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A New Type of War
Michael Byers‡ on Blair and Bush's Attempt to Change International Law*

'I don't care what the international lawyers say, we are going to kick some ass.' According to Richard Clarke, that was George W. Bush's response when he was told that international law did not permit the retributive use of military force after the terrorist attacks of 11 September 2001.[1] In fact, there was no legal impediment to the intervention in Afghanistan. A sympathetic Security Council would have authorised the action, had it been asked. Even in the absence of a UN resolution, the right of self-defence allows a country to make a necessary and proportionate response. The US suffered a devastating attack, Osama bin Laden claimed responsibility, the Taliban endorsed his acts and refused to surrender him. Only two countries opposed the self-defence claim: Cuba and Iraq. The intervention itself was hardly challenging: American casualties were minimal, foreign assistance readily forthcoming, and the transition to a new government greatly facilitated by the UN. Within a year, fewer than 10,000 US troops remained in the country. Although bin Laden and Mullah Omar were still at large, the Afghan campaign had become little more than a distraction.

Iraq was where Bush learned that the international rules on the use of military force do matter, even to a country as powerful as the US. The ability to fight distant wars depends on access to foreign airspace and bases (last year, the Turkish parliament's reluctance to allow an invading army on its territory forced the Pentagon to abandon its plans for a northern front in Iraq). And foreign treasuries can lighten financial burdens: Germany and Japan paid much of the cost of the 1991 Gulf War.

Today, dissatisfied governments from New Delhi to Ottawa have left the US military stuck in Baghdad. Iraq needs a multinational constabulary of blue berets; instead, it has Apache helicopters, tanks and trigger-happy marines. Even Britain's participation in the war was not assured until, after two months of intense negotiations, Colin Powell obtained Security Council Resolution 1441 - a deliberately ambiguous document that provided enough of a legal toehold to support Blair's position in the subsequent domestic debate.

*(See **A New Type of War** on page 3)*

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* This article first appeared in the London Review of Books, vol. 26(9), 6 May 2004 [www.lrb.co.uk].
[1] Against All Enemies : Inside America's War on Terror by Richard Clarke (Free Press, 320 pp., £18.99, March, 0 7432 6024 4).

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President's Message

Spring/printemps 2004

Spring is of course a time of rebirth. In this spirit I am delighted to announce the appointment of the Council's new Executive Director, Ms. Jennifer Fieldhouse. Jennifer brings a wealth of enthusiasm, knowledge, skills and administrative know-how to this all-important position for the Council. The holder of a degree in political science from Queen's University, Jennifer has 11 years' experience in international development work, focused particularly in the areas of accountability, social development and water and sanitation programmes. Jennifer also has extensive conference planning and fundraising experience. Indeed the Council is already benefiting from her multitudinous skills, as she assumed the position of Executive Director on March 1. I invite all of you, when you are communicating with the Council's office or when you register for this fall's conference, to introduce yourselves to Jennifer and join me in welcoming her. We look forward to many years of fruitful collaboration.

Une des principales préoccupations de Jennifer et de l'exécutif à ce moment-ci, bien sûr, sera la planification du prochain congrès annuel. Les coprésidents du congrès, Don McRae et John Hannaford, ont déjà élaboré un programme préliminaire des plus attrayants sur le thème « La légitimité et l'imputabilité en droit international ». Vous en trouverez les détails ailleurs dans ce Bulletin. Parmi les points saillants, mentionnons le conférencier d'honneur Thomas Franck, qui parlera de la légitimité après les conflits au Kosovo et en Iraq, l'ambassadeur canadien aux Nations Unies Allan Rock, qui sera le conférencier invité lors du déjeuner du vendredi, Jonathan Fried, qui sera le conférencier invité lors du banquet, et John Jackson, qui dirigera les séances plénières consacrées à la souveraineté et la subsidiarité. De toute évidence, ce congrès sera l'événement de droit international de premier choix au Canada cette année, alors notez-en dès maintenant les dates dans votre agenda.

Message du président

Le congrès aura lieu du 14 au 16 octobre 2004, au Fairmont Château Laurier à Ottawa. Planifiez votre horaire de façon à pouvoir vous joindre à nous dans la capitale nationale pour une fin de semaine automnale à la fois agréable et intellectuellement stimulante.

Speaking of conferences, the Executive is currently considering an issue on which I would particularly welcome feedback from members. Due to a realignment of business plans, Kluwer International will no longer be publishing the Council's (or any other) conference proceedings. The Executive is in the process of considering new publication options, but has also taken this opportunity to examine more closely the format, role and importance of the conference proceedings. A wide array of suggestions have been made, including no longer publishing conference proceedings at all, maintaining the status quo, publishing in different formats (e.g. online), or enhancing the current publication by increasing its editorial content and focus. Please share any views you may have on any of these options, or on the conference proceedings generally, either by writing to the Council's offices or by e-mailing me directly at president@ccil-ccdi.ca.

En terminant, je souligne à regret que Timothy Wilson, membre de notre exécutif, nous a remis sa démission récemment, après plusieurs années de loyaux services au Conseil. Au nom de tous les membres, je remercie Tim pour ses nombreuses contributions au fil des années. Je me fais votre porte-parole pour souhaiter la bienvenue au professeur Doris Buss, du Département de droit de l'Université Carleton, que l'exécutif a élu pour terminer le mandat de Tim.

On behalf of the Council, I wish you all a rejuvenating spring and summer!

John H. Currie
President/Président

Please note that all enquiries and suggestions related to the 2004 Conference can be sent to <conference@ccil-cddi.ca>.

Tous commentaires et suggestions relatifs au congrès 2004 peuvent être acheminés au comité organisateur par courriel à <conference@ccil-cddi.ca>.

A New Type of War

(continued from page 1 - suite de page 1)

The Bush administration employs scores of seasoned lawyer-diplomats who devise justifications for its policies - or, if plausible justifications are not possible, work to change or obfuscate the law. Their efforts are reflected in the Bush doctrine of pre-emptive self-defence. When the president first announced this policy at West Point in June 2002, he made no attempt to claim a legal basis for it: 'We must take the battle to the enemy, disrupt his plans, and confront the worst threats before they emerge.' But from the lawyers' perspective, the policy unnecessarily implied that existing international law would have to be violated, since pre-emption, if allowed at all, was allowed only in the face of imminent threats. In the September 2002 National Security Strategy, the requirement of imminence reappears, together with the apparently reasonable assertion that it be adapted to the 'capabilities and objectives of today's adversaries', namely terrorists and rogue states.

The British government has, until recently, steered clear of the debate on pre-emptive action. Blair insists that the primary justification for the Iraq war was the enforcement of Security Council resolutions; this is now the only plausible argument left open to him, given that Iraq was hardly a threat to the UK. Blair's argument has the tenuous advantage of being divorced from facts on the ground. It claims, essentially, that the authorisation of intervention provided by the Security Council in 1990, after Iraq's invasion of Kuwait, was merely suspended and not terminated by the ceasefire resolution of the following year. The authorisation - so the argument goes - could therefore be reactivated if Iraq came into 'material breach' of its ceasefire obligations, one of which was the obligation to disarm. When Iraq failed to co-operate fully with that obligation, the US and Britain were entitled to go to war - all on the basis of the 1990 authorisation.

A fuller analysis - and one was undoubtedly provided by the Foreign Office - would have pointed out that the 1991 ceasefire resolution terminated rather than suspended the previous year's authorisation, and that the parties to the ceasefire were the Security Council and Iraq: the coalition states were subject and not party to the ceasefire, and any material breach could not have reactivated any right for them to use force independently. As for Resolution 1441, it neither specifies the legal consequences of material breach, nor expressly authorises military action. Indeed, following its adoption, all the Council's members, including the US and Britain, publicly confirmed that it provided no 'automaticity'.

Blair didn't want to hear about any of this. Elizabeth Wilmshurst, the deputy Foreign Office legal adviser, resigned; her boss, Michael Wood, stoically remained in place and subsequently received a knighthood. Unusually, the holders of the Oxbridge chairs in international law, James Crawford and Vaughan Lowe, took a public stance against the government. The controversy continues, though Blair desperately wants to move on, but not, as he claimed in a speech in his Sedgefield constituency in March, to 'the economy, jobs, living standards, health, education, crime'. A man who fancies himself as a figure of global historical significance, he's already planning the next international campaign. The best evidence of Blair's shift in focus is his change of position on the international rules governing the use of force. At Sedgefield, he took the seemingly unnecessary step of embracing the Bush doctrine. Borrowing from the logic of the National Security Strategy, he argued that deterrence does not work against global terrorists and rogue states. Rather, the radical, risk-taking, hydra-headed nature of the threat requires a willingness to find and destroy it before it can grow: this is not just a necessity, but - according to Blair - 'a duty and a right'.

Remarkably, Blair went even further than Bush's lawyers would have the president go: back to the position initially asserted at West Point. The prime minister argued that this 'new type of war . . . forces us to act even when so many comforts seem unaffected, and the threat so far off, if not illusory'. Yet Blair is not freelancing: in February, Bush too cast aside legal niceties and reasserted the need for wide-reaching preventive action. In an unscripted television interview, he said: 'I believe it is essential - I believe it is essential - that when we see a threat, we deal with those threats before they become imminent. It's too late if they become imminent. It's too late in this new kind of war.' What seemed a blunder at the time is, in light of Blair's reiteration, beginning to look like policy - a policy that, by ditching the requirement of imminence, goes beyond pre-emptive self-defence and into precautionary war.

Bush and Blair have apparently realised that even the lawyers' reformulation will not receive the widespread acceptance necessary to change international law. Most governments cannot engage in military action abroad, and so an extended right of pre-emption is not in their

interest (unless, of course, they've wholly aligned themselves with a powerful state). The lack of widespread interest, and the resulting lack of consent, would normally be determining factors in a legal system that has traditionally been based on the collective sovereign wills of the world's nearly two hundred nation- states. But Bush and Blair are not simply declaring their willingness to act illegally; instead, they're adopting a different conception of how international law is made.

This different conception is most apparent in something else Blair talked about at Sedgefield, the 'responsibility to protect'. As he explained: 'Before 11 September, I was already reaching for a different philosophy in international relations from a traditional one that has held sway since the Treaty of Westphalia in 1648; namely that a country's internal affairs are for it and you don't interfere unless it threatens you, or breaches a treaty, or triggers an obligation of alliance.' And this - Blair is explicit - means changing international law. Step one in his quest is the assertion, almost in passing, that the existing law allows for unilateral action in the face of a 'humanitarian catastrophe'. The term is drawn directly from the legal justification provided by the Foreign Office for the Kosovo war, and such a 'catastrophe' is defined by the presence of genocide, ethnic cleansing and mass rape. However, that attempt to establish a new law failed dismally. After Kosovo, the 133 developing states of the G77 twice adopted declarations unequivocally affirming the illegality of humanitarian intervention unless authorised by the UN. In late 1999, the Foreign Office suggested that the UN General Assembly discuss the idea of a carefully defined, limited right of unilateral humanitarian intervention; the proposal was attacked on so many fronts that it was quickly withdrawn. Canada's attempt to address the controversy over Kosovo involved the establishment of an independent commission charged with finding 'some new common ground'. The resulting report, 'The Responsibility to Protect', concluded that, 'as a matter of political reality, it would be impossible to find consensus . . . around any set of proposals for military intervention which acknowledged the validity of any intervention not authorised by the Security Council or General Assembly.'

Stymied at the UN, rejected by international commissions, the prime minister has decided to move beyond the requirements of state consent. With mind-boggling audacity, he's made the concept of community his vehicle: 'The essence of a community is common rights and responsibilities. We have obligations in relation to each other . . . And we do not accept in a community that others have a right to oppress and brutalise their people . . . We surely have a responsibility to act when a nation's people are subjected to a regime such as Saddam's.' Blair has also initiated a 'Countries at Risk of Instability Project' in Whitehall. An interdepartmental group has been asked to identify ways of 'improving the capacity of the international system' and advancing the 'agenda' of this notion of a responsibility to protect. The goal is to produce a final report this autumn, before the US presidential election, with a view to influencing - or perhaps counteracting - the report of a more globally representative panel, established by Kofi Annan, which is due to conclude its work in December.

Blair seems unable to grasp what it means to have a rule of law. In Sedgefield he said:

I understand the worry the international community has over Iraq. It worries that the US and its allies will, by sheer force of their military might, do whatever they want, unilaterally and without recourse to any rule-based code or doctrine. But our worry is that if the UN - because of a political disagreement in its Councils - is paralysed, then a threat we believe is real will go unchallenged.

This is a vision of power without accountability, exercised by benevolent leaders with the best interests of their subjects in mind. At the same time, it is reminiscent of a much earlier, natural law approach to international law - one that did not require broad-based consent and was instead imposed by the so-called 'civilised'. The prime minister is reaching for the international law of the crusaders and conquistadors.

All this will come as little surprise to many observers of the prime minister. But why, when Bush and Blair are hopelessly bogged down in Iraq and both running for re-election, do they feel it's worth the trouble to articulate a new vision for international law? Part of the answer lies in the continuing need for justification after the event. The other part of the answer, surely, lies in North Korea. Thanks to some extent to the current administration's abandonment of Bill Clinton's policy of engagement, North Korea has accelerated its weapons programmes and become more bellicose. Conveniently, this has helped to justify Bush's pet project of missile defence, the first, largely untested phase of which will become operational this autumn. And if missile defence works at all, its immediate usefulness would be to provide some protection against a very small number of primitive missiles, such as those North Korea might possess, thus

*(See **A New Type of War** on page 14)*

Statutory Review of NAFTA Awards in Canada: Whose Submission to Arbitration?

by Jean-François Hébert*

The North American Free Trade Agreement recently celebrated its tenth birthday on January 1st 2004. The Treaty was concluded to ensure, amongst other things, a predictable commercial framework for business planning with a view to substantially increasing investment opportunities in the territories of Canada, the United States and Mexico (the "State-parties"). Some of the tools with which NAFTA seeks to achieve this objective may be found in Chapter Eleven of the Treaty that contains provisions to promote investment liberalization and to protect foreign investors and their investments in the territory of the NAFTA parties.

One Chapter that has received a lot of attention is Chapter Eleven. The Chapter empowers foreign investors to initiate binding international arbitration against a State-party that the investor alleges has breached certain obligations under Part "A" of Chapter Eleven or Articles 1503(2) or 1502(3)(a) of the NAFTA. The most often invoked obligations include the National Treatment obligation (Article 1102), the Minimum Standard of Treatment obligation (Article 1105) and the obligation not to expropriate an investment of an investor of another State-party except in certain circumstances (Article 1110).

Awards rendered by *ad hoc* Tribunals constituted pursuant to Chapter Eleven are final and binding upon the parties to the dispute.[1] However, an unsuccessful party may request the revision or the annulment of the award before a domestic court of competent jurisdiction. In Canada, these procedures entail filing an application with a provincial superior court or the Federal Court of Canada pursuant to either one of the provincial or federal acts that have all incorporated the substance, if not the actual wording, of the *Model Law on International Commercial Arbitration* as adopted by the United Nations Commission on International Trade Law (the "Model Law").[2]

Pursuant to Article 34 of the Model Law, an arbitral award may be set aside by a court if, amongst other grounds, the award "deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration." Article 36, which allows a court to refuse recognition or enforcement of an arbitral award, contains an identical ground.

Since the investor-State dispute settlement regime of NAFTA became available to American, Canadian and Mexican investors on January 1st, 1994, Tribunals set up pursuant to Chapter Eleven have rendered final decisions in a total of nine investment disputes. Of these nine decisions, three have been challenged before domestic Courts and of these three decisions all have been challenged before Canadian courts on the grounds, amongst others, that the award exceeded the scope of the submission to arbitration.

On May 2, 2001 the Supreme Court of British Columbia rendered the first of these three decisions in *United Mexican States* v. *Metalclad Corporation* ("Metalclad")[3]. In that case, Mexico brought an application to set aside an award ordering it to pay damages to an American investor. The award held that Mexico's failure to grant the investor, an American waste disposal company, a municipal license to operate its hazardous waste treatment facility and landfill site located in Mexico and a municipal decree declaring the area where the facility and site were located an ecological zone, constituted a breach of Articles 1102, 1105 and 1110 of the NAFTA for which the investor was entitled to damages.

Mr. Justice Tysoe granted in part Mexico's application to set aside the award. According to the Court, the Tribunal decided the dispute on the basis of transparency obligations that are not part of the obligations that can be sanctioned through the investor-State dispute settlement process. The Court therefore found that the Tribunal had decided a matter that was beyond the scope of the submission to arbitration within the meaning of Article 34(2)(a)(iii) of the Model Law. However, the Court refused to set aside the award entirely since it found that the Tribunal's finding that the impugned ecological decree constituted a measure "tantamount to expropriation" in violation of Article 1110 of the NAFTA was not "beyond the scope of the submission to arbitration."

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[1] Article 1136(1) of the NAFTA

[2] United Nations document A/40/17, Annex I

[3] (2001), 89 B.C.L.R. (3rd) 359, 14 B.L.R. (3rd) 285

Mr. Tysoe's judgment in *Metalclad* was criticized by those who saw in the decision a dangerous shift away from the traditional deference and reserve shown by Canadian courts towards commercial arbitration awards. According to the critics, the decision had the potential to undermine the autonomy of the arbitration system and the public's perception of the suitability of Canada as a place to conduct international arbitrations.[4] As we shall see, recent decisions of the Ontario Superior Court of Justice and the Federal Court should lay these fears to rest.

Late last year, on December 3, 2003, the Ontario Superior Court rendered its judgment in *United Mexican States* v. *Marvin Roy Feldman Karpa* ("Feldman").[5] The matter involved another Mexican application to set aside an arbitral award rendered by a Chapter Eleven Tribunal. As in *Metalclad*, Mexico based its application on Article 34 of the Model Law. In that case, the investor, a U.S. citizen, submitted a claim on behalf of a Mexican registered foreign trading company and exporter of cigarettes. The investor alleged that Mexico denied it the benefit of a law that allowed certain tax rebates to exporters in breach of Articles 1102, 1105 and 1110 of the NAFTA.

In its application before the Court, Mexico alleged that it was unable to present its case since the Tribunal had drawn impermissible inferences from its failure to disclose confidential taxpayer information in compliance with Mexican laws that prohibit disclosure of personal taxpayer information. In addition, Mexico argued that the Tribunal had exceeded the scope of the submission to arbitration because the Tribunal's negative inference conflicted with mandatory rules for the conduct of investor-State arbitrations contained in Article 2105 of the NAFTA. That provision affirms that Parties cannot be required to disclose information contrary to a Party's law protecting personal privacy.

Mr. Justice Chilcott dismissed Mexico's application. In doing so he showed considerable deference to the Tribunal. The Court stated that the grounds for review found in Article 34 of the Model Law are extremely limited and do not allow it to review what it characterized as findings of fact made by the Tribunal. The Court also disagreed with Mexico that it was hindered in its ability to present its case due to its domestic privacy law. Further, the Court considered it "improper" for the applicant to raise an argument based on Article 2105 on review when the record does not show that this argument was raised or dealt with before the Tribunal. Mr. Justice Chilcott also referred to the factors considered by Canadian superior courts seized with a judicial review application of an administrative tribunal to support his conclusion that the Court ought to show deference to the Tribunal's decision. Mexico has appealed the decision.

Finally, on January 13, 2004, the Federal Court issued its judgment in *Canada* v. *S.D. Myers Inc.* ("Myers").[6] The matter involved an application by Canada to set aside an award rendered against it by a Chapter Eleven Tribunal. The Tribunal was set up to resolve a claim by S.D. Myers, an American corporation that processes and disposes of PCB waste, alleging that Canada's ban on the export of PCB waste from Canada to the United States violated, amongst other, Articles 1102 and 1105 of the NAFTA.

Canada's application, as Mexico's applications in *Metalclad* and *Feldman*, was based on Article 34 of the Model Law. One of Canada's main arguments was that the Tribunal had exceeded the scope of the submission to arbitration by incorrectly finding that S.D Myers Inc. was an investor for the purposes of Chapter Eleven although it did not hold any equity interest in its alleged investment, a Canadian corporation. According to Canada, S.D. Myers was not an investor and was therefore not entitled to invoke the investor-State dispute settlement provisions of Chapter Eleven.

In his judgment, Mr. Justice Kelen cited with approval the decisions rendered in *Metalclad* and *Feldman* in support of the proposition that the Court's jurisdiction to set aside arbitration awards is limited to the grounds set out in Article 34 of the Model Law. Echoing Mr. Justice Lebel's reasons in *Desputeaux* v. *Éditions Chouette (1987) Inc.*[7] rendered less than a year earlier, Mr. Justice Kelen found that the "pragmatic and functional" approach devised by the Supreme Court of Canada to review the legality of decisions rendered by administrative tribunals subject to the superintending and reforming power of superior courts "cannot be used to create a standard of review not provided for in Article 34 of the Code."

Essentially, Mr. Justice Kelen rejected Canada's argument on the grounds that it constituted an objection to the jurisdiction of the Tribunal that should have been raised not later than in Canada's Statement of Defence

[4] See for example Charles H. BROWER II, *Investor-State Disputes Under NAFTA: The Empire Strikes Back*, (2001) 40 CLMJTL 43.
[5] (3 December 2003), Ottawa 03-CV-23500
[6] 2004 FC 38, 5 C.E.L.R. (3d) 166
[7] [2003] 1 S.C.R. 178

pursuant to Article 21 of the *UNCITRAL Arbitration Rules*. Although the Court dismissed Canada's applications on procedural grounds, the Court also dealt with Canada's substantive arguments in *obiter dictum*.

The Court relied on the pragmatic and functional analysis, which it found relevant to determine the standard of review as opposed to the grounds of review. The Court reviewed the Tribunal's definition of the words "investor" and "investment of an investor of a Party" according to the standard of correctness and the application of the definitions to the facts according to the standard of reasonableness. In the end, Mr. Justice Kelen found that the Tribunal's interpretation of the pertinent definition was correct and its application to the facts reasonable. He therefore dismissed Canada's challenge to the jurisdiction of the Tribunal.

While the decisions in *Feldman* and *Myers* demonstrate considerable deference towards the tribunals, and should therefore alleviate the fears expressed by critics of the *Metalclad* ruling, they also highlight the difficulties of applying Articles 34 and 36 of the Model Law to deal with awards rendered by Tribunals set up to settle investor-State investment disputes.

Indeed, while it can be relatively easy to identify the terms of the submission to arbitration and determine the scope of the submission to arbitration when a court is seized of a challenge to a private commercial arbitration, the task is more difficult in the context of an investor-State investment dispute where there is no consensual arbitration agreement in the ordinary sense of the word. Parties to a private commercial arbitration must come to a prior understanding as to the dispute and matters they want to remit to arbitration, which will often be conveniently evidenced in a writing. On the other hand, all a claimant needs to do under Chapter Eleven of the NAFTA in order to seize a tribunal of a dispute is to submit a claim within specified time periods and waive its rights to submit the dispute to other dispute settlement procedures. If the claimant satisfies these requirements, the State-party will be deemed to have consented to the arbitration pursuant to Article 1122 of the NAFTA and an *ad hoc* Tribunal will be set up to address each and every claim made. The difficulties highlighted by the *Feldman* and *Myers* rulings stem from the fact that, according to the interpretation of the Model Law retained by these rulings, the Model Law does not provide any review mechanisms by which a State-party can challenge a finding by a Tribunal which would have the effect of extending the investor-State dispute settlement process to matters submitted to arbitration by the investor but which were not contemplated by the Parties to the NAFTA. If this is correct, Tribunals could decide disputes that the State-parties never intended to submit to the investor-State dispute resolution process and such decisions could not be reviewed.

Courts seized of future challenges to NAFTA awards should recognize that, while it may seem paradoxical, judicial intervention is sometimes necessary to safeguard the autonomy of the disputing parties' will to submit a dispute to arbitration. ≺

Recent Treaty Developments

Multilateral Treaties:

-*United Nations Convention against Corruption*, adopted by the G.A. of the U.N. on 31 October 2003 in New York, not yet in force (signed by Canada on 21 May 2003).

-*Stockholm Convention on Persistent Organic Pollutants*, adopted 22 May 2001 in Stockholm, entered into force 17 May 2004 (signed and ratified by Canada on 23 May 2001).

Bilateral Treaties:

-*Convention between Canada and Romania for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income and on Capital*, signed 8 April 2004 in Ottawa, not yet in force.

-*Agreement between the Government of Canada and the Government of Norway regarding the sharing of forfeited or confiscated assets or their equivalent funds*, signed 25 March 2004 in Ottawa, not yet in force.

-*Exchange of Notes constituting an agreement to amend the Agreement between the Government of Canada and the Government of the Kingdom of Denmark relating to the delimitation of the continental shelf between Greenland and Canada done at Ottawa on 17 December 1973*, signed 20 April 2004 in Copenhagen, not yet in force. (RH) ≺

Trudeau Foundation Awards

Endowed by the Government of Canada in 2002, the Pierre Elliott Trudeau Foundation manages three programmes in its promotion of outstanding research and dialogue on issues of major societal importance to Canada and the world. Trudeau Foundation *Fellows, Mentors* and *Scholars* are selected annually by the non-partisan organization. All recipients must be engaged in one or more of the Foundation's four themes: human rights and social justice, responsible citizenship, Canada and the world, and humans and their natural environment. The Foundation will provide regular opportunities for the awardees to meet together, and will sponsor major public events. Ultimately, the goal is to enhance public debate and to provide Canadians with a deeper experience of deliberative democracy.

Both the Fellows and Mentors programmes are unsolicited awards given to either Canadians or foreign nationals. The Foundation presents up to five Fellowships to creative thinkers with outstanding communication abilities. Fellows receive $150,000 disbursed over 3 years, with another $25,000 per year available for approved travel and research expenses. On April 29, 2004, Ann Dale, Roderick A. Macdonald, Rohinton Mistry, Donald J. Savoie and Daniel M. Weinstock were named as this year's Fellows. Last year's Fellows were Danielle Juteau, David Ley, Janice Gross Stein and James Hamilton Tully.

Trudeau Foundation Mentorships are awarded to up to 12 outstanding professionals. Mentors work with Trudeau Foundation Scholars and are selected for their creativity in policy analysis and implementation in government, business, the voluntary sector, the professions or the arts. Mentorships are for one year, but may be renewed for a second year. An honorarium of $20,000 is given and another $15,000 per year is available for approved travel expenses. On October 15, 2003 the Foundation announced its first group of Mentors, naming Louise Arbour, Allan E. Blakeney, Elizabeth Dowdeswell, L. Yves Fortier, Michael Harcourt, Judith Maxwell and Ken Wiwa.

Unlike the Fellows and Mentors programmes, individuals may apply to the Scholars programme. Up to 15 scholarships valued at $200,000 each are awarded annually to leading doctoral students. Selection criteria include academic achievement, ability to engage in scholarly exchange and the intention to work in an area related to one or more of the Foundation themes. This year's Scholars will be announced in June and up to 25% of the recipients may be foreign nationals studying in Canada. Foundation Scholars in 2003 were Caroline Allard, Anna-Liisa Aunio, Jay Batongbacal, Pascale Fournier, Julie Gagné, Ginger Gibson, D.M. Lavell-Harvard, Robert Leckey, James Milner, Robert Lee Nichols, Anna Stanley and Sophie Thériault. Information on the 2005 Doctoral Scholarships Programme will be posted on the Trudeau Foundation website in August 2004. (RH)

Source: http://www.trudeaufoundation.ca ◅

The First Trudeau Public Policy Conference

Entitled « Ideas *Move* : Sharing Knowledge Across Cultural Boundaries and Security Barriers », the conference will be held in Montreal from 14-16 October 2004.

"Ideas move today at an astonishing rate. Formal and informal networks of people – scientists, policymakers, scholars, government leaders, and activists – create knowledge and share it. Knowledge networks transcend physical and cultural borders. These networks are by no means neutral in their political goals or effects, and they can operate to exclude 'outsider' ideas. Yet the capacity of knowledge networks to influence public policy globally and within states is increasing dramatically. At the same time, all societies cope with intensifying perceptions of threat, including fears of terrorism, pandemic disease, food safety, and cultural assault and assimilation. Governments and other social actors close down or restrict routes of communication, physical movement and, ultimately, the sharing of knowledge. New technologiesand ideologies emerge that both hasten and retard the movement of ideas. These phenomena are present globally, including in Canada. How will these forces shape the future? What compromises will emerge? How will they change our lives and our societies? The first Trudeau Public Policy Conference will explore the choke points and channels that affect the ebb and flow of ideas, and participants will identify opportunities for social, political and cultural action." Source: <http://www.trudeaufoundation.ca/2004conf.asp>. ◅

La 58e Session de l'Assemblée Général de l'ONU et le Rapport de la Sixième Commission

par Cissé Yacouba*

La version complète de cet article, avec notes infrapaginales, sera disponible sur le site web du CCDI.

Introduction

L'Assemblée générale de l'ONU, lors de sa 58e session et en sa 72e séance plénière, a adopté le 9 décembre 2003 plusieurs projets de résolutions qui lui ont été soumis par la Sixième Commission (Commission juridique). Certaines résolutions ont porté sur des problèmes classiques de droit international (ex : la responsabilité des États et les immunités juridictionnelles). D'autres par contre, sous la poussée des divergences ou même des convergences entre les intérêts étatiques et ceux de la communauté internationale, ont été perçus comme de nouveaux défis nécessitant l'élaboration de nouvelles règles juridiques internationales. S'inscrit dans cette catégorie la problématique du clonage humain à des fins thérapeutiques ou de reproduction.

L'Assemblée a également adopté d'autres résolutions, portant notamment sur le développement progressif des principes et normes du droit international concernant le nouvel ordre économique international ; l'assistance des Nations Unies en vue d'une diffusion et d'une compréhension plus large du droit international ; les activités de la Commission des Nations Unies pour le Droit Commercial International (CNUDCI) et celles de la Commission de Droit International (CDI) ; les relations entre le pays hôte et les missions diplomatiques auprès de l'Organisation des Nations Unies ; la Cour pénale internationale, la Charte des Nations Unies et l'affermissement du rôle de l'Organisation ; le terrorisme international, la portée juridique de la Convention relative à la sécurité du personnel des Nations Unies et du personnel associé ; l'octroi du statut d'observateur à certaines communautés ; et enfin, l'administration de la justice à l'Organisation des Nations Unies.

Programme d'assistance des NU aux fins de l'enseignement, de l'étude, de la diffusion et d'une compréhension plus large du droit international

L'Assemblée générale a adopté, sans vote[1], la résolution relative à ce point en autorisant le Secrétaire général à mettre en œuvre les activités prévues pour les années 2004 et 2005 et a décidé que siègeraient au sein du Comité Consultatif pour le Programme d'Assistance des Nations Unies créé à cet effet, 25 États membres selon la répartition géographique suivante : 6 États d'Afrique, 5 États d'Asie, 3 États d'Europe orientale, 5 États d'Amérique latine et des Caraïbes, et 6 États d'Europe occidentale et autres. Les activités du Comité Consultatif débuteront dès le 1er janvier 2004 et se poursuivront pour une période de quatre ans.

Immunités juridictionnelles des États et de leurs biens

La résolution sur la Convention relative aux immunités juridictionnelles des États et de leurs biens a été adoptée sans vote par l'Assemblée générale. Si la Sixième Commission a cru devoir revenir sur cette question, cela prouve bien que le droit actuellement applicable pèche par des insuffisances ou des imprécisions qui ne sont pas encore levées. L'Assemblée générale, bien qu'ayant adopté la résolution sur ce point, au demeurant fort controversé, a cependant exprimé le souhait que s'opère une harmonisation des législations nationales menant à une plus grande clarté du droit positif en la matière. Pour ce faire, le Comité Spécial en charge d'étudier plus à fond cette question s'est réuni du 1er au 5 mars 2004 avec pour mandat précis de formuler un préambule et des clauses finales qui permettront l'élaboration complète de la Convention sur les immunités juridictionnelles des États et de leurs biens. L'Assemblée générale a prié le Comité Spécial de lui faire un compte rendu de ses travaux lors de sa 59e session en 2004.

Rapport de la CNUDCI sur les travaux de sa 36e session

Étant le principal organe juridique des Nations Unies en charge des questions relevant du droit commercial international, la CNUDCI a été exhortée par l'Assemblée générale à renforcer ses efforts de coopération et de coordination avec, d'une part, les institutions de Breton

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[1] C'est la procédure qui consiste à ne pas soumettre aux votes lors des séances plénières de l'Assemblée générale, les résolutions ou projets de résolution de la Sixième Commission ou de toute autre commission dès lors qu'un consensus a été obtenu au cours des travaux des différentes commissions.

Woods que sont la Banque Mondiale et le Fonds Monétaire International et d'autre part, avec les Commissions économiques régionales et d'autres organisations internationales.

L'Assemblée générale a souhaité par ailleurs que les objectifs ci-après décrits soient atteints :

- Que la CNUDCI propose des normes internationales largement acceptées en matière commerciales en référence à ses propres objectifs et ceux des institutions financières internationales
- Que le PNUD, les organismes d'aide au développement et les gouvernements continuent d'appuyer le Programme de formation et d'assistance technique de la CNUDCI
- Que de l'aide financière au titre des frais de voyage soit accordée aux États membres de la CNUDCI les moins nantis en vue de favoriser une participation plus large aux sessions de cette Commission et de ses groupes de travail
- Qu'en vue d'accélérer le processus d'entrée en vigueur des Conventions CNUDCI pour l'unification et l'harmonisation des règles du droit commercial international, les États non encore parties signe, ratifie ou adhère à ces conventions
- Que le *Guide législatif de la CNUDCI sur les projets d'infrastructures à financement privé* et les *Dispositions législatives types de la CNUDCI* soient disponibles et largement diffusés et que tous les États en tiennent compte lorsqu'ils doivent réviser leurs législations ou adopter des lois en matière de financement privé portant sur la construction et l'exploitation d'infrastructures publiques

Rapport de la CDI sur les travaux de sa 55e session

L'Assemblée générale a rappelé l'importance de la poursuite par la CDI de l'œuvre de codification, du développement progressif du droit international et des sujets inscrits à son programme. Elle a invité par ailleurs les États à fournir des informations à la CDI sur leur pratique en matière d'actes unilatéraux, de législations nationales ou d'accords bilatéraux portant sur la gestion transfrontalière des « ressources naturelles partagées ». Elle a en outre prié le Secrétaire général d'inviter les États et les organisations internationales à fournir des informations sur leurs pratiques relativement à la question ainsi libellée : « Responsabilité des organisations internationales, en particulier sur les cas dans lesquels des États membres d'une organisation internationale peuvent être considérés comme responsables des actes de cette organisation. » L'Assemblée générale a également invité la CDI à continuer de prendre des mesures pour améliorer son efficacité et sa productivité et a encouragé les États membres à examiner la possibilité de se faire représenter par des conseillers juridiques pendant la dernière semaine au cours de laquelle la Sixième Commission examinera le rapport de la CDI de façon à ce que les questions de droit international soient examinées à un niveau élevé. L'Assemblée a décidé que ladite semaine serait désormais appelée « semaine du droit international »

La CDI tiendra sa prochaine session à Genève du 3 mai au 4 juin et du 5 juillet au 6 août 2004. Quant à la Sixième Commission, elle commencera ses travaux sur le rapport de la CDI le 1er novembre 2004.

Rapport du comité des relations avec le pays hôte

La résolution portant sur le « Rapport du Comité des relations avec le pays hôte » a été adoptée sans vote par l'Assemblée générale. Conformément aux recommandations dudit Comité, l'Assemblée générale a prié le pays hôte (les États-Unis) de résoudre par la négociation, les problèmes relatifs aux privilèges et immunités dus aux délégations et aux missions accréditées auprès de l'ONU. En effet, il convient de rappeler que le stationnement des véhicules diplomatiques dans la ville de New York est au cœur de la controverse entre le pays hôte et certaines missions diplomatiques qui se sentent lésées par la réglementation sur le stationnement et la sanction consistant à ne pas renouveler les plaques d'immatriculation des véhicules des diplomates. L'Assemblée générale a prié le pays hôte de lever les restrictions imposées en cette matière afin de faciliter le fonctionnement normal des missions permanentes accréditées au siège des Nations Unies à New York. Le Comité devra procéder à un examen plus approfondi de l'application de cette réglementation sur le stationnement des véhicules diplomatiques.

Toutefois, la délégation cubaine, dans son explication de vote, a fait savoir les manquements par le pays hôte à l'immunité due aux diplomates cubains et aux pratiques discriminatoires dans l'octroi des autorisations de voyage aux membres de son gouvernement.

La cour pénale internationale

Depuis le 1er juillet 2002, le Statut de Rome créant la Cour pénale internationale est entré en vigueur. Tous les organes de la Cour sont maintenant constitués avec

l'élection des juges, du procureur et la nomination du greffier. L'Assemblée générale, après avoir adopté sans vote la résolution sur le Statut de Rome, a invité les États non parties à ce Statut d'envisager sa ratification, d'y adhérer et d'être parties à l'Accord sur les privilèges et immunités de la Cour pénale internationale. Un groupe de travail spécial sur le crime d'agression de l'Assemblée des États parties au Statut de Rome a été créé. Sur invitation de l'Assemblée générale, le Secrétaire général devrait prendre des dispositions en vue de la conclusion d'un accord régissant les relations entre l'ONU et la Cour pénale internationale. Par la voix de sa représentante, les États-Unis ont signalé qu'ils n'entendaient pas s'aligner sur le consensus acquis sur cette question.

Rapport du comité spécial de la Charte des Nations Unies

L'application des mesures préventives ou coercitives prises par le Conseil de Sécurité contre des États peut engendrer des effets non voulus, notamment des difficultés économiques à l'endroit d'États tiers. C'est le sens du rapport portant sur la résolution intitulée « La mise en œuvre des dispositions de la Charte des Nations Unies relatives à l'assistance aux États tiers touchés par l'application des sanctions ». Cette résolution a été adoptée sans vote. Toutefois, conformément à l'article 50 de la Charte des Nations Unies, l'Assemblée générale a invité le Conseil de Sécurité à engager des consultations avec les pays tiers souffrant des sanctions infligées à un État, mais qui entraînent des difficultés économiques pour ces derniers. Le groupe de travail officieux créé à cet effet, devra faire des recommandations en vue du renforcement de l'efficacité des sanctions prises par l'ONU. Par ailleurs, l'Assemblée générale a recommandé au Conseil de Sécurité la recherche d'une plus grande efficacité, de transparence et de rationalisation des méthodes de travail des comités des sanctions. Cependant, lorsque les sanctions économiques ont des conséquences graves sur des États tiers, l'Assemblée a donné la possibilité au Secrétaire général de nommer un représentant spécial ou le cas échéant, d'envoyer sur le terrain des missions d'établissement des faits qui évalueront la situation et, éventuellement, l'aide à accorder aux États concernés.

L'élimination du terrorisme international

L'Assemblée générale a adopté sans vote la résolution relative aux « mesures visant à éliminer le terrorisme international ». Après avoir énergiquement condamné la continuation des actes terroristes, elle a invité tous les États à prendre de nouvelles dispositions pour enrayer ce fléau conformément à la Charte de l'ONU, au droit international général et aux droits de l'homme. La prévention du terrorisme, selon l'Assemblée générale, passera par le renforcement de la coopération, notamment au niveau des échanges des informations, l'arrêt du financement ou tout support au terrorisme, la ratification par les États des conventions et protocoles sur la répression du terrorisme, l'adoption de législations nationales conformes au droit international, la reconnaissance des compétences des tribunaux de droit interne pour juger les auteurs d'actes terroristes, et la poursuite par le Comité spécial, créé en 1996 par l'Assemblée générale, de ses travaux sur l'élaboration d'un projet de convention sur le terrorisme international.

La sécurité du personnel des Nations Unies et du personnel associé

Il s'agit de la résolution intitulée « Portée de la protection juridique offerte par la Convention sur la sécurité du personnel des Nations Unies et du personnel associé » adoptée sans vote par l'Assemblée générale. En effet, la sécurité du personnel onusien se pose de plus en plus avec acuité, eu égard aux risques et périls auxquels celui-ci fait face. Sur recommandation de l'Assemblée générale, le Secrétaire général devrait « continuer à demander aux pays d'accueil d'accepter que les principales dispositions de la Convention soient incorporées dans les accords sur le statut des forces et des missions et les accords de siège qui seront négociés à l'avenir entre l'Organisation des Nations Unies et les États concernés… ». Le Secrétaire général peut, par ailleurs, prévenir le Conseil de Sécurité de l'existence d'un risque exceptionnel. Les mécanismes de protection qui existent actuellement pour le personnel de l'ONU et le personnel associé devraient s'étendre au personnel recruté sur place et qui est la principale victime des actes terroristes. Le Comité spécial créé par la résolution 56/89 se réunira du 12 au 16 avril 2004 en vue d'élargir la portée de la protection juridique offerte par la Convention sur la sécurité du personnel des Nations Unies et du personnel associé.

Le clonage humain

La Sixième Commission avait, par consensus, demandé à l'Assemblée générale la suspension de son examen de l'épineuse question du clonage humain jusqu'en 2005. Mais ce délai de deux ans avait créé un vide juridique qui avait été exploité et qui avait mené à des tentatives de clonage d'êtres humains à des fins de reproduction. Pour résoudre cette impasse, et surtout en raison des multiples implications éthiques, culturelles,

médicales et religieuses soulevées par de telles démarches, la délégation du Costa Rica avait proposé purement et simplement l'interdiction absolue sur les territoires nationaux, du clonage humain sous toutes ses formes, notamment thérapeutiques et de reproduction, dans l'attente de l'adoption d'une convention internationale sur le clonage humain. En violation des procédures et certainement dans le but de trouver un compromis entre les positions contradictoires, l'Assemblée générale a décidé, contrairement au consensus trouvé en Sixième Commission, d'inscrire cette question à l'ordre du jour de sa prochaine session de 2004. Cette violation de procédure a été dénoncée par plusieurs délégations.

Sur le fond du problème, l'explication de vote de la Grande-Bretagne illustre parfaitement la controverse. Le représentant de ce pays a dit ceci : « Réaffirmant l'opposition totale de son gouvernement au clonage à des fins de reproduction, le représentant a déclaré que le Royaume-Uni était l'un des premiers pays à promulguer une législation spécifique pour bannir cette possibilité. Toutefois, sa délégation estime que la recherche sur tous les types de cellules souches, dont le clonage à des fins thérapeutiques, devrait être encouragée. Le Royaume-Uni ne sera jamais partie à aucune convention qui viserait une interdiction au niveau mondial sur le clonage à des fins thérapeutiques, ne participera pas à la rédaction d'une telle convention et ne l'appliquera pas au niveau national. Le Royaume-Uni continuera à autoriser la recherche sur le clonage à des fins thérapeutiques ».

Développement progressif des principes et normes du droit international du nouvel ordre économique international et l'administration de la justice à l'ONU

Ces deux points n'appellent pas de commentaires substantiels puisque l'Assemblée générale a simplement décidé, s'agissant du problème concernant le nouvel ordre économique international (NOEI), de renvoyer la question pour examen ultérieur. Quant au second point relatif à l'administration de la justice à l'ONU, l'Assemblée générale a modifié le statut du Tribunal administratif des Nations Unies avec effet à compter du 1er janvier 2004. Ce Tribunal sera composé de 7 membres de nationalités différentes et possédant une expérience judiciaire ou toute autre expérience juridique dans le domaine du droit administratif ou un domaine équivalent dans leur juridiction nationale.

Les océans et le droit de la mer

Après avoir reconnu que des progrès ont été réalisés dans la mise en œuvre de la Convention de 1982 sur le droit de la mer, l'Assemblée a réaffirmé toute l'importance qu'elle accorde aux mesures de conservation des ressources marines. Face à la récurrence des difficultés liées aux pêcheries mondiales, notamment la surpêche, les pêches incidentes (non sélectives) et déprédatrices, les pêches illégales, non réglementées et non rapportées (*IUU Fishing*) dans les espaces maritimes sous juridiction des États côtiers, l'Assemblée a cru devoir insister sur les notions de viabilité des pêches, de gestion et d'exploitation durable des ressources, de diversité biologique marine, de gestion intégrée, sur l'approche écosystémique, sur l'approche fondée sur la précaution ainsi que sur les preuves scientifiques d'évaluation des stocks en vue d'assurer une meilleure conservation des ressources halieutiques.

L'Assemblée a en outre estimé qu'il y avait une urgence d'agir face à l'ampleur de certains problèmes. Il s'agit, entre autres de la dégradation du milieu marin du fait des pollutions causées par les marées noires, de la recrudescence des infractions attribuables aux navires et d'incidents liés à la sécurité de la navigation (la collision des navires, la production des cartes marines, la piraterie, les vols à mains armées). Elle a par ailleurs milité en faveur d'une redéfinition plus précise du terme « lien réel » ou « lien substantiel » (*genuine link*) entre le navire et l'État du pavillon. Il faut rappeler que pendant longtemps, cette défaillance a été à l'origine du phénomène des pavillons de complaisance ou des registres de libre immatriculation dont les conséquences néfastes sur la salubrité du milieu marin, la sécurité de la vie humaine en mer et du commerce maritime en général sont connues. Aussi, l'Assemblée a adopté le projet de résolution créant, d'ici 2004, le mécanisme de notification et d'évaluation systématiques à l'échelle mondiale de l'état du milieu marin, mécanisme qui sera constitué par un groupe d'experts de 24 membres

La surexploitation des ressources biologiques marines est un phénomène persistant du fait du manque de volonté politique des États concernés quant à l'application des conventions internationales auxquelles ils sont parties. L'évaluation mondiale de l'état du milieu marin devrait être placée sous l'Autorité de l'Assemblée générale. Cet organe doit discuter des problèmes de fond lors des réunions du Processus consultatif officieux ou pendant les réunions des États parties. L'Assemblée a exhorté les États qui ne l'ont pas encore fait de ratifier la Convention de 1982 et d'être parties à ses acccords d'application (ex :Accord de New York sur les stocks chevauchants et stocks grands migrateurs).

Alien Tort Claims Act Hangs in the Balance

by Robin Hansen*

On March 30, 2004, the U.S. Supreme Court heard oral arguments for *Sosa v. Alvarez-Machain* and *Sosa v. United States*.[1] The cases, springing from a 1985 U.S. Drug Enforcement Agency sponsored kidnapping of a Mexican doctor, will be the Supreme Court's first ruling on the correct interpretation of the Alien Tort Claims Act.[2] The US State Department and Department of Justice have strongly encouraged the Supreme Court to narrow the statute's previously interpreted scope, to such an extent that it may no longer be used to establish a cause of action.

Since *Filartiga v. Peña-Irala* in 1980*,* a succession of U.S. judgments have interpreted the ATCA as providing federal jurisdiction for alien tort claims that arise from violations of international law.[3] In *Filartiga,* the father and sister of a Paraguayan minor who had been kidnapped and tortured to death sued a Paraguayan police official residing in the United States. In its resulting decision, the 2nd Circuit Court of Appeals held that the ATCA permitted claims based on serious violations of international human rights law.

The 9th Circuit Court of Appeals' *en banc* ruling in *Doe v. Unocal* is pending judgment in the *Sosa* cases.[4] The *Unocal* appeal concerns the liability standards applicable in ATCA claims, with allegations in this case including aiding and abetting forced labour, torture and extra-judicial execution. In contrast, the *Sosa* decisions will query the legitimacy of ATCA itself. The US Department of Justice has argued that the 9th Circuit decision in *Sosa v. United States*[5] wrongly infringed upon the Executive's role in enforcing national security, and that the ruling precludes federal agents from engaging in vital activities such as locating Osama Bin Laden.[6]

The major question before the Supreme Court in *Sosa v. Alvarez-Machain* is whether or not the ATCA creates a private cause of action or is merely a jurisdiction-granting provision. The US State Department and Department of Justice have urged the Supreme Court to adopt the latter interpretation, effectively ending claims under the ATCA. They contend that the ATCA could facilitate claims against US allies, thus impinging upon the Executive's role in foreign relations.[7] They also write that legal actions cannot arise from non-binding declarations such as the Universal Declaration of Human Rights and Freedoms, nor from ratified but non-self-executing treaties such as the International Covenant on Civil and Political Rights, for this would constitute a breach of the division of powers, enabling the Executive to make laws without the participation of the legislative branch.[8]

These arguments are countered by the Lawyers' Committee for Human Rights (LCHR) and the Rutherford Institute who have filed amicus briefs with the Supreme Court. They argue that the past 20 years of jurisprudence show a consistent US Appeals Court approach to ATCA cases, one that does not require a cause of action apart from the act itself.[9] Following the approach outlined in *Filartiga,* courts have held that only violations of well-established universally recognized norms of international law may constitute a claim under the ATCA. Thus, U.S. laws are not applied extra-

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[1] *Sosa v. Alvarez-Machain,* 72 U.S.L.W. 3370 (U.S. Dec. 1, 2003); *United States v. Alvarez-Machain*, 124 S. Ct. 821 (U.S., Dec. 1, 2003); "Argument Calendar - For the Session Beginning March 22, 2004", online: U.S. Supreme Court <http://a257.g.akamaitech.net/7/257/2422/12jan20041425/www.supremecourtus.gov/oral_arguments/argument_calendars/monthlyargumentcalmarch2004.pdf>.

[2] 28 USCS § 1350 (2002).

[3] *Filartiga v. Pena-Irala*, 630 F.2d 876 (2d Cir. 1980).

[4] *Doe v. Unocal Corp.*, 2003 Cal. Daily Op. Service 1388 (February 14, 2003); "Status of Pending En Banc Cases", online: 9th Circuit Court of Appeals <http://www.ca9.uscourts.gov/ca9/Documents.nsf/0/26604b492ab620e58825685d00537e33/$FILE/02-09-04a.pdf>.

[5] *Alvarez-Machain v. United States*, 331 F.3d 604 (9d Cir. June 18, 2002).

[6] *United States v. Alvarez-Machain*, 124 S. Ct. 821 (U.S., Dec. 1, 2003) (Petition for a Writ of Certiorari), online: US Department of Justice <http://www.usdoj.gov/osg/briefs/2003/2pet/7pet/2003-0485.pet.aa.pdf>.

[7] *Sosa v. Alvarez-Machain,* 72 U.S.L.W. 3370 (U.S. Dec. 1, 2003) (Brief in Support of Petition) at 26, online: The Center for Justice & Accountability <http://www.cja.org/legalResources/USBriefAlvarez.pdf>.

[8] *Ibid.* at 22.

[9] *Sosa v. Alvarez-Machain,* 72 U.S.L.W. 3370 (U.S. Dec. 1, 2003) (Amicus Brief), online: Human Rights First <http://www.humanrightsfirst.org/international_justice/w_context/ATCA_Sosa_amicus100703.pdf>.

territorially, thereby avoiding diplomatic friction, nor is the international law applied in ATCA cases the result of unchecked Executive power. Also, past ATCA cases show the courts' clear ability to separate meritorious claims from those that do not constitute violations of universal norms of international law. This analytical sophistication extends to courts' ascertaining as to whether claims relate to non-judiciable Executive Branch functions, and ought to fail for that reason.

The Supreme Court's response to such arguments will determine the future of ATCA litigation generally, as well as several current lawsuits, including *Unocal.* Among those cases pending is *Wiwa v. Royal Dutch Petroleum Company*, which has proceeded to examination for discovery after overcoming jurisdiction challenges and a motion for summary dismissal.[10]

With a decision expected in June or July, it remains to be seen how the Supreme Court will interpret the ATCA in the *Sosa* cases. However, an interpretation as proposed by the US Department of Justice and State Department will effectively repeal the act by adding a hitherto unknown cause of action requirement. A decision rendering the ATCA meaningless will create immunity for human rights violations, a move in direct opposition to the United States' stated objective of promoting the protection of internationally-recognized human rights. ≺

[10] *Wiwa v. Royal Dutch Petroleum Co*., 226 F.3d 88 (2d Cir. 14 September 2000), (Cert. Denied) 2001 U.S. LEXIS 2488 (26 March 2001); *Wiwa v. Royal Dutch Petroleum Co*., 2002 U.S. Dist. LEXIS 3293 (S.D.N.Y. Dist. Ct. 2002); "Wiwa v. Royal Dutch Petroleum/Wiwa v. Anderson: Description and Status", online: Center for Constitutional Rights < http://www.ccr-ny.org/v2/legal/corporate_accountability/corporateArticle.asp?ObjID=sReYTC75tj&Content=46>.

A New Type of War

(continued from page 4 - suite de page 4)

neutralising its deterrent and opening the door to an intervention there.

Negotiations between Washington and Pyongyang are stalled, with the Bush administration steadfastly refusing to hold bilateral talks. Thirteen countries are working with the US to develop co-operative mechanisms for interdicting shipments of missiles and weapons of mass destruction on the high seas - an initiative that will increase the pressure on a government that depends heavily on trading arms. Most American troops in South Korea have already been moved to the far south of the peninsula, beyond the range of North Korean artillery. B52 bombers and attack submarines have been deployed to Guam. Whatever happens, Bush has publicly admitted that he 'detests' Kim Jong-il, and this means that the North Korean leader is unlikely to enjoy four more years in power. But what if the first US strikes on North Korea's nuclear facilities were to come sooner rather than later? Blair has already readied himself to support a war that would be strongly opposed by Russia and China. He knows that this time there would be no Security Council resolution on which to hang an argument, that he and Bush would need allies wherever they could find them, and that life would again become sticky at home.

The extended form of the Bush doctrine fits the North Korean situation like a glove. Although North Korea is not an imminent threat, it could well become one - especially if the Bush administration continues to provoke it. By selling missiles, nuclear weapons or associated technologies, it could also contribute to threats elsewhere; seen through this lens, Kim Jong-il is the proliferator Saddam might have been. And the tyranny and famine that haunt North Koreans fit nicely within Blair's conception of a responsibility to protect. Despite the absence of genocide, mass expulsion or systematic rape, North Koreans are unarguably both oppressed and brutalised.

There are millions of victims of genocide, expulsion and mass rape in northern Uganda, eastern Congo, south and west Sudan, although the presence of a few thousand British soldiers could put a stop to such crimes. Launching strikes against North Korean nuclear facilities involves risks of untold dimensions, not just to the people of the Koreas. The prime minister knows all this. But he's also a risk-taker, and he realises that his partner, the cowboy from Crawford, is not about to spend his second term policing the villages of Africa. And so, as Blair said in private during the lead-up to the Iraq war, you do what you can. Helping Bush dismantle another spoke in the axis of evil could end some suffering, and it will keep Blair centrally involved. The eager Englishman with the gift for words has been useful to Bush in the never-ending hunt for airspace, bases, soldiers and cash. Sometimes a lawyer comes in handy, even when you're kicking ass. ≺

Jessup International Law Moot Results

This year's 45th Annual Phillip C. Jessup International Law Moot was held in Washington DC from March 28 to April 3, with teams participating from 83 countries and 539 law schools. Philippines' Ateneo de Manila University defeated the National University of Singapore to win the 2004 Jessup Cup, arguing before a Championship panel consisting of Professor M. Cherif Bassiouni, Judge Fausto Pocar, and Judge Maureen Harding Clark.

The problem, «The Case Concerning the International Criminal Court,» involved an ethnic conflict along the border of two fictional countries and addressed the International Criminal Court's jurisdiction to try nationals of States which do not support the Court's existence.

Canada was represented by National Champion the University of Toronto and National Runner-up the University of Calgary, with the two teams finishing 20th and 60th respectively.

The Canadian National Division Tournament of the Jessup Competition was hosted this year by the University of British Columbia from February 11 to 14, 2004. York University finished third, after Toronto and Calgary, with the University of Victoria following in fourth place. First Place Memorials went to the University of Toronto, followed by the University of Western Ontario. Nicole Skuggedal of the University of Toronto won First Place Oralist, with Andrew Tischler of McGill University named Second Place Oralist. The Canadian Spirit of the Jessup Award went to Dalhousie Law School. (RH)

Sources: ILSA and http://www.shearman.com/jessup/jessup_index.html ◅

Remarks of Judge R. St. J. Macdonald, C.C. upon Professor Donat Pharand being named Lifetime Honourary Chief Judge of the Canadian National Division Qualifying Tournament of the Philip C. Jessup International Law Moot Court Competition

February 14, 2004

It is a special honour to send greetings and congratulations to the incomparable Donat Pharand, beloved teacher, author, consultant, welcoming and unforgettable colleague of all gathered with you this evening.

And who is this Donat Pharand, this big Teddy-Bear of a man with ringing laughter and magnetic personality?

When I think of Donat Pharand I usually start by thinking of his professional accomplishments, for which he is rightly famous throughout our country: - his achievements in legal education, teaching and research; his lasting contribution in bringing order to the seemingly chaotic presentation of the international law of the Arctic; his steadfast dedication to expanding collaborative opportunities for students, teachers and practitioners across Canada; his work as consultant and adviser to governments in Latin America, Asia and Africa; his service as an international judge.

As these matters come to mind, I realize again and again that without Professor Pharand's vision and personal commitment the international law community in Canada would not have been successful in fulfilling its role as the focal point for our subject in Canada.

But as I continue to reflect I soon turn away from the formal achievements and accolades — the Order of Canada, the Royal Society, the Read Medal — and in my mind's eye I see before me, although now covered with honours, the same man beside whom I sat in law school 55 years ago: - an enormously energetic, open-hearted, wonderfully humane and clear-headed individual full of witty, astringent, irreverent comments, friendly, forgiving, loyal and delightful.

I smile to myself, a long slow satisfying smile, as I recall how at the end of any contact with Donat Pharand, however fleeting, you walk away full of admiration and pleasure, as if you were part of a special performance. As indeed you were.

Please add my voice to those shouting approval and gratitude for this national treasure.

R. St-J. Madconald
Judge at the European Court of Human Rights 1980-98
Hon. President CCIL ◅

Congrès annuel du CCDI (2004) L'imputabilité et la légitimité en droit international

Le congrès du CCDI 2004 aura lieu cette année à Ottawa, du 14 au 16 octobre. La grande ligne de réflexion du congrès sera « L'imputabilité et la légitimité en droit international ». Élaborant à partir de ce thème, les co\h \r 1présidents du congrès, le professeur Don McRae et John Hannaford, sont à mijoter un programme à la fois varié et stimulant. Le professeur Thomas Franck, de la Faculté de droit de la New York University, prononcera le discours-programme lors de la séance inaugurale du congrès; il fera une réflexion sur son ouvrage de pionnier, « The Power of Legitimacy Among Nations », un peu plus d'une décennie après sa publication. L'ambassadeur Allan Rock, c.p., c.r., partagera lors du dîner ses impressions en tant que représentant permanent du Canada auprès des Nations Unies et en tant que membre émérite du Barreau canadien. Le professeur John Jackson, du Law Centre de la Georgetown University, prononcera une allocution lors de la seconde séance plénière sur les questions liées à la souveraineté, à la subsidiarité et à la gouvernance internationale. Enfin Jonathan T. Fried, le conseiller en politique étrangère du premier ministre, a été invité à nous faire part de sa perspective unique sur le thème du congrès lors du banquet.

En plus de ces séances plénières, les organisateurs ont prévu un forum sur l'emploi à l'intention des étudiants et des étudiantes et un bon nombre de séances de spécialistes pour la discussion de sujets divers se rattachant aux thèmes des séances plénières. Parmi ceux-ci, mentionnons le trafic de personnes, la protection diplomatique, la prise de décision internationale et la réglementation interne, les normes de travail internationales, la souveraineté et le tiers monde ainsi que la transparence.

Cette année, le congrès du CCDI favorisera donc une participation engagée, en offrant maintes occasions d'échanger sur une grande variété de sujets d'intérêts pour les juristes et les spécialistes du droit international du milieu universitaire, de la pratique privée, de la communauté des organisations non gouvernementales et de la fonction publique.

CCIL Annual Conference (2004) Accountability and Legitimacy in International Law

The 2004 CCIL Conference will be held this year in Ottawa between October 14 and 16. The conference will focus on « Accountability and Legitimacy in International Law ». Building on this theme, conference co-chairs Professor Donald McRae and John Hannaford are organising a varied and stimulating programme. Professor Thomas M. Franck of the New York University School of Law will deliver the keynote address to the first plenary session of the conference reflecting on his seminal work "The Power of Legitimacy Among Nations" more than ten years on. Ambassador Allan Rock, P.C., Q.C., will at the luncheon share his reflections as Canada's Permanent Representative to the United Nations and as a senior member of the Canadian bar. Professor John Jackson of the Georgetown University Law Centre will address the second plenary session on issues relating sovereignty, subsidiarity and international governance. Finally, Jonathan T. Fried, the Foreign Policy Adviser to the Prime Minister, has been invited to offer his unique perspective on the conference's theme at the banquet.

In addition to these plenary presentations, the organisers have arranged for a student job forum and for a range of panel discussions, which will be thematically linked to the plenary presentations. These include a panel on human trafficking, diplomatic protection, international decision making and domestic regulation, international labour standards, sovereignty and the third world, and transparency.

This year's CCIL conference thus promises to be an engaging forum for discussion of a wide range of topics of interest to academics, members of the private bar, the NGO community and government counsel.

John Hannaford
Conference co-chair
(translation by Hélène Laporte)

Iraqi Special Tribunal: Prospects for Justice?

by Robin Hansen*

Despite present uncertainty in Iraq's security and vital services, past leaders are set to face trial by the *Iraqi Special Tribunal* as created by the *Statute of the Iraqi Special Tribunal* (SIST). The Iraqi Governing Council, made up of individuals selected by the Coalition Provisional Authority headed by U.S. Ambassador L. Paul Bremer III, passed the statute last December. Some commentators have questioned whether the laws of occupation permit the creation of such a tribunal;[1] however, any such breach pales in comparison with the pre-emptive invasion of Iraq itself, widely regarded as inconsistent with international law on the use of force.

A number of facts suggest that the tribunal could be open to highly damaging charges of dependence and partiality. Named as tribunal president is Salem Chalabi, nephew to the head of the Iraqi National Congress, a political opposition group funded by the U.S. since the gulf war. Also, evidence for war crimes charges is currently being assembled by U.S. Department of Justice officials.

These and other such details may not only influence the actual decision-making of the tribunal but will also undoubtedly influence the perception of the fairness of the tribunal's work. In addition, the SIST provisions themselves will also likely be problematic. An examination of key provisions of the statute reveals a process that inadequately protects the rights of the accused, and fails international standards of trial fairness, foregoing an opportunity to further the rule of law in Iraq.

Covering acts committed between July 17, 1968 and May 1, 2003, the tribunal has jurisdiction over crimes against humanity, war crimes and genocide, as well as Iraqi law crimes including attempting to manipulate the judiciary, wasting public assets and invasion of an Arab country. Only natural persons who are Iraqi nationals or residents may be charged.

Approximately 300,000 Iraqis were killed under the Ba'athists. Hussein himself is expected to be charged with genocide for the 1988 Anfal campaign against the Iraqi Kurds, which killed 100,000 people. Crimes against humanity and war crimes charges will also probably arise from the mass killings which served to quell the 1991 Iraqi uprisings as well as from the use of chemical weapons against Iranian soldiers and Kurdish civilians. Other charges will result from the repression of Marsh Arabs and forced minority expulsions in the North.

The statute contains no prohibition on capital punishment. Tribunal offenses which are criminal under Iraqi law, such as rape or murder, will be punished according to Iraqi law, which includes death by hanging. Where tribunal offenses are not crimes under Iraqi law, penalties will be as determined by the Trial Chamber judges (art. 24.e). As the tribunal has the authority to try any Iraqi, the death penalty could be fairly widely imposed and not just in high profile cases like that of Hussein. Yet international law militates against execution.

The official language of the tribunal is Arabic and the statute makes no provisions for the accused to be informed of a charge in a language he understands or to be granted the services of an interpreter at trial. Also, while the ICCPR bans prosecution of a person more than once for the same crime, the tribunal statute permits such an outcome with the approval of the Appeals Chamber.

The SIST protects the rights of the accused during trial, but it guarantees few rights during the investigation phase. It guarantees a right to consult a lawyer during questioning, but not the right to remain silent, to be informed of potential charges or to be free from coercion, duress, threat, torture or arbitrary detention/arrest. This exposes the accused to violations of the fundamental human right to be free from arbitrary arrest or detention.

Moreover, at article 17.a, the SIST provides that "the general principles of the criminal law will be... the Criminal Procedure Code of 1971, subject to the provisions of this statute and the rules made thereunder". At paragraph 218, the 1971 Code permits in certain circumstances, confessions obtained through physical coercion, a possibility which the tribunal statute does not directly rule out.

Also, the tribunal is not bound to use the criminal standard of proof beyond a reasonable doubt. The UN Human Rights Committee in its official comment to

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* B.A. (Hons.), Third year LL.B. student at the University of Ottawa and M.A. candidate at the Norman Paterson School of International Affairs, Carleton University. Robin Hansen is also the CCIL student intern at the University of Ottawa for the academic year 2003-2004.

[1] *Memorandum to the Iraqi Governing Council on 'The Statute of the Iraqi Speical Tribunal',* Human Rights Watch, (December 2003), online: <http://www.hrw.org/backgrounder/meno/iraq121703.htm.> [hereinafter *Memorandum*] at 1.

article 14.7 of the International Covenant on Civil and Political Rights has stated that proof beyond a reasonable doubt is the appropriate standard to employ in criminal proceedings.

While the SIST requires that judges "be of high moral character, impartiality and integrity" with "qualifications required for the appointment to the highest judicial offices," it does not explicitly require that judges have experience in criminal proceedings. Instead it holds that during judges' selection "due account shall be taken of the experience of the judges in criminal law and trial procedures"(art. 5.a, 7.d). There is also no requirement that prosecutors be impartial or of high moral character.

The SIST provides that prosecutors and investigative judges act independently and prohibits them from seeking or receiving instructions from any official or other source (art. 7.j, 8.b). Unfortunately, no such provision applies to trial and appeals judges who will be responsible for sentencing.

The tribunal statute thus shows serious weaknesses in protecting the rights of the accused and the guarantee of a fair trial. Unfortunately, the tribunal has questionable potential to end the culture of impunity which for many years has plagued Iraq, and to a certain extent, the rest of the world.

Recent Member Publications

by Robin Hansen

Recent publications by CCIL members are numerous and this update is far from complete. Upcoming books by CCIL members include Linda C. Reif's *The Ombudsman, Good Governance and the International Human Rights System* (Leiden; Boston: Martinus Nijhoff Publishers, 2004). Also, Edgar Gold, Aldo Chircop and Hugh M. Kindred have collaborated to write *Maritime Law* (Toronto: Irwin Law, 2004).

Members Joost Blom and Geneviève Saumier, together with Nicholas Rafferty, Marvin Baer, Elizabeth Edinger and Catherine Walsh wrote *Private International Law in Common Law Canada: Cases, Text, and Materials*, 2nd ed. (Toronto: Emond Montgomery Publications, 2003). Fabien Gélinas co-authored with Karim Benyekhlef *Le règlement en ligne des conflits: Enjeux de la cyberjustice* (Paris: Romillat, 2003). Members Ted L. McDorman and Douglas Johnston, working with Alexander J. Bolla and John A. Duff, produced *International Ocean Law* (Durham, NC: Carolina Academic Press, 2004) while Stéphane Beaulac published *The Power of Language in the Making of International Law* (Leiden: Martinus Nijhoff Publishers, 2004). Member Meg Kinnear along with David Sgayias, Donald Rennie and Brian J. Saunders penned *Federal Court Practice 2004* (Toronto: Carswell, 2004). As well, *Global Governance, Economy and Law: Waiting for Justice* (New York; London: Routledge, 2003), co-authored by Errol Mendes and Ozay Mehmet, was released.

Collections edited by CCIL members include Maureen Irish's *The Auto Pact: Investment Labour, and the WTO* (The Hague; London; New York: Kluwer Law International, 2004) and Karen Knop's *Gender and Human Rights* (Oxford: Oxford University Press, 2003). Michael Byers edited with Georg Nolte *United States Hegemony and the Foundations of International Law* (Cambridge: Cambridge University Press, 2003). Obiora Chinedu Okafor along with Obijiofor Aginam edited *Humanizing Our Global Order* (Toronto: University of Toronto Press, 2003). *Capital Punishment : Strategies for Abolition* (Cambridge: Cambridge University Press, 2004) was edited by member William A. Schabas with Peter Hodgkinson.

N.B.

In light of the sheer number of articles published by CCIL members and the therefore increased risk of omitting some, the decision was taken to concentrate on recently published books. I do hope that there have been no major omissions on this occasion. As indicated in my Editor's Notebook, I would be extremely grateful if members could alert me as to any recent publications in which they have been involved. (SL)

En raison du volume d'articles publiés par les membres du CCDI, et donc du risque accru d'en omettre, la décision a été prise de ne présenter que les livres récemment publiés. J'espère que ce relevé n'omet pas de parutions importantes. Tel que je l'indiquais dans mon cahier de la rédactrice, je serais extrêmement reconnaissante si les membres pouvaient m'aviser de nouvelles publications auxquelles ils ont participé. (SL)

Editor's Notebook

Since the 2003 October conference, I've had the pleasure of discussing with a number of members their views on the Bulletin. One fairly common view has been that the Bulletin should not try and compete with the many learned and refereed journals which exist in the field of international law. Bulletin articles should be topical and to the point. Another strong point of view, and one that I share wholeheartedly, has been that the Bulletin should be a valuable tool in fostering a sense of community among Canadian international lawyers, scholars and diplomats. Members such as Michael Byers and Joanna Harrington, among others, have suggested that the Bulletin can and should play a vital role in keeping Canadian internationalists connected – for example, by tracking the career moves of CCIL members and their publications, highlighting international legal events at various faculties, research centres and governmental agencies, as well as reporting on the different international moot competitions.

Of course, for this project to succeed, the Bulletin will need input from across Canada. Therefore, in the coming months, I would like to try and find a contact member in each law faculty as well as at Justice and DFAIT and any other key institution. I very much hope that members will take a few moments and email me any news they would like to share with the CCIL membership and also to indicate whether they would be willing to act as a Bulletin contact. My full contact details are: Suzanne Lalonde, professeure, Faculté de droit, Université de Montréal, C.P. 6128, Succ. Centre-ville, Montréal (Qc), H3C 3J7. My phone number is (514) 343-7207 and my fax number is (514) 343-2199. My email address is: suzanne.lalonde@umontreal.ca. I would greatly appreciate your help in making such "community building" articles a regular feature of the Bulletin.

On a different note, I would like to extend a heartfelt thank you to Robin Hansen, this year's CCIL intern at Ottawa University, for all her hard work and support.

I also wish to thank Mme Hélène Laporte, assistant to the vice-dean of the French Common Law programme at the University of Ottawa, for her invaluable help in translating some of the English texts published in the Bulletin over the past year.

Suzanne Lalonde ≺

Cahier de la rédactrice

Depuis la conférence d'octobre 2003, j'ai eu le plaisir de discuter avec bon nombre de membres de la mission du Bulletin. Il semble être de l'avis de plusieurs que le Bulletin ne devrait pas tenter de faire concurrence aux nombreuses revues juridiques qui existent en droit international. Les articles du Bulletin devraient être concis et traiter de sujets d'actualité. De plus, et selon un autre point de vue auquel je me rallie d'emblée, le Bulletin devrait être un important outil de développement d'un sentiment d'appartenance à la communauté des internationalistes canadiens. Michael Byers et Joanna Harrington, parmi d'autres, ont souligné que le Bulletin pourrait et devrait permettre aux membres d'être informés, par exemple, des nominations et des nouvelles publications de nos membres, des évènements de droit international au sein des diverses facultés, centres de recherche ou ministères, et même des résultats des différents concours de plaidoiries de droit international.

Évidemment, pour qu'un tel projet réussisse, il faudra recueillir les informations pertinentes dans toutes les régions du Canada. Par conséquent, au cours des prochains mois, je vais tenter de trouver un membre contact dans chacune des facultés, aux ministères de la Justice et des Affaires Étrangères ainsi qu'au sein d'autres institutions importantes. J'apprécierais énormément recevoir de votre part toute nouvelle que vous aimeriez partager avec les membres du CCDI et, éventuellement, une note quant à votre intérêt à devenir l'un de ces contacts. Mes coordonnées sont les suivantes : Suzanne Lalonde, professeure, Faculté de droit, Université de Montréal, C.P. 6128, Succ. Centre-ville, Montréal (Qc) H3C 3J7. Mon numéro de téléphone est le (514) 343-7207 et mon numéro fax le (514) 343-2199. Mon adresse courriel est : suzanne.lalonde@umontreal.ca. Toute aide visant à consolider notre sentiment d'appartenance à la communauté des internationalistes canadiens par un échange d'informations sera grandement appréciée.

Dans un autre ordre d'idée, j'aimerais remercier chaleureusement Robin Hansen, la stagiaire CCDI à l'Université d'Ottawa (2003-2004), pour tout son excellent travail et pour sa très grande disponibilité.

Je souhaite également remercier Mme Hélène Laporte, adjointe à la vice-doyenne de la section de common law (programme français) à l'Université d'Ottawa, pour une aide inestimable dans la traduction de certains textes publiés dans le Bulletin au cours de la dernière année.

Suzanne Lalonde ≺

Au Calendrier — Upcoming Events

71st Conference of the International Law Association

August 16-21, 2004, Berlin. The official website for the ILA 71st Conference next summer in Berlin can be found at <http://www.ila2004.org>. The site contains all the information currently available regarding the Conference, including the outline programme, registration fees, hotels and excursions. Registrations for the conference can be made online or by downloading the forms and returning them to the conference organizers by post or fax. Hotel reservation forms are also available for downloading and should be posted or faxed directly to the appropriate hotel. The pre-conference committee reports will be available o both the Conference website and the main ILA website as of June 1st, 2004.

5th Pan-European Conference

September 9-11, 2004, The Hage. The International Court of Justice, the Yugoslav Tribunal, the International Criminal Court, Europol and other international law serving institutions located in The Hague symbolize the construction of a world order in which ideas matter as much as material power. The Netherlands Congress Centre, around the corner from these international courts, thus offers a fine setting for a new round in the debate about the intertwinement of International Relations Theory and International Law. The Conference, entitled "Constructing World Orders" will examine three main themes: International Relations Theory meets International Law; the European Union meets New Members; and Anarchy meets Hierarchy. All relevant information, including registration details and a provisional programme, is available at: <http://www.sgir.org/conference2004/intro.htm>.

Canadian Council on International Law 2004 Conference

October 14-16, 2004, Ottawa. This year's CCIL Conference, which will address the theme of "Legitimacy and Accountability in International Law" promises to be an interesting forum for discussions of this timely topic. The wide-ranging programme will address such international legal issues as international environmental law, trade and investment law, the use of force and humanitarian law, international procedures and will also include Professor Thomas Franck of the New York University School of Law as keynote speaker. As in past years, the schedule will also include a Student Job Fair and Form. Further details and registration information can be found on the CCIL's website at: <http://www.ccil-ccdi.ca>.

International Law Students Association 2004 Fall Conference

October 21-23, 2004, Boulder, Colorado. Tentatively titled "Challenges Facing Developing Countries", the 2004 ILSA Fall Conference will be sponsored by the Nicholas R. Doman Society of International Law at the University of Colorado School of Law and the Colorado Journal of International Environmental Law & Policy. Whether the challenges facing developing countries are environmental, economic, political or human rights related, solutions are often difficult and players are often polarized against compromise. By bringing together scholars on topics such as constitution-building, international environmental law, the rule of law, and cultural relativism, the conference will attempt to address how the frequent conflict between international standards and developing countries' needs can be resolved. More information about the Conference is available at: <http://www.colorado.edu/law/ilsa-2004>.

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Créé en 1972, le CCDI est une association indépendante, sans allégeance politique, qui cherche à promouvoir l'étude et l'analyse de questions de droit international par les spécialistes dans les milieux universitaires et gouvernementaux de même qu'en pratique privée. Publié quatre fois par an, le *Bulletin* contient des renseignements relatifs aux développements du droit international et aux activités se rapportant à ce domaine au Canada et ailleurs.