CURRENT LEGAL DEVELOPMENTS

The Future of Inter-State Dispute Settlement Within the Council of Europe

Keywords: Council of Europe; Europe; European Commission on Human Rights; European Court on Human Rights; settlement of disputes.

1. INTRODUCTION

The original philosophy behind the 1950 European Convention on Human Rights and Fundamental Freedoms (European Convention)[1] was accurately summarized by Lord Layton when, in opening the first debates of the Parliamentary Assembly in 1949, he underlined "the great importance" of the guarantee of human rights:

> first for the sake of the individual European citizens who may benefit from it; secondly, as a means of strengthening the resistance in all our countries against insidious attempts to undermine our democratic way of life from within or without, and thus to give to western Europe as a whole greater political stability; and thirdly, as the acid test of whether countries should be admitted to this Council of Europe.[2]

The aims of the Council of Europe are the same today: the provision of an effective assurance of individual rights and on the other hand the additional goal of bringing about a real 'democratic security' in the heart of an enlarged Europe.

It is important to recognize that the considerable development which has taken place in the field of protection of individual rights, thanks to the existence of a particularly abundant jurisprudence, has sometimes eclipsed the 'political vocation' of the Council of Europe, even at a time when,

1. 213 UNTS 211 (1955).
2. I Recueil des Travaux Préparatoires 31 (1975).

Leiden Journal of International Law 9: 397-410, 1996.

after the *Greek* case,[3] the Conference on Security and Cooperation in Europe (CSCE) was becoming an important forum for discussion between the two halves of Europe. More importantly, the Charter of Paris for a New Europe, signed on 21 November 1990 by all the European heads of state or government, not only placed the emphasis on the political principles of a "Europe whole and free", but also advocated development of a "mechanism for the human dimension", the signatories undertaking to ensure that "everyone has the right to know and act upon his right".[4] The risk of duplication of effort was obvious. In practice, the CSCE has leaned towards the machinery of diplomacy, whether in the form of instruments of preventive diplomacy or of procedures for the settlement of inter-state disputes, without according a role to the individual as such.[5] For its part, the Council of Europe, in the course of its successive enlargements, is finding a new dimension and, no doubt, a new mission in relation to the regulation of inter-state disputes.

2. A Triple Challenge

Following the first summit of the heads of state and government of the Council of Europe, organized in Vienna in October 1993, the Council of Europe, in effect, had to surmount a triple challenge: the acceleration of the rate of adhesion of new member states, the establishment of a new system for the protection of human rights with a single court, and, finally, the establishment of new rights concerning, in particular, national minorities.

---

3. Denmark, Norway, Sweden, and the Netherlands *v.* Greece, Report of the Commission of 5 November 1969, 12 Yearbook of the European Convention on Human Rights 126 (1969); *see also* A. Manin, *La Grèce et le Conseil de l'Europe*, 20 AFDI 875 (1974).
4. 30 ILM 190 (1991). The same document limited itself to recognizing "the important contribution of the Council of Europe to the promotion of human rights and the rule of law as well as to the development of cultural co-operation. We welcome moves by several participating States to join the Council of Europe and adhere to its European Convention on Human Rights. We welcome as well the readiness of the Council of Europe to make its experience available to the CSCE."
5. Regarding the Court on Conciliation and Arbitration within the CSCE, *see* the proceedings of the colloquium organized at Geneva on 19 October 1995 by L. Caflish on *The Settlement of Disputes in Europe* (not yet published).

2.1. The burden of new member states

Born at the height of the Cold War, the Council of Europe has as its vocation the bringing about of "a greater unity between its Members for the purpose of safeguarding and realising the ideals and principles which are their common heritage".[6] On 6 July 1989, Michael Gorbachev addressed the Parliamentary Assembly of the Council of Europe at Strasbourg, during a pivotal period, and emphasized that "the common European home is a community governed by law".[7] It need hardly be said what an historic step it was in the destiny of the continent when the Russian Federation was admitted, on 28 February 1996, as the 39th member state.[8] This was a continuation of the process of opening up Europe as a whole, which had begun in 1990 with the admission to membership of Hungary and continued in 1995 with the membership of Moldavia and the Ukraine - both members of the Commonwealth of Independent States (CIS).

The simultaneous granting of observer status to the United States emphasized, as if there were any need, the exceptional significance of this admission to membership for the balance of Europe as a whole. Indeed, with the exception of Canada on the one hand and the Asian republics on the other, virtually all the participants in the Organization for Security and Cooperation in Europe (OSCE) were, from that point on, gathered within the Council of Europe.

In becoming a member of the Council of Europe, Russia took the significant step of undertaking to ratify the European Convention and Protocol No. 11 to the Convention for the Protection of Human Rights and Fundamental Freedoms of 1994[9] within a period of one year, in conformity with the views of the Parliamentary Assembly of 26 January 1996. This established a more and more stringent practice, which had begun with the admission to membership of Finland.[10] Of course, it was

6. Art. 1, 1949 Statute of the Council of Europe, 87 UNTS 103 (1951).
7. Council of Europe, Parliamentary Assembly 1989-1990, Official Report of Debates, Vol. I, Eighth Sitting, Thursday 6 July 1989, at 197.
8. The case of Croatia having been left in abeyance, there are three states that continue to hold the position of special guest, which constitutes a first step in the process of adherence to the Council of Europe, namely, Armenia, Belarus, and Bosnia. All ties with the former Yugoslavia were suspended in 1992, depriving it of its former status as special guest.
9. *See* 33 ILM 943 (1994).
10. *See Documents d'Actualité Internationale, in* La Documentation Française, No. 7, 1 April

to be no more than a very short period of time before the European Convention would give rise to petitions by individuals, or by states, concerning the human rights situation throughout the 39 member states of the Council of Europe. At the same time, this amounted to both a juridical revolution and a 'litmus test' for a 'Europe governed by law'.

2.2. The renewal of the juridical system

During this period, the system of collective guarantee of fundamental rights, which is the very basis of the Council of Europe, was to undergo an important overhaul. The system, established in 1950 by the European Convention, had not been subject to any significant reassessment, despite important changes in practice and jurisprudence.[11]

The consequences of original compromises between the states parties remained, favouring the 'voluntarism' of states to the detriment of 'equal terms' for petitioners, even if the full potential of the Convention in the field of classical international law was not to be realized. Though some, such as Henri Rollin, feared that the European Court might compete with the International Court of Justice in the field of settlement of disputes between states, this did not occur. Instead, the petitions of individuals formed the mainstream of European litigation.[12]

The European Commission on Human Rights was hardly called upon to provide conciliation between states, in the international law sense, through attempts at "securing a friendly settlement" between the parties (Article 28(1.b) of the European Convention).[13] Certain cases between states, it is true, took on a markedly political character, involving a trial of strength, whether, as in the *Greek* case, leading to the forced withdrawal of the defendant state, or, as in the *Turkish* case,[14] to a 'normalisation',

---

1996, at 277.

11. *See* E. Decaux, *Les États Parties et Leurs Engagements, in* L.E. Pettiti, E. Decaux & P.H. Imbert (Eds.), La Convention Européenne des Droits de l'Homme 3 (1995).
12. *See* E. Pettiti, *Les Recours Interétatiques Dans le Système de la Convention Européenne des Droits de l'Homme, in* D. Bardonnet (Ed.), Le Réglement Pacifique des Différends Internationaux en Europe: Perspectives d'Avenir 331 (1991).
13. J.P. Cot, La Conciliation Internationale (1968).
14. France, Norway, Denmark, Sweden, and the Netherlands *v.* Turkey, Inter-State Applications Decision of the Commission of 6 December 1983, 26 Yearbook of the European Convention on Human Rights 1 (1983).

termed an amicable settlement. However, the conformity of these cases with the provisions of Article 28(1.b) is doubtful. Furthermore, it was only a handful of states, i.e., Denmark, Norway, Sweden, and the Netherlands in both these cases, joined by France in the *Turkish* case, that saved the honour of the Council of Europe on these two occasions by referring them to the Commission. Most of the remaining states have demonstrated maximum prudence. The Court was only called upon to settle a single case between states, namely, the case of *Ireland* v. *The United Kingdom*.[15]

Such fundamental political issues as the crisis in Ireland or the occupation of Cyprus were barely reached by the organs of Strasbourg. And plainly, those concerned on the Commission did not consider the European Convention as the proper instrument for the regulation of such highly political affairs.[16] This being the case, a certain void can be seen at the very heart of Western Europe in relation to the settlement of disputes, limiting the appropriateness of viewing "the Convention as an instrument of public order in Europe", in accordance with the rather strong formula of the Court in its first judgment in the *Loizidou* case,[17] and limiting the degree of diplomatic pressure which the member states can otherwise bring to bear in support of stability and security in Europe.

Protocol 11 has as its first effect the removal of the original concessions made to the 'voluntarism' of the parties in relation to the settlement of disputes, by eliminating the system of double optional acceptance, first, of the process of petitions from individuals (Article 25) and, second, of the competence of the Court (Article 46), by means of declarations with a time limit, on the model of the Statute of the International Court of Justice. As from the entry into force of Protocol 11, all the state parties will, *ipso facto,* be finally bound by the jurisdiction of the Court, both in relation to its contentious jurisdiction and to its advisory jurisdiction.

It remains to be seen what will be the impact of these reforms on the actual evolution of disputes, which is the object of these preliminary remarks.

---

15. *See* Case of Ireland *v.* United Kingdom, Judgment of 18 January 1978, Ser. A, No. 25, at 1 (1978).
16. *See* the lively debates on the subject at the Thesalonnica colloquium of 24-26 September 1987, reproduced *in* Démocratie et Droits de l'Homme (1990).
17. Case of Loizidou *v.* Turkey (Preliminary Objections), Judgment of 23 March 1995, at 24, para. 75 (not yet published).

2.3. The impasse concerning national minorities

The last factor to be taken into account is the rapid development of the problem of national minorities within the Council of Europe. The question was always there, for it was already an issue in the case of *Austria* v. *Italy*, a case involving the autonomous region of Upper-Adige (South Tyrol). The Commission strongly asserts that

> the purpose of the High Contracting Parties in concluding the Convention was not to concede to each other reciprocal rights and obligations in pursuance of their individual national interest but to realise the aims and ideals of the Council of Europe as expressed in its statute, and to establish a common public order of the free democracies of Europe with the object of safeguarding their common heritage of political traditions, ideals, freedom and the rule of law.[18]

At the time of the Vienna Summit of 1993, some radical proposals - in particular of Austria - aimed, by means of an additional protocol, at the introduction of the rights of national minorities, as such, into the area covered by the Convention. The heads of state, however, decided to separate two aspects of the question. First, they called upon experts to draft a framework convention to settle general principles, quite apart from any mechanisms for litigation - something which could be done quite quickly.[19] Second, the experts were charged with looking into the possibility of an additional protocol to the European Convention covering "cultural rights, in particular for people belonging to national minorities"; however, this exercise eventually led to an acknowledgment of failure. In the meantime, some took the view that the Convention, as it stood, already provided sufficient protection for the cultural rights of people belonging to national minorities.[20]

The question of national minorities remains no less at the heart of the Council of Europe's preoccupations than of other major European institutions, whether the European Union, with the launching of the Pact

---

18. Application No. 788/60, 11 January 1961, 4 Yearbook of the European Convention on Human Rights 139 (1961).
19. *See* European Treaty Series, No. 157.
20. On the problem of cultural rights, *see* the work of the Council of Europe Budapest Colloquium in 1995. *See also* P. Meyer-Bilsch (Ed.), Les Droits Culturels, une Catégorie Sous Développée des Droits de l'Homme (1993).

for Stability in 1995,[21] or the OSCE, with the place taken by the High Commissioner for National Minorities,[22] and the creation of the Court on Conciliation and Arbitration. The paradox is that all these new mechanisms, stemming from the problem of national minorities - good neighbourliness, preventive diplomacy, conciliation, and arbitration, etcetera - do not include any juridical mechanism to allow the individual to assert his rights, with the risk of raising the stakes involved to the national level through the intervention by a 'sister state' taking up the cudgels on behalf of a neighbouring minority.

3. JURIDICAL DISPUTES AND POLITICAL DISPUTES

The European Convention is by no means the only instrument concerned with the potential growth in European judicial disputes. The international system has, for nearly a century, never ceased from multiplying machinery, no sooner created than forgotten. Without reiterating the possibilities of international arbitration, one must still refer to the place taken by European states in the renaissance of the International Court of Justice, with declarations by Poland and Spain in 1990, by Estonia in 1991, and by Bulgaria and Hungary in 1992, and with the cases pending in The Hague between Hungary and Slovakia and between Bosnia-Herzegovina and the Yugoslav Federation.

On the regional level, there is also no lack of machinery. However, the 1957 European Convention on the Pacific Settlement of Disputes - which should have had a place in political, as well as in juridical, arbitration - never really made a start, having received no more than thirteen ratifications, all of which took place long ago.[23] Curiously, the authorities at Strasbourg appear to have given up any mention of the 1957 Convention; thus, while the opinion of the Parliamentary Assembly on the admission to membership of Russia is full of references and recommen-

21. *See* E. Decaux, *Les Mécanismes de Contrôle International*, *in* E. Decaux & A. Pellet (Eds.), Nationalité, Minorités et Succession d'États en l'Europe de l'Est 115 (1996).
22. *See* the present author's study on the role of the High Commissioner, *Le Haut Commissaire de la CSCE Pour les Minorités Nationales*, *in* A.L. Sicilianos (Ed.), Les Nouvelles Formes de Discrimination en Europe 269 (1995).
23. *See* European Treaty Series, No. 23, at 13-14 (1957).

dations, it omits any call for Russia to settle international and internal disputes by peaceful means - an obligation which is incumbent on all member states of the Council of Europe. On the other hand, the Stockholm Convention,[24] adopted in 1992 within the framework of the CSCE, has succeeded in building up a dynamic, the countries of Central and Eastern Europe being among the first to have ratified it. At the same time, it remains for the new Court of Conciliation and Arbitration to prove itself by having a case referred to it.

Within this changing scene, the role of the European Court on Human Rights should not be ignored. Taking over the terms of Article 24 of the European Convention, Protocol 11 envisages the possibility of cases between states in Article 33: "[a]ny High Contracting Party may refer to the Court any alleged breach of the provisions of the Convention and its Protocols by another High Contracting Party". In the same way, the procedure for amicable settlement is repeated in Article 38 of Protocol 11. Whether these clauses will demonstrate new life within the new system depends, at the same time, both on the underlying system and on the particular forms of dispute that may occur.

3.1. The juridical culture of the Council of Europe

One may suppose that the states that are parties, of which there are now nearly 40, will use the machinery of the revised Convention in a very different spirit than that of the past. The Council of Europe, like the European Union, has developed a kind of judicial 'culture', making law not only the engine of integration between its members, but also the means of rising above conflicts between national interests. In this sense, there is no real distinction between disputes that are, by nature, essentially political and those that are, by nature, essentially judicial. In a 'community governed by law', which has a supranational dimension, all technical discussion has a political aspect (*e.g.*, the 'mad cow' crisis), but any political crisis also has a judicial element. The role of law is then to 'calm things down', to defuse the crisis by using respect for common principles to dampen the violence of the conflict.

---

24. *See* 1992 Convention on Conciliation and Arbitration Within the CSCE, reproduced *in* 32 ILM 551 (1993).

In the classic concept of diplomacy, resort to arbitration is seen as a failure, carrying with it the risk of crystallizing opposing positions as opposed to seeking a negotiated compromise between friendly states. This is no longer the case today, when resort to the law is not seen as a 'hostile move', but rather as a means of submitting to a common ideal of rules and principles. Thus, the almost sacred status accorded to law, which is characteristic of our traditions at the national level, has been extended into the new 'area governed by law' on the European level.

The dominance of law also has an equalizing effect, which has been proclaimed, even in poetic terms, by the advocates of international justice:

> [q]uand dans les deux plateaux de la balance, il s'agit de jeter des épées, l'une peut être plus lourde et l'autre plus légère. Mais lorsqu'il s'agit d'y jeter des idées et des droits, l'inégalité cesse et les droits du plus petit et du plus faible pèsent dans la balance d'un poids égal aux droits des plus grands.[25]

Since the last war, within the 'Europe of Judges',[26] as it has been called, in Strasbourg and in Brussels, the idea of the equality of states has been alive. This means, more particularly, that there are neither 'Great Powers' above the law nor 'internal affairs' or 'spheres of influence' that are outside the jurisdictional area created in common, but only sovereign and equal states that have accepted submission to the collective guarantee of the law.

During this same period, the Council of Europe has developed the ambiguous concept of 'democratic security', without having, at least within the terms of its Statute, either the diplomatic or the military means of achieving it. It is thus upon law alone that the system of the Council of Europe rests; this is both its strength and its weakness, by comparison with genuinely diplomatic systems, such as the OSCE, existing within the logic of regionalism and 'collective security' enshrined in Chapter VIII of the UN Charter. The Council of Europe has, as it were, placed its money on the contagious force of normativity, but it may equally be that all it will discover is the impotence of the law.

25. L. Bourgeois, Pour la Société des Nations xi (1914).
26. R. Lecourt, L'Europe des Juges (1976).

3.2. Categorization of 'inter-state' disputes

Within this new perspective of a 'European public order' as guarantor of 'democratic security', two major forms of judicial dispute between states may be conceived, which we will categorize, on the one hand, as bilateral litigation and, on the other, as multilateral litigation.

In the past, bilateral disputes have given rise to petitions by states, but the Council of Europe has hardly had any place in the management of crises. By simply sitting back and allowing situations to deteriorate, and by effectively burying the cases that were passed to it, the Committee of Ministers has demonstrated that it is neither a major diplomatic organ nor a respected judicial authority. Thus, the European Convention has become merely an exercise in the frivolities of procedure and the refinements of the 'reasonable period', while all the time remaining powerless in the face of breaches of the most fundamental rights, such as the right to life protected by Article 2, or even breaches of peace and justice, to which the Preamble to the European Convention expressly refers - thus emphasizing that "fundamental freedoms [...] are the foundation of justice and peace in the world".

The direct submission of cases to the Court, envisaged in Protocol 11, opens the way for an increase in litigiousness in relation to these matters, in particular by the new members of the Council. The rights envisaged by the Convention are, themselves, wide enough to allow submission to the Court of numerous political disputes. Having in mind the rights of national minorities, or of minority groups, Article 14, which provides that "[t]he enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as [...] national or social origin [or] association with a national minority", can be invoked by any state as a basis for a claim based on discrimination in matters such as education, religious freedom, or property rights, of which its nationals abroad, or members of a national minority, are the victims.

Such action by one state against another may be direct, by means of an 'inter-state' case (Article 33 of the Protocol), but may also be indirect, with the petitions of private individuals (Article 34 of the Protocol) being supported by means of 'third party intervention' of the state concerned (Article 36 of the Protocol). This latter route can be more effective and discreet than a frontal attack by a state. However, the new Court, if it is

to thoroughly fulfil its goal of establishing a new judicial order, may, on the contrary, prefer to tackle inter-state litigation as a whole, so as to be able to push for stable amicable settlement, rather than to be bound by a series of uncertain individual petitions.

There remains the possibility, which sadly cannot be ignored, of a state being in long-term breach of its obligations. The precedents of the *Greek*[27] and *Turkish*[28] cases show that the concept of 'collective guarantee' of human rights is taken seriously in the Council of Europe. In these two cases, one can genuinely speak of 'multilateral litigation', as a group of states acted in the name of the basic principles of the Council of Europe, of which they are jointly the guarantors. The absence of reciprocity in treaties concerning human rights means that if no state is directly the victim of a violation through its nationals, all the states that are parties have an interest in acting to secure the 'integrity' of the treaty.[29] In fact, it is all the party-states which must act together to bring a real 'collective action' in the absence of an action by the organs of the Council of Europe, something that unfortunately remains just as impossible under the modernized system as it was under the system that existed up to now. One can, indeed, deplore the feebleness of the consultative process, which could very well have allowed some basis for the submission of cases by the statutory organs of the Council of Europe. There would have been nothing improper about the Secretary General of the Council of Europe, or the Parliamentary Assembly, being able to submit matters directly to the Court.[30] Similarly, intervention ought to be encouraged in practice, while allowing states greater scope to make their points of view known, as happens very frequently in Luxembourg.

The fact that the jurisdiction of the Court will be automatic in the future will make the choices of states clearer. The Committee of Ministers, with its pivotal position, would have been able to play an important role in contentious matters having a political aspect.[31] Wisely, Protocol 11

---

27. *See* Report of the Commission of 5 November 1969, 12 Yearbook of the European Convention on Human Rights 126 (1969).
28. *See* note 14, *supra*.
29. *See* E. Decaux, *La Réciprocité en Droit International*, 82 Libraire Générale de Droit et de Jurisprudence (1978).
30. It is quite different with the European Union, where the European institutions play a large role in litigation, whether in cases between institutions or in cases against states.
31. This was the case in the *Greek* case. *See* A. Kiss & P. Vegleris, *L'Affaire Grecque Devant le*

rules out any juridical competence for the Committee of Ministers. However, the Committee retains an underlying role under Article 46 of the Protocol, which makes it responsible for seeing that the authority of the prescripts of the Court are respected. This synergy recalls that which should, according to the texts, exist between the International Court of Justice and the Security Council of the United Nations. At the European level, it is important to have a new Court which will be strong and respected, confident in stating the law, and fully supported by a Committee of Ministers.

4. CONCLUSION

The modernization of the system can be the occasion for a renaissance for the European Convention, if the new Court can find a way of drawing up a true 'judicial regime'. Of course, it must take into account the principle of subsidiarity and allow for a margin of national appreciation, while remaining always able, above all, to establish clear lines and coherent principles for the future.

In a period of transition, characterized by inevitable political tensions, the new Court must be able to rise above geographic divisions, and the divides that stem from different juridical traditions. Even though it is possible within a relatively homogeneous judicial *milieu* to take decisions by majority vote, as is the case with national supreme courts, and even to allow dissenting opinions against such decisions, as does the Supreme Court of the United States, it is certainly not sensible for a supranational jurisdiction to give the impression of being 'a house divided against itself' through narrow majorities fragmented in multiple dissenting opinions.

The International Court of Justice, which itself went through a similar crisis in the late 1960s during a period of profound change in the international order with the reversal of opinion that then took place as a result of the *Southwest Africa* cases,[32] has since been able, despite a fresh

---

Conseil de l'Europe et la Commission Européenne des Droits de l'Homme, 17 AFDI 889 (1971).

32. The judgment in the South West Africa cases, Second Phase, Judgment, 1966 ICJ Rep. 6, adopted "by the casting vote of the President", marked the high point of this crisis, of which one finds the final echoes in the contribution of Judge André Gros, *La Cour Internationale de Justice 1946-1986, Réflexion d'un Juge*, *in* Y. Dinstein (Ed.), International Law at a Time

crisis arising from the case of *Nicaragua* v. *United States*,[33] to develop a more consensual way of thinking. It has, as Sir Robert Jennings noted,[34] systematically sought unanimous, or nearly unanimous, decisions, thanks to a truly collegiate way of working through which it has emphasized the principles that united it on essentials while rejecting those that might uselessly divide it. This example deserves to be emphasized at a time when Europe is, in its turn, experiencing a period of large scale change.

In this new context, weakly motivated decisions, adopted by majority vote, would carry the less conviction in a judicial *milieu* that is more and more heterogeneous with judges coming from very varying backgrounds, however great the respect due to the authority of a courts prescripts and however great the admiration for the jurisprudence of the Court. Furthermore, the increase in the number of member states, and the resulting increase in the number of judges, means the replacement of plenary sessions by a 'large chamber', of which the composition will depend on chance. Thus, there will no longer be any permanent authority to ensure the long-term coherence of the Court's jurisprudence, either in space or in time. The educational function of its qualified majorities will be all the more important for the new Court, in that they will, nevertheless, have to safeguard the unity of the jurisprudence on the horizontal plane - between different chambers, the composition of which will remain also a matter of chance - as well as on the vertical plane, to avoid systematic recourse to the 'large chamber' in case of divided decisions.

It will be the job of the new Court to avoid these pitfalls by establishing a willingly accepted jurisprudence through the cases favoured by decision of the 'large chamber', through the coherence and continuity of its successive majorities, but above all through the manifest rigour of its decisions. Disputes between states, because of the unified approach to the problems, and the wide debate on conflicting points of view which they

---

of Perplexity, Essays in Honour of Shabtai Rosenne 289 (1989).

33. Notwithstanding the somewhat black-and-white interpretation of certain American authors analyzing the ideology of the jurisprudence, the majority of the Court was united in its judgment in Military and Paramilitary Activities in and Against Nicaragua (Nicaragua *v.* United States of America) (Merits), Judgment, 1986 ICJ Rep. 14: *see* T.D. Gill, Litigation Strategy at the International Court. A Case Study of the Nicaragua *v.* United States Dispute (1989).

34. *See* R. Jennings, *The Internal Judicial Practice of the International Court of Justice*, 59 BYIL 31 (1988).

entail, can provide the Court with an opportunity to pass beyond the *pointillism* of case-by-case solutions and to gain not only juridical vision, but also political ambition on a level with the new challenges which the Council of Europe has to meet.

Emmanuel Decaux[*]

---

* Professor of International Law, University of Paris X, Nanterre, France.