

**Report of the Third Meeting of the Steering Committee of the Project on
International Courts and Tribunals**

**Lauterpacht Research Centre for International Law, Cambridge
12 – 13 November 1999**

The third meeting of the Steering Committee of the Project on International Courts and Tribunals (PICT) was held at the Lauterpacht Research Centre for International Law in Cambridge on 12 and 13 November 1999. The following members of the Steering Committee attended the meeting:

Laurence Boisson de Chazournes
James Crawford
Florentino Feliciano
David Kennedy
Monica Pinto
Allan Rosas
Tullio Treves

Daniel Bethlehem, Pierre Klein and Sir Arthur Watts, QC were also invited to participate in the meeting as observers.

The following PICT staff were present: Shepard Forman, Philippe Sands, Cesare Romano, Ruth Mackenzie, Yuval Shany, and Thordis Ingadottir. The meeting was chaired by James Crawford.

Before the beginning of the meeting Florentino Feliciano and Tullio Treves gave a seminar as part of the Research Centre's Friday Lecture series, addressing procedures and recent developments in the World Trade Organisation Dispute Settlement Body and in the International Tribunal for the Law of the Sea respectively.

SUMMARY OF THE MEETING

The following issues were discussed at the meeting of the Steering Committee: -

1. Review of PICT activities 1998 – 1999
2. Provision of public international legal advice and assistance on non-commercial basis to developing countries and other actors
3. Future work 1999 – 2000
4. Other business

1. Review of PICT activities 1998 – 1999

Members of the PICT project team reported on work carried out during the past year.

(i) Publications

(a) Manual on International Courts and Tribunals

Philippe Sands informed the Steering Committee members that the *Manual on International Courts and Tribunals* had been published by Butterworths in Autumn 1999. Butterworths had made available to the Project, free of charge, 500 copies of the Manual for distribution to government and non-governmental legal advisers in developing countries. FIELD was currently in the process of compiling a list of recipients of the Manual and welcomed suggestions from Steering Committee members (a list is set out at Annex A).

Philippe Sands reported that PICT was also compiling a volume of *Basic Documents on International Courts and Tribunals* to be published as a companion volume to the Manual. It was anticipated that this volume would be submitted to the publishers in Spring 2000.

There was some discussion as to the possibilities of translating the Manual into French and/or Spanish, and as to the possible content of future editions of the Manual. It was agreed that PICT would explore with particular institutions, suggested by Steering Committee members, the possibility of collaborating on translations of the Manual into French and Spanish in due course. Suggested partners include the Centre de Droit International (Université Libre de Bruxelles) and the Institut des Hautes Etudes Internationales (Université de Paris II). In relation to future editions, the Steering Committee considered whether the content of the Manual should be expanded so as to include a review of the case law of the various tribunals relating to their procedures. While there was some support for this idea, it was generally agreed that this would constitute a major undertaking and that at this stage the Manual could serve a useful purpose as a more general reference to a range of tribunals.

(b) International Criminal Courts: the Making of the Rome Statute

Cesare Romano reported on the role of PICT in the preparation of the above publication, edited by Roy Lee. He also reported that PICT had purchased 200 soft-cover copies of this book for distribution through the project. 110 copies were distributed to people in the PICT contact list, which includes diplomats, academics, practitioners. 20 were sent to international courts and tribunals. 18 to the PICT Steering Committee members. Finally, 40 were granted to the students of the Gaborone School on International Criminal Jurisdictions, which met on October 11-22 in Gaborone, Botswana. The Steering Committee considered other possible avenues for distribution of the book.

(c) NYU Journal of International Law and Politics (Vol. 31, N.4)

Cesare Romano presented the first copy of the NYU Journal of International Law and Politics special issue containing the results of the symposium co-sponsored by PICT and the NYU School of Law (NY, October 1998) entitled "The Proliferation of International Tribunals: Piecing Together the Puzzle". The issue contains pieces by B. Kingsbury, J. Charney, C. Romano,

E.Petersmann, P.-M. Dupuy, T. Treves, J. Jackson, M. Pinto, E. Benvenisti, G. Danilenko, G. Abi Saab.

The Center on International Cooperation has ordered 400 copies of the journal for distribution through the PICT network. 40 copies have been sent to international courts and tribunals.

(ii) PICT Courses on International Courts and Tribunals

Philippe Sands reported on the first PICT Course on International Courts and Tribunals which was held from 21 – 25 June 1999 in London. The course brochure was distributed to Steering Committee members. The course was organised jointly by PICT and *Justice*, which was responsible for sections of the course relating to human rights tribunals. More than 100 participants had taken part in the course over the week. The organisation of a second course in 2000 was discussed. It was suggested that this might be of two days duration, and that a further one-week course might be held in 2001. One participant suggested that the 2000 course might be organised in July back-to-back with the meeting of the International Law Association in London.

The Steering Committee also discussed other potential collaborators for future PICT courses. It was reported that Yuval Shany had taken part, on behalf of PICT, in a course for diplomats convened by UNITAR in September 1999 in Geneva. UNCTAD had also approached PICT regarding possible collaboration in capacity-building activities relating to dispute settlement in the fields of trade, intellectual property rights and investment. Other possible collaborators which were suggested by participants at the meeting were the International Development Law Institute and the Commonwealth Secretariat and the Centre for Human Rights of the University of Pretoria. Additionally, there had been approaches from Mexico and South Korea for developing regional courses, and these were being followed up.

(iii) PICT Website

Cesare Romano reported that the PICT website was now up and running <www.pict-pecti.org>. Precise figures on the number of visits was hard to gauge, although it appeared that the site was getting around 1500 visits a day, going up to 4000 visits a day on some occasions.¹ The Steering Committee considered what “added value” the PICT website offered which was not available on other similar websites. In this regard, it was recognised that the *News* section of the website, which provides, *inter alia*, regular updates on the case law of the various courts and tribunals was a particularly significant and novel feature which should be more widely publicised. It was also noted that over the long term, it is hoped that a searchable database of the full texts of judgments of the various tribunals can be added to the website.

(iv) Research Matrix

¹ These figures only became available after the meeting. By February 2000, the PICT website had received more than 83, 000 hits, from at least 39 countries.

Cesare Romano gave a demonstration of the PICT Research Matrix which will shortly be added to the Project website. The Matrix is the first comprehensive, systematic and holistic mapping of the international judicial system. It encompasses 18 international judicial bodies, grouped in six clusters according to their geographical scope and/or subject-matter jurisdiction. For each institution, 29 issues, grouped in five categories, have been mapped, for a total of 522 individual entries. It is fully interactive and includes 20 graphs summarizing the information provided.

Printouts of the information contained in the Matrix and screenshots of the various pages have been mailed to all international courts and tribunals. The Steering Committee decided that before the Matrix is made available to the public, courts and tribunals should be given adequate time to review and comment, but that launching should not take place later than beginning of January 2000.

The Steering Committee recommended also that legal advice be sought to ensure PICT copyright and to formulate an adequate disclaimer.

2. Provision of public international legal advice and assistance on non-commercial basis to developing countries and other actors

In this part the participants noted the apparent need for international legal advice and considered whether and how such advice might be made more widely accessible, either *pro bono* or on a non-commercial basis.

Sir Arthur Watts QC outlined the terms for a proposal by which experienced international law practitioners might make themselves available for such a scheme. The proposal assumed that administrative costs should be minimised. Essentially the proposal envisaged the maintenance of a list of participating lawyers which would be maintained by an existing organisation or entity. Participation in the scheme would be limited to experienced practitioners and inclusion would be based on objective criteria. Each lawyer participating in the scheme would indicate how many hours of time he or she would be prepared to contribute under the scheme in any given year. The availability of advice given under the scheme would not be limited to litigation but would also be available for the avoidance of disputes, i.e. in the pre-litigation phase.

The proposal was discussed by the Group, its general thrust being welcomed. A number of potential difficulties in the operation of such a scheme were identified, and some tentative solutions proposed.

In discussions on this issue, the participants considered three sets of issues: *firstly*, whether there was a need for such a scheme; *secondly*, what form such a scheme might take; and *thirdly*, the implications of such a scheme for broader issues related to professional ethics and the “international bar”.

In relation to the need for such a scheme, the participants first considered the *status quo* in relation to the provision of advice and assistance for disputes before particular tribunals. For example, the meeting considered the status of the Trust Fund of the International Court of Justice. Participants also considered recent activity toward the

creation of an Advisory Centre to provide advice and assistance to developing country Members of the World Trade Organisation (WTO) relating to potential or actual disputes under WTO Agreements.

In relation to the type of scheme which might be envisaged, the participants discussed whether a simple referral system (e.g. the maintenance of a list) or a managed system, incorporating an initial screening process, might be preferable. They also considered the types of assistance which might be required, and the target groups which any such scheme might aim to assist (e.g. states, individuals).

In relation to questions of professional ethics and the “international bar”, the Steering Committee discussed briefly, *inter alia*, conflict of interest issues, the role of secretariats in giving legal advice, the role of experts as advocates, and the rules of various tribunals as to who is entitled to appear before them.

3. Future Work 1999 – 2000

(i) Basic documents in International Courts and Tribunals

As noted above, a volume of *Basic Documents on International Courts and Tribunals* is currently being prepared and it is anticipated that this will be published during 2000.

(ii) Research

(a) International Criminal Court

Thordis Ingadottir reported on ongoing activities of PICT relating to the development of the rules of procedure of the International Criminal Court. PICT is involved in the preparation of papers on the Victims and Witnesses Unit of the Court, on the financing of the Court, and on the Trust Fund foreseen by Article 79 of the Rome Statute.

One question which has arisen is the role which PICT should adopt in the ICC process – e.g. should PICT take positions on particular issues or should it perform an essentially informative role? Other issues which needed to be addressed are how PICT should take decisions as to the subject matter of its discussion papers and authorship. The Steering Committee considered whether or not they should form a sub-committee to review and resolve such issues. However, it was decided that these issues should be addressed by the Project’s management.

(b) Research and Monograph Series

A list of potential topics for PICT research and monographs was distributed for the consideration of the Steering Committee. Ruth Mackenzie indicated that some of these topics had been included as proposed research projects in a proposal submitted to the Volkswagen Foundation by PICT, with the University of Munich, in Summer 1999, the results of which were pending.

At this stage, the general view was that the emphasis should be on shorter “think-pieces” or research papers which could be distributed under the auspices of PICT, initially through the website. The Steering Committee recommended that a short note should be drafted indicating the nature and purpose of PICT’s discussion papers. At this stage, the following issues have been identified as potential subjects of PICT research papers: -

- 1) Compliance with judgements of international tribunals
- 2) Submission of *amicus curiae* briefs to international courts and tribunals
- 3) The legal effect of provisional measures orders of international courts in national courts
- 4) The independence of the international judiciary
- 5) Costs orders of international tribunals
- 6) The proper relationship between national and international courts
- 7) The development of a quasi-judicial compliance system for the Kyoto Climate Change Protocol
- 8) Reform of the WTO Dispute Settlement System
- 9) Women and International Dispute Settlement
- 10) Collegiality in international tribunals
- 11) Developing countries and international judicial bodies

In a number of instances, potential authors or collaborators for these papers have already been identified, and the PICT project team will seek appropriate collaborators for the remaining papers.

4. Funding

Currently PICT is financed with funding from the Ford and the John D. and Catherine T. MacArthur foundations (Center on International Cooperation) and the William and Flora Hewlett Foundation (FIELD). A request for funding has been submitted by FIELD to the Volkswagen Foundation, the results of which are pending.

The Center on International Cooperation is currently using its core funding to run PICT and Shepard Forman pointed out that, despite the good-reputation PICT has acquired so far, attempts to diversify sources of financing have had modest results. Members of the Steering Committee have pointed out that this might be due to a general shift in interest of traditional funders from international law to other areas of international relations.

5. Other Business

A member of the Steering Committee indicated that the University of Geneva intends to host a conference on Intergovernmental Organizations and Dispute Settlement at the end of 2000 or the beginning of 2001. The conference would explore the role of intergovernmental organizations as actors, arenas and legislators in relation to dispute settlement. It was suggested that PICT and the University of Geneva should

collaborate in the organisation of the conference, and that the next meeting of the Steering Committee could be scheduled to coincide with conference.

In relation to other potential collaborations, it was suggested that PICT might explore collaboration with the Hague Academy External Programme and the programmes of the International Development Law Institute.

5. Close of the Meeting

The meeting was closed at 3.30 pm on 13 November 1999. PICT expressed its gratitude to the staff of the Lauterpacht Research Centre for International Law for their assistance in the organisation of the meeting.