

Università degli Studi di Milano – Facoltà di Scienze Politiche

INTERNATIONAL COURTS AND TRIBUNALS: ISSUES OF INTERNATIONAL LAW AND ORGANIZATION

Seminar

Dr. Cesare P.R. Romano, Center on International Cooperation, New York University, Project on International Courts and Tribunals, Assistant co-Director.

One of the most recent and striking features of contemporary international relations is the flourishing of international courts and tribunals, their transformation and specialization, and the opening to non-state entities (e.g. individuals, legal persons, NGOs, etc.). In the last decade of the twentieth century, almost a dozen international judicial bodies have become active or have been extensively reformed, compared to only about six or seven previously populating the international scene. At the same time, the number of States accepting the jurisdiction of these bodies (either implicitly or, when necessary, by way of expressed statements) has increased, and fora where only states can appear have become the exception rather than the rule.

This seminar articulates on three levels: historical, political and legal. First, it illustrates the way in which the so-called “international judicial system” has expanded to present proportions and which factors have influenced its development. Second, international judicial bodies are presented as international organizations, addressing issues of organization and administration of justice. Third, international judicial bodies are studied as instruments for the implementation, clarification and development of international law. Both normative and procedural issues will be considered.

Lesson 1 (Tuesday, December 11, 2001, 11AM - 1PM)

Introduction and methodology. Explanation of basic concepts and terms

The development of the international judicial system: An overview

- Rekindling of Arbitration: From the Jay Treaties to the Permanent Court of Arbitration
- The institutionalization of international justice: From the Permanent Court of International Justice to the International Court of Justice.
- Specialization of international judicial bodies: Human Rights Courts, the Law of the Sea Tribunal, the General Agreement on Tariffs and Trade/World Trade Organization Dispute Settlement System.
- Regional economic and political integration agreements and their courts: the European Court of Justice model.
- The latest development: International Criminal Courts and Tribunals

Lesson 2 (Wednesday, December 12, 2001, 9AM – 11AM)

Fundamental features of international judicial bodies:

- Established by a treaty
- Consent to jurisdiction
- Independent Judges
- Predetermined rules of procedure

- Binding Outcome
- International law as proper law
- States and/or International Organizations can be parties

Lesson 3 (Monday, December 17, 2001, 11AM – 1PM)

International judicial bodies as international organizations

Structure

- Judges: how they are chosen and guarantees of their independence.
- Administration: The Registry
- Representation before international judicial bodies: the “invisible international bar”

Relationship between the judicial organ and the political organs of the organization

Lesson 4 (Tuesday, December 18, 2001, 10AM – 12PM)

Legal issues

Typology of jurisdictions

- Contentious
- Advisory
- Appellate
- Preliminary
- Administrative
- Criminal

Locus standi: Access and utilization

- States: Developed and Developing Countries
- International Organizations
- Legal and natural persons
- Non-governmental Organizations

Procedure

- The written and oral pleadings and the hearings
- Amicus curiae
- Incidental jurisdiction (interim measures, orders, warrants, etc.)
- The judgment

Lesson 5 (Thursday, December 20, 2001, 11AM – 1 PM)

Legal issues (contd.)

Remedies in international judicial bodies
Execution of decisions

Conclusions

Towards and International “Judicial System”? Advantages and drawbacks of an anarchical system
New Trends

Università degli Studi di Milano – Facoltà di Scienze Politiche

**INTERNATIONAL COURTS AND TRIBUNALS:
ISSUES OF INTERNATIONAL LAW AND ORGANIZATION**

Seminar

Readings for the Seminar

All students of the course are required to familiarize themselves with the basic provisions regulating the work of six main international judicial and dispute settlement organs: International Court of Justice (ICJ), European Court of Human Rights (ECHR), European Court of Justice (ECJ), International Criminal Court (ICC), International Tribunal for the Law of the Sea (ITLOS), and the World Trade Organization's (WTO) dispute settlement system. Ideally, that should be done before the beginning of the seminar. We will look to the practice of other bodies where appropriate.

Hard copies of these provisions will be made available in advance of the seminar to all participants. They are the relevant chapters of Sands, P./Mackenzie, R./Shany, Y., Manual on International Courts and Tribunals, Butterworths, London, 1999, Vol. 1, and Vol. 2 (forthcoming).

Students are also encouraged to visit the Project on International Courts and Tribunals' website (<http://www.pict-pcti.org>), and in particular study the PICT Matrix (<http://www.pict-pcti.org/matrix/matrixhome.html>)

Basic Documents

ICJ:

UN Charter, Articles 92-96

Statute of the Court (1945)

Rules of the Court (1978)

Resolution Concerning the Internal Judicial Practice of the Court (1990)

Web site: <http://www.icj-cij.org/>

ITLOS:

UNCLOS (1982)

Statute of the Tribunal (Annex VI to UNCLOS)

Rules of the Tribunal

Guidelines concerning Preparation and Presentation of Cases

Resolution on the internal judicial practice of the Tribunal

Web site: <http://www.un.org/Depts/los/>

WTO Appellate Body:

WTO Agreement (1994), Arts. III-IV

Dispute Settlement Understanding (Annex 2 to WTO Agreement)

Working Procedures for Appellate Review (1997)

Rules of Conduct for the DSU (1996)

Web site: http://www.wto.org/english/tratop_e/dispu_e/dispu_e.htm

ICTY:

Statute (1993, SC Res 827)

Rules of Procedure and Evidence

Web site: <http://www.un.org/icty/>

ECJ:

EC Treaty

Statute of the Court of Justice of the EEC

Rules of Procedure of the Court of Justice of the European Communities

Web site: <http://europa.eu.int/cj/index.htm>

ECHR:

EHR Convention (as amended by Protocol 11)

Rules of Court (1998)

Web site: <http://www.echr.coe.int/>

All students are required to read:

Sands, Ph. / Klein P., Judicial and Quasi-Judicial Functions, in Bowett's Law of International Institutions, London, Sweet and Maxwell, 2001, pp. 337-438.

Moreover, students can select one of these clusters of readings (note that some readings are offered as alternative to other readings in the cluster)

Cluster 1 (historical/political)

- Caron, D. "War and International Adjudication: Reflections on the 1899 Peace Conference" 94 American Journal of International Law (2000), pp. 4-30.
- Aldrich, G.H./Chinkin C., "A Century of Achievement and Unfinished Work" 94 American Journal of International Law (2000), pp. 90-98.
- Abbott, K.W., Keohane, R./Moravcsik, A./Slaughter, A.M., Snidal, D., "The concept of legalization", 54 International Organization (2000), pp. 401-419.

Cluster 2 (New Trends / Legal System-non System)

- Philippe Sands, "After Pinochet: the proper relationship between national and international courts", in L. Boisson de Chazournes and V. Gowlland-Debbas, The International Legal System in Quest of Equity and Universality: Liber Amicorum Georges Abi-Saab (2001), at 699-716.

plus

- Romano, C., "The Proliferation of International Courts and Tribunals: The Pieces of the Puzzle", 31 New York University Journal of International Law and Politics (1999), pp. 709-52.

or

- Treves, T., "Tendenze attuali nella soluzione delle controversie internazionali", Le controversie internazionali: nuove tendenze, nuovi tribunali, Giuffrè, 1999, pp. 3-67.

Cluster 3 (Practice of International law)

- Lauterpacht, E., "The International Lawyer as Judge", in C. Wickremasinghe, The International Lawyer as Practitioner, British Institute of International and Comparative Law, 2000, pp. 125-144.

plus

- Pellet, A., "The Role of the International Lawyer in International Litigation", in Wickremasinghe, C., The International Lawyer as Practitioner, British Institute of International and Comparative Law, London, 2000

or

- Rosenne, S., The World Court: What it is and How it Works, Kluwer, 1995, 5th ed., Chapters 2 (The UN and the Court), 3 (The Judges), 4 (Jurisdiction), 5 (How a Case is Tried) pp. 21-154.