

'Who decides what where?' from the Europäische Zeitung


Caption: The aim of this article, published in 2002 in the German periodical Europäische Zeitung, is to draw a clear distinction between the four international courts of justice which have their seat in Europe: the International Court of Justice (ICJ) in The Hague; the International Criminal Court in The Hague; the European Court of Human Rights (ECHR) in Strasbourg; and the Court of Justice of the European Communities (ECJ) in Luxembourg.

Source: Europäische Zeitung. Hrsg. ENTEL, Stefan A.; BROK, Elmar; PROF. SCHÖNDUBE, Claus; DR SCHOSER, Franz ; Herausgeber KELLER, Horst. Oktober/November 2002, n° 10-11, 53. Jahrgang. Bonn: Europa Union Verlag GmbH. "Wer entscheidet wo was?", auteur:Graf, Oskar , p. 14.

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Europe is home to various international law courts

Who decides what where?

By Oskar Graf

‘Where would you find the seat of the *European Court*?’ That was a question in a recently broadcast television quiz show, the suggested possible answers to which included The Hague, Strasbourg and Luxembourg. Luxembourg was the correct answer. Judges at the ‘Court of Justice of the European Communities’ in Luxembourg and at the ‘European Court of Human Rights’ in Strasbourg will undoubtedly have recoiled on hearing such a question. The correct answer to that flawed question should, in fact, have been Strasbourg *and* Luxembourg. Still, did anyone actually notice this inaccuracy?

All three of the above locations are home to international courts whose decisions meet time and again with significant public interest. There are four such courts in total: the International Court of Justice (ICJ) in The Hague, the International Criminal Court (ICC) in The Hague, the European Court of Human Rights (ECHR) in Strasbourg and the Court of Justice of the European Communities (CJEC) in Luxembourg.

The International Court of Justice (ICJ) in The Hague

The ICJ is the oldest of the four courts. The First Hague Peace Conference convened in 1899 and decided to set up a ‘Permanent Court of Arbitration’. The Peace Palace in The Hague became its official seat in 1913. The international law experts appointed to the Court of Arbitration were entrusted with settling disputes between States that could no longer be resolved through diplomatic channels. 1920 saw the establishment by the League of Nations of a Permanent Court of International Justice which, upon the creation of the United Nations — the successor to the League of Nations — in 1945, was to become the International Court of Justice, the UN’s principal judicial organ. Its Statute forms an integral part of the Charter of the United Nations.

The fifteen judges at the ICJ are elected by the United Nations General Assembly and Security Council. All candidates for the office of judge must, of course, possess the necessary qualifications. The judges as a body must ensure representation of the main forms of civilisation and the principal legal systems of the world. They are elected for a nine-year term, and one third of them become eligible for re-election every three years. They exercise their office impartially and cannot, in principle, be dismissed. The ICJ currently includes a German judge in its ranks, Carl-August Fleischhauer, who was previously with the Federal Foreign Office.

All Member States of the United Nations are, by dint of membership, parties to the Statute of the ICJ and are entitled to institute proceedings before the Court. However, both parties to the dispute must submit to the jurisdiction of the Court. They are obliged under the UN Charter to comply with the Court’s decisions, but only if they have consented to its jurisdiction. The ICJ has no power to enforce compliance with its decisions. Such a measure would, after all, undermine the principle of the sovereignty of States applying in international relations. If a party fails to comply with a decision by the ICJ, recourse to the UN Security Council is the only remaining course of action available.

Proceedings were brought before the ICJ against Germany, along with other NATO States, in connection with the air strikes on Serbia. Germany, for its part, brought a claim against the United States in connection with the execution of the LaGrand brothers. Only a modest number of rulings have been delivered by the ICJ. Indeed, since 1946 they have numbered less than a hundred, but the Court has also delivered a number of advisory opinions.

The International Criminal Court (ICC) in The Hague

The idea of establishing an international criminal court was conceived after the Second World War when cases of alleged war crimes from the Second World War were being tried before international tribunals in Nuremberg and Tokyo. As early as in 1948, the UN General Assembly proposed the creation of a permanent

court which would have jurisdiction with respect to atrocities like those committed in the Second World War. However, it took a further 50 years for 120 States to adopt, in July 1998, a treaty establishing a permanent international criminal court. *Ad hoc* tribunals had been set up on a number of occasions prior to its establishment, for example in the light of events in Rwanda or the former Yugoslavia, bringing figures such as Slobodan Milošević to trial in The Hague. Setting up such tribunals is a complicated and costly business. A permanent court presents a deterrent to potential offenders in that they have to be prepared to be tried for any crimes that they commit.

Once the required number of instruments of ratification had been deposited, the Statute of the International Criminal Court entered into force on 1 July 2002. Unlike the ICJ, the ICC is not a UN institution; it is an organisation established by and formed of the States parties to its Statute which, by the end of September 2002, had been signed by 139 States and ratified by 81. The Court's jurisdiction is limited to crimes committed after its Statute entered into force, which include genocide, crimes against humanity and war crimes. The possibility of broadening the scope of its jurisdiction to include the elements of the crime of aggression, acts of terrorism and drug trafficking is currently under assessment.

The ICC is not intended to replace national jurisdictions; it exercises its jurisdiction only if a State is itself unable or unwilling to prosecute. Therefore, it is difficult to understand why the United States is attempting by every possible means to ensure that US citizens do not come before this Court, which has not yet begun its operations. With its establishment, it is to be hoped that, in future, any State or army committing human rights infringements will no longer go unpunished.

The European Court of Human Rights (ECHR) in Strasbourg

The European Convention on Human Rights, which entered into force on 3 September 1953, is the most significant convention adopted by the Council of Europe, an organisation founded on 5 May 1949 by ten countries and with a current membership of 44 European States. The Convention provides for the establishment of a European Court of Human Rights attributed with compulsory jurisdiction and intended to ensure that Member States meet their obligations under the Convention. A permanent body since 1998, the ECHR has as many judges as the Council of Europe has members.

Judges are elected by Parliamentary Assembly of the Council of Europe from a list of three candidates nominated by each of the Member States. They must possess the qualifications required for appointment to high judicial office and sit in the Court in an independent capacity. They are appointed for a period of six years, with one half of them being newly elected every three years.

The ECHR has jurisdiction to hear complaints lodged by Member States against other Contracting States concerning infringements of the Human Rights Convention ('Inter-State cases'). Individuals may also bring an action if they can demonstrate that their rights under the Convention have been violated ('Individual applications'). However, all domestic remedies must first have been exhausted.

If the Court finds that a human rights violation has been committed, that finding has no immediate impact on the measure which gave rise to the application. However, the Member States undertake to abide by the judgments of the Court. The execution of judgments is supervised by the Committee of Ministers of the Council of Europe, which comprises the Foreign Ministers of the Member States or their permanent representatives. Any State failing over a lengthy period to abide by a judgment of the Court may have its membership suspended. If the worst comes to the worst, it may even have its membership terminated.

The Court of Justice of the European Communities (CJEC) in Luxembourg

The CJEC in Luxembourg is the international court closest to the citizens because its decisions may have a direct impact on their everyday lives. With the establishment of the European Communities came the creation of communities based on law whose rules must be observed by Member States, Community institutions and individuals alike. The CJEC is responsible for ensuring that the law is observed in the application and interpretation of the Treaties. Member States, the Community institutions and natural and legal persons may

bring proceedings before it. Its cooperation with national courts in the preliminary ruling procedure guarantees the uniform interpretation of Community law in every Member State.

Since 1989, a Court of First Instance has been attached to the CJEC. It has jurisdiction to hear and determine all actions brought by natural and legal persons against acts of the Community institutions and other Community bodies. Its judgments are subject to a right of appeal to the CJEC on points of law only. The Court of First Instance was created for the purpose of enabling the CJEC to concentrate on the uniform interpretation of Community law; by contrast, the Court of First Instance also frequently has to determine facts.

The CJEC is composed of 15 Judges, one Judge from each Member State. They are supported by eight Advocates General who propose a decision (or 'Opinion') to the Court in each case. Judges and Advocates General are appointed by the governments of the Member States for a six-year term, and some are replaced every three years. They must offer a total guarantee of their impartiality and possess the qualifications required for appointment to the highest judicial offices in their respective countries.

The reference for a preliminary ruling procedure is a particularly important procedure in which a national court suspends the proceedings pending before it in order to refer to the CJEC questions on Community law which are relevant to its own decision in the case. This not only demonstrates the close interlinking of EC law with the national legal systems but also underpins the important principle that Community law takes preference over national law.