Part II

Treaty Interpretation, International Trade and Investment Law
THE APPELLATE BODY AND TREATY INTERPRETATION*

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I. Introduction

The participants in this final roundtable—Judge Gilbert Guillaume of the International Court of Justice, Judge Paolo Mengozzi of the European Court of Justice, Court of First Instance, Judge Allan Rosas of the European Court of Justice, Judge Tullio Treves of the International Tribunal for the Law of the Sea, and myself—are invited to partake in a Brechtian play, to exercise “distan-

ciation”: each actor, while playing his role, sheds a critical look at the persona he is incarnating, as if he were evaluating its behaviour and commenting on its predicament from the outside. The actors here are international judges, and they are invited to reflect, at arms length, on the role they are playing on their diverse benches with respect to treaty interpretation.

However, in order for the roundtable to yield a meaningful comparison and conclusion, these reflections have to follow parallel lines. In consequence, the participants have been asked, each from the perspective of his bench, to address the following questions:

1. To what extent do they rely explicitly on the customary rules of interpreta-

tion of public international law, and particularly by referring to their codi-

fied version in articles 31 and 32 of the Vienna Convention on the Law of Treaties (Vienna Convention)?; and to what extent do they rely on special

rules of interpretation, whether in addition to, or in substitution for, the

above-mentioned general rules?

2. How do they consider that their respective institutions would be character-

ized if their record were to be situated, in terms of judicial policy, along the

scale going from strict constructionism to teleological interpretation?

3. To what extent have their respective fora gone in their use of interpretative

methods, beyond the interpreted instruments, by calling, for example, on

paragraph 3(c) of article 31 of the Vienna Convention (‘any relevant rules of

international law applicable in relations between the parties’), and more

particularly through reference to general international law?

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