



10TH INTERNATIONAL RESEARCH CONFERENCE

3rd and 4th August 2017

'Changing Dynamics in the Global Environment: Challenges and Opportunities'

ABSTRACTS

General Sir John Kotelawala Defence University Sri Lanka

Ratmalana 10390
Sri Lanka

This book contains the abstracts of papers presented at the 10th International Research Conference of General Sir John Kotelawala Defence University, Ratmalana, Sri Lanka held on 3rd - 4th August 2017. No part of this publication may be reproduced, stored in a retrieval system or transmitted in any form, without prior permission of **General Sir John Kotelawala Defence University, Ratmalana, Sri Lanka**

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Published by

General Sir John Kotelawala Defence University
Ratmalana 10390
Sri Lanka

Tel : +94113370105

E-mail : chair2017@kdu.ac.lk

Website : www.kdu.ac.lk/irc2017

ISBN 978-955-0301-38-6

Published date

3rd August 2017

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Design and Printed by

www.designwavesmedia.com

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Message from the Chief Guest



I am pleased to send this message to the Abstract Book of the International Research Conference-2017 of General Sir John Kotelawala Defence University, Sri Lanka, especially on the occasion that it is held for the 10th consecutive time.

Research, experiment and invention have been in existence ever since the presence of man on this planet, and it has been brought into a whole new level and caliber in the 21st century, which can be witnessed in the pro-research environments and research conferences of this nature promoted and held by universities around the world. In this milieu, KDU-IRC, I believe, has become predominant in providing a collective platform for both civil and military specialists to engage in multidisciplinary discussions while showcasing new discoveries related to multiple disciplines.

I firmly believe that, this year's conference theme Changing Dynamics in the Global Environment, is both timely and appropriate for local as well as foreign scholars to display and gain recognition for their research achievements. Also worth mentioning is the importance of such collaborative multidisciplinary research which will ultimately pave path for inculcating professionalism, boosting international relations and nation-building, which, I presume, is undoubtedly one of the aims of KDU-IRC as well.

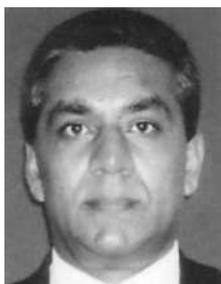
Finally, while congratulating and appreciating the work done thus far by Kotelawala Defence University in general and the conference organizers in particular, I wish all the success for the 10th International Research Conference of KDU.

HON SUSIL PREMAJAYANTHA

Minister

Ministry of Science, Technology and Research

Message from the Secretary Ministry of Defence



It is a pleasure for me to send this message to the International Research Conference 2017 of General Sir John Kotelawala Defence University (KDU) in my capacity as the Secretary to the Ministry of Defence and the Chairman of the Board of Management of KDU.

It is well-known that Kotelawala Defence University has been rendering a yeoman service in the field of defence education catering to the requirement of producing graduate officers for the tri-services in Sri Lanka, and today it has grown in strength to extend its high quality, tertiary level, English medium education for Sri Lankan youth as well as for foreign students. In this context, it is heartening to see that it is also playing a leading role in the field of multi disciplinary research, and I am

sure that the tenth anniversary research conference on the theme, “Changing Dynamics in the Global Environment: Challenges and Opportunities”, would provide a sound platform to discuss with highest intellectual and philosophical depth on diverse issues in the dynamic world we are living today, particularly with a view to opening new avenues for solving our problems.

I take this opportunity to congratulate the Vice Chancellor and KDU staff on organising this important event and also to commend the researchers who took it upon themselves to make a valuable contribution to the knowledge bases of their respective disciplines, particularly in Defence and Strategic Studies. I wish the participants of this International Research Conference an intellectually fulfilling experience.

KAPILA WAIDYARATNE PC
Secretary
Ministry of Defence

Message from the Vice Chancellor



It is with great pride and pleasure that I pen this message for the Abstract Book of the International Research Conference of General Sir John Kotelawala Defence University, Sri Lanka (KDU-IRC), especially at this symbolic moment when it is held for the 10th consecutive time. Over the past decade, KDU-IRC has made its distinct mark in the arena of multi-disciplinary research both nationally and internationally. This is certainly a matter that cannot be ignored; it gives me immense pride in reminiscence, especially as we celebrate KDU-IRC's 10th anniversary, and I am humbled to be at its helm.

Today, KDU-IRC has attracted specialists in diverse fields across the globe, enriching and encouraging its multi disciplinary space in the field of research and in the practice of knowledge dissemination. This year's conference under the theme Changing Dynamics in the Global Environment gathers experts both local and foreign under various disciplines, including defence and strategic studies. In particular, we are proud to have internationally eminent, Sri Lankan born scientists such as Prof. Chandra Wickramasinghe and Dr.

Bandula Wijay with us this time as they have made our motherland proud in the international arena as renowned experts and intellectuals in their respective domains.

KDU-IRC stands strong today with the great withstanding support of KDU staff and its well-wishers. I am especially thankful to the Ministry of Science, Technology and Research and the National Science Foundation, not forgetting the Ministry of Defence for their unfailing support in co-organising this conference.

It is my sincere wish that the plenary sessions, pre/post-conference workshops, and oral and poster presentations, which will unfold during the course of these significant days, will generate productive discussion and constructive criticism and will instigate thought for development in future. I hope that many would make KDU-IRC events an opportunity to study the changing dynamics in the socio-cultural environment in Sri Lanka, and help place our nation high, driving it towards success in the global matrix.

REAR ADMIRAL JAGATH RANASINGHE USP, psc
MSc(DS)Mgt, MMaritimePol(Aus), PG Dip in CPS, Dip in CR, AFNI(Lond)
Vice Chancellor

Message from the Conferenc Chair



It is with great pride that I write this message as the Chair of 10th International Research Conference of General Sir John Kotelawala Defence University (KDU IRC), in this exciting time in KDU history.

For a decade KDU IRC has been a platform for knowledge sharing among researchers of various backgrounds. In this special year on its 10th anniversary, KDU IRC has invited over 50 experts from world over to share their knowledge and to initiate collaborations with their local counterparts numbering well over 1000.

KDU IRC received 557 research papers this year. Out of which 365 has been selected through a double blind peer review process for presentation. I, therefore, have no doubt that the outcomes of the conference would not only bring pride to KDU, but also uplift the status-quo of research and development of the country as a whole.

My task as the Chair this year would have been laborious, if not for the guidance, assistance and most of all the freedom given to me by the Vice Chancellor, Rear Admiral JJ Ranasinghe to mould and shape this conference to present-day requirements.

The generous assistance received from the Ministry of Science Technology and Research and the National Science Foundation is also praise worthy.

I hope both local and international participants will actively contribute in discussions, make new connections and have a productive and memorable time during the two days of the conference at KDU. I wish you all the very best.

DR PRASANNA PREMADASA
PhD(UK) MSc(UK) BSc Hons. (Perad.)
Chairperson
10th International Research Conference - 2017

Message from the Session President



It is my sincere pleasure and honour to contribute this message to the abstract book of the 10th International Research Conference of General Sir John Kotelawala Defence University. As the president of the law sessions I enthusiastically look forward to welcome you at the Plenary Session and Technical Sessions organized and conducted by the Faculty of Law, KDU under the theme of “Law and Justice in the Global Environment: Challenges and Responses”. The Faculty of Law with its relative short history is proud of its enormous contribution made so far to the legal education and Legal Professional of the country, through dissemination of knowledge and research work at undergraduate and graduate levels. We strongly believe that the direction of human society is dependent on the imagination of human beings, discovery of novel knowledge and its dissemination and intellectual discussion. KDU International Research Conference provides us with an unparalleled opportunity to make additions to the current paradigm of knowledge. With a view of enlightening you with outstanding academic presentations, we have invited distinguished academic and professional intellectuals to the plenary session of the first day. The plenary session on Law, Chaired by Prof. Camena Gunaratne, Open University of Sri Lanka, is enriched with the distinguished participation of Mr. Palitha Fernando, Former Attorney General, Professor Fred Soons, University of Utrecht, Netherlands, Associate

Professor Leanne Wisemen, Griffith University, Australia, Mrs. Wasantha Senevirathne, Senior Lecturer, Head of the Department (Public and International Law), Faculty of Law, University of Colombo, and Dr. Kalana Senaratne, Visiting Lecturer, Department of Law, University of Peradeniya. In the Second day of the Conference which consists of four technical sessions, authors and presenters will have the unique opportunity of presenting their research work in sessions chaired by the following eminent scholars; Professor Fred Soons, Associate Professor Leanne Wiseman, Dr. Chamila Talagala and Senior Deputy Solicitor General Priyantha Nawana. I take this opportunity to congratulate all authors who managed to emerge through a rigorous peer review process that ensured the selection of research papers of the highest academic standing to be presented in the form of oral and poster at the Technical Sessions and poster session respectively. It would be impossible to arrange an International Research Conference without the hard work and dedication of the members of the faculty. Therefore I am much appreciative of the sincere cooperation and great commitment shown by the coordinators and the staff members of the faculty in organizing this grand event. I hope this Research Conference will be an exciting event filled with novel and inspiring ideas for all participants and presenters. reviewing committee, and numerous others who helped to shape the content of this session.

Mr. WM AMARADASA
 Dean, Faculty of Law
 President - Law Session



*Plenary Sessions
Synopses*

LAW AND JUSTICE IN THE GLOBAL ENVIRONMENT; CHALLENGES AND RESPONSES

Rear Admiral (Retd) Mr. Palitha Fernando, PC
Former Attorney General

The rapid expansion of the scope of International law in the past few decades has had a significant impact on States. Law and justice stands prominently in this respect. Adoption of international standards within domestic jurisdictions and scrutiny of law enforcements within domestic jurisdictions by the international community has remarkably grown. This has restricted the traditional concept of Sovereignty. The international community has identified areas of international concern and has taken giant strides in promoting protective measures through law enforcement. Some of the areas that have come within this scope are Human Rights, Humanitarian Law, Restriction of destructive armament, and Global environment. Accountability of individuals and the right of individuals to enforce claims against State entities are been considerably developed. Domestic legal structures and enforcement need to be restructured and revised to meet international standards and international scrutiny. This paper would consider challenges faced by States in the Global environment in light of the above aspects

ADMINISTRATION OF JUSTICE WITH SPECIAL REFERENCE TO HUMAN RIGHTS PROTECTION: CHALLENGES AND PROSPECTS

Ms. Wasantha Seneviratne

Head, Senior Lecturer, Department of Public and International Law,
Faculty of Law, University of Colombo, Sri Lanka.

In the process of administration of justice, victims of human rights violation cases are not always remedied as per the international standards. As a result, access to justice is not always guaranteed for those who look forward for justice. This might create a gap between the established law and ensuring justice. This is apparent in particular in the area of human rights protection. Despite the progressive developments ensue in international human rights treaty law due to the lethargy of the legislatures in states which follow dualistic approach in incorporating international law into domestic law people in such countries whose human rights are violated by the state instruments are unable to profit from those progressions occur at the global level. In exceptional occasions Sri Lankan judiciary has attempted to address this injustice through judicial activism. They have not departed from the traditional dualistic tradition but have done the justice to victims of human rights violations through different judicial interpretations and also by way of creeping through monism. In monist countries when international treaties are ratified or acceded by states, those international treaties become self-executing. Hence, the judges can adjudicate the cases in light of the legal principles stipulated in such treaties without the need of transformation of them to domestic law through acts of legislature. Nevertheless, one may argue that through this approach the executive branch of the government would have more powers in the process of international incorporation of treaties and the judiciary can bypass the legislature and directly apply the principles of international treaties to the cases before the courts. In contrast, in dualistic countries treaties will not automatically become executed but those should be incorporated

through an enabling statute adopted by the legislature. Thereby the legislature maintains the monopoly of law making authority without leaving any space for the judiciary to do so. However, many states traditionally known to be dualistic countries now dramatically use the legal principles embedded in treaties which are transformed to be customary international law principles to be invoked without the need of an enabling legislation. This trend could be seen through the jurisprudence of many apex courts of India, Canada and Australia in spite of the fact that those states maintain the dualistic tradition of international incorporation. However, Sri Lankan judges have faced with a blockade in *Nallaratnam Singarasa v. Attorney General* judgment and as a result, the emerging monist trend created by previous judges through landmark judgments seems to have been ended. Therefore, it is important to examine the way forward for Sri Lanka in the post *Singarasa* era in order to overcome such negative implications that hinder the access to justice through the monist passage for the victims of human rights violations. This research paper thus wishes to examine such new trends emerging in many such jurisdictions and some of the positive and negative examples drawn from Sri Lanka. Therefore, the research question addressed in this research is Can Sri Lanka's judiciary, though not empowered to make legislations, interpret Sri Lanka's obligations under international law into the municipal law of the country in pronouncing its decision in a case concerning issues of international law? The methodology used in the research is qualitative and many text books, scholarly articles and case law jurisprudence of a number of jurisdictions have been used.

CLIMATE CHANGE AND OCEAN GOVERNANCE: CONSEQUENCES OF SEA-LEVEL CHANGE

Professor Alfred Soons

Utrecht University School of Law, The Netherlands

One of the most important consequences of climate change is the rising sea-level. Sea-level has been rising for several decades, and during the current century is expected to rise further: estimates vary between almost one meter to much more, depending in particular on the speed of the melting of the Antarctic ice caps. So there is great uncertainty about the extent of this rise. At the same time, sea-level rise constitutes one of the 'changing dynamics in the global environment', and raises great challenges for law and justice in this global environment. The rising sea-level will not only affect the geographical extent of land areas: low-lying coastal areas will become inundated or uninhabitable. For some coastal States, with vast low-lying coastal areas with a small gradient, this will have significant consequences. Large coastal populations will eventually have to move, unless timely protective measures have been taken. Often this will not be possible. In particular low-lying island States must even fear for their own physical survival. But part from this loss of land, sea-level rise will also have another consequence for these low-lying countries, especially those constituted by islands: loss of sea areas over which they exercise

sovereignty or jurisdiction. The sea areas subject to coastal State jurisdiction can be enormous and sometimes are of great importance economically for these States. In addition to the territorial sea of 12 nautical miles, the exclusive economic zone (EEZ) extends to 200 nautical miles (370 km) from the so-called 'baseline' (usually the low-water line along the coast), and the continental shelf can even extend much farther from this baseline. If the baseline recedes as a result of sea-level rise, the outer limits of the EEZ or continental shelf would recede accordingly. Should an island (and thus the baseline) disappear entirely, the EEZ around such island may also be lost. This presentation will examine the consequences of sea-level rise for the extent of maritime jurisdictional zones to which coastal States are entitled under international law. In particular the presentation will identify possible ways for the affected coastal States to take timely measures to prevent or mitigate this imminent loss of maritime jurisdictional zones. These measures could be unilateral, regional or at a global level. They imply the invocation of justice in the global environment.

OPENING ACCESS TO RESEARCH AND DATA: EMPOWERING RESEARCH COMMUNITIES

Associate Professor Leanne Wiseman

Griffith University, Brisbane, Australia

The shift to Open Access (OA) for research began almost 25 years ago with various public statements on the importance of making research freely available. These included the Budapest Open Access Initiative, the Bethesda Statement on Open Access Publishing, and the Berlin Declaration on Open Access. With idealistic motives, great enthusiasm and, in some cases, pressure from a wide range of stakeholders including private and public research funders, OA was justified on the basis that the full social and economic benefits of research should be available to everyone who could use and build on the research to improve society and people's lives. More recently, OA principles and policies have extended to not only to the research being done, but also to the data underlying the research. The opening of access to research and data has posed its own challenges. But as most of the international policies and statements highlight,

it is the laws of privacy and intellectual property that can potentially hinder or obstruct OA. For many nations, however, it is the more practical issues involved in operationalising OA policies that pose the real challenge. While the costs of establishing research repositories and journal subscription are significant, there are now some programs such as Research₄Life that facilitate OA. In examining some of the challenges of OA, this paper focuses on how a clear, consistent and equitable approach to the releasing of research and data is fundamental to OA. In particular, the paper will highlight that a key element of OA is the education of, and support for, the research community. In order to mark this argument, the paper draws from a range of sectors that, having already adopted OA policies, are now focusing on operationalising OA in a way that enables researchers and their institutions to embrace OA at the grass roots level.

INTERNATIONAL LAW & JUSTICE: SOME PRELIMINARY THOUGHTS ON A STRAINED RELATIONSHIP

Dr. Kalana Senaratne

Visiting Lecturer, Faculty of Graduate Studies,
University of Colombo, Sri Lanka

International law is often considered to be a discipline meant to promote justice. The story of international law's historical evolution tends to be generally associated with events which are celebrated as having advanced the cause of justice, and modern international law's key instruments embody the strong desire for promoting and preserving justice and peace. But this is only one part of the story. A more dispassionate reading of international law's historical evolution shows that its origins and development had little to do with the notions of justice and fairness. How could this be so? And how may we think about international law's role and relevance in a troubled world, if we realize that the relationship between international law and justice has always been, and will always be, a strained one?

*Oral
Prasentation*



DOES SRI LANKA NEED A SYSTEM FOR REGISTERING GEOGRAPHICAL INDICATIONS?

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Abstract – Recent reports published in Sri Lankan newspapers suggest that local industries (particularly Cinnamon producers) have raised concerns about the lack of a registration system for Geographical Indications (GIs) in Sri Lanka. They have even gone on to suggest that the failure on the part of Sri Lankan authorities and stakeholders to obtain protection of Sri Lankan GIs in other jurisdictions (and in particular the European Union) is attributable to the lack of a domestic mechanism for the registration of GIs. Both local industries and academics have made reference to the Indian approach on the registration and protection of GIs and have called for the implementation of a similar system in Sri Lanka. It was in order to address this specific concern and plea that the Cabinet of Ministers by a decision made in October 2016 pledged to amend the Intellectual Property Act 2003 (IP Act), which governs the protection and

enforcement of Intellectual Property Rights in Sri Lanka. Yet, contrary to expectations and adopting an approach that is much less comprehensive than the existing legislative approach in India, the proposed amendment to the IP Act merely introduces a single sub-section to s161 that deals with the protection of GIs. In this backdrop, this paper deals with the following points. First, the paper considers whether the current regime for the protection of GIs in Sri Lanka is sufficient in order to obtain the necessary legal protection for Sri Lankan GIs both locally and globally. Second, the paper critically assesses the new amendment to the IP Act, comparing it with the Indian approach, in considering its practicality and utility. It is argued that the new amendment adds nothing to existing law.

Keywords: Geographical Indications, Registration, Protection, Certification marks

GREENING PATENT LAW: THE SRI LANKAN PERSPECTIVES

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Abstract— Environmental issues are one of the key areas addressed by technology. The patent system has the potential of enhancing technological development. However, despite the fact that promoting environmentally valuable technology has become a key area which requires national and international priority, the current patent law of Sri Lanka has failed to prioritize environmentally valuable patents. The recent Meettotamulla garbage dump disaster in Sri Lanka too reveals the non-availability of a potential technology to manage solid waste. Therefore this research aims to identify the existing patent legal framework of Sri Lanka with regard to green patents and its possibility to promote 'green technology'. It is also aimed at scrutinizing how United Kingdom and China have fast-tracked green patents and its relevance to Sri Lanka. Finally this research intends to propose a fast-tracked green patent system in Sri Lanka to promote environmentally valuable patents. In conducting the research, socio-legal approach was followed relying on both qualitative and

quantitative data. Statutes were used as primary sources and legal treatises, research journals and conference proceedings were used as secondary sources. Furthermore, information gathered through key informant interviews based on open ended questionnaires were utilized to glean empirical evidence. Moreover, comparative legal analysis concerning the legal framework in China , the United Kingdom and Sri Lanka was conducted in reaching the recommendations and conclusion. The findings reveal that the countries that have fast-tracked green patents, have achieved a significant development with regard to green technology. In achieving sustainable development, Sri Lanka too has a responsibility of addressing burning environmental issues such as energy efficiency, recycling and waste disposal. Therefore, an expedited system of green patents could be utilized as the initial effort in granting green patents in Sri Lanka.

Keywords: Green Patents, Green Technology, Environment

EVOLUTION OF THE DIGITAL COPYRIGHT INDUSTRY: ARE WE READY TO FACE DYNAMIC CHANGES?

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Abstract—New digital technology enables people to access multiple forms of creative work regardless of the geographical location of origin. It expands the areas of human creativity from mere literary, scientific and artistic works; up to the multitude of computer based creations including computer software, mobile applications and three dimensional creations etc. Through the lens of copyright law, this approach sets novel form of avenues for the users to participate in the consumption, distribution and creation of content in a way which is revolutionary for both the culture and the industry. However, from the authors and the point of view of the copyright owner, this development urges a set of new protections to prevent their rights from being violate (infringed). The main research problem of this paper is explaining whether the existing Sri Lankan copyright law is adequate to protect the rights of the copyright holder and copyright user from the evolving challenges in digital world or should a

new piece of legislation be enacted to clearly define their rights in order to prevent digital copyright infringements? The research was conducted following qualitative research method, thus the number of books, journal articles and internet articles were used to gather secondary data on this area. This research presents an analysis about the existing Sri Lankan law relating to copyright and related rights by examining its adequacy to meet the challenges evolving in the digital world and recommends to adopt new piece of legislation to protect the rights of the whole society to enjoy the benefits derived from day today creations including digitized works, while mitigating unlawful behaviour which hinder effective enjoyment of the fruits acquired by the copyright holders through their legitimate.

Keywords: Copyright, Entertainment Industry, Digital Economy, Digital World

CHALLENGES RELATING TO CROSS BORDER FLOWS OF DATA

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Abstract— Developments in technology are gradually changing the manner in which trade conducted throughout centuries. Trade of goods and services are gradually being replaced by trade of data across borders. Taking into consideration the value given for data today, it can be considered the new oil in the 21st century. There are number of challenges when data is being transferred across borders. This includes protection of personal data and privacy, combating cybercrimes and protection of intellectual property. In addition, there is a great divergence between countries on free flow of cross border data. Some jurisdictions favour data protection and promotion of privacy over free flows of data whereas the others promote cross border flows of data for the promotion of international

trade. The objective of this paper is to identify the given challenges and to discuss the measures that have been taken by the countries to overcome such challenges and to promote transfer of data. As the research methodology, an online study was done on international treaties such as OECD Guidelines, EU Regulations on data protection, APEC framework, statutes and decided cases from other jurisdictions, published articles on cross border data transfers, privacy and data protection and the challenges relating thereto.

Keywords: Cross Border Data Flows, Privacy, Data Protection

RECONCILING BREEDER'S RIGHTS AND FARMER'S RIGHTS FOR FOOD SECURITY IN SRI LANKAN CONTEXT: COMPARISON WITH INDIA

MDM Cooray

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Sri Lanka owns a noticeable history of agricultural sector that has been flourishing since ancient times, where food security had been ensured for decades. The advancement of technology unwrapped new capacities in science which enabled new plant varieties to play a key role in agriculture, which diminished the traditional knowledge of farmers. Sri Lanka as a developing state has ratified International Treaty on Plant Genetic Resources for Food and Agriculture (ITPGRFA), which has granted recognition for farmer's rights while Sri Lanka has not been able to ratify International Convention for the Protection of New Varieties of Plants (UPOV) that has prioritized breeder's rights. However, the significance of creating new plant varieties should be addressed in the domain of food security of the world and likewise in a context where sustainable development goal has set to end hunger, achieve food security and improve nutrition and promote sustainable agriculture. Yet Sri Lanka has failed to introduce any legislation where states such as India has been able to enact proper mechanisms to rec-

oncile the rights of both breeders and farmers without even joining the UPOV convention. Thus, the objectives will concentrate on methods where these rights can be settled, examine the international legal regime, examine loophole in Sri Lankan system and to make the second goal of sustainable development goals a reality. The information regarding this will be derived from primary sources; conventions, legislations of Sri Lanka and India. Qualitative data will be gathered through books and journals while interviews will be also incorporated. Discussion comprise mainly an analysis and have emphasized on the conflicting interest of rights of breeders and farmers. Finally, this paper will encourage to generate recommendation for the existing loopholes while proposing a unique legislation for Sri Lanka in order to reconcile breeder's rights and farmer's rights.

Keywords: Breeder's rights, Farmer's rights, Sri Lanka, food security

TURN TO YOUR DUTIES TO RETAIN YOUR RIGHTS: CRITICAL ANALYSIS ON RIGHT TO WATER

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Abstract— The outstanding importance of water has pronounced many of scholars in various occasions. Water is necessary for the survival of entire life, yet over one billion people do not have available sources of clean water for drinking. People those who are undergoing water scarcity menace tend to claim right to water from governments without considering their obligations to uphold the right. However this situation should be observed in reciprocal manner. Right to water is entirely based on the availability of the resource. Without prejudice entire mankind is responsible altogether to safeguard water resources. Presently water is facing a huge threat of pollution and over extraction which was created and responsible by the mankind themselves and the mankind rapidly reaching towards an era of the water scarcity. Immerging trend to expand the Right to Life which has been recognized by the Article 3 of the UDHR accommodated the Right to Water by establishing state obligations through several other instruments such as Treaties and their Protocols, Regional instruments and International declarations, norms and other standards. Hereby all the states are

compelled to provide continuous water supply and to facilitate various other integrated water resource management systems in order to enhance the infrastructure facilities to uphold water rights. Hence it is essential to turn towards the duties and responsibilities of the people, being right holders to become eligible to claim their rights from governments being duty bearers. This paper expects to investigate the possibility to assign duties upon general public to safeguard water resources mutually as to preserve their right to water. The main objective of this paper to convince the contribution of the community to counter future challenges of fresh water and indicate the necessity of contribution to preserve fresh water resources. Further this research expects to emphasize the necessity of reciprocal approach to claim water rights and to elaborate the mutual understanding between right holders and duty bearers in terms of water rights.

Keywords: Right, Water, Reciprocal Obligation, Duties

STATE RESPONSIBILITY AND LEGAL FRAMEWORK OF SRI LANKA IN FOOD SAFETY

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Abstract - Using different kinds of chemicals for agriculturally produced foods is a common phenomenon in Sri Lanka. The use of chemicals can be seen mostly in each and every step in the cultivation process, from nursery level till it reaches customers. Particularly this can be mostly seen in fruit ripening process. Fruit ripening is a natural process and it takes some time for fruit to ripe naturally. However, it is very pathetic to note that farmers, sellers and distributors use chemicals to get a high profit in their businesses even in off seasons and to deal with transportation and distribution issues. In appearance, the chemical treated foods are very attractive, greener and more fresh looking than untreated food; however, now this has created many challenging issues such as health, environmental, social, economic and has now become even a threat

to the right to life of people in Sri Lanka. This research is basically a normative study, which focuses on the legal aspects of using chemicals for agriculturally produced foods. By adopting the rights based approach this study focuses on the State's responsibility to a human rights regime regarding food safety. This study describes the available international human rights provisions and domestic legal provisions in this regard. The main objective of this study is to critically analyze whether the existing law regarding chemical treated food is adequate to address the current needs of society with the standards prescribed by the international community.

Keywords: Food Safety, Right to health, Right to life

TRIUMVIRATE OF TRANSBOUNDARY MOVEMENTS OF HAZARDOUS WASTES AND DEVELOPING COUNTRIES

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Abstract—For decades, poor countries have been used as dumping sites for unwanted wastes, particularly those classified as ‘hazardous,’ by the developed industrialist countries. As a result, developing world has to tackle a myriad of issues arising out of solid waste dumping while ensuring the safety of the environment and the human lives. The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal sought to address this crucial issue but the burden of wastes generated in the developed world is still, to a greater extent born by the developing world which stands in clear violation of the well-recognized principles of international environmental justice. This research therefore seeks to address the problem, how the developing world is still being a graveyard of wastes which generates negative impacts on the environment and human lives notwithstanding the legal instruments and principles that seek to regulate transboundary waste dumping and their impacts on human lives and the environment?. The objectives of the research are to analyse the role and application of Basel Convention on the Control of Transboundary

Movements of Hazardous Wastes and their Disposal in the movement of wastes into the poorer countries by the developed world, to determine whether it contributes towards the establishment of environmental justice and to find out the factors that hinder the effective use and implementation of the Basel Convention. The research was carried out using the black letter approach to research based on primary sources viz. legislations, judicial decisions and international treaties and secondary sources viz. books, journal articles, previous research studies and online sources. Gathered data will be interpreted in light of the theory of environmental justice. The study concludes that the proper implementation of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal is necessary to protect the environment and human lives and to meet sustainable development goals.

Keywords: Environmental Justice, Transboundary Movements, Hazardous Wastes, North South Division.

THROWBACK ON THE PROCESS OF REGISTRATION OF CONDOMINIUM PROPERTIES

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Abstract— Most Condominium Property Developers, taking advantage of weaknesses in the procedural law on the registration of Condominiums, have dragged the Condominium Dwellers into a well woven cob web. Where, hopelessly Dwellers end up litigating against the Developer for fraud. However, in practical terms such a litigation situation is rare due to the lack funds to institute them. Hence, the objective of the research is to analyse the loopholes of the existing domestic procedural law on the registration of Condominiums. Legal research methodology was followed. The source of library based secondary data review was referred to. Furthermore, a number of interview sessions were conducted for primary method of data collection. The mixed method was adhered to when establishing the recognized objectives. The identified stakeholders were Condominium Dwellers, Condominium Developers and the experts in the field of law related to Condominiums. It is evident that most Condominium Dwellers are not aware of their inherent rights. Hence, without this understanding

on the statutory rights, they have faced with a number of issues that emanate from the registration process of Condominiums; specific reference to lack of a real transfer of title due to the conditional sale the parties enter into, the risk of not being able to be compensated from the insurance claims in case of a damage to the building and several other major adverse consequences. Hence, the intended research outcome is to introduce a policy paper with recommendations aiming to assist the law making commissions when amending the existing domestic procedural legal framework related to the registration of Condominiums. Establishing the fact that, Sri Lanka should encourage the living in Condominiums to cope up with the increasing migrants to urban areas, it could be concluded that it is a timely requirement to make the Condominium Dwellers aware about their rights.

Keywords: Condominium Properties, Registration, Dwellers

REFORMS TO THE INTERNATIONAL TRADE REGIME FOR THE PROTECTION OF MARINE LIVING RESOURCES

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Abstract- The World Trade Organization (WTO) was established, as the successor to the General Agreement on Tariffs and Trade (GATT), through Marrakesh Agreement giving birth to new arenas of international trade. Though the main objective of the WTO is to promote free and fair trade among the member states, the draftsman of the agreement have clearly identified the need of addressing the interdisciplinary perspectives of trade. There are number of agreements and provisions under the WTO umbrella, which focus on these interdisciplinary issues including marine environmental concerns of international trade. Agreement on Technical Barriers to Trade, Agreement on Sanitary and Phiosanotary Measures and GATT provide explicit provisions to address trade related ecological issues. However, the world had witnessed a number of trade related marine eco system degradations where the Dispute Settlement Panels have used their discretionary powers in a trade favoured manner. This study is a

literature based research that focuses on assessing the existing international trade regime in light of balancing global trade and marine environmental interests. The foremost output of the study is that free trade or open economy is not always in conflict with the protection of natural resources provided if necessary regulations are in place. The focal point is that the provisions under the current regime are not efficiently and effectively implemented in order to ensure the proper balance between the two disciplines. In conclusion, the WTO needs to ensure that they promote not only fair and free trade but also a green trading system and for that purpose, the WTO should encourage the member states and Dispute Settlement Panels to promote world trade while keeping an eye on the international environmental standards.

Keywords: Marine living resources, International Trade Law, Trade related environmental disputes, Sustainable trade goals

BEWARE IF YOU ARE BEING A CHEAP CHARLIE: USED GOODS AND MERCHANTABLE QUALITY

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Abstract—As specified by S.15 (2) of the Sale of Goods Ordinance No 11 of 1896 (SGO of 1896), where goods are bought by description from a seller who deals in goods of that description, there is an implied condition that the goods shall be of merchantable quality and when the sale is by sample, S. 16 (2) (c) specifies that there is an implied condition that the goods shall be free from any defect rendering them unmerchantable, which would not be apparent on reasonable examination of the sample. It is quite clear that this condition of ‘merchantable quality’, would award protection to a buyer who purchases goods in the usual way from a shop. However, the question to be addressed in this context is whether a buyer who purchases used goods (second hand goods) is entitled to the same level of

protection under the SGO of 1896 as received by a buyer of a brand new product. Utilizing the black letter approach, this doctrinal research aims to find out the solution for the above problem. Further, the comparative analysis method is used to examine the distinctions between the statutory provisions in the SGO of 1896 regarding ‘merchantable quality’ and the analogous provisions of the relevant statutes in the United Kingdom with the objective of making recommendations to develop the existing law in Sri Lanka.

Keywords: Used Goods, Merchantable Quality, Sale of Goods

FINANCIAL TRANSACTIONS REPORTING: AN OVERVIEW OF THE SRI LANKAN LAW

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Abstract— Financial crimes including money laundering and terrorist financing has become a major burden to the economies of almost all the jurisdictions. Further, the institutions engaged in finance business including banking business are the most exposed institutions to financial crimes as they are doing their business with money which is the most liquid asset. In Sri Lanka, three major legislations namely, Convention on the Suppression of Terrorist Financing Act No 25 of 2005, Prevention of Money Laundering Act No 5 of 2006 and Financial Transactions Reporting Act No 6 of 2006 (FTRA) had been enacted targeting countering such financial crimes. However, FTRA can be identified as the enactment which influences the most in the sense of banking and finance business as it has introduced important guidelines and instructions for the institutions, while setting

up the Financial Intelligence Unit. Hence, this paper will discuss the main features of FTRA and its consequence to the institutions engaged in finance business including the snags face in implementing the act. The author uses primary sources viz. acts, codes and guidelines and secondary sources viz. journals, reports, annual reports, electronic resources and books as main sources for this study. Finally, the paper concludes with suggestions to FTRA towards strengthening the legal regime to combat against money laundering and terrorist financing while minimizing afflictions affecting the institutions in complying with FTRA.

Keywords: Money Laundering, Terrorist Financing, Financial Transactions Reporting, Sri Lanka

TAX AMNESTIES: THE CASE OF STICKS AND CARROTS

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Abstract- Tax amnesties are an invitation to tax evaders to join the ranks of people who pay the due taxes. The popularity of amnesty programs over time and across countries is understandable as it produces both short- and medium-term benefits. However, cost benefit analysis shows that the costs exceed the benefits of the program. This paper weighs the advantages and disadvantages of tax amnesties, drawing on results from the theoretical literature, econometric evidence, and using Sri Lanka as a case study. The focal point of this research is to determine if a 'successful' tax amnesty is a norm or an exception to the norm. It is evident that tax amnesties have been devised to increase tax compliance. However, the low levels of tax compliance can be better addressed via improvements to the tax administration system. Thus, it leads to the question whether tax amnesties

are only a plaster on a broken bone where an extensive surgery is required for full reparation i.e. an enhanced tax administration system. It must be understood that tax amnesties alone cannot increase tax compliance, as it is only an incentivizing mechanism and not the solution to the larger problem at hand. Most successful amnesty programs rely on improving the tax administration's enforcement capacity. Furthermore, given the potential drawbacks of tax amnesties, a few alternative measures are discussed which can be implemented to improve the enforcement capacity of tax administration system.

Keywords: Tax amnesty, Tax administration, Compliance, Evasion

CAUSATION AND THE LIABILITY FOR NON- DISCLOSURE OF RISK IN SRI LANKA; VINDICATING RIGHTS OF PATIENTS BY LIGHTENING PRINCIPLE OF CAUSATION

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Abstract- Informed consent is considered as one of the corner stones in medical practice and it is a socio legal obligation of medical professionals. Failure to disclose risk is considered as one aspect of medical negligence. Obligation to disclose risk was introduced by the Bolam principles in United Kingdom and has been subjected to later developments which has taken place in all over the world. Doctrine of informed consent deals with the doctor's duty to inform the patient before proceeding with the treatment. Professional autonomy is now moving to the direction of patient's autonomy. Patients have a legal right to self-determination. Patients should allow to engage in critical decision making regarding their body and he can refuse the treatment, if he does not receive adequate information. Accordingly, consent should be obtained by the doctor after providing all necessary informa-

tion to the patient. However, in informed consent cases, it is a big barrier for the patient to prove that the failure to disclose information regarding the recommended treatment has led to cause the injury. Following the qualitative research method this paper aims to discuss the evolution of the law of informed consent. Furthermore, this will examine the application of the test of causation in informed consent cases, while raising the necessity of lightening, moderating and sometimes even to depart from the requirement of causation cautiously by the judiciary, to vindicate patient's rights in informed consent cases in Sri Lanka.

Keywords: causation, consent, disclosure, patient, risk

HEALTH INFORMATION PRIVACY AND RIGHT TO INFORMATION A CASE STUDY OF INDIA AND SRI LANKA

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Abstract— Privacy is a concept which is felt on a personal basis and accordingly it is difficult to define. Health information privacy is concerned with control, access and sharing of personal health information. Inherently personal health information possesses special degree of protection which originates through the traditional fiduciary relationship between the Doctor and patient. This paper is based on the findings of a research conducted on analysing the extent to which the right to privacy of personal health Information can be upheld while balancing it with the right to access for information. The study is designed as a case study of India and Sri Lanka and data collection done through a survey of literature. After an analysis of the legal framework of the two jurisdictions it was found out that an

individual cannot exercise complete control over all personal information they have to allow access to such information to certain parties depending on certain circumstances. Doctors, nurses and other health care service staff personnel need to access such information for treatment purposes. Further, such information needs to be accessed for public purposes such as health research, statistical purposes, prevention of contagious diseases and epidemics. Accordingly, and absolute right to privacy of such information cannot be entertained as it violates another person's right to access to such information especially in order to uphold the benefit of the public.

Keywords: privacy, health information, right to access information

SRI LANKAN LEGAL VERSION OF MIGRANT WORKERS' RIGHTS: HOW IT IS AND HOW IT SHALL BE

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Abstract - 'Migrant workers' are generally defined as people who leave their home country in search of employment. It is known that the largest source of income in Sri Lanka is foreign employment. Protection of the migrant becomes an integral need in this context. With the recent unpleasant tragedies occurred to migrants of Sri Lanka pose the question of actual protection of rights and its compatibility with the international standards. On the other hand, protection of migrant worker is linked to the protection of families of the migrant worker. Thus, the dependants, especially children of the migrants have the direct effect on deprivation of their rights and vice-versa. Therefore, this social phenomenon enables the author to seek the legal protection of

the migrant worker and its extent. Thereby this paper objects to compare the current domestic and international context on migrant workers' rights and to identify the key areas for improvement. The black letter and international and comparative legal research approaches were followed to analyze data. Related enactments and international standards as primary sources and journal articles, research publications and statistics published by authorities as secondary sources would be utilized in this research to recommend suitable legal reforms.

Keywords: Migrants, Protection of Rights, Foreign Employment

THE OFFICE ON MISSING PERSONS (ESTABLISHMENT, ADMINISTRATION AND DISCHARGE OF FUNCTIONS) ACT, NO.14 OF 2016 ; A WAY FORWARD

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Abstract - Every human has the right to be free from disappearances (enforced or involuntary) and many states across the globe which had specially experienced the situations of conflict had taken the initiation of protecting this right by introducing a specific legal framework for the same. The Office on Missing Persons (Establishment, Administration and Discharge of Functions) Act, No.14 of 2016 (hereinafter referred to as OMPA) was one of the key statutes passed by the Parliament of Sri Lanka during past year in order to establish the justice for the persons who had been subjected to the disappearances due to numerous conditions and situations occurred in the country during the stage of internal conflict and the post conflict era . The study is focused on assessing the level of accuracy and the effectiveness of the domestic legal framework introduced in order to protect the rights of persons subjected to disappearances with reference to the main international legal instrument, International Convention for

the Protection of All Persons from Enforced Disappearance, 2006 (herein after referred as ICPAPEP) as appropriate. The study is based on legal research methodology which is totally based on the assessment of the primary sources of domestic and international instruments. The study specifies few practical difficulties in implementing the introduced mechanism under the statute and appraises the level of protection available towards the rights of disappeared persons. The study concludes recommending few amendments to the domestic statute, highlighting the necessity of guarantying effective intervention of the law and policy makers towards guarantying the right of free from enforce or involuntary disappearances in Sri Lanka.

Keywords: Missing persons, Enforced or Involuntary Disappearances, Rights, Sri Lanka.

THE IMPLEMENTATION OF CONSTITUTIONAL OUSTER CLAUSES IN SRI LANKA : A SISYPHEAN TASK?

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Abstract - The phrase ‘A Sisyphean task’ originates in Greek mythology, where Sisyphus, king of Ephryra, was condemned to an eternity of repeatedly rolling a large boulder up a hill, only to have it roll back down each time he reaches the top. This paper examines whether the implementation of ouster clauses has proven to be equally futile. Ouster Clauses (also known as privative, preclusive or exclusionary clauses) are legislative provisions which seek to exclude from the ambit of judicial review, certain acts or decisions of a statutory body. Does the legislature repeatedly introduce such clauses, only to have the judiciary disregard them? The author views ouster clauses as pivots in the legal machinery, maintaining the delicate balance between the three organs of government. Therefore, it is critical to identify the role of the judiciary in maintaining that balance. The objective of this study is to identify a common thread in Sri Lankan judicial approach with regard to the specific category of Constitutional ouster clauses. It is a discursive essay on how the courts have tackled the four main

ouster clauses contained in the second Republican Constitution, focusing primarily on Article 61A, which is a comparatively recent addition; introduced by the 17th amendment and modified by the 19th. This shall be compared vis-à-vis the functionally similar Article 55(5) which existed prior to the 17th Amendment, in order to highlight any changes in judicial approach and the reasons underpinning such changes. Through a qualitative analysis of Constitutional provisions and relevant judicial decisions, this paper addresses the key problem of whether the Sri Lankan courts have conformed to a general set of principles in interpreting Constitutional ouster clauses, or has implementation been solely dependent on how far an individual judge is willing to go, disregarding the literal meaning, in the name of ‘judicial activism’?

Keywords: Ouster Clauses, Judicial Review, Constitutional Law, Administrative Law.

ILLEGAL FISHING BY INDIAN TRAWLERS VIOLATING THE MARITIME BOUNDARY OF SRI LANKA AND ITS IMPACT ON LIVELIHOOD AND THE INDO-SRI LANKA RELATIONS

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Abstract - Although, Indian and Sri Lankan fishing communities shared Palk Bay and Gulf of Mannar as their common fishing grounds for centuries, crossing of maritime boundaries for fishing purposes was prohibited after ratifying maritime boundary agreements in 1974 and 1976. However, Indian fishermen frequently enter into Sri Lankan waters and carry out illegal fishing creating numerous conflicts. This study aims to identify the nature of illegal fishing practices carried out by Indian fishermen in the territorial waters of Sri Lanka and its impact on livelihood and the Indo-Sri Lanka relations. Primary data were collected from different stakeholders in Mannar and Jaffna areas through questionnaires and semi-structured interviews and secondary data were obtained from government institutions were used in this study. This study revealed that around 1000-1500 mechanized trawlers are coming to Palk Strait, Palk Bay and Gulf of Mannar regions three days per week to catch prawns and demersal fishes. Their average daily catch mainly consists of prawns (56 ± 11 kg; 31%), demersal fishes (116 ± 18

kg; 65%), sea cucumbers and squids (6 ± 3 kg; 3%) and they have harvested approximately 1900 tons of shrimps and 4000 tons of demersal fish in 2016. Around 98% stake holders responded that Indian poaching is the biggest threat for their livelihood. It was found that 22% of fishers permanently lost their livelihood and others are facing livelihood insecurities. Both countries have proposed some actions such as setting up of Standard Operating Procedures (SOPs) to expedite the release and handover of fishermen, intensify the cooperation on patrolling, and establish a hotline between coast guards of two countries to solve this problem, however, still they could not find a long term solution. The northern fishing community strongly suggests that the government of Sri Lanka must take strict security measures to protect its maritime border and actions to secure livelihood of fishers.

Keywords: Maritime boundary, Illegal fishing, Diplomatic missions

*Poster
Prasentation*



LEGITIMATE CAPABILITY OF EXECUTING THE DEATH PENALTY UNDER HUMAN RIGHTS LAW AND VALUES

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Abstract - The debate whether the death penalty should be carried out or not, has been continuing from time to time in different parts of the world. Death penalty is creating an unnatural way of ending life and it is opposite to the recognized human norm of right to life. This right to life has been recognized in many international conventions and there are some international instruments which specifically focus on abolishing the death penalty. In this context the main research issue/problem for this research is to analyze whether a state is legitimately capable of carrying out the death penalty. This legal research has used the doctrinal method which has utilized a critical, philosophical and comparative study method as the main means of coming to a conclusion. Under this method international conventions, declarations, Constitution of Sri Lanka, other legislations and regulations have been used as primary sources and journal articles, text books and case laws have been used as the secondary sources. Under the provisions

put forward by the international instrument, the state is positively obliged to protect the right to life and if a state allows carrying out the death penalty it amounts to the violation of state obligations. On the other hand, the state is bound to protect the life of individuals till people die of natural causes. The death penalty is considered an unnatural mode of death and therefore, the state has no legal and moral obligation to do it. Furthermore, the beneficiaries of any human rights treaty are individuals and the state is responsible for granting these benefits to them. Similarly, there are many other arguments that have arisen from human rights values which render a State legitimately incapable of executing the death penalty against wrong doers.

Key words: Death Penalty, Right to Life, State's Capability

PROTECTION OF WOMEN IN NON INTERNATIONAL ARMED CONFLICT- A FEMINIST PERSPECTIVE

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Abstract – The legal regime of international humanitarian law is meant for protection for victims of armed conflict. It distinguishes two types of armed conflicts, namely: IAC, opposing two or more States, and NIAC, between governmental forces and nongovernmental armed groups, or between such groups only. This regime, however, has given an inadequate cover to non-international armed conflict and has been subject to severe criticism in this regard. The aim of this article is to critique the law for non international armed conflict in respect of women which is unknown, rarely discussed and addressed. During an armed conflict, women as civilians are generally forced into poor living conditions and are prone to accidents, injuries, and disease. This paper is an attempt to reaffirm the inadequacy of the law on non international armed conflict and that has little to do with the protection of women. Thus, the methodology follows the normative research by analyzing the laws available for armed conflict, especially on non international

armed conflict. Various treaties, customary international laws, and case decisions have been discussed in this regard. This paper will not offer a complete literature on international armed conflict. However, it will discuss the provisions of international armed conflict containing protection of women to compare and contrast the protection for women under non international armed conflict. International law as a concept is gendered. Therefore it is not new to discover international humanitarian law is being gendered. The feminists on this area explain and question this. It is high time to go for an amendment or formation of new laws in International Humanitarian Law on women. Bringing a UN resolution on NIAC can work to fill the gaps of protection of women in this zone.

Key words: Women, Non international armed conflict, feminism

DECISIVE ROLE OF ROMAN LAW IN DEVELOPMENT OF INTERNATIONAL LAW

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Abstract – Roman Law has been generally conceived by legal academia as a system of private law, which mainly deals with contract, marriage and property. Though it has been not much widely discussed, Justinian’s “Corpus Juris” contains a good deal of Roman Public Law. The usage of this legal treatise was confined to Roman Empire and it was faded into oblivion by the decline of Rome in 5th century A.D. The research problem of this research primarily deals with the fact that how Roman Law caused to create the pillars of International Law in the West and it further examines how Romans practiced customs with foreign nations and how those customs turned into be legal norms in coming years by making impacts to the development of International Law. The term Jus Gentium in Roman Law had a different meaning in practice. It designed primarily for the litigation among foreigners and in addition to that it included rules of International Law such as sanctity of envoys or the captor’s right to war booty. In the post Roman era famous Jesuit

scholar in Law Francesco Suarez (1548-1617) was the first modern jurist to apply “Jus Gentium “as International Law. Apart from that when Grotius developed the international law in 17th century his works were mainly influenced by Roman legal thinking. For instance the concepts of jus ad bellum and jus in bellum (Right to War) were developed under the thread of Roman notion of bellum justum (Just War). The doctrinal approach will be applied to the assessment of this research on the basis of Roman legal texts and historiography. At the end of this work reader will get a clear understanding of how the modern roots of International Law were shaped through the annals of Roman juridical contribution.

Keywords: Roman Empire, Public Law, International Law, Just War

ANALYSIS OF DEPENDENCIES & LEGAL BARRIERS ON DIGITAL FORENSIC INVESTIGATIONS IN SRI LANKA

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Abstract— The objective of this research is to investigate dependencies and legal barriers that arise when conducting digital forensic investigation in Sri Lankan context. Since the Sri Lankan legislations on computer crimes are now outdated and were written before the era of computer forensics, computer forensics experts face major problems during computer forensic investigations. Due to this issues, lot of court cases were delayed for over years and still open for interpretation. To firmly analyse this prevailing issue, Evidence (Special Provisions) Act, Electronic Transactions Act, Payment Device Fraud Act, Computer Crime Act and Mutual Assistance in Criminal Matters Act were analysed against the basic digital forensic process (acquisition, preservation, analysis and presentation). Empirical evidence form digital forensic engineers were also gathered using questionnaires. Seven issues were recognized during this research

and they are, Cross Jurisdictional Conflicts, Cloud Computing Challenges, Need of National Certification Authority, Need of Legally Accepted Forensic Software Tools, Stored Communication, Anonymization and Technical Competencies of digital forensic experts. These issues were discussed in detail with the appropriate recommendations and suggestions to improvements. New domains of forensics analysis which need to be included in the current legislative system were also discussed during this research. By referring this research, computer forensics experts would be able to identify techniques to produce legally admissible evidences to the courts.

Keywords: Digital Forensic Dependencies, Legal Barriers on Digital Forensic, Sri Lankan Legislations on Digital Forensic Investigations

ILLEGAL UNREPORTED UNREGULATED FISHING BY SRI LANKAN FISHERMEN: LAW IMPLEMENTATION MECHANISM AND FISHERS' ATTITUDES ON COMPLIANCE

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Abstract –This paper discusses the mechanism of the national legal framework for combatting IUU fishing and suggests strategic improvements based on fishers' attitudes on compliance. A questionnaire was prepared and forwarded to the legal department of the Department of Fisheries and Aquatic Resources (DFAR) to get an insight on the current law implementation mechanism to combat IUU fishing at national level. A separate questionnaire was forwarded to groups of fishermen in Kudawella, Dondra, Kalpitiya and Cod-Bay fishing harbors to observe the level of their attitudes on compliance. Fisheries and Aquatic Resource Act No 2 of 1996 is the main legal instrument that regulates fishing operations in the Sri Lankan EEZ. No 35 of 2013 amendment and certain extraordinary gazettes assert the rules for fishing operations in the high seas. Push net, moxy net, monofilament net, gill net and trammel net on coral reefs have been pronounced as illegal fishing methods in Sri Lanka. High seas fishing operations are monitored by Vessel Monitoring Systems (VMS) and log books. VMS, catch data regulations, and high seas fishing operation regulations are among the major regularity measures. There are awareness programs organized by the DFAR to enhance the level of awareness of fishermen on

compliance. Poaching of Sri Lankan fishermen in other countries EEZs could be limited, due to the availability of new technological and navigational equipment to identify the position of the boats. However, the number of cases of violations has been increased within the last three years. In 2015, Sri Lankan export fisheries were banned by the EU, due to the records of IUU fishing by Sri Lankan fishermen. Miscommunication and unawareness of fishermen, unavailability of sufficient VMS systems, lack of proper mechanism for making complains and technicality of the compliance procedure may hinder the expectations of effort to combat IUU fishing. Increased number of VMS boats, onboard inspectors, enhancing the communication between fishermen and the DFAR are viable solutions to increase the level of compliance. Poaching of Indian fishermen in Sri Lankan EEZ is a major threat to the sustainability of fish stocks in the areas under national jurisdictions, which needs proper monitoring and surveillance to control.

Keywords: IUU fishing, law implementation, compliance

OCCUPATIONAL SAFETY AND HEALTH OF SRI LANKAN EMPLOYEES: WITH SPECIAL REFERENCE TO FACTORIES ORDINANCE AND WORKMEN'S COMPENSATION ORDINANCE

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Abstract— With the globalization of the world's economies, changes in the world of work and consequently in the scope of occupational safety and health have been occurred in both positive and negative ways. As a vast domain, occupational safety and health is a key element in attaining sustained decent working conditions and strong preventive safety cultures. A large number of areas of Industrial Law activities include an occupational safety and health or occupational safety and health-related component, among them employment, child labour, informal economy, gender mainstreaming, labour statistics, labour inspection and maritime safety, HIV/AIDS and the world of work, and international migration. In Sri Lanka, Factories Ordinance No 45 of 1942 is obligatory for the employer to ensure health, safety and welfare of persons at workplace. It specifies that safety of the worker must be ensured by installing and main-

taining the machinery, mechanisms, transmission apparatus, tools, equipment and machines in best possible safety conditions. Moreover, Workmen's Compensation Ordinance No 19 of 1934 provides the payment of compensation for injuries suffered by workmen, including the causing of death in the event of injuries or death resulting out of or arising out of course of employment. Nevertheless, the existing legal framework on occupational health and safety does not cover all aspects and still under lacunas. This study suggests new recommendations to improve such safety and health of workers and to ensure decent working conditions in order to draft a new legal notion. For that, it is used a mixed approach with both qualitative and quantitative approaches.

Keywords: Occupational health and safety, Decent working conditions, Compensation

THE NEED FOR A REGIONAL MECHANISM TO COMBAT PIRACY AT SEA IN THE SOUTH ASIAN REGION

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Abstract— This research paper explores whether there is a need for a regional mechanism to combat piracy in South Asia with special reference to Sri Lanka. Thus, the objectives of this paper revolve around identifying whether there is a need to implement a regional anti-piracy mechanism, its practicality and the challenges that has to be faced if such regional mechanism is to be introduced. The methodology adopted in this paper is a comprehensive analysis of available literature on the matter of global piracy and regional mechanisms. The literature review explores using available statistics if there is an urgent need for a regional mechanism to combat piracy in South Asia. It draws the attention to successful regional mechanisms of other regions of the world. It will also briefly look in to the subject matter with the standpoint of benefits to Sri Lanka if such a mechanism is implemented. The results and analysis of available statistics indicate that the number of pirate attacks in the Indian Ocean especially near India and

Bangladesh mainly, is increasing through the past decade. This may be due to a spill over effect from the piracy hotspot in the Southeast Asian region like the Malacca strait. Even though the countries of the South Asian region are part of the regional agreement known as the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAPP) for all Asian countries, it is observed that they need a sub-regional mechanism that is sensitive to the geographical, political, economic concerns of the South Asian region. In conclusion it is evident that there appears to be a need to form a regional mechanism to combat piracy in the South Asian region. This could be achieved through the existing institution for regional corporation namely South Asian Association for Regional Co-operation (SAARC).

Keywords: Piracy at Sea, Piracy in South Asia, Regional anti-piracy mechanisms

TO WHAT EXTENT THE PROTECTION OF INTELLECTUAL PROPERTY RIGHTS ARE INVOLVED IN 'BIO PIRACY' IN SRI LANKA

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Abstract - Bio piracy could be identified as the process of claiming patents to restrict the general use of exploited plants and animal species for the purposes of bio prospect. This process is interrelated to the principle of intellectual piracy which the world considered it as an international principle to be applied irrespective of the different protections provided under the Domestic Law. The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS), as the international legal framework which provides standards for the intellectual property rights has created a conflict of interests among developed and developing countries, with regard to the protection of biological resources and traditional knowledge of countries. The main objective of this research is to analyze the misappropriation of the propriety rights by the developed countries over the biological resources in the developing countries, special reference to the Sri Lankan context, within the framework of TRIPS. The research problem is to identify the contentious discard between the international laws and domestic laws in relating to protection of intellectual property rights involved in 'Bio Piracy' in Sri Lanka and how such dissension of laws has created the conflict between environmental interests and economic interests of the country. This

research will also analyze the legal and practical issues relating to implementation of both domestic and international laws in protecting the intellectual rights of biological resources in Sri Lanka. The research also would engage in analysis of the provision of TRIPS Agreement which have created serious challengers relating to the rights in area of bio diversity in Sri Lanka and how such provisions have exceeded the applicability of relevant domestic legal regime. Moreover, the focus of this research would also include the significance of developing a sui generis system to protect the intellectual rights of biological resources in Sri Lanka, with the objective of critically analyzing of how to develop a domestic legal framework which amalgamate with the TRIPS Agreement. The research methodology of the research would involve the legal research methodology and it is based on qualitative data obtained by primary sources including statutes, international instruments and constitutional provisions. The secondary sources of law which involve in the research will be scholarly articles and text books.

Keywords: Bio Piracy, genetic resources, intellectual Property rights

A GRAPPLE FOR STANDING OUT RATHER FITTING IN: SRI LANKAN CLAIM TO THE COMMISSION ON THE LIMITS OF THE CONTINENTAL SHELF

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Abstract—Continental shelf is one of the maritime zones which consist of numerous rich mineral deposits, oil, gas and fisheries. The commercial value attached to this particular zone is gigantic. In consequence every state tries to extend their continental margin in order to exploit and grab as much as they can make out of it. A state is entitled to establish their outer edge of the continental margin by two ways. One is Article 76(4) of the Law of the Sea Convention (LOSC) 1982 which cannot be utilised to claim more than 200nm and the second is by Statement of Understanding (SOU) contained in annex 2 to the Final Act of the 3rd UN Conference on Law of the Sea 1980 which entertain claims of the states having special geological and morphological characteristics. Sri Lankan continental margin also displays the requirements described in SOU therefore it submitted their claim based on the interpretation of SOU to avoid the inequality that would result if it go by Article

76(4). This paper will discuss the Sri Lankan claim to the Commission on the Limits of the Continental Shelf (CLCS) and the claims submitted by Kenya, Myanmar and Bangladesh. The aims of the study are to identify the existing legal framework regarding the claim, to examine why the negotiations were slow moving and to provide recommendations to develop our claim. Authors use secondary sources such as library resources and internet inclusive of books, journal articles, cases and other related statutes as main sources of this research. The strengths and weaknesses of the claims made by the other countries to the CLCS are analysed for providing recommendations to the study. The comparative study will assist in uncovering what is unseen of our claim.

Keywords: Continental shelf claim, Sri Lanka, Strengths, Weaknesses

WRONGFUL CONVICTIONS AND REMEDIES TO MINIMIZE IMPRISONMENT

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Abstract—Wrongful conviction is generally viewed as the conviction of a factually innocent person. It denotes the exoneration of an individual who was convicted of a crime that he or she did not commit or have any stake in. In the present context, there are so many innocents convicted wrongfully in Sri Lanka and a large number of cases have been reported regarding wrongful conviction of innocents. Wrongful accusations (e.g., by eyewitnesses, forensic scientists, or the police) include errors in the process of administration of justice that is supposed to correct errors and prevent wrongful convictions (e.g., errors by counsel or judges or errors resulting from deficiencies in the institutional framework for the conduct of trials or review of convictions). It is evidenced that large number of innocent persons are imprisoned due to wrongful convictions not even in Sri Lanka but in other jurisdictions as well. Therefore, time has come to take necessary actions to prevent such wrongful imprisonments and to produce real offenders to the court and to charge them accordingly for their criminal activities. Thus, this research study is focused on identifying the causes of wrongful convictions and

making recommendation for mechanism to check the accuracy of the verdict or act and to catch the real offenders in criminal justice system. The qualitative research method will be used for this study. Under the qualitative research method data will be collected through secondary sources. Secondary data will be collected from published books, journals, theses and online data from websites, e-databases, e-journals, e-theses and e-books. Collected data will be analyzed through its strengths, weaknesses, opportunities and threats to prevent imprisonment of innocence. In this context, it will reveal the existing strengths to prevent the wrongful convictions as well as weaknesses. In one hand, it will discuss the opportunities the victims have to prove their innocence. On the other hand, it discusses existing threats for victim, if their innocence is proved. In this research study, it is expected to find out a concrete solution to wrongful convictions and to educate public on how to escape from such convictions and to justify the criminal justice system.

Keywords: Wrongful conviction, Imprisonment of innocence, Criminal justice system

“CURSE OF FLYING DEATH AND DILEMMA OF LAW”: CHALLENGES OF INTERNATIONAL HUMANITARIAN LAW BEFORE DRONE ATTACKS

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Abstract - Usage of new technology in warfare has bamboozled the existing customs and etiquettes in battlefield. Especially the innovation of Drone as a lethal weapon in the battle field has created much complexities in International Humanitarian Law. The greater problem of Drones is that it unlike other weapons or mass destructive methods, entirely do not possess the military features. With regard to the current legal implications Drones have not been regarded as a prohibited weapon by any international treaty or customary law. Neither Drone have been prohibited by the Article 8 of Rome statute as they do not exhibit any banned qualities such as causing indiscriminate harms or unnecessary sufferings. In fact Article 36 of Additional Protocol 1 of Geneva Convention states a new weapon could be acquired, if it is not prohibited by the protocol. This legal ambiguity has created a heavy loophole in the black letter law to legitimize

this deadly weapon. As a matter of fact number of issues regarding the nature of belligerents, whether Drone has ability to distinguish a military target from civilian arise and this paper’s main objective is to trace those legal lacunas in International Humanitarian Law regarding the usage of Drones in war. Methodology of the research will be based on a doctrinal approach and Geneva conventions, ICRC documents, additional protocol 1 shall be used as primary documents along with other available literature. The remedy that can be taken within International Humanitarian Law against Drones will be further discussed in this paper and it will enlighten the reader about the present challenge in IHL on Drones and the routine that has created this problem.

Keywords: Drones, Belligerents, Civilians, International Humanitarian Law

A STUDY ON STRENGTHENING THE LAWS ON GENETICALLY MODIFIED ORGANISMS IN SRI LANKA WITH SPECIAL REFERENCE TO THE PROPOSED REGULATORY MECHANISM

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Abstract—The agricultural and fisheries industries have traditionally been supportive of technological innovation, particularly in the field of genetic improvement. For decades, these industries have been mixing naturally the genetic traits of seeds and animals in the search of varieties that are able to express a desired trait. Genetically Modified Organisms (GMO) is a noteworthy step forward in the production of agricultural crops. Although this method is more efficient, a number of scientific evidence manifest the fact that “novel gene combination” may have health and environmental impacts that are not being adequately addressed at present. Thus a proper legal framework should be established to ensure that the quality of the imported and domestically produced GMOs are harmless to the human health and bio diversity of Sri Lanka. Despite the significance of this requirement, proposals for precise legislation are still in discussion stages. Hence, the main objective of this research is to evaluate whether the existing legal framework can be effectively utilised to ensure that the biodiversity and human health of Sri Lanka are not negatively affected by the importation and domestic synthesis of GM seeds and other products. The secondary objectives are to analyse the impact

of GMOs to various facets of a country, to analyse the steps taken in the international arena to combat the above mentioned issues, to examine the factors that may be prompting the delay of the enforcement of the said law and to give recommendations to the domestic legal framework in light of international standards. This research is carried in the form of a library based research and a qualitative research design is adopted. Case laws, statutes, conventions are used as primary sources whereas books, journal articles, conference papers, research papers, web based information, newspaper articles and other legal instruments and resolutions of international/regional institutions are used as secondary sources. The key findings of this research show that the existing laws can be utilized to a considerable extent in fortification of bio diversity and human health in Sri Lanka. Furthermore, this study seeks to propose several additions in light of the precautionary principle to achieve the ends that cannot be accomplished by utilizing existing domestic laws alone.

Keywords: Bio-safety policy, Genetically Modified Organisms (GMO), Living Modified Organisms (LMO), Biotechnology, Human Health

SILENT THREAT TO SRI LANKA'S BIODIVERSITY: LAWS RELATING TO INVASIVE ALIEN SPECIES

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Abstract— Incidents such as reduction of forge grasses that can be used by elephants due to rapid spreading of Lantana in Udawalawe National Park and growth of common gorse in Horton National Park indicate that there is a silent threat to the biodiversity of Sri Lanka. The spreading of invasive alien species has been identified as the main reason for the aforesaid threat. Invasive alien species are a part of alien species who will survive, inhabit and spread beyond their areas and purposes of introduction. The impact caused by these species is ranked as the second most serious threat to biodiversity of countries. Invasive alien species assessment conducted in 2016 states that there are 32 flora species and 7 fauna as species named as invasive alien species priorities in Sri Lanka. These species cause impacts in different sectors including biodiversity loss, economic effects and health issues. Invasive alien species (IAS) require expensive control and management with Rs 33 million spent between 2010-2014, the department of irrigation has incurred costs of Rs 324 million from 2008 on cleaning tanks, canals and water ways. Therefore, it is essential to have a specific set of laws to address the mass destruction of biodiversity caused by these species. The existing legal framework does not directly address this growing threat. The main objective of the research is to distinctly identify the legal principles and laws

that are applicable in this area. This area of study provides evidence of identifying the importance of soft law in the process of protecting the environment. The researcher attempts to highlight the contribution of International Environmental Law in this area and the importance of a synergy between law and biodiversity protection mechanisms. Furthermore, Sri Lankan context is discussed in the research. In Sri Lanka, there are certain laws indirectly addressing the issue of invasive alien species. However, the unavailability of a specific legislation to control or eradicate invasive alien species and to protect the biodiversity of the country undermines the policy initiatives. The author seeks to analyse the existing legal framework and intends to suggest recommendations for effective implementation of the laws. Legal research methodology is followed in this research. Qualitative analysis of data is used in the research. Both primary and secondary data are used in the research. Primary data includes international conventions, laws and books, journal articles and web articles are used as secondary sources. The legal framework in South Africa and European Union was used to suggest recommendations.

Keywords: Invasive Alien Species, biodiversity loss, Environmental Law

PRIVATIZATION OF ARMED CONFLICTS AND INTERNATIONAL HUMANITARIAN LAW

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Abstract- From earlier times Private Military Companies (PMC) have become a popular phenomenon in armed conflicts around the world. However thus far, International Law have averted from creating a comprehensive legal framework that is especially needed in recognizing the status of people who provides services under PMC to uphold accountability. Today the international community has laid down several international documents with regard to the subject matter, focusing on responsibility and good practice of the PMCs. However a question arises on the legality of these documents. PMCs are today playing its role, which has attracted the attention of the international community for the reason of their recent activities around the world. Therefore there is a need of adopting a new legal phenomenon addressing the activities of the PMCs with respect to the laws of International Humanitarian Law (IHL).

In light of that, this paper will focus on the overview of the existing international laws with regard to PMCs. It will also critically analyse the existing international theories and documents in relation to the effects it would have on PMCs, with a special reference to its accountability and criminal responsibility. In this study qualitative data was used for the purpose of critical analysis. Based on such analysis both pros and cons were recognised. As a result it was discovered that there is a necessity to take initiatives to create an inclusive International framework that binds all participants of armed conflicts with reference to principles of IHL.

Keywords: International Humanitarian Law, Private military companies, Armed conflicts, Criminal responsibility

ANALYSIS ON DEFORESTATION AND ENVIRONMENTAL LAW IN SRI LANKA

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Abstract—Ever since human starts to walk in the earth they had a close relationship with the forest and their daily essentials were provided by the forest. But due to the expansion of civilization, forest lands were destroyed for agricultural purposes, development projects and for timber. Gradually human distant themselves from forests due the technological development they achieved and paid less attention to the protection of forests. Therefore, deforestation rate increased. As an island nation and a biologically hot spot, Sri Lanka had to face the environmental issue, “deforestation”. From the beginning of this nation there were rules and regulations relating to the protection of forests. Though there are laws relating to environmental protection somehow deforestation has become a major environmental

issue in the country due to its implication on biodiversity, water cycle, carbon cycle, etc. This research is carried out to examine “whether laws relating to deforestation are adequate to control the rate of deforestation?” Objectives of this research are to analyze the international and domestic laws prevailing in the country and to examine whether they are adequate enough to mitigate this issue, environmental impact of deforestation and finally to recommend solutions by referring into measures taken by other countries. This research would employ a quantitative analysis of primary sources and secondary sources. Primary sources would include conventions, case laws and secondary sources would include textbooks, journal articles and other electronic resources.

Keywords: Deforestation, Sri Lanka, Environmental law

LIABILITY FOR OMISSION IN PROSPECTUS UNDER THE COMPANIES ACT OF 2007: NEED FOR REFORMATION

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Abstract— Prospectus is a legally mandated document which reflects the status of a company which has offered securities to the public. Based on the information provided in the prospectus, the investors make their decisions as to whether or not accept the offer and purchase securities of that enterprise. As a result of this vital role played by prospectuses in inducing investors to invest in securities, it is of immense importance that the prospectus not only provide accurate information, but also do not omit any fact which is essential to make a proper decision. However, under the company law of Sri Lanka, although the liability for misstatements could be imposed on persons who are responsible for making the prospectus, there cannot be found any provisions which provide for liability for omissions. Nonetheless, with reference to other legal systems in the world such as India, the United Kingdom (UK), and the United States (USA), it can be seen that provisions relating to liability for misstate-

ments as well as for omissions are included in their relevant legislations. Hence this can be identified as a loophole in Sri Lankan company law regime owing to which a subscriber who has suffered a loss as a result of any omission lacks an effective legal remedy to claim compensation from the party who is responsible for such an omission. Therefore, this study recommends that the existing company law of Sri Lanka should be amended in order to include provisions relating to liability for omissions as well. The author used primary and secondary data such as statutes, judicial decisions, and web articles to achieve the objectives of analysing the company law regime of Sri Lanka in relation to the liability for omissions in prospectuses with a comparative analysis of other jurisdictions; India, the UK and the USA.

Keywords: Company Law, Prospectus, Liability for Omissions, Sri Lanka

INTERNATIONAL HUMANITARIAN LAW AND REGULATIONS TO PREVENT THE DEATHS AND INJURIES OF THE CIVILIANS DURING AN INTERNATIONAL ARMED CONFLICT

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Abstract - Armed forces in any country are expected to use special expert knowledge and skills to save the dignity of the state and its citizens without being negligent or without having failure and inappropriate commanding orders. Therefore, it should have a serious examination on the existing laws and specially, on the Geneva Convention Article 3 which has specially focus on the non-combatants in international conflict. Even though, there have been numerous types of laws and regulations, it is being noticeable that these are somewhat ineffective in the present war field. It could lead to a zero respect towards the law. In as much the objectives of this paper effort to examine the required standard of care by the international authorities, consider on the several articles and currently existing laws and regulations that have special regard on the protection of

unarmed civilians also, to identify the loopholes of the existing laws and provide suggestions on the existing laws. This research is a doctrinal type of research which reviews literature, analyzes case studies and books in the area of International Humanitarian Law. In the long run, there are millions of innocent civilians who have been trapped in many war effecting areas helplessly without any wrong on their hands. Therefore, it is one of a massive and also an important duty to rescue them immediately as soon as possible. The International Humanitarian Law as the supreme law for the international armed conflicts is having that noble duty of protecting innocent civilians in endanger no matter in any circumstances occur.

Keywords: International Humanitarian Law, Civilians, Litigations, Reforms

A GAME OF TITLES: THE EFFECTIVENESS OF THE IMPLEMENTATION OF THE CURRENT LAND TITLE REGISTRATION PROGRAMME UNDER THE REGISTRATION OF TITLES ACT NO. 21 OF 1998 IN SRI LANKA

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Abstract—A definite title to one's land is essential before one can reap the full benefits of such land. In order to obtain a definite title to a land, a landowner must register such land legally in order for him to fully enforce his rights to such land. The law relating to the registration of lands in Sri Lanka at present is governed under the law relating to 'registration of deeds' system in the Registration of Deeds Ordinance 1927 Sri Lanka. However, this system of registration of lands is fundamentally flawed and therefore was replaced with 'registration of title' system by the Registration of Titles Act No 21 of 1998. The land registration programme, popularised as 'Bim Saviya' was the programme implemented under this Act entrusted with the main task of registration of lands in Sri Lanka and issuing title certificates to such lands. However, this programme, ever since

its implementation has shown a very slow progress in the registration of lands in Sri Lanka. The objective of this study is to analyse the current land title registration programme in Sri Lanka in order to ascertain its effectiveness in registering lands and issuing title certificates to lands. The research uses doctrinal and non-doctrinal approaches to research. The non-doctrinal approach will analyse quantitative data collected so as to identify the loopholes in the present land registration programme implemented under the Title Registration Act and thereby to provide effective solutions to the slow procedure in land title registration.

Keywords: Title Registration, Land law, Sri Lanka, Bim Saviya

