

## **Project on International Courts and Tribunals (PICT)**

### **Note of the Sixth Meeting of the Steering Committee**

**University of Milan, 24 October 2003**

#### **Participants**

Steering Committee members: G. Abi-Saab (Chair); M. Arsanjani; L. Boisson de Chazournes; P-M. Dupuy; M. Pinto; B. Simma; T. Treves; N. Vajic; E. Valencia Ospina.

PICT: J. Almqvist; S. Forman; T. Ingadottir; R. Mackenzie; C. Romano; P. Sands.

#### **Opening of the meeting**

The Chair of PICT Steering Committee thanked Professor Treves and the University of Milan for hosting the meeting.

#### **Recent developments in international courts and tribunals**

The meeting began with a discussion of recent developments in relation to international courts and tribunals, and their implications for PICT's future work and priorities.

The Steering Committee discussed the question of the proper relationship between international courts and tribunals raised in a number of recent and ongoing cases. These include the possibility of the same case coming before different tribunals, different sets of proceedings arising out of the same factual circumstances, as well as cases in different international courts and tribunals addressing the same substantive legal issues. Among the examples raised were the following:

- The suspension of proceedings in the *MOX Plant* case before an UNCLOS Annex VII arbitral tribunal, pending consideration of relevant issues of European Communities law by the European Court of Justice;
- The potential relationship between international arbitral proceedings and the European Court of Justice (in relation to the ongoing arbitration between the Netherlands and Belgium concerning the Iron Rhine railway line);
- The relationship between the European Court of Justice and the European Court of Human Rights (for example, in relation to the *Senator Lines* case (terminated) and the *Bosphorus Airlines v. Ireland* case)
- Proceedings before the International Court of Justice and the International Criminal Tribunal for the Former Yugoslavia regarding events in former Yugoslavia;
- Judgments of and proceedings in various international courts on the issue of head of state immunity.

The possibility of inconsistent jurisprudence among Chambers of the International Court of Justice and the plenary Court was also raised..

The Steering Committee also discussed the *La Grand* decision on the legal effect of provisional measures orders. It was suggested that this might be an example of cross-fertilisation, or indeed competition, among international courts and tribunals, given that other tribunals had been endowed with explicit authority to make binding provisional measures orders. The issue of the legal effect of provisional measures orders of the European Court of Human Rights might be revisited in 2004. The findings of the ICTY and ICJ as to the status of Yugoslavia were cited as an example of harmony in jurisprudence of international tribunals.

The Steering Committee briefly discussed the project of the International Law Commission on fragmentation of international law, noting that the problem of the competing jurisdictions of international courts and tribunals was not initially part of the agenda of that project.

It was generally agreed that PICT could make a contribution in analysing these types of developments. For example, PICT could act to facilitate the dissemination of information on the jurisprudence of various international courts and tribunals. It was noted that any such endeavour would have to avoid over-simplification. Two separate but related possible PICT activities were considered. First, the simple collation and dissemination of relevant information on the jurisprudence of the various international courts and tribunals; and, second, in-depth treatment of the information through roundtables/colloquia etc. With regard to the latter, it was suggested that it might be timely to convene a conference to revisit the issues addressed in the 1998 NYU conference on proliferation of international courts and tribunals.

A number of other issues were also raised in the general discussion. For example, the relationship between international and national courts was highlighted, particularly in the context of the International Criminal Court and complementarity. It was noted that training would be needed for domestic judges in order to avoid “vertical fragmentation” of international criminal law. In relation to procedural matters, the implications of the process of the election of judges to the ICC, particularly the approach to gender representation, for other international courts and tribunals were raised. Similarly, it was suggested that the transparency of the ICC’s working arrangements in its establishment phase were worthy of further attention.

Finally, the role of the international judiciary in cases where there has been a failure or impasse in political decision-making was questioned, particularly with regard to the WTO dispute settlement system.

### **Review of PICT activities 2002-2003**

The Steering Committee had before it a report on PICT’s work in the period from July 2002 to October 2003.

### ***ILA Study Group***

It was noted that the next meeting of the ILA Study Group had been postponed until Spring 2004. In the meantime the Co-Chairs of the Study Group (Philippe Sands and Campbell McLachlan) would circulate revised materials for consideration by the Group. It was agreed that PICT Steering Committee members would be added to the circulation list for information on the ILA Study Group.

### ***Publications***

It was agreed that when new manuscripts were submitted to the Oxford University Press series editors (Sands, Mackenzie, Romano) for review, the Steering Committee members would be informed by e-mail. Any Steering Committee member who wished to do so could then indicate that he or she wished to see the manuscript.

It was also agreed that an e-mail would be sent to the Steering Committee members after the meeting inviting them to indicate priority areas to be addressed in the OUP series.

### ***Future PICT work***

The Steering Committee had before it a note outlining PICT's proposed research agenda for 2003-2005.

### ***Research***

The proposed work on the attitude of the US to international courts and tribunals was discussed. Attention was drawn to a forthcoming agora in the *Austrian Journal of International Law* and to a new book edited by Byers and Nolte, *United States Hegemony and the Foundations of International Law*.

It was suggested that the project should involve collaboration between American and European researchers, and that this might be an appropriate theme for a collaboration between NYU, the University of Michigan and the European Journal of International Law. The project should consider the historical (and positive) role of the US in relation to international courts and tribunals, rather than focusing solely on more recent events.

The theme was also considered as a potential topic for the next PICT conference (see below).

### ***2004 PICT Conference***

A number of possible themes were put forward for the next PICT conference in 2004. These included:

- the 1998 NYU "proliferation" symposium revisited;
- dispute settlement diplomacy (the use of dispute settlement to achieve political/diplomatic ends);
- the attitude of the US towards international courts and tribunals; and

- the role of individuals in international courts and tribunals (e.g. the reparations issue in the ECHR and ICC).

With regard to the “1998 revisited” theme, it was suggested that one useful approach might be to take one or two substantive issues, such as head of state immunity or the right to consular assistance, and to examine how that issue had been treated by different international courts and tribunals.

It was proposed that if the theme of the next conference were “1998 revisited”, then in addition to the Steering Committee, there should also be a separate side meeting of Steering Committee members to consider the research project on the US approach to international courts and tribunals.

### **New Steering Committee members**

The Steering Committee approved the appointment of Richard Falk and Michael Doyle as new members. A number of other suggestions were put forward as potential candidates for the Steering Committee. The Steering Committee members agreed to send further suggestions to PICT staff.