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**COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW  
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**PEACEFUL SETTLEMENT OF DISPUTES:**

**JURISDICTION OF INTERNATIONAL COURTS AND TRIBUNALS**

Document submitted by the Delegation of Portugal

In the last 15 years there has been a rapid multiplication in international courts and tribunals, coupled both with an increased activity and willingness from States to resort to them to settle disputes.

There are today more than 20 permanent international courts and tribunals and about 70 more international institutions with judicial and quasi-judicial functions (see the Synoptic Chart elaborated by *The Project on International Courts and Tribunals* and available in [www.pict-pcti.org](http://www.pict-pcti.org)).

This growth has been termed as “proliferation” and qualified as “uncoordinated” and potentially leading to the “fragmentation” of international law. However, this phenomenon is not being viewed unanimously as problematic (see the Bibliography also elaborated by *The Project on International Courts and Tribunals* and available in [www.pict-pcti.org](http://www.pict-pcti.org)).

While the case law is not yet revealing, there have been some instances where the issue of overlapping of jurisdictions was effectively or at least potentially present such as in the Southern Bluefin Tuna case, in the Swordfish case or the Mox Plant case.

A number of issues can be raised, both of practical and theoretical importance:

- Should a court or tribunal refuse to decide a case on the ground that it lacks jurisdiction over all the issues brought before it?
- Should a court or tribunal decide on all the issues on the ground that it has jurisdiction over some them?
- Should a court or tribunal decide only on the issues where it has jurisdiction?
- Should courts and tribunals try to avoid this problem? Is there any coherent and principled solution?
- What court or tribunal has jurisdiction and what is the law applicable?
- What should happen when jurisdictions overlap? I.e. if more than one court/tribunal has jurisdiction, if there are different or even conflicting decisions on the same issue, if there are multiple proceedings, etc.
- Is it possible or desirable to avoid “forum shopping”?
- Is there an international judicial system? Is it possible to find within this system principles and rules to solve problems of overlapping and competition? Is there need for such principles and rules?
- What are the consequences of a lack of solutions?
- Could the International Court of Justice been seen as a review or appeal body? Should the ICJ have a special place role to play?
- What should be the role of *res judicata* and of litispendence?
- Could the rule of precedent play a bigger role in international law?

Log on to our website for news about all international courts and tribunals (judgments, press releases, articles, and more). This chart can also be downloaded from the PiCT site.

International Judicial Bodies							
General Jurisdiction	International Criminal Law/Humanitarian Law	Human Rights	Trade, Commerce and Investments	Regional Economic Integration Agreements			
<b>EXISTING</b> <ul style="list-style-type: none"> <li>International Court of Justice (1946 →)</li> </ul> <b>EXTINCT</b> <ul style="list-style-type: none"> <li>Permanent Court of International Justice (1919-1945)</li> </ul>	<b>EXISTING</b> <ul style="list-style-type: none"> <li>International Criminal Tribunal for the Former Yugoslavia (1993 →)</li> <li>International Criminal Tribunal for Rwanda (1995 →)</li> </ul> <b>EXTINCT</b> <ul style="list-style-type: none"> <li>African Slave Trade Mixed Tribunals (1819-1866 circa)</li> <li>International Military Tribunal at Nuremberg (1945-1946)</li> <li>International Military Tribunal for the Far East (1946-1948)</li> </ul> <b>ABORTED</b> <ul style="list-style-type: none"> <li>International Prize Court (1907)</li> </ul> <b>NASCENT</b> <ul style="list-style-type: none"> <li>International Criminal Court (1998)</li> </ul>	<b>EXISTING</b> <ul style="list-style-type: none"> <li>European Court of Human Rights (1959-1998 / 1998 →)</li> <li>Inter-American Court of Human Rights (1979 →)</li> </ul> <b>NASCENT</b> <ul style="list-style-type: none"> <li>African Court of Human and Peoples' Rights (1998)</li> </ul> <b>PROPOSED</b> <ul style="list-style-type: none"> <li>International Human Rights Court</li> </ul>	<b>EXISTING</b> <ul style="list-style-type: none"> <li>World Trade Organization Dispute Settlement Understanding (1995 →)</li> </ul> <p>The DSU created a dispute settlement system based on a standing political organ (the Dispute Settlement Body), comprising all members of the WTO, a set of ad hoc expert panels, and the Appellate Body. The reports of the Panels and the Appellate Body can be rejected by the DSB only by consensus. Strictly speaking, only the Appellate Body belongs in this column, while the DSB and the panels should be listed in the section "Permanent Arbitral Tribunals/Conciliation Commissions".</p> <b>PROPOSED</b> <ul style="list-style-type: none"> <li>International Loans Tribunal</li> </ul>	<b>Europe</b> <ul style="list-style-type: none"> <li><b>EXISTING</b> <ul style="list-style-type: none"> <li>Court of Justice of the European Communities (1957 →)</li> <li>Benelux Economic Union Court of Justice (1974 →)</li> </ul> </li> </ul> <p>The Benelux College of Arbitrators has been listed in the section "Permanent Arbitral Tribunals/Conciliation Commissions".</p> <li>Court of First Instance of the European Communities (1988 →)</li> <li>The European Court of Auditors (1977 →) is not quite an international judicial body (see back). It is an internal control body of the European Union. It examines whether EU budgetary revenue has been received, and the corresponding expenditure incurred.</li>			
<b>Law of the Sea</b> <ul style="list-style-type: none"> <li><b>EXISTING</b> <ul style="list-style-type: none"> <li>International Tribunal for the Law of the Sea (1996 →)</li> </ul> </li> </ul>				<b>Europe / Central Asia</b> <ul style="list-style-type: none"> <li><b>EXISTING</b> <ul style="list-style-type: none"> <li>Economic Court of the Commonwealth of Independent States (1993 →)</li> </ul> </li> </ul>			
<b>Environment</b> <ul style="list-style-type: none"> <li><b>PROPOSED</b> <ul style="list-style-type: none"> <li>International Court for the Environment</li> </ul> </li> </ul>				<b>Africa / Middle East</b> <ul style="list-style-type: none"> <li><b>EXISTING</b> <ul style="list-style-type: none"> <li>Common Court of Justice and Arbitration for the Organization for the Harmonization of Corporate Law in Africa (1997 →)</li> <li>Court of Justice of the Common Market for Eastern and Southern Africa (1998 →)</li> </ul> </li> <li><b>EXTINCT</b> <ul style="list-style-type: none"> <li>East African Community Court of Appeal (1967-1977)</li> <li>East African Community Common Market Tribunal (1967-1977)</li> </ul> </li> </ul>			
				<b>DORMANT</b> <ul style="list-style-type: none"> <li>Economic Community of West African States Tribunal (1975)</li> <li>Judicial Board of the Organization of Arab Petroleum Exporting Countries (1980)</li> <li>Court of Justice of the Economic Community of Central African States (1983)</li> <li>Court of Justice of the Arab Maghreb Union (1989)</li> <li>Court of Justice of the African Economic Community (1991)</li> <li>Southern Africa Development Community Tribunal (1992)</li> </ul> <b>PROPOSED</b> <ul style="list-style-type: none"> <li>International Islamic Court of Justice</li> <li>Arab Court of Justice</li> </ul>			
				<b>Latin America / Caribbean</b> <ul style="list-style-type: none"> <li><b>EXISTING</b> <ul style="list-style-type: none"> <li>Court of Justice of the Andean Community (1984 →)</li> <li>Central American Court of Justice "Corte Centroamericana de Justicia" (1994 →)</li> </ul> </li> <li><b>EXTINCT</b> <ul style="list-style-type: none"> <li>Central American Court of Justice "Corte de Justicia Centroamericana" (1908-1918)</li> </ul> </li> <li><b>NASCENT</b> <ul style="list-style-type: none"> <li>Caribbean Court of Justice (2001)</li> </ul> </li> <li><b>PROPOSED</b> <ul style="list-style-type: none"> <li>MERCOSUR Court of Justice</li> <li>Inter-American Court of International Justice</li> </ul> </li> </ul>			

Quasi-Judicial, Implementation Control and other Dispute Settlement Bodies							
Human Rights Bodies	International Administrative Tribunals	Inspection Panels	International Claims and Compensation Bodies - Multilateral / Bilateral				
<b>EXISTING</b> <ul style="list-style-type: none"> <li>ILO Commission of Inquiry (1919 →)</li> <li>ILO Committee of Experts on the Application of Conventions and Recommendations (1926 →)</li> <li>ILO Conference Committee on the Application of Conventions (1926 →)</li> <li>United Nations Commission on Human Rights (1946 →)</li> <li>ILO Governing Body Committee on Freedom of Association (1950 →)</li> <li>Committee of Independent Experts under the European Social Charter (1965 →)</li> <li>Committee on the Elimination of Racial Discrimination (1969 →)</li> <li>International Civil and Political Rights Committee (1976 →)</li> <li>Inter-American Commission on Human Rights (1979 →)</li> <li>Committee on the Elimination of All Forms of Discrimination Against Women (1981 →)</li> <li>Committee on Economic, Social and Cultural Rights (1987 →)</li> <li>Committee Against Torture (1987 →)</li> <li>African Commission on Human and Peoples' Rights (1987 →)</li> <li>European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (1989 →)</li> <li>Committee on the Rights of the Child (1990 →)</li> <li>European Commission Against Racism and Intolerance (1993 →)</li> <li>Human Rights Commission for Bosnia Herzegovina (1995 →)</li> </ul>	<b>EXISTING</b> <ul style="list-style-type: none"> <li>Commission for Displaced Persons and Refugees (Bosnia Herzegovina) (1995 →)</li> <li>Commission to Preserve National Monuments (Bosnia Herzegovina) (1995 →)</li> </ul> <b>EXTINCT</b> <ul style="list-style-type: none"> <li>European Commission on Human Rights (1959-1998)</li> </ul>	<b>EXISTING</b> <ul style="list-style-type: none"> <li>International Labour Organization Administrative Tribunal (1946 →)</li> <li>United Nations Administrative Tribunal (1949 →)</li> <li>Appeal Board of the Organization for Economic Cooperation and Development (1950 →)</li> <li>Appeals Board of the Western European Union (1956 →)</li> <li>Council of Europe Appeals Board (1965 →)</li> <li>Appeals Board of NATO (1965 →)</li> <li>Appeals Board of the Intergovernmental Committee for Migration (1972 →)</li> <li>Appeals Board of the European Space Agency (1975 →)</li> <li>Administrative Tribunal of the Organization of American States (1976 →)</li> <li>World Bank Administrative Tribunal (1980 →)</li> </ul> <b>EXTINCT</b> <ul style="list-style-type: none"> <li>League of Nations Administrative Tribunal (1927-1945)</li> <li>Appeals Board of the European Space Research Organization (1966-1974)</li> <li>Appeals Board of the European Space Vehicle Launcher Development Organization (1966-1974)</li> </ul>	<b>EXISTING</b> <ul style="list-style-type: none"> <li>Inter-American Development Bank Administrative Tribunal (1981 →)</li> <li>International Monetary Fund Administrative Tribunal (1994 →)</li> <li>Asian Development Bank Administrative Tribunal</li> <li>African Development Bank Administrative Tribunal</li> <li>Latin American Integration Association Administrative Tribunal</li> </ul> <b>EXTINCT</b> <ul style="list-style-type: none"> <li>League of Nations Administrative Tribunal (1927-1945)</li> <li>Appeals Board of the European Space Research Organization (1966-1974)</li> <li>Appeals Board of the European Space Vehicle Launcher Development Organization (1966-1974)</li> </ul>	<b>EXISTING</b> <ul style="list-style-type: none"> <li>World Bank Inspection Panel (1994 →)</li> <li>Inter-American Development Bank Independent Investigation Mechanism (1995 →)</li> <li>Asian Development Bank Inspection Policy (1995 →)</li> </ul>	<b>EXISTING</b> <ul style="list-style-type: none"> <li>Iran-United States Claims Tribunal (1980 →)</li> <li>Marshall Islands Nuclear Claims Tribunal (1983 →)</li> <li>United Nations Compensation Commission (1991 →)</li> <li>Commission for Real Property Claims of Displaced Persons and Refugees (Bosnia and Herzegovina) (1995 →)</li> <li>Claims Resolution Tribunal for Dormant Accounts in Switzerland (1997 →)</li> </ul>	<b>EXISTING</b> <ul style="list-style-type: none"> <li>German Forced Labour Compensation Programme (2000 →)</li> <li>Eritrea-Ethiopia Claims Commission (2000 →)</li> </ul> <b>EXTINCT</b> <ul style="list-style-type: none"> <li>American-Mexican Claims Commissions (1868, 1923 and 1924)</li> <li>Conciliation Commissions under the 1947 Peace Treaty with Italy (1947-1965*)</li> <li>UN Tribunal for Eritrea (1951-1954)</li> <li>UN Tribunal for Libya (1951-1955)</li> </ul>	<p>This list is not exhaustive, but only illustrative. There are more than 80 mixed arbitral tribunals and claims commissions that were created in the nineteenth and twentieth centuries in the wake of armed conflicts and revolutions. Most of them were created in the aftermath of World Wars I and II. * This is the date in which the last award was made.</p>
Non-Compliance / Implementation Monitoring Bodies			Permanent Arbitral Tribunals/Conciliation Commissions				
<b>EXISTING</b> <ul style="list-style-type: none"> <li>Implementation Committee under the Montreal Protocol on Substances that Deplete the Ozone Layer (1990 →)</li> <li>IMO Sub-committee on Flag State Implementation (1992 →)</li> <li>Implementation Committee of the Protocols to the 1979 ECE Convention on Long-Range Transboundary Air Pollution (1997 →)</li> </ul>	<b>NASCENT</b> <ul style="list-style-type: none"> <li>Desertification Convention (1994)</li> <li>Basel Convention on Control of Transboundary Movements of Hazardous Wastes and their Disposal</li> <li>Kyoto Protocol (1997)</li> <li>Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (1998)</li> </ul>	<b>NASCENT</b> <ul style="list-style-type: none"> <li>Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (1998)</li> <li>Multilateral Consultative Process for the United Nations Climate Change Convention (1998)</li> <li>Cartagena Protocol on Biosafety (2000)</li> <li>Stockholm Convention on Persistent Organic Pollutants (2001)</li> </ul>	<b>EXISTING</b> <ul style="list-style-type: none"> <li>Permanent Court of Arbitration (1899 →)</li> <li>International Joint Commission (1909 →)</li> <li>Bank for International Settlements Arbitral Tribunal (1930 →)</li> <li>International Civil Aviation Organization Council (under the 1944 Chicago Convention the ICAO Council has certain dispute settlement competences) (1944 →)</li> <li>OSCE Court of Conciliation and Arbitration (1994 →)</li> <li>NAFTA Dispute Settlement Panels (1994 →)</li> <li>Arbitration and Mediation Center of the World Intellectual Property Organization (1994 →)</li> <li>Upper Silesia Arbitral Tribunal (1922-1937)</li> <li>DORMANT <ul style="list-style-type: none"> <li>Arbitral Tribunal of the Inter-governmental Organization for International Carriage by Rail (OTIF) (1890)</li> <li>Arbitral College of the Benelux Economic Union (1958)</li> <li>Court of Arbitration of the French Community (1959)</li> <li>Arbitration Tribunal of the Central American Common Market (1960)</li> </ul> </li> </ul>				
			Internationalized Criminal Courts and Tribunals				
			<b>EXISTING</b> <ul style="list-style-type: none"> <li>Kosovo War and Ethnic Crimes Court (2000 →)</li> <li>United Nations Transitional Administration in East Timor – Prosecutor General (2000 →)</li> </ul> <b>NASCENT</b> <ul style="list-style-type: none"> <li>Special Court for Sierra Leone (2001)</li> </ul> <b>PROPOSED</b> <ul style="list-style-type: none"> <li>Special Court for Liberia</li> </ul>				

### The International Judiciary in Context: A Synoptic Chart

The purpose of this chart is to provide international legal scholars and practitioners with a compendium of all international judicial bodies. Yet, this apparently straightforward task is riddled with traps and dilemmas. Perhaps the greatest challenge is to portray what can be called oxymoronically “an anarchic system” without exaggerating its level of order. The grouping and sub-grouping of all these bodies and mechanisms into a taxonomy does not imply the existence of an “international judicial system”, if by system it is meant “a regularly interacting or interdependent group of items forming a unified whole” or “a functionally related group of elements” (Webster’s Collegiate Dictionary, 10th ed.). Whether they ought to exist as a system is open to debate.

The second challenge is that in order to capture the dynamism and fluidity of the international judicial domain, any chart of the international judiciary needs to have a temporal dimension. Thus, alongside existing institutions, such as the International Court of Justice, the chart portrays bodies that have been closed down (labeled “extinct”), such as the Permanent Court of International Justice. There are also bodies provided for in treaties that never entered into force (aborted), such as the International Prize Court; idle ones like the Organization for Security and Cooperation in Europe’s European Nuclear Energy Tribunal (dormant); and nascent bodies, like the International Criminal Court. Moreover, the synoptic chart also includes bodies that have been debated and remain confined to the realm of ideas, such as a possible International Court for the Environment (proposed). In sum, the chart depicts the past, present and potential make-up of the international judiciary.

The main focus of the chart is on international judicial bodies. On the top portion of the chart, there are 43 different institutions (of which only 16 are currently functioning) grouped by subject-matter jurisdiction in seven clusters. All the entities listed in this group meet certain fundamental criteria, which set them apart from all other entities listed in the bottom part of the chart. Namely, these entities:

- a) are permanent institutions;
- b) are composed of independent judges;
- c) adjudicate disputes between two or more entities,  
at least one of which is either a State or an International Organization;
- d) work on the basis of predetermined rules of procedure; and
- e) render decisions that are binding.

Altogether, these entities form the so-called “international judiciary”. However, in order to fully understand the reasons for the rapid quantitative increase in the number of international judicial bodies, the extensive transformation of their competencies, and the success of certain subject-matter jurisdictions over others, it is necessary to include also those bodies and mechanisms which, while not meeting several or all of the above mentioned standards, also play a role in the enforcement, interpretation and implementation of international law. When these international judicial bodies are placed in a much larger historical and analytical context, 82 other entities and mechanisms, referred to as “Quasi-Judicial, Implementation Control and other Dispute Settlement Bodies”, and gathered in seven autonomous clusters, need to be accounted for (excluding extinct International Claims and Compensation Bodies).

The institutions and mechanisms listed in this chart have very few legal or functional links among one another, either within or across each major grouping or cluster. Admittedly, until 1995 the International Court of Justice could review judgments of the United Nations Administrative Tribunal, but the link was then severed by the UN General Assembly. Certain institutions listed in the group “human rights bodies” (e.g., the Inter-American Commission on Human Rights) act as a mandatory filter for certain international courts and tribunals (in this case the Inter-American Court of Human Rights). Again, there are several cases of potentially competing “jurisdictions”, both among bodies within the same group (e.g., the International Court of Justice and the International Tribunal for the Law of the Sea) and bodies in different groups (e.g., the non-compliance procedures, the International Court of Justice or the World Trade Organization Dispute Settlement Body, to cite but a few). However, beyond such links, each institution is formally unrelated to any other.

Nonetheless, in their staggering diversity these 125 international bodies and mechanisms have certain commonalities that justify their presence on the same layout. First, all of these entities make legal determinations, and this sets them apart from other bodies, such as the UN General Assembly or the Parliamentary Assembly of the Council of Europe, which share the same aspiration towards a “just world” but are of a quintessentially political nature. To be precise, these 125 bodies determine whether certain acts are congruous with certain norms. And this leads to a second commonality, which is the fact that in order to make their determinations they all resort to the same body of law: international law. Third, all of these international bodies have been established directly or indirectly (i.e., through a decision taken by a body established by treaty) by international agreements. It follows that they are subject to a legal order that is different from that of national systems, but, at the same time, that they are subject to (and materially dependent on) State support. Finally, and perhaps more importantly, collectively they are the expression of a widely shared need to abandon a world where only States count and the mighty rule, in favor of an order where certain fundamental common values are shared, protected and enforced by all members of a wide society, composed of States, International Organizations and individuals in all their legal incarnations (NGOs, peoples, corporations, natural persons, etc.).

Like any chart, this one is most likely incomplete. It is the result of an ongoing research effort carried out within PICT, and should be considered at best a partial representation of what exists, or has existed. Certain groupings have a mere illustrative function, for the enormous number of bodies that have been created in the past could not properly fit in the scheme. Other entries might change status in the near future, and new institutions and mechanisms might be created. Therefore, this chart will be updated regularly. To this end, any comments and suggestions will be greatly appreciated and can be sent to <cr28@acf2.nyu.edu>.

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#### Note to Version 2.0

This is an updated version of the Synoptic Chart that was prepared in 1998 as a supplement to the special issue of the NYU Journal of International Law and Politics, Vol. 31, 4. That version listed 41 bodies in the top group and 55 in the bottom one. Some of the additions are new bodies that have been created or proposed since 1998, while others are simply past omissions that have been kindly pointed out by readers.

New features of this chart include a special category for “dormant bodies” and a new sub-grouping in the bottom part called “Internationalized Criminal Courts and Tribunals” (i.e., domestic criminal tribunals with international supervision created in the aftermath of regional and domestic armed conflicts, such as those for Sierra Leone, Kosovo, East Timor, and Cambodia). These are the latest additions to the multitude of bodies populating the international legal scene.