Annual Grotius Lecture 2014
Summary

Tuesday 4 February 2014
The Law Society
113 Chancery Lane, London WC2A 1PL

The Contribution of National Courts to the Development of International Law

Speaker: Sir Christopher Greenwood CMG QC
Judge on the International Court of Justice,
Vice-President, British Institute of International and Comparative Law
Summary

Sir Christopher Greenwood persuasively demonstrated in the course of his Lecture that national courts have an important role in the development of international law.

He confirmed that it is now universally accepted that national courts take heed of international law in a wide and increasing variety of circumstances. One result has been that, since the late 1990s, it has become a regular occurrence for national courts to invoke ICJ judgments. However, Sir Christopher argued that national courts reflect international law in a way not dissimilar to that of a ‘fairground mirror image’ – national judgments do not always give a wholly accurate reflection of all of international law.

Sir Christopher considered that national courts consider international law differently from international courts for five reasons:

1. National courts may be constrained by constitutional principles (e.g. their constitutions or (in the UK) Parliamentary supremacy).
2. National courts are constrained by the doctrine of precedent in practice, notwithstanding that they may not consider themselves bound in theory.
3. National courts can be uneasy grappling with certain types of issues, such as political matters, which may seem to arise in some international legal cases.
4. There are differing jurisdictional issues for national courts compared with international tribunals.
5. There are a range of cultural factors, such as the language barrier and the reality that practitioners are often more comfortable with local (rather than international) materials, that affect national courts.

The focus of the Lecture was on ways in which national courts contribute to the development of international law. Sir Christopher analysed four ways in which they contribute:

1. Article 38(1)(d) of the ICJ Statute permits the ICJ to take ‘judicial decisions’ into account. Sir Christopher interpreted this provision as inclusive of national, as well as international judgments. The ICJ has done this in a couple of recent decisions.
2. Because a national court constitutes an organ of a state, judgments of national courts are capable of qualifying as state practice towards establishing a general practice accepted as law for the purposes of Article 38 (1)(b).
3. Under Article 38(1)(c), the ICJ may consider general principles of law, and these may have been elucidated by national courts.
4. The willingness of international tribunals to learn from the experience of national courts. For example, the procedure adopted by the criminal tribunals of the 1990s had very different start – and end – points from that of the military tribunals at Nuremberg and Tokyo.

The former President of the ICJ and President of BIICL, Dame Rosalyn Higgins, who chaired the session, concluded the Grotius Lecture with a thought that this is still a relatively untrodden area, which is ideal for further scholarship.

The Lecture will become available on video on the BIICL website and it is hoped that the full text will be published in due course.

Summary drafted by Dominic Bright, intern at BIICL