On 1 September 2000 the Amsterdam Center for International Law (ACIL) of the University of Amsterdam launched a new research project *The Symbiosis between Public International Law and National Law – Studies in the enforcement of public international law in the national legal order*. The project, funded by the Netherlands Organisation for Scientific Research and the University of Amsterdam, explores various dimensions of the evolving entanglement between public international law and national law.

The project contains both a general theoretical part and a number of specialised parts. The general part seeks to provide a renewed theoretical reflection on public international law and its relationship to national law that goes beyond the traditional monism-dualism dichotomy. The specialised parts explore various discrete issues pertaining to the relationship between international law and national law, including the direct effect of international law, the invocability of international law by private parties, the allocation of authority between international and national courts and interactions between international and national law in the law on state responsibility.

The project is being conducted under the responsibility of Professor André Nollkaemper, who is also Director of the ACIL. Currently, one post-doctoral and three Ph.D. projects are being carried out by ACIL researchers and the team will be expanded in the near future. As one of its activities, the project organises regular seminars and conferences on the relationship between international law and national law, both on theoretical and topical issues.

On 8 June 2001, a one-day seminar on ‘The application of customary international law by national courts’ was organised as part of the research project. The topic is of interest both for conceptual reasons – what differences remain, despite the many interactions, between the nature of (customary) international law and

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national law – and for technical reasons – through what procedures and mechanisms is customary international law applied at the national level. The seminar brought together attorneys, judges and academics from different countries. 

Dr. Simonetta Stirling-Zanda, University of Edinburgh, drew upon her doctoral research into the practice of courts in European countries in applying customary international law. Among the various issues raised was the tendency by several states to use constitutional provisions in order to test the applicability of customary international law in the matter of immunity from jurisdiction (France Germany and Italy), the way in which different courts in some countries, for example France (Cour de Cassation and Conseil d’État), interpret customary international law and the role of judicial agencies in advising national courts on customary international law (the Direction de Droit International in Switzerland and the Commissionnaire de Gouvernement before the Conseil d’État in France).

Michael Anderson, British Institute of International and Comparative Law, London, traced similar developments in Commonwealth courts, noting that the doctrine of parliamentary sovereignty remains embedded in the practice of such courts. One feature of practice in Commonwealth courts is that all too often there exists an underlying anxiety about the separation of powers which is translated into the issue of whether customary international law has been incorporated into national law. This has certain ramifications for the case law of these courts: renvoi to national instruments, particularly in the field of human rights, in order to construe national law, using those instruments both to endow constitutional status as well as to interpret international law and the tendency for common law judges to seek to have customary international law ‘proven’ as facts by party-led experts.

These two general introductions were followed by the interventions of a judge and a practising attorney, each of whom dealt with the treatment of customary international law before national courts. Judge J.H.M. Willems, Vice-President, Hof Amsterdam (Amsterdam Court of Appeal) described the process of finding the content of customary international law in relation to crimes against humanity and torture in the Bouterse case, as well as the Court’s use of expert evidence, in the form of an opinion by Professor C.J.R. Dugard of 7 July 2000, relating to jurisdiction

1 Stirling-Zanda, Simonetta L’application judiciaire du droit international coutumier: (étude comparée de la pratique européenne) (Zürich: Schulless, 2000).