investment law, its origin and basis. The purpose of IIL is to promote and protect the investment made by countries in each other's territory. International Investment Law is based on mainly two Sources: Bilateral Investment Treaties (BITs) and Free Trade Agreements (FTAs), BITs being the most important and dominant source of IIL. They set the rights of foreign investors including the right of not being discriminated and fair and equitable treatment and prevention from expropriation.

He elaborated more on the concept of '*Full Protection and Security (FPS)*' guaranteed to the foreign investors under BITs. Investments are protected by FPS clauses from unfavorable third-party consequences or host state actions and inactions. FPS is concerned with instances in which states fail to protect investors' properties against actual damage (or, in some cases, harm to humans) brought on by negligent state employees or outside parties. Moreover, the protection under FPS is absolute and it also includes the protection against physical violence and harassment by the host state caused to the foreign investors. He then discussed few cases to the same concept, The first case was *AAPL v. Sri Lanka*, where the actions of security forces were held to be excessive and unwarranted by the International Criminal Court because they destructed the investment during an counter-insurgency operation. Second was the case of *Azurix v. Argentina*, where the tribunal affirmed the obligation to afford the full protection and Security to the investors. The tribunal said if the host country fails to provide fair and equitable treatment to the investment, then it will be a breach of standard of FPS under BIL.

In the last part of his lecture, he discussed the provisions relating to Investor-State Dispute settlement (ISDS). It is a right of the foreign investors to bring arbitration claims against the state on their own. These disputes are resolved by the arbitration tribunals which use the adjudicative model of commercial arbitration to resolve the issue in question.

He then presented some contrary views by other ISDS tribunals regarding the absolute protection under the FPS standard. To substantiate the same, he discussed the case of *Saluka v. Czech Republic*, where it was stated that FPS clause is not meant to cover just any kind of impairment to the investment, but to protect more specifically the physical integrity of an investment against interference by use of force.

With respect to the enforceability of bilateral treaties in case of change of power in a state, he discussed certain provisions of ICL draft articles, 2011. Article 3 states that the treaty does not cease to operate ipso facto due to the existence of an armed conflict. Moreover, treaties mentioned in draft Article 7 also include reciprocal bilateral investment treaties as they grant private entities, third parties beneficiary rights. Hence, the treaties will still be operational in case the government changes.

In the end, he left the floor open for queries by the participants. He invited questions in order to further on the discussion to the nest session. Due to time constraints, the day's session ended with an interactive round of questions and answers.