Chapter Four

The Convention and Its Dispute Settlement in the Context of General International Law

4.1. The Growth of International Adjudication

Whilst some 50 years ago the main concern of international lawyers was to convince States in the utility of international adjudication, the present state of international dispute settlement is characterised by a significant multiplication of the judiciary. This is a direct consequence of the corresponding expansion of international treaties, many of which establish their own dispute settlement systems, including the creation of permanent and *ad hoc* courts and tribunals. Never before has international law experienced such a large number of treaties setting forth new dispute settlement mechanisms. Indeed, the last decade of the 20th century gave birth to more international judicial bodies than any other period in the history of international law. The process of institutionalization of international law continues to develop even today and yet more tribunals are proposed.¹

Starting from the 1794 Jay’s Treaty,² there have been 132 existing, extinct, aborted, dormant or nascent international judicial, quasi-judicial, implementation control and other dispute settlement bodies in the world. Of these, 84 are currently in operation.³ The phenomenon of adjudicative multiplication has been caused not only by new treaties establishing new tribunals, but also by the expansion of international law into domains that were once either solely within the State’s domestic jurisdiction, were not the object of multilateral regime or


² Treaty of Amity, Commerce and Navigation between the Great Britain and United States, of 19 November 1794, 1 BFSP 784.

were simply *vacua legis*. Other reasons include transformation of international relations following the dissolution of the Soviet Union, the need to address specialized areas of international law that may not be within the competence of a court having a general jurisdiction, the need to control the membership or to preclude intervention rules, the possibility of non-State entities participation, historical, cultural and political considerations, etc.⁴

There is general disagreement on the impact of this growth of the international judiciary, ranging from the cautious and sceptical⁵ to optimistic and encouraging attitude towards it.⁶ While the multiplication of international 

