International Courts Committee

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This article summarizes significant developments in 2007 concerning international courts and tribunals, particularly the International Court of Justice, the Permanent Court of Arbitration, the Eritrea-Ethiopia Claims Commission, the Iran-U.S. Claims Tribunal, the United Nations Compensation Commission, and arbitral tribunals constituted under the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States. This article covers the period of activity from December 1, 2006, to November 30, 2007.

I. International Court of Justice[1]

The International Court of Justice ("ICJ" or the "Court") is the principal judicial organ of the United Nations (U.N.). The ICJ's jurisdiction is two-fold: to deliver judgments in contentious cases submitted to it by sovereign states and to issue non-binding advisory opinions at the request of certain U.N. organs and agencies.[2] This section reports briefly on the contentious cases decided by the Court, the Court's general list of pending cases, and the composition of the Court.[3]

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1. All International Court of Justice decisions, pleadings, and other related materials referenced in this section are available at http://www.icj-cij.org.

2. U.N. Charter arts. 92, 96; Statute of the International Court of Justice art. 36, *available at* http://www.icj-cij.org/documents/index.php?p1=4&p2=2&p3=0.

3. During the relevant reporting period, the Court received no requests for advisory opinions and no new cases were filed. At the end of 2006, the Court amended its Practice Directions IX and XI and adopted new

A. Contentious Cases

During this year's reporting period, the Court delivered three substantive judgments and one order on a request for the indication of provisional measures. These are summarized below in chronological order.

1. *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*

On January 23, 2007, the Court delivered an order in the *Pulp Mills* Case.[4] The case was initiated by Argentina in May 2006.[5] In its application, Argentina alleged that the construction by Uruguay of two pulp mills on the River Uruguay, the joint Uruguay-Argentina border, threatened the river and its environs with likely damage to water quality.[6] Argentina further alleged that the actions by Uruguay violated several provisions of an international agreement on the use of the river, known as the "Statute of the River Uruguay," which was signed by Argentina and Uruguay on February 26, 1975 (the "1975 Treaty").[7]

In the course of proceedings, Argentina submitted a request for the indication of provisional measures on May 4, 2006, and asked the ICJ to compel Uruguay to suspend construction of the mills and to cooperate with Argentina on certain environmental aspects of the river, among other things.[8] On July 13, 2006, the Court rejected the request, since the circumstances were "not such as to require the exercise of its power under Article 41 of the Statute to indicate provisional measures."[9]

On November 29, 2006, Uruguay submitted a request for the indication of provisional measures.[10] Uruguay claimed to be suffering economic damage as a result of the efforts by organized groups of Argentineans to block an important bridge over the River Uruguay.[11] The blockade harmed trade and tourism, according to Uruguay, which alleged that Argentina was responsible since it allowed, acquiesced in, and failed to act against the blockade.[12] Uruguay asked the Court to order Argentina: (1) to take all reasonable and appropriate steps to end the blockade, (2) to abstain from aggravating the dispute, and (3) to abstain from other measures that might prejudice Uruguay in the dispute.[13]

In its order dated January 23, 2007, the Court rejected the request in its entirety, holding that the circumstances did not require it to exercise its power to indicate provisional

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practice directions IXbis and IXter. *See* ICJ Press Release, The International Court of Justice Revises Practice Directions, *available at* www.icj-cij.org [hereinafter Jan. 23, 2007 Request for Provisional Measures].

4. *Pulp Mills on the River Uruguay* (Argentina v. Uruguay), Provisional Measures (Request for the Indication Of), Order of Jan. 23, 2007, *available at* www.icj-cij.org/docket/files/135/1315.pdf.

5. *Id.* ¶ 1.

6. *Id.*

7. *Id.* ¶ 3.

8. *Id.* ¶ 4.

9. Pulp Mills on the River Uruguay (Argentina v. Uruguay), Provisional Measures (Request for the Indication Of), Order of July 13, 2006, ¶ 87, *available at* http://www.icj-cijg.org/docket/files/135/11235.pdf.

10. Jan. 23, 2007 Request for Provisional Measures, *supra* note 3, ¶ 6.

11. *Id.* ¶ 8.

12. Pulp Mills on the River Uruguay (Argentina v. Uruguay), Provisional Measures, Order of January 23, 2007, ¶¶ 8,10.

13. *Id.* ¶ 13.

measures.[14] The Court underlined that the second and third provisional measures requested by Uruguay depended on the granting of the request for the indication of the first measure.[15] There was no "imminent risk of irreparable prejudice to the rights of Uruguay in dispute before it," since construction at the site of the cellulose plant had progressed and was continuing despite the blockade.[16]

2. *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*

The Court rendered its judgment in the above case on February 26, 2007.[17] The case was first brought by the Republic of Bosnia and Herzegovina against the Federal Republic of Yugoslavia (FRY)[18] on March 20, 1993, alleging violations of the Convention on the Prevention and Punishment of the Crime of Genocide (the "Genocide Convention" or "Convention").[19] In a judgment of July 11, 1996, the Court dismissed all preliminary objections and found that it had jurisdiction to adjudicate the dispute on the basis of Article IX of the Genocide Convention.[20]

At the outset of the present judgment, the Court identified Serbia as the sole respondent.[21] It then proceeded to reject renewed Serbian objections to its jurisdiction. Serbia had argued that its admission as a member of the United Nations in 2000 demonstrated that it was not the successor of the Federal Republic of Yugoslavia and, thus, that it had not been a party to the Genocide Convention or the Statute of the Court at the time of the filing of the application. In Serbia's view, since it had not had access to the Court at the time, the ICJ lacked jurisdiction ratione personae over it in the present dispute. The Court, in a ten to five vote, decided that its 1996 Judgment on jurisdiction constituted res judicata and that it could only be overturned through a successful application for revision under Article 61 of its Statute.[22]

The Court also found that it had jurisdiction in this case only over violations of the Genocide Convention on the basis of Article IX of the Convention.[23] The Court rejected Serbia's contention that the Genocide Convention contains only an obligation for State parties to prevent genocide, stressing instead that Article I of the Convention implies a

14. *Id.* ¶ 56.

15. *Id.* ¶ 50.

16. *Id.* ¶¶ 49, 56.

17. Application of the Convention of the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. & Mont.) (Judgment of February 26, 2007), *available at* http://www.icj-cij.org/docket/files/91/13685.pdf [hereinafter "Genocide Judgment"].

18. From 2000-2006, the Respondent in the case, FRY, included Serbia and Montenegro, but after 2006, only Serbia.

19. The Genocide Convention was adopted by the U.N. General Assembly on December 9, 1948. Convention on the Prevention and Punishment of the Crime of Genocide December 9, 1948, 78 U.N.T.S. 278.

20. Genocide Judgment, *supra* note 17, ¶¶ 12, 107.

21. *Id.* ¶¶ 67-79.

22. *Id.* ¶¶ 80-141, 471. An application by Respondent for revision of the 1996 Judgment was found inadmissible by the Court in a 2003 Judgment. *See* Application for Revision (Bosn. & Herz. v. Serb. & Mont.) (Order of February 3, 2006) ¶ 115, *available at* http://www.icj-cij.org/docket/files/122/8248.pdf.

23. Genocide Judgment, *supra* note 17, ¶ 80.

prohibition against the commission of genocide and against other acts prohibited under the Convention by a State party or its agents.[24]

The Court further noted that for an act to be considered genocide, it must come within one of the five categories enumerated in the definition of genocide set out in Article II of the Convention (killing, causing serious bodily or mental harm, deliberately inflicting conditions of life calculated to bring about the destruction in whole or in part of the group, preventing births and forcibly transferring children of the group to another group), and it has to be accompanied by the specific intent (dolus specialis) to destroy the group in question, in this case Bosnian Muslims, in whole or in part.[25]

After addressing questions of evidence, the Court examined the facts of the case and compared these facts with the criteria set out in the Convention. The Court found that many atrocious acts were committed in Bosnia during the period in question. It also found, however, that only in the case of the killing of more than 7,000 Bosnian Muslim men in Srebrenica in July 2005 was it possible to prove the specific intent to destroy, in part, Bosnian Muslims. The Srebrenica massacre was thus the only instance of genocide identified by the Court. The Court found that the genocide in Srebrenica was perpetrated by the army of the Republika Srpska, which was not an organ of the FRY. Thus, the Court held that under the international law of state responsibility, the Srebrenica genocide could not be attributed to the FRY/Serbia since the acts were not carried out by its agents or on its instruction under its direction or control.[26]

Thereafter, the Court stated that under Article I of the Convention the FRY had an obligation to take every action within its power to prevent and punish genocide. The Court found that FRY, which was or should have been aware of the serious risk of genocide and that was in a position of considerable influence over the Bosnian Serbs, violated this obligation by doing nothing to prevent the Srebrenica genocide. The Court also held that the Respondent had violated its obligation to punish genocide under Article VI of the Convention by not cooperating with the International Criminal Tribunal for the Former Yugoslavia in the arrest and extradition of one of the foremost authors of the Srebrenica genocide, Radko Mladic. It finally found that the Respondent had violated the Court's Order of April 8, 1993, by not taking all measures within its power to prevent genocide.[27]

On the question of reparations for the three violations, the Court found that the inclusion of a declaration regarding the violations in the operative paragraph of the judgment was sufficient reparations, including that the Respondent immediately take effective steps to ensure compliance with its obligations under the Convention; this consisted of, *inter alia*, "transfer[ing] individuals accused of genocide or any of those other acts for trial by the International Criminal Tribunal for the former Yugoslavia, and to co-operate fully with that Tribunal."[28]

24. *Id.* ¶ 179.
25. *Id.* ¶¶ 142-149, 186-189.
26. *Id.* ¶¶ 278-297, 377-415.
27. *Id.* ¶¶ 425-450.
28. *Id.* ¶ 471, § 8.

3. *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of Congo)*

On May 24, 2007, the Court delivered its judgment on the admissibility of the application in the above case.[29] The case concerned the international law of diplomatic protection. On December 28, 1998, the Republic of Guinea (Guinea) instituted proceedings against the Democratic Republic of Congo (DRC). Guinea alleged that Ahmadou Sadio Diallo, a Guinean national and long-time resident of the DRC, managed and owned two business entities incorporated under DRC law. When Diallo attempted to recover debts owed to him by certain other DRC corporations, he was incarcerated for an extended period of time and then expelled. At the same time, he was stripped of his assets, including the companies. The Court concluded that since this treatment was carried out by organs of the DRC in violation of Diallo's rights, the DRC was responsible to Guinea.[30]

In its judgment, the Court dealt with certain preliminary objections to the admissibility of the case. Based on the international law of diplomatic protection, Guinea claimed that its diplomatic protection extended to at least three different rights attributable to Diallo: his rights as a person, rights as a shareholder (associé), and the rights of his companies "by substitution."[31]

The Court held that only the first two claims of Guinea were admissible.[32] The first claim, based upon Diallo's rights as a person, was admissible because Diallo was a Guinean national and had exhausted all remedies in the DRC. The second claim, based upon Diallo's rights as the owner of the two companies, was also admissible, again because Diallo was a Guinean national and local remedies had been exhausted.[33] The third claim, however, did not give Guinea standing in the present case because the companies that Diallo owned bore DRC nationality. The Court found that Diallo's Guinean nationality could not be substituted so as to give Guinea standing. The theory of diplomatic protection by substitution was not part of customary international law.[34] Therefore, this part of the application was found to be inadmissible.

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29. Ahmadou Sadio Diallo (Rep. of Guinea v. Dem. Rep. of Congo) (Preliminary Objections) (Order of May, 21 2007), *available at* http://www.icj-cij.org/docket/files/103/13856.pdf [hereinafter Ahmadou Sadio Diallo] (quoting Article 1 of the draft Articles on Diplomatic Protection of the International Law Commission, ILC Report, doc. A/61/10, at 24).

> [D]iplomatic protection consists of the invocation by a State, through diplomatic action or other means of peaceful settlement, of the responsibility of another State for an injury caused by an internationally wrongful act of that State to a natural or legal person that is a national of the former State with a view to the implementation of such responsibility.

30. *Id.* ¶ 1.

31. Guinea sought to exercise its diplomatic protection on behalf of Diallo "by substitution" for the two companies that he founded and owned, Africom-Zaire and Africontainers-Zaire. By "substitution," Guinea meant "the right of a State to exercise its diplomatic protection on behalf of nationals who are shareholders in a foreign company whenever the company has been a victim of wrongful acts committed by the State under whose law it has been incorporated." *Id.* ¶ 30.

32. *Id.* ¶ 96.

33. *Id.* ¶¶ 48, 67, 75.

34. "The Court, having carefully examined State practice and decisions of international courts and tribunals in respect of diplomatic protection of associés and shareholders, is of the opinion that these do not reveal – at least at the present time – an exception in customary international law allowing for protection by substitution, such as is relied on by Guinea." *Id.* ¶ 89.

4. *Territorial and Maritime Dispute Between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*

On October 8, 2007, the Court delivered its judgment in the above case.[35] Nicaragua initiated the proceedings in 1999 regarding a dispute with Honduras over their joint maritime boundary in the Caribbean Sea. Nicaragua claimed that the boundary had never been established whereas Honduras claimed that there was a pre-existing, recognized maritime boundary along the 15th parallel by virtue of the principle uti possidetis juris (on the continued validity of colonial boundaries after independence).[36]

The Court's judgment addressed two main issues: the sovereignty over four minor islands to the north of the 15th parallel and the delimitation of the maritime boundary. The Court's decision resulted in the determination of a composite boundary, namely the straight line drawn by the Court with a polymorph dent around the islands.

The Court first examined the issue of sovereignty over the four islands: Bobel Cay, Savanna Cay, Port Royal Cay, and South Cay. Neither an examination of colonial administrative boundaries (in line with the uti possidetis juris principle) nor a study of colonial effectivités brought the Court closer to a conclusion. Evidence presented by Honduras regarding post-colonial effectivités, however, convinced the Court that Honduras had in fact ensured civil and criminal law enforcement and regulated immigration, fisheries, and private and public construction.[37] In the words of the Court, these effectivités "constitute a modest but real display of authority over the four islands."[38] The Court thus recognized Honduras's sovereignty.[39]

Regarding the maritime boundary, the Court found there was no boundary along the 15th parallel based on either uti possidetis juris or mutual agreement. It therefore decided to draw the boundary itself.[40] The default method under Article 15 of the U.N. Convention on the Law of the Sea to draw an equidistant line was not acceptable, according to the Court, since the geography was very peculiar at the point where the two countries land border reach the sea at Cape Gracias a Dios, "a sharply convex territorial projection abutting a concave coastline" at the unstable mouth of the River Coco (the endpoint of the land boundary).[41] Instead, the Court decided to use a bisector to divide evenly the angle created by linear approximations of coast lines. Having selected two locations on either side of the cape, the resulting bisector has an azimuth of 70° 14' 41.25", which ends in an area where the rights of certain third States may be affected.[42]

Having recognized a twelve-mile broad territorial sea around the four islands mentioned above and a fifth island located in Nicaraguan waters, the boundary following the bisector followed the median line between the islands where their territorial seas over-

35. Territorial and Maritime Dispute Between Nicaragua and Honduras in the Carribean Sea (Nicar. V. Hond.) (Judgment) (Order of 8 October 2007), *available* at http://www.icj-cij.org/docket/files/120/14075.pdf. The reasoning and the decisions of the Court is difficult to comprehend without access to the several maps that the Court relied on. *See id.* at 12, 25, 82, 85, 86, 88, 91 and 92.

36. *Id.* ¶ 17-18, 72-73 and Sketch-map No. 2 at 25.

37. *Id.* ¶¶ 146-227.

38. *Id.* ¶ 208.

39. *Id.* ¶ 227.

40. *Id.*

41. *Id.* ¶¶ 277, 281.

42. *Id.* ¶¶ 298, 312.

lapped.[43] Since the River Coco and its delta constantly change, the ICJ decided to establish the starting point of the bisector in the sea, three nautical miles from the coast. The parties were instructed to negotiate in good faith to reach agreement on the end point of the land boundary and the start of the maritime ditto.[44]

B. General List

As of November 30, 2007, the General List of pending contentious ICJ cases were the following: Gabcíkovo-Nagymaros Project (Hungary/Slovakia); Ahmadou Sadio Diallo (*Republic of Guinea v. Democratic Republic of the Congo*); Armed Activities on the Territory of the Congo (*Democratic Republic of the Congo v. Uganda*); Application of the Convention on the Prevention and Punishment of the Crime of Genocide (*Croatia v. Serbia and Montenegro*); Territorial and Maritime Dispute (*Nicaragua v. Colombia*); Certain Criminal Proceedings in France (*Republic of the Congo v. France*); Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks, and South Ledge (Malaysia/Singapore); Maritime Delimitation in the Black Sea (*Romania v. Ukraine*); Dispute Regarding Navigational and Related Rights (*Costa Rica v. Nicaragua*); Pulp Mills on the River Uruguay (*Argentina v. Uruguay*); Certain Questions of Mutual Assistance in Criminal Matters (*Djibouti v. France*).

C. Composition of the Court

As of November 30, 2007, the membership of the Court was comprised as follows: Rosalyn Higgins (United Kingdom of Great Britain and Northern Ireland), President; Awn Shawkat Al-Khasawneh (Jordan), Vice-President; Judge Raymond Ranjeva (Madagascar); Judge Shi Jiuyong (China); Judge Abdul G. Koroma (Sierra Leone); Judge Gonzalo Parra-Aranguren (Venezuela); Judge Thomas Buergenthal (United States of America); Judge Hisashi Owada (Japan); Judge Bruno Simma (Germany); Judge Peter Tomka (Slovakia); Judge Ronny Abraham (France); Judge Kenneth Keith (New Zealand); Judge Bernardo Sepúlveda-Amor (Mexico); Judge Mohamed Bennouna (Morocco); and Judge Leonid Skotnikov (Russian Federation).

II. The Permanent Court of Arbitration

The Permanent Court of Arbitration (PCA) is the oldest of the existing dispute settlement bodies. It was established by the 1899 Hague Convention on the Pacific Settlement of International Disputes,[45] subsequently revised in 1907,[46] to facilitate immediate settlement of international disputes that the parties have agreed to refer to it.[47] Besides arbitration, the Hague Treaties of 1899 and 1907 provide for the constitution of an International Commission of Inquiry to facilitate the solution of disputes by elucidating facts through an impartial and conscientious investigation.

43. *Id.* ¶¶ 299-305.

44. *Id.* ¶ 321.

45. For the text of the Convention of July 29, 1899, *see* Treaties and Other International Agreements of the United States of America 1776-1949 (Charles I. Bevans ed., 1968), Vol. I, at 230-46.

46. For the text of the Convention of October 17, 1907, *see id.* at 577-606.

47. *Id.* at 230-46.

The point has been well made that the name "Permanent Court of Arbitration" is not a wholly accurate description of the machinery set up by the Hague conventions. Indeed, the PCA is neither a "court" nor "permanent." It is, rather, an institutional framework open to parties to a dispute to avail themselves of their choice. It provides them with all legal, administrative, and secretarial services necessary to have an effective settlement of the dispute, including: providing an updated list of leading scholars and practitioners to be appointed as arbitrators or conciliators; acting as a channel of communication between the parties; holding and disbursing deposits for costs; ensuring safe custody of documents; arranging for efficient secretarial, language, and communications services; and providing a courtroom and office space.

In recent years, there has been a sharp increase in accessions to the Conventions of 1899 and 1907. There are currently 107 States party to one or both of the Conventions. Each Member State may designate up to four arbitrators, known as "Members of the Court," from among whom the members of each ad hoc arbitral tribunal might be chosen.[48]

Under its own rules of procedure, which are based upon the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL), the PCA administers arbitration, conciliation, and fact finding in disputes involving various combinations of states, private parties, and intergovernmental organizations. The forum is available not only for resolution of disputes involving at least one State but also for international commercial arbitration.

During the reporting period, two arbitral tribunals working under the auspices of the PCA rendered their awards—one partial and one final. On the PCA list of active cases, two cases reported upon last year remain pending: *Saluka Investments B.V. (The Netherlands v. Czech Republic)* and *Ireland v. United Kingdom* ("*MOX Plant Case*").[49] Other active cases on the PCA list are those being decided by Eritrea-Ethiopia Boundary Commission and the Eritrea-Ethiopia Claims Commission (discussed *infra*), ten investor-state arbitrations under bilateral or multilateral investment treaties, and three arbitrations under contracts between private entities and states or state-controlled entities.

A. GUYANA/SURINAME

On September 20, 2007, an arbitral tribunal formed under Annex VII of the United Nations Convention on the Law of the Sea (UNCLOS)[50] to establish a maritime boundary between Guyana and Suriname rendered its decision.[51] Guyana and Suriname are two contiguous states on the north coast of South America, with Guyana to the east and Suri-

48. Moreover, according to Article 4.1 of the Statute of the International Court of Justice, the members of the PCA appointed from each state Party constitute "national groups" that are entitled to nominate candidates for election, by the General Assembly and the Security Council of the United Nations, to the International Court of Justice. Statute of the International Court of Justic, art. 4.1, *available at* http://www.icj-cij.org/documents/.

49. Prior reports on developments in these cases can be found in Caplan et al., *International Courts and Tribunals*, 41 INT'L LAW. 291 298-300, 301-03 (2007).

50. United Nations Convention on the Law of the Sea, December 10, 1982, 21 I.L.M. 1261 (1982).

51. Arbitration (Guy. v. Surin.) (Award of September 17, 2007), *available at* http://www.pca-cpa.org/upload/files/Guyana-Suriname%20Award.pdf. This case was previously reported on by Caplan, et. al., *supra* note 49, at 301.

name to the west.[52] The dispute at issue is a part of a long-standing row between the two states over the precise territorial boundary. On several occasions in the twentieth century, the parties attempted to negotiate an agreement to settle boundary differences. These efforts, however, were to little avail.

Arbitral proceedings were initiated unilaterally by Guyana on February 24, 2004,[53] pursuant to Articles 286 and 287 and Annex VII of UNCLOS. Following the rejection of a series of objections by Suriname on admissibility and jurisdiction,[54] the Tribunal proceeded to a consideration of the parties' contentions on the merits. In aid of its efforts in this regard, the Tribunal appointed its own independent expert, Professor Hans van Houtte, to assist in verifying the documents and evidence that the parties had been ordered to produce[55] and appointed its own hydrographic expert, David H. Gray.[56] The Tribunal issued its award on September 17, 2007.

The award establishes a single maritime boundary between Guyana and Suriname that differs from the boundaries claimed by each of the parties in their pleadings. The boundary, for the most part, follows an equidistant line between Guyana and Suriname; however, in the territorial sea, the boundary follows a N 10°E line from the starting point to the three-nautical-mile limit and then a diagonal line from the intersection of the N 10°E line and the three-nautical-mile limit to the intersection of the twelve-nautical-mile limit and the equidistance line. In addition, the Award concludes that both Guyana and Suriname violated their obligations under UNCLOS to make every effort to enter into provisional arrangements of a practical nature and not to hamper or jeopardize reaching of a final agreement. The Tribunal further concluded that Suriname had acted unlawfully when, in 2000, it expelled from the disputed area a drilling rig licensed by Guyana.

This is the second such delimitation arbitration held under Annex VII of UNCLOS. Last year, on April 11, 2006, another arbitral tribunal delimited the maritime boundary between Barbados and the Republic of Trinidad and Tobago.[57]

B. Eurotunnel

On January 30, 2007, an arbitral tribunal rendered a partial award in the so-called "Eurotunnel" arbitration brought by two private companies, the Channel Tunnel Group

52. Suriname emerged from Dutch rule in 1975. Guyana gained its independence from Britain in 1966.

53. The Tribunal was composed of H.E. Judge L. Dolliver M. Nelson (President), Professor Thomas M. Franck (appointed by Guyana), Dr. Kamal Hossain, Professor Ivan Shearer (who replaced Dr. Allan Philip who had passed away before hearings began), and Professor Hans Smit (appointed by Suriname). The PCA acted as registry and hearings were held in Washington, D.C., at the headquarters of the Organization of American States . Caplan, et. al., *supra* note 49, at 301.

54. Arbitration (Guy. v. Surin.) (Preliminary Objections) (Order No. 2 of July 18, 2005), *available at* http://server.nijmedia.nl/pca-cpa.org/upload/files/order%202%20fin.pdf.

55. Arbitration (Guy. v. Surin.) (Preliminary Objections) (Order No. 3 of Oct. 12, 2005), *available at* http://server.nijmedia.nl/pca-cpa.org/upload/files/Order%203%20121005%20Fin.pdf.

56. Arbitration (Guy. v. Surin.) (Preliminary Objections) (Order No. 6 of Oct. 12, 2005), *available at* http://server.nijmedia.nl/pca-cpa.org/upload/files/Order%20No.%206%20Hydro%20Expt%20final.pdf.

57. Arbitration (Barb. & Tri and Tob.) (Award of April 11, 2006), *available at* http://www.pca-cpa.org/ENGLISH/RPC/. This case was previously reported on in Caplan, et. al., *supra* note 49, at 300-01.

Limited and France-Manche S.A., against the governments of the United Kingdom and France.[58] The PCA acted as registry in this case.

The arbitral tribunal[59] was formed in accordance with Article 19 of the Treaty Between the French Republic, the United Kingdom of Great Britain, and Northern Ireland Concerning the Construction and Operation by Private Concessionaires of a Channel Fixed Link, signed at Canterbury, on February 12, 1986.[60]

In the dispute, the claimants argued that between 1999 and 2002 Eurotunnel's business was severely harmed by immigrants clandestinely seeking to gain access to the U.K. through the channel tunnel. Claimants complained that the presence of a hostel for the migrant, which came to be known as the Sangatte hostel, opened by the French Government close to the mouth of the tunnel had become a springboard for those seeking to enter the U.K. illegally. Eurotunnel's French terminal was broken into by migrants repeatedly, culminating in a mass incursion by some 450 migrants on Christmas Eve 2001. Despite Eurotunnel's constant improvements to the protection of its terminal, the migrants' activities caused frequent delays and disruptions to Eurotunnel's services, resulting in significant financial losses. Each time one of the migrants managed to get into the tunnel, the company had to close the terminal and stop the traffic.

Claimants argued that both governments had breached their duties as set out in the Concession Agreement by failing to take the necessary steps to maintain conditions of normal security and public order in and around the Eurotunnel terminal. The governments countered that it was the responsibility of Eurotunnel to maintain the security of the Tunnel.[61]

In its award, the Tribunal found that:

> [I]n the circumstances of the clandestine migrant problem as it existed in the Calais region in the period from September 2000 until December 2002, it was incumbent on the [the French and UK Governments] . . . to maintain conditions of normal security and public order in and around the Coquelles terminal, that they failed to take appropriate steps in this regard, and thereby breached Clauses 2.1 and 27.7 of the Concession Agreement.[62]

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58. In The Matter of an Arbitration Before a Tribunal Constituted in Accordance with Article 19 of the Treaty Between the French Republic and the United Kingdom of Great Britain and Northern Ireland Concerning the Construction and Operation by Private Concessionaires of a Channel Fixed Link Signed at Canterbury on 12 February 1986, Between The Channel Tunnel Group Limited and France-Manche S.A. and the Secretary of State for Transport of the Government of the United Kingdom of Great Britain and Northern Ireland and Le Ministre De L'équipement, Des Transports, De L'aménagement Du Territoire, Du Tourisme Et De La Mer Du Gouvernement De La République Française (Partial Award of January 30, 2007), *available at* http://www.pca-cpa.org/upload/files/ET_PAen.pdf [hereinafter "Channel Tunnel Partial Award"].

59. The members of the arbitral tribunal were Professor James Crawford (Chairman), Mr. L. Yves Fortier and Mr. Jan Paulsson (nominated by the Channel Tunnel Group), Judge Gilbert Guillaume (appointed by the French Government), and Lord Millett (appointed by the British Government).

60. Treaty Concerning the Construction and Operation by Private Concessionaires of a Channel Fixed Link, Fr.-U.K., Feb. 12, 1986, 1497 U.N.T.S. 334.

61. Claimants also brought a second claim solely against France arguing that the French government had given improper financial support to SeaFrance, a French company created in January 1996 to operate ferry services between the U.K. and France, thus distorting competition and harming Eurotunnel's business. This claim was rejected because the Tribunal believed that the text of the Concession agreement did not allow it to rule on that claim. Channel Tunnel Partial Award, *supra* note 58, at ¶ 143.

62. *Id.* ¶ 395.2.

In his dissent, Lord Millett argued that the responsibility of the U.K. should be limited to the costs of detention and removal of the clandestine migrants that had been imposed on and collected from Claimants.[63]

The Tribunal will set a timetable for the second phase of the procedure to determine the amount of loss and its compensation. In 2004, Eurotunnel estimated the loss over the period at £30 million, of which £17 million was security costs and £13 million was lost revenues. As of December 31, 2006, the loss is estimated at around £35 million.

III. Eritrea-Ethiopia Claims Commission

Following a United Nations-supervised referendum, Eritrea seceded from Ethiopia in 1993. The two states coexisted peacefully until a violent border conflict erupted in May 1998, claiming the lives of tens of thousands of Eritrean and Ethiopian citizens and displacing hundreds of thousands more from their homes. After two years of fighting, Eritrea and Ethiopia entered into the Peace Agreement of December 12, 2000,[64] which ended the war and established two Commissions: a Boundary Commission charged with determining for the parties a common boundary between the two countries and a Claims Commission charged with resolving the claims of each party against the other for any acts arising out of the war that injured that party in violation of international law.[65]

In December 2005, the Claims Commission issued a series of awards regarding Eritrea's claims relating to Ethiopia's bombardment of the Western Front,[66] Eritrea's Pensions claim,[67] Eritrea's Loss of Property claim,[68] Ethiopia's Ports claim,[69] Ethiopia's Economic Loss claim,[70] both countries' Diplomatic claims under the Vienna Convention on Diplomatic Relations,[71] and a Partial Award in favor of Ethiopia's claim of violation of

63. *Id.* at ¶ (a)(6) (Lord Millet, dissenting), *available at* http://www.pca-cpa.org/upload/files/ETMillettDOen.pdf.

64. Agreement Between the Government of the Federal Democratic Republic of Ethiopia and the Government of the State of Eritrea (Peace Agreement), Eth.-Eri., Dec. 12, 2000, 40 I.L.M. 260, *available at* http://www.pca-cpa.org/ENGLISHRPC/EEBC/E-E%20greement.html.

65. The Commission has five members: Belgian professor and arbitrator Hans van Houtte serves as President, while four American lawyers serve as party-appointed members. Eritrea appointed John Crook and Lucy Reed; Ethiopia appointed George Aldrich and James Paul.

66. Western Front, Aerial Bombardment and Related Claims, Eritrea-Ethiopia Claims Commission (Eth. v. Eri.) (Partial Award of Dec. 19, 2005), *available at* http://www.pca-cpa.org/upload/files/FINAL%20ER%20FRONT%20CLAIMS.pdf.

67. Pensions, Eritrea-Ethiopia Claims Commission (Eth. v. Eri.) (Final Award of Dec. 19, 2005), available at http://www.pca-cpa.org/upload/files/FINAL%20ER%20PENSIONS.pdf.

68. Loss of Property in Ethiopia Owned by Non-Residents, Eritrea-Ethiopia Claims Commission (Eth. v. Eri.) (Partial Award of Dec. 19, 2005), *available at* http://www.pca-cpa.org/showfile.asp?fil_id=155.

69. Ports, Eritrea-Ethiopia Claims Commission (Eth. v. Eri.) (Partial Award of Dec. 19, 2005), *available at* http://www.pca-cpa.org/showfile.asp?fil_id=154.

70. Economic Loss Throughout Ethiopia, Eritrea-Ethiopia Claims Commission (Eth. v. Eri.) (Partial Award of Dec. 19, 2005), *available at* http://www.pca-cpa.org/showfile.asp?fil_id=156.

71. Diplomatic Claim, Eritrea's Claim 20, Eritea-Ethiopia Claims Commission (Eth. v. Eri.) (Partial Award of Dec. 19, 2005), *available at* http://www.pca-cpa.org/upload/files/FINAL%20ER%20DIP%20AWARD.pdf.

jus ad bellum.[72] The most notable of the Commission's holdings in these awards were discussed in the 2006 Year-in-Review.[73]

On July 27, 2007, the Claims Commission issued two new decisions providing guidance to the parties regarding submissions on the question of damages flowing from Eritrea's jus ad bellum liability[74] and inviting further comments on the issue of providing relief to war victims.[75]

A. Decision 7: Damages for Jus Ad Bellum Violation

In a partial award rendered in December 2005, the Commission held that Eritrea carried out a series of unlawful armed attacks against Ethiopia in violation of Article 2(4) of the UN Charter, which prohibits the threat or use of force against the territorial integrity of any State.[76] The Commission also rejected Eritrea's claim of self-defense.[77]

The Commission held the first round of hearings in the damages phase of the proceedings in April 2007. At these hearings, Ethiopia claimed extensive damages on the grounds that these bore a reasonable connection to the violation found by the Commission. It asserted that Eritrea's actions created a "wider condition" of hostilities and that any loss, damage, or injury associated therewith should be compensable.[78] Eritrea, on the other hand, contended that the Commission had directed the parties to provide a considered assessment of liability and that Ethiopia's sweeping claim should be rejected as failing to provide a basis for a ruling by the Commission.[79]

Following the hearings, the Commission issued its Decision 7 on July 27, 2007. In the first part of the decision, the Commission offered guidance on the appropriate standard of legal causation. With respect to Ethiopia's claim for a "reasonable connection" standard, the Commission noted that the "reasonable connection" test was neither a general principle of law nor a customary rule of international law and that it was too subjective to be appropriate.[80] The Commission then proceeded to review and reject the alternate standards of direct causation and reasonable foreseeability. Instead, the Commission determined that a "proximate cause" standard was the most appropriate formulation.[81] It further specified that in determining the element of proximity, considerable weight would

72. Jus Ad Bellum, Eritrea-Ethiopia Claims Commission (Eth. v. Eri.) (Partial Award of Dec. 19, 2005), *available at* http://www.pca-cpa.org/upload/files/FINAL%20ER%20DIP%20AWARD.pdf [hereafter "Partial Award, Jus Ad Bellum"].

73. *See* Caplan, et. al., *supra* note 49, at 304-08.

74. Decision Number 7: Guidance Regarding Jus Ad Bellum Liability, Eritrea-Ethiopia Claims Commission, (Decision 7 of Julyy 27 2007), *available at* http://www.pca-cpa.org/upload/files/EECC_Decision_No_7.pdf.

75. Decision Number 8: Relief to War Victims, Eritrea-Ethiopia Claims Commission, (Decision 8 of July. 27, 2007), *available at* http://www.pca-cpa.org/showfile.asp?fil_id=657.

76. Partial Award, Jus Ad Bellum, *supra* note 72, at § 16.

77. *Id.* at § 9.

78. Transcript of the Eritrea-Ethiopia Claims commission Hearings of April 2007, Peace Palace, The Hague, at 37 (Professor Murphy).

79. Decision Number 7: Guidance Regarding Jus Ad Bellum Liability , *supra* note 74, at § 17.

80. Ethiopia had cited Whiteman's treatise to support the argument that the relevant standard was one of "reasonableness." *Id.* at § 8 (citing Marjorie Whiteman, 3 Damages in International Law 1766-67 (1943)).

81. Decision Number 7: Guidance Regarding Jus Ad Bellum Liability , *supra* note 74, at §§ 9-13.

be given to "whether particular damage reasonably should have been foreseeable to an actor committing the international delict in question."[82]

In the second part of the decision, the Commission discussed in greater detail the factors it considered relevant to assessing jus ad bellum liability. It reviewed the three instances where States have been held to be internationally responsible for war damage as a matter of international law: the Treaty of Versailles; Germany's post-Second World War program of compensation and the 1951 Treaty of Peace with Japan; and the UNCC for Iraq's 1990-1991 invasion of Kuwait. Each Party relied on all three precedents in support of its respective position. The Commission, however, distinguished all three cases from the conflict between Eritrea and Ethiopia. It noted that the reparations and compensation imposed by the Treaty of Versailles were motivated by "policy and revenge unrelated to the principles of law" and that compensation effectuated by Germany after the Second World War were shaped by considerations of "morality and politics."[83] Likewise, the September 1951 Treaty of Peace with Japan focused on the liquidation or seizure of assets according to the State's ability to pay, with the aim of "reintegrating Japan into the global community"; accordingly, these cases provide little guidance on the implementation of principles of international law.[84]

Finally, the Commission distinguished the broad measures adopted by the UNCC with regard to Iraq's occupation and invasion of Kuwait on the basis of their "unusual and compelling circumstances."[85] It stressed that Iraq's invasion of Kuwait involved "pervasive, continuing illegal conduct by Iraq extending far beyond an initial breach of the jus ad bellum" and that the UN Security Council's communications with the Parties in the present conflict had been "markedly different in substance and tone."[86] In particular, the Council had always addressed both parties in equal terms, and the Commission's 2005 partial award did not include a finding that Eritrea had "engaged in the sort of widespread lawlessness" that justified the extent of liability imposed on Iraq by the Security Council.[87] The Commission, therefore, invited the Parties to put forward more considered and precise submissions regarding the scope of liability flowing from the 2005 jus ad bellum award.

B. Decision 8: Relief to War Victims[88]

In Decision 8, relating to relief measures for war victims, the Commission acknowledged that the parties had requested further guidance on the distribution of damages to civilian victims, as per the Commission's letter of April 13, 2006. The Commission agreed that with respect to many of the claims that it had found liability in its 2005 awards, it would "probably [be] impossible, and certainly inordinately expensive" to iden-

82. *Id.* at § 13.

83. *Id.* at § 22.

84. *Id.* at § 22-27.

85. *Id.* at § 28.

86. *Id.* at § 30-31.

87. *Id.* at § 32.

88. Decision Number 8: Relief to War Victims, *supra* note 75.

tify individual perpetrators.[89] It suggested, therefore, that the parties consider relief programs for categories of victims to provide health, agricultural, or other services.[90]

IV. Iran-U.S. Claims Tribunal

The Iran-United States Claims Tribunal (the "Tribunal") was established in 1981 through the Algiers Declarations[91] as part of the resolution of the Iranian hostage crisis. The Tribunal adjudicates disputes between Iran and the United States and their respective nationals. It hears two categories of claims: private claims, which are claims brought by a national of one country against the other country, and inter-governmental claims, which are claims brought by one country against the other, alleging either a violation of the Algiers Declarations (denominated A cases) or breach of contract (B cases). After twenty-six years in operation, the Tribunal has decided virtually all of the private claims, disposing of nearly 4,000 cases and awarding more than $2.5 billion to the United States and U.S. nationals and more than $900 million to Iran and Iranian nationals. Its docket now consists primarily of large inter-governmental claims permitted under the January 1981 Claims Settlement Declaration adhered to by the two countries.

2007 saw the conclusion of hearings in a large government-to-government case—Case No. B/61. At issue is the question of the extent and nature of the U.S. undertaking in the Accords to permit the transfer to Iran of Iranian property, and, specifically, how that obligation should be interpreted in light of the "subject to the provisions of U.S. law in effect prior to November 14, 1979" clause of paragraph 9 of the General Declaration. The hearing concluded on March 2, 2007, with closing arguments by both sides.

The Tribunal was in the process of deliberation when Iran filed two separate challenges to the President of the Tribunal, one of the third-country appointees. The first was lodged by Iran on November 30, 2007, and asserted grounds for justifiable doubts as to the President's impartiality on the basis that he "virtually eliminated Judge Oloumi [one of the Iranian-appointed arbitrators] from deliberations of Case B61 by turning down his request for postponement of deliberations until April 2008 needed for his effective contribution." As a result of disclosures of secret deliberative information made by Judge Oloumi that precipitated Iran's challenge of the Tribunal President, the United States filed a challenge against Judge Oloumi on December 10, 2007. Iran's second challenge to the President was made on February 29, 2008, on the basis of statements made by the President in the course of defending himself against Iran's first challenge. Deliberations in Case B/61 were postponed pending decisions on the challenges.

89. *Id.* at § 5.

90. *Id.* at § 6.

91. The term Algiers Declarations refers to the Declaration of the Government of the Democratic and Popular Republic of Algeria, Jan. 19, 1981, 1 Iran-U.S. C.T.R. 3 [hereinafter "General Declaration"] and the Declaration of the Government of the Democratic and Popular Republic of Algeria concerning the Settlement of Claims by the Government of the United States of America and the Government of the Islamic Republic of Iran, Jan. 19, 1981,1 Iran-U.S. C.T.R. 9 [hereinafter "Claims Settlement Declaration"].

V. The United Nations Compensation Commission

The United Nations Compensation Commission (UNCC) is a subsidiary organ of the United Nations Security Council. It was established in accordance with Security Council Resolutions 687 (1991)[92] and 692 (1991)[93] to process claims and pay compensation for direct losses and damage suffered by individuals, corporations, governments, and international organizations as a direct result of Iraq's unlawful invasion and occupation of Kuwait (August 2, 1990 to March 2, 1991).

The UNCC has received approximately 2.7 million claims, with a total asserted value of approximately $352.5 billion.[94] After some twelve years of claims processing, the UNCC issued its final awards in June 2005; as of that date, approximately $52.4 billion in relation to some 1.55 million claims was awarded.[95]

To date, the UNCC has made approximately $21.8 billion available to governments and international organizations for distribution to successful claimants, the vast majority of whom have been paid in full. Funds to pay compensation are drawn from the United Nations Compensation Fund, which receives a percentage of the proceeds generated by export sales of Iraqi petroleum and petroleum products. In conformity with Security Council Resolution 1483 (2003),[96] 5 percent of the proceeds are currently deposited into the Compensation Fund.

With the conclusion of claims processing work, the UNCC has focused its attention on payments of awards to claimants and a number of residual tasks, including corrections to awards pursuant to Article 41 of the UNCC's Provisional Rules for Claims Procedure (including the identification of duplicate claims) and monitoring the technical and financial aspects of certain environmental remediation projects.[97] At its February and June 2007 sessions, the UNCC issued corrections relating to a total of 4,537 claims, which had the net effect of reducing compensation awarded by a total of over $17 million.[98]

VI. Arbitral Tribunals Constituted Under the ICSID Convention

The International Centre for the Settlement of Investment Disputes (ICSID) is one of the five constituent institutions of the World Bank Group. It was established under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (the "Convention"), which came into force on October 14, 1966.[99] The Bank's main consideration in creating a non-lending institution like ICSID was the belief

92. S.C. Res. 687, U.N. Doc. S/RES/687 (Apr. 8, 1991).

93. S.C. Res. 692, U.N. Doc. S/RES/692 (May 20, 1991).

94. United Nations Compensation Committee, The UNCC at a Glance, http://www2.unog.ch/uncc/ataglance.htm (last visited Jan. 29, 2008)

95. *See* Press Release, UNCC Governing Council, Opening of the Sixty-Fourth Session of the UNCC Governing Council, U.N. Doc. PR/2007/9 (Oct. 26, 2007), *available at* http://www2.unog.ch/uncc/pressrel/pr_64o.pdf.

96. S.C. Res. 1482, U.N. Doc. S/RES/1483 (May 22, 2003).

97. The UNCC Governing Council approved this program at its fifty-eighth session, in December 2005. UNCC Governing Council, U.N. Doc. S/AC.26/Dec. 258 (Dec. 8, 2005).

98. *See* UNCC Governing Council, U.N. Doc. S/AC.26/Dec. 263 (Feb. 22, 2007); UNCC Governing Council, U.N. Doc. S/AC.26/Dec. 265 (Feb. 22, 2007).

99. ICSID Convention, Regulations and Rules are available at http://icsid.worldbank.org/ICSID/StaticFiles/basicdoc_en-archive/ICSID_English.pdf.

that an institution specially designed to facilitate the settlement of investment disputes between governments and foreign investors could help promote increased flows of international investment.[100]

Pursuant to the Convention, ICSID provides facilities for the resolution by conciliation and arbitration of disputes between its member states and investors from other member States. The Convention requires each member country of ICSID, whether or not a party to the dispute at issue, to recognize and enforce the award of an ICSID Tribunal.

In addition to proceedings under the Convention, the ICSID Secretariat has, since 1978, been authorized by a set of Additional Facility Rules to administer other types of proceedings between States and foreign nationals that fall outside the scope of the Convention. These include conciliation and arbitration proceedings where either the State party or the home State of the foreign national is not a member of ICSID. They also include cases where the dispute is not an investment dispute, provided it is distinguishable from an ordinary commercial transaction, as well as fact-finding proceedings where any State and foreign national may have recourse if they wish to institute an inquiry "to examine and report on facts."[101]

Below is a review of the key developments in ICSID during the period from December 1, 2006, to November 30, 2007, both institutional and with regard to the cases administered by the Centre.

One key development is that on December 15, 2006, Canada took a step towards ICSID membership by signing the ICSID Convention and thereby bringing the number of ICSID signatories to 155. Canada will become an ICSID Contracting State after it has ratified the Convention and deposited its instrument of ratification with the Centre. Other member-countries of the World Bank that have yet to ratify the ICSID Convention include India, Iraq, Mexico, South Africa, Qatar, Russia and Thailand. A full list of the Member countries of ICSID is available at the Centre's website.[102]

Another significant development was the denunciation of the ICSID Convention by Bolivia. On May 2, 2007, the World Bank received a written notice of the denunciation of the Convention from the Government of Bolivia.[103] As provided by Article 71 of the Convention, the denunciation took effect six months later on November 3, 2007.[104]

Another important institutional development at the Center in 2006 was the election by the ICSID Administrative Council on October 22, 2007, of Mr. Nassib G. Ziade, a dual national of Chile and Lebanon, as the Centre's new Deputy Secretary-General.[105] Prior

100. Report of the Executive Directors on the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, *available at* http://www.worldbank.org/icsid/basicdoc/basicdoc.htm.

101. Article 1 (1) ICSID Fact Finding (Additional Facility) Rules.

102. ICSID, List of Contracting States and Other Signatories of the Covnention, http://icsid.worldbank.org/ICSID/FrontServlet?requestType=ICSIDDocRH&actionVal=ShowDocument&language=English.

103. Press Release, ICSID, Bolivia Submits a Notice Under Article 71 of the ICSID Convention (May 16, 2007), *available at* http://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=OpenPage&PageType=AnnouncementsFrame&FromPage=Publications> News Releases&pageName=Announcement3.

104. *Id.*

105. Press Release, ICSID, Nassib G. Ziade Elected ICSID Deputy Secretary-General (Nov. 2, 2007), *available at* http://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=OpenPage&Page

to joining ICSID, Mr. Ziade was the Executive Secretary of the World Bank Administrative Tribunal.[106]

Among the thirty-seven cases registered by the Centre between December 1, 2006, and December 1, 2007, was a case brought against Bolivia after it had deposited its denunciation notice but before it came into effect.[107] During the same period, four cases were registered against Argentina, three against the Central African Republic, two against Hungary, Paraguay, Turkey and the Ukraine, respectively.[108] The other cases registered during that period include one brought by the Indonesian province of East Kalimantan against seven foreign investors; the first case brought under the Dominican Republic Central America Free Trade Agreement, involving the Government of Guatemala; and the first case brought by a Chinese investor, which involved the Government of Peru.[109] The other Governments involved in the cases registered during the period, appearing in chronological order, are: Uzbekistan, Panama, Ecuador, South Africa, Azerbaijan, Armenia, Costa Rica, Paraguay, Bosnia and Herzegovina, Lebanon, Romania, Kazakhstan, Georgia, Nigeria, Albania, Ghana, Jordan, Venezuela and Paraguay.[110]

The subject matter of the cases varies and includes projects in telecommunications, mining, highway construction, hydrocarbon and oil exploration, electricity generation and transmission, and rail road enterprise, among others. The majority of the cases have been commenced under arbitration provisions in bilateral investment treaties. At the end of this review period, there were 119 cases as compared to 105 for the same period last year.[111]

Numerous orders, decisions, and awards were issued by the various tribunals and ad hoc Committees of the Centre. A full list that indicates the status of the various cases before the Centre is available at the Centre's website.[112]

Type=AnnouncementsFrame&FromPage=<a%20href=javascript:goHome()>Publications>%20<a%20href=/ICSID/ICSID/ViewNewsReleases.jsp>News%20Releases&pageName=Announcement2.

106. *Id.*

107. ICSID List of Pending Cases, http://icsid.worldbank.org/ICSID/FrontServlet?requestType=CasesRH&actionVal=ViewPendingCases (last visited Feb. 18, 2007)

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.*