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Introduction

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Introduction

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This special issue of the Loyola of Los Angeles International and Comparative Law Review brings together the papers, and reaction papers, presented at the symposium “The International Judicial Function,” in Amsterdam, The Netherlands, on March 18–19, 2011.

The symposium was a joint undertaking of five academic institutions—the University of Amsterdam, the Amsterdam Center for International Law; Loyola Law School Los Angeles; the University of Geneva, Faculty of Law; the Centre on International Courts and Tribunals, University College London; and the Hebrew University, Faculty of Law—cooperating within the framework of the Project on International Courts and Tribunals (PICT).

PICT is a network of researchers and practitioners who share a common interest in the study of international courts and tribunals.¹ Members of the network regularly work with each other, and with other interested individuals and institutions, generating innovative research activities and bringing basic knowledge about international courts and tribunals to students, state officials, and other professionals.² The research performed by PICT focuses on both the increase in power and the systemic issues associated with the sharp rise in the number of international courts and tribunals since the early 1990s.³ In an effort to identify across-the-board problems and solutions, PICT researchers embrace in their work a broad perspective of international adjudication.⁴ They ask various questions, including: what makes international courts effective; what are the functions of international judges; what

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1. PROJECT ON INTERNATIONAL COURTS AND TRIBUNALS, *What is PICT?* <http://www.pict-pecti.org> (last visited Apr. 23, 2012).

2. *Id.*

3. PROJECT ON INTERNATIONAL COURTS AND TRIBUNALS, *What does PICT research explore?*, <http://www.pict-pecti.org> (last visited Apr. 23, 2012).

4. *Id.*

mechanisms are in place to allow access to international courts by non-state actors and other disempowered constituencies; how are international courts funded; what are the relations between national and international courts; how are jurisdictional conflicts between international courts resolved; how are judges selected; what ethical standards should guide international judges and lawyers appearing before them; and what renders some international courts more legitimate than others.⁵

The symposium brought together twenty-four international law and international relations scholars to discuss the role that international and national courts can and should actually play in international life.⁶ In other words, the symposium aimed to explore the essence of the “international judicial function,” a key concept that underlies the organizers’ understanding of the promise and limits of international courts and their mutual relations, as well as the relations between national and international courts. Specifically, the symposium sought to promote discussions of the disparate roles played by different kinds of international courts, including the various and divergent priorities they embrace and any ensuing resource-allocation decisions. For example, the symposium sought to answer, should courts focus their energies on quickly resolving disputes or on law-development? On deterrence or reconciliation? The symposium also attempted to identify areas of functional commonality and divergence across different courts, an exercise that may help in understanding the extent to which the experiences of specific courts are transferable to others.

5. *Id.*

6. Participants were: Jose Alvarez (NYU Law School); Samantha Besson (University of Fribourg); Armin von Bogdandy (Managing Director, Max Planck Institute for Comparative Public Law and International Law); David Caron (UC Berkeley, Boalt Hall); Antonio Cassese (President, Special Tribunal for Lebanon); Shireen Fischer (Judge, Special Tribunal for Sierra Leone); Thordis Ingadottir (University of Reykjavik); Ruth Mackenzie (University of Westminster); Jonathan Mance (Justice, Supreme Court of the United Kingdom); Andre Nollkaemper (University of Amsterdam); Eduardo Valencia Ospina (International Law Commission); Monica Pinto (University of Buenos Aires, Judge, World Bank Administrative Tribunal); Alan Rosas (Judge, Court of Justice of the European Union); Georges Abi Saab (former member of the WTO Appellate Body; former judge of the International Criminal Tribunal for the Former Yugoslavia; ad hoc judge, International Court of Justice); Philippe Sands (Director, Centre for International Courts and Tribunals, University College London); Bruno Simma (Judge, International Court of Justice); Anna Spain (University of Colorado); Alec Stone Sweet (Yale Law School and the Department of Political Science); Tullio Treves (Judge, International Tribunal for the Law of the Sea); Antonios Tzanakopoulos (University of Glasgow); Nina Vaic (European Court of Human Rights); Ingo Venzke (Max Planck Institute for Comparative Public Law and International Law); and Abdulqawi Ahmed Yusuf (Judge, International Court of Justice).

The symposium was structured in four main sessions: “International Courts as Dispute Settlers or Law Enforcers,” “International Courts as Fact-Finders,” “International Courts as Law Interpreters or Developers,” and “the International Judicial Function of National Courts.” Introductory and final panels proceeded and followed each of the four main sessions. Each session focused on a single paper, followed by a number of comments on that paper by judges, practitioners, and academics, and a round table discussion. The final roundtable sought to distill the conclusions of each session and to discuss methods of experience-sharing across different international courts.

This special issue contains the papers presented to kick-start discussion in the symposium’s four main sessions. Anna Spain’s article “Examining the International Judicial Function: International Courts as Dispute Resolvers,” opened the first session.⁷ Samantha Besson replied with a paper entitled “International Judges as Dispute-Settlers and Law-Enforcers: From International Law Without Courts to International Courts Without Law.”⁸ The second session was opened by Makane Mbengue’s paper “International Courts and Tribunals as Fact-Finders: The Case of Scientific Fact-Finding in International Adjudication,”⁹ and Jose Alvarez’s comments “Are International Judges Afraid of Science?” are published here.¹⁰ The third session featured Ingo Venzke’s paper “The Role of International Courts as Interpreters and Developers of the Law: Working Out the Jurisgenerative Practice of Interpretation.”¹¹ Finally, Antonios Tzanakopoulos’ paper “Domestic Courts in

7. See generally Anna Spain, *Examining the International Judicial Function: International Courts as Dispute Resolvers*, 34 *LOY. L.A. INT’L & COMP. L. REV.* 5–31 (2011) (discussing the current and future state of the international judicial function).

8. See generally Samantha Besson, *International Judges and Dispute-Settlers and Law-Enforcers: From International Law Without Courts to International Courts Without Law*, 34 *LOY. L.A. INT’L & COMP. L. REV.* 33–52 (2011) (discussing opportunities for international adjudication as a response to Anna Spain’s paper).

9. See generally Makane Mbengue, *International Courts and Tribunals as Fact-Finders: The Case of Scientific Fact-Finding in International Adjudication*, 34 *LOY. L.A. INT’L & COMP. L. REV.* 53–80 (2011) (discussing the complexity of scientific fact-finding in the international adjudication process).

10. See generally Jose Alvarez, *Are International Judges Afraid of Science?: A Comment on Mbengue*, 34 *LOY. L.A. INT’L & COMP. L. REV.* 81–98 (2011) (discussing two myths of international law, referencing Makane Mbengue’s paper on the challenges of scientific fact-finding in international adjudication and Ingo Venzke’s papers on the prevalence of judge-made international law).

11. See generally Ingo Venzke, *The Role of International Courts as Interpreters and Developers of the Law: Working Out the Jurisgenerative Practice of Interpretation*, 34 *LOY. L.A. INT’L & COMP. L. REV.* 99–131 (2011) (discussing the inevitability of judge-made law in international court adjudication).

International Law: The International Judicial Function of National Courts” was the keynote for the fourth session.¹²

This is the second time that the Loyola of Los Angeles International and Comparative Law Review has published a special issue of the papers presented at a PICT symposium. Volume 30, Issue 3 (2008) contained the papers presented at the PICT’s 10th anniversary symposium in The Hague (2007).¹³ Once more, our school is proud to further knowledge and understanding of the international judiciary and to be part of a large and international research network.

12. See generally Antonois Tzanakopoulos, *Domestic Courts in International Law: The International Judicial Function of National Courts*, *LOY. L.A. INT’L & COMP. L. REV.* 133–68 (2011) (discussing how domestic courts deal with international law questions.)

13. See generally 30 *LOY. L.A. INT’L & COMP. L. REV.* 211–490 (2008) (discussing the function of the international judicial system and its future).