Leiden Journal of International Law, 22 (2009), pp. 703–713
© Foundation of the Leiden Journal of International Law doi:10.1017/S0922156509990173

HAGUE INTERNATIONAL TRIBUNALS

Rosalyn Higgins: Judge and President of the International Court of Justice (1995–2009)

THOMAS BUERGENTHAL*

Abstract
This article was prompted by the retirement of Dame Rosalyn Higgins as judge and president of the International Court of Justice in February 2009. It reviews her brilliant career as law professor, barrister, advocate before various international courts, and international arbitrator. The major part of the article deals with her role as judge and president of the ICJ and her impact on the elaboration and development of international law by the Court.

1. Introduction

With Rosalyn Higgins's retirement on February 2009 as judge of the International Court of Justice and as its president, the Court lost one of the most eminent international lawyers to sit on its bench.

A distinguished professor of international law, practising lawyer, advocate before international tribunals, arbitrator, and author of numerous scholarly books and articles by the time she joined the Court, Rosalyn Higgins exemplified the legal and professional qualities that ICJ judges should embody. She also brought to the Court and to her presidency a human touch, seeing her colleagues not merely as a group of lawyers joined by a common task, but also as a family that could count on her support in dealing with personal problems.

Rosalyn Higgins was first elected to the Court in 1995. Few individuals have been as prepared for service with the Court in terms of their practical and scholarly backgrounds as she was. She had served as counsel in six major ICJ cases[1] and as an arbitrator in a series of important international legal disputes.[2] She had represented clients in English courts, the European Court of Human Rights and the Court of

* Judge of the International Court of Justice.

1 *East Timor (Portugal v. Australia)*, Judgment of 30 June 1995; *Territorial Dispute (Libyan Arab Jamahiriya/Chad)*, Judgment of 3 February 1994; *Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom)*, Preliminary Objections, Judgment of 27 February 1998; Case concerning *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)*, Judgment of 25 September 1997.

2 Arbitration between Eritrea and Yemen: Territorial Sovereignty (1998); Maritime Delimitation (1999); President, AMCO Asia/Indonesia, Resubmitted case, Award on Jurisdiction, 1988; ibid., Award on Merits, 1992; President, Iron Rhine Arbitration (Belgium v. Netherlands) (2003–2005); President, Interpretation of the Award in the Iron Rhine (2005); President, Capital Power Mauritius I and Energy Enterprises (Mauritius) Company v. Republic of India (2004–5).

https://doi.org/10.1017/S0922156509990173 Published online by Cambridge University Press

Justice of the European Communities. As legal counsel to the International Tin Council, moreover, she had advised that organization and handled its litigation in a series of cases in the United Kingdom. From 1985 to 1995 she also served on the United Nations Human Rights Committee.

It is worth noting that her practical experience was not limited to just one or two areas of the law. Rather, as a practising attorney, she dealt with a wide variety of cases, involving business law, petroleum law, European Community law, commercial law, and human rights law, as well as public and private international law. That broad exposure to different areas of the law, both national and international, stood her in good stead as an ICJ judge.

2. The professor

Already an eminent professor of international law by the time she joined the Court, Rosalyn Higgins had received her legal education at Cambridge University in the United Kingdom and the Yale Law School in the United States. She began her teaching career as a Visiting Fellow at the London School of Economics (1974–8). There followed full professorships in international law at the University of Kent at Canterbury (1978–81) and the University of London (1981–95). Over the years the outstanding quality of her scholarship brought her many academic honours and lectureships in different parts of the world.

The list of Professor Higgins's publication is vast, consisting of more than a dozen books and a very large number of articles, published in British and foreign law journals and legal compendia, both before and after she joined the Court. The breadth of this scholarly output is reflected in the breakdown by subject of her publications: international legal theory, UN law, use of force, state and diplomatic immunities, human rights, and international petroleum law, as well as a mix of publications dealing with a variety of other topics. Many of these essays are reprinted, with appropriate introductions, in her two-volume *Themes and Theories: Selected Essays, Speeches, and Writings in International Law* (2009). The book is a veritable treasure trove of her scholarly and judicial thinking.

Rosalyn Higgins's first book, *The Development of International Law through the Political Organs of the United Nations*, published in 1963,[3] grew out of her doctoral dissertation at Yale. This was the first thorough scholarly analysis, brilliantly executed, of the lawmaking practice of UN organs. The methodology of this pioneering work served as an analytical model that influenced the writings of many scholars over the years. My own *Law-Making in the International Civil Aviation Organization*, published in 1969,[4] was among the beneficiaries of her groundbreaking approach in analysing the law-making practice of international organizations.

Of the other books that Professor Higgins published over the years, my favourite is *Problems and Process: International Law and How We Use It* (1994), which won the

3 R. Higgins, *Themes and Theories: Selected Essays, Speeches, and Writings in International Law, Oxford University Press* (2009).

4 T. Buergenthal, *Law-Making in the International Civil Aviation Organization* (1969).

https://doi.org/10.1017/S0922156509990173 Published online by Cambridge University Press

prestigious Certificate of Merit of the American Society of International Law. As she put it in its preface, she had two main objectives in writing this book:

> First, I try to show that there is an essential and unavoidable choice to be made between the perception of international law as a system of neutral rules, and international law as a system of decision-making towards the attainment of certain declared values. Second, instead of recounting all about the well-agreed principles of international law, I have deliberately written about many of the difficult and unanswered issues of international law today. And I have tried to show how the acceptance of international law as process leads to certain preferred solutions so far as those great unresolved issues are concerned.

Whether or not one agrees with the Yale policy-oriented approach to international law reflected in this book, to me its special value lies in the highly readable and masterful manner in which Professor Higgins struggles with and tries to resolve what she considers to be the real problems confronting the role of contemporary international law. The two-volume compendium, *Themes and Theories*, mentioned above, contains many further examples of the creative way in which she developed these themes in her long scholarly and judicial career.

During the latter part of Professor Higgins's service on the UN Human Rights Committee, the end of the Cold War made it possible for the Committee to strengthen its powers in monitoring the manner in which the states parties to the International Covenant on Civil and Political Rights gave effect to the rights that that treaty guarantees. Rosalyn Higgins played a major role in chartering this process. As Special Rapporteur for New Cases, she was responsible for the initial review of the admissibility of individual communication (complaints) filed with the Committee under its (First) Optional Protocol. In this position she played an important role in determining which cases would proceed to the formal admissibility stage.

Professor Higgins also served as the principal drafter of General Comment No. 24, adopted by the Committee in 1994.[5] This document set out the Committee's guidelines for the interpretation and application of reservations to the Covenant and its protocols. In it the Committee asserted its power, *inter alia*, to determine whether a state party's reservation was compatible with the object and purpose of the Covenant. Under the Vienna Convention on the Law of Treaties only states are empowered to file such objections. The General Comment proceeded on the assumption, however, that human rights courts and human rights treaty bodies, such as the Human Rights Committee, must also be deemed to have that power, in order to be able to exercise their monitoring functions effectively.

In support of this position the General Comment asserted that the rules on reservations, codified in the Vienna Convention on the Law of Treaties, failed to account for the difference between human rights treaties, which seek to protect individuals against violations by states, including states of their own nationality, and treaties in general that are designed for the reciprocal exchange of obligations and

5 General Comment No. 24 on Issues Relating to Reservations Made upon Ratification or Accession to the Covenant or the Optional Protocols Thereto, or in Relation to Declarations under Article 41 of the Covenant, UN Doc A/50/40 (1995), 124 (Annex V).

https://doi.org/10.1017/S0922156509990173 Published online by Cambridge University Press

benefits between states. Because reservations to human rights treaties seldom affect any of their rights, states have no real incentive to object to reservations to human rights treaties. That is so even when such reservations are clearly incompatible with the object and purpose of these treaties, which also explains why they are rarely, if ever, objected to by other states parties.

General Comment No. 24 ran into strong objections from some governments, including those of the United States,[6] the United Kingdom,[7] and France.[8] They submitted that the Committee's position on reservations was in conflict with the applicable provisions of the Vienna Convention on the Law of Treaties and that the Committee was, therefore, not competent to declare a reservation incompatible with the object and purpose of the Covenant. These governments also contended that the Committee's reliance on the fact that the Inter-American Court of Human Rights and the European Court of Human Rights adopted similar positions was misplaced. According to them, the powers exercised by these two courts with regard to reservations had a more valid institutional basis because of the special regimes within which they operated, and which the Committee lacked.

Notwithstanding these objections, the views on reservations expressed by the Committee in its General Comment have gradually gained considerable international support. Thus, for example, the International Law Commission (ILC) recently provisionally adopted special Draft Guidelines on 'Reservations to General Human Rights Treaties'.[9] Here the ILC recognizes, albeit cautiously, that different rules may have to be applied to these treaties under certain circumstances.[10] Rosalyn Higgins would be justified, therefore, in feeling that her ideas on reservations, developed in General Comment No. 24, are gradually finding acceptance.

3. The judge

By the time Judge Higgins was elected by her fellow judges to the presidency of the ICJ in February 2006, she had served for eleven years on the Court and had sat on forty-eight cases. During her three years as president she participated in the decisions of a further twelve cases. These sixty cases consisted of judgments on the merits, advisory opinions, judgments on preliminary objections (admissibility and jurisdiction issues), and requests for provisional measures. The list does not include the numerous minor orders on procedural matters the Court issues as a case proceeds through different litigation stages, in which she also participated.

As president of the Court, Judge Higgins chaired ex officio each of the drafting committees responsible for drawing up the draft judgments, opinions, and orders in the twelve cases on which she sat. Before she became president she had also served

6 Ibid., 131 (Annex VI).
7 Ibid., 135 (Annex VI).
8 Ibid., 104 (Annex VI).
9 See ILC Report on the work of its 59th session, UN Doc. A/62/10 (2007), 15–121; text of the guidelines on reservations to treaties provisionally adopted so far by the Commission, 46–66; Draft Guideline 3.1.12 on reservations to general human rights treaties, 65; Text of the draft guidelines with commentary, 66–121; Commentary on Draft Guideline 3.1.12, 113–16.
10 Ibid., Draft Guidelines 3.1.12, 65.

https://doi.org/10.1017/S0922156509990173 Published online by Cambridge University Press

as a regular member of a number of drafting committees. The members of drafting committees are elected by secret ballot and, other than the president's ex officio committee chairmanship,[11] their names are a closely guarded secret. It is therefore not possible here to identify the drafting committees on which Judge Higgins served before she became president. It should not surprise, though, that some judges serve on more drafting committees than others, and that Judge Higgins had her share of drafting committee assignments. It is also the case that some Court presidents take a more active role in chairing drafting committees, and that it is reasonable to assume that President Higgins belonged to this group. Although drafting committees do not determine the contents of the decisions of the Court – that power is exercised very rigorously by the judges as a whole – drafting committees do, however, perform an important function in the initial formulation of such decisions.

By the time Rosalyn Higgins joined the Court in 1995, the Cold War was over. With its demise, the Court's docket began to increase, as did the different types of case that were referred to it for adjudication. While the Court continued to be the preferred venue for disputes involving maritime and territorial delimitation issues, cases dealing with a broader range of international law questions began to reach it during that period with greater frequency. That situation continues. During her tenure as judge and president, Rosalyn Higgins thus had an enviable opportunity to contribute significantly to the development of modern international law.

Given that Judge Higgins's membership on drafting committees cannot be disclosed and considering that the Court's deliberations are confidential and that, furthermore, its judgments and advisory opinions reflect the collective views of its members, I am not free to identify her individual contribution to one or the other decision. Judge Higgins did, however, join in a series of important separate opinions that permit a glimpse into her judicial philosophy.

Judge Higgins's first separate opinion, a dissent, came shortly after she joined the Court. In the *Advisory Opinion on Legality of the Threat or Use of Nuclear Weapons*,[12] the Court was evenly divided on the most important issue of the case, namely on whether the threat or use of nuclear weapons would be contrary to the rules of international law in armed conflict. With President Mohammed Bedjaoui's casting vote, the Court, in paragraph 2E of the *dispositif*, ruled in the affirmative on that question, but added the following words to the same paragraph:

> However, in view of the current state of international law, and of the elements of fact at its disposal, the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake.[13]

Judge Higgins voted in favour of the Court's findings on all other issues, but dissented with regard to the Court's holding in paragraph 2E. In a lengthy analysis of the applicable international law, she reached the conclusion, first, that the 'non-holding' on self-defence was a *non liquet* and concerned a point that was not put to the Court;

11 Art. 6(ii) of the Resolution concerning the internal judicial practice of the Court, adopted on 12 April 1976.
12 *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July 1996, [1996] ICJ Rep. 226.
13 Ibid., at 266.

https://doi.org/10.1017/S0922156509990173 Published online by Cambridge University Press

and, second, that the question before the Court regarding the legality of the threat or use of nuclear weapons could not be answered in the abstract. In her view, the answer depended upon a determination whether in a given case the use of these weapons caused unnecessary suffering, which under the relevant provisions of international humanitarian law required a balancing of 'necessity and humanity'. She then examined what legal and factual considerations had to be taken into account in that balancing process.

Judge Higgins's judicial and personal philosophy is reflected, in part at least, in the concluding paragraph of her dissenting opinion of that case.[14] Here she had the following to say:

> One cannot be unaffected by the knowledge of the unbearable suffering and vast destruction that nuclear weapons can cause. And one can well understand that it is expected of those who care about such suffering and devastation that they should declare its cause illegal. . . . *The judicial lodestar, whether in difficult questions of interpretation of humanitarian law, or in resolving claimed tensions between competing norms, must be those values that international law seeks to protect. In the present case, it is the physical survival of people that we must constantly have in view.* . . . It is not clear to me that either a pronouncement of illegality in all circumstances of the use of nuclear weapons or the answer formulated by the Court in paragraph 2E best serve to protect mankind against that unimaginable suffering we all fear.[15]

The position taken by Judge Higgins in this dissent and in the next case reflects the views she had previously expressed in some of her writings, namely that international law had to be seen as a system of decision-making towards the attainment of certain declared values rather than a system of neutral rules.

An advisory opinion of the Court that attracted worldwide attention dealt with the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (2004).[16] Judge Higgins appended a separate or concurring opinion to this decision,[17] seriously criticizing the Court's holding with regard to a number of issues. While this is not the place to address all the questions she dealt with, some of her views on the role of the Court deserve special attention. Thus, in paragraph 19 of her concurring opinion, she regretted the Court's failure to address a point she regarded as crucial.

> I think the Court should have taken the opportunity to say, in the clearest terms, what regrettably today apparently needs constant reaffirmation even among international lawyers, namely, that the protection of civilians remains an intransgressible obligation of humanitarian law, not only for the occupier but equally for those seeking to liberate themselves from occupation.[18]

14 Ibid., at 583.
15 Ibid., at 592 (para. 41, emphasis added).
16 *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 July 2004, [2004] ICJ Rep. 136.
17 Ibid., at 207.
18 Ibid., at 212, para. 19.

https://doi.org/10.1017/S0922156509990173 Published online by Cambridge University Press

Referring to the fact that various humanitarian law provisions were invoked in dealing with the legality of the construction of the wall, Judge Higgins criticized the Court's failure to subject them to thorough analysis. On that subject, she noted that:

> It might have been expected that an advisory opinion would have contained a detailed analysis, by reference to the texts, of the voluminous academic literature and the facts at the Court's disposal, as to which of these propositions [regarding the obligations these provisions imposed] is correct. Such an approach would have followed the tradition of using advisory opinions as an opportunity to elaborate and develop international law.[19]

In this opinion, as in much of her other writings on and off the bench, Judge Higgins considers that the Court has an obligation not only to decide disputes, but also to 'elaborate and develop international law'. The need for the Court to perform both of these functions thoroughly and effectively pervades her judicial thinking. It is reflected particularly well in two joint separate opinions in which she participated.

In the first of these cases, *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*,[20] the question to be decided was whether a foreign minister of the Democratic Republic of the Congo (DRC), who was charged in Belgium with the commission in the Congo of crimes against humanity and related crimes, enjoyed immunity from arrest in Belgium. The Court ruled that he did. In reaching this conclusion, the Court decided the case entirely by reference to the immunity issue without examining the question whether Belgium was entitled to rely on universal jurisdiction in issuing the arrest warrant in the first place. The DRC had initially challenged the arrest warrant on the ground that Belgium's reliance on universal jurisdiction in issuing the warrant violated international law. It also claimed that the foreign minister's immunity from jurisdiction required Belgium to withdraw the warrant. Subsequently the DRC withdrew the claim based on universal jurisdiction and relied exclusively on immunity from jurisdiction.

In the joint separate opinion,[21] Judge Higgins and her two colleagues had the following to say, *inter alia*, on the approach adopted by the Court in not dealing first with the issue of jurisdiction:

> Only if it is fully appreciated that there are two distinct norms of international law in play (albeit that the one – immunity – can arise only if the other – jurisdiction – exists) can the larger picture be seen. One of the challenges of present-day international law is to provide for stability of international relations and effective international intercourse while at the same time guaranteeing respect for human rights. The difficult task that international law today faces is to provide that stability in international relations by means other than impunity of those responsible for major human rights violations. The challenge is reflected in the present dispute and the Court should surely be engaged in this task, even as it fulfils its function of resolving a dispute that has arisen before it. But through choosing to look at half the story – immunity – it is not in a position to do so.[22]

19 Ibid., para. 23.
20 *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, Judgment of 14 February 2002, [2002] ICJ Rep. 3 (Judges Higgins, Kooijmans, Buergenthal, Joint Separate Opinion).
21 Ibid., at 63.
22 Ibid., at 64, para. 5.

https://doi.org/10.1017/S0922156509990173 Published online by Cambridge University Press

After analysing the issue of universal jurisdiction, the joint separate opinion reached the important conclusion that with regard to acts falling into the category of crimes against humanity, 'an exercise of universal jurisdiction is not precluded under international law'.[23]

In this case we see yet another example of Judge Higgins's emphasis on the Court's obligation to elaborate and develop international law. In her view and that of her two colleagues, the Court here missed an opportunity to address the question of the right of states to resort to universal jurisdiction in cases involving serious international crimes, a subject that was in need of further judicial elaboration.

In the second case (*DRC* v. *Rwanda*)[24] the Court decided that Rwanda's reservation to Article IX of the Genocide Convention, which confers jurisdiction on the ICJ with regard to disputes 'relating to the interpretation, application or fulfilment' of the Convention, was not incompatible with the object and purpose of that treaty.[25] It held, accordingly, that the reservation could be invoked by Rwanda to prevent the Court from dealing with the case filed against it by the Democratic Republic of the Congo.

Judge Higgins and four other judges appended a joint separate opinion to this judgment.[26] Their opinion sought primarily to demonstrate that the Court's finding was too sweeping in concluding that, because Rwanda's reservation did not affect its substantive obligations under that treaty, the reservation was not incompatible with the Convention's object and purpose. Although the joint separate opinion did not disagree with the Court's decision upholding Rwanda's right to invoke the reservation in this case, it emphasized that the distinction between substantive and procedural obligations, first articulated in the Court's 1951 *Advisory Opinion on Reservations to the Genocide Convention*,[27] was too broad to take full account of the complex problems that reservations to the Genocide Convention and to other human rights treaties might present. Thus, while some reservations to certain procedural provisions of human rights treaties might be incompatible with the object and purpose of the treaty because of their importance to the protective scheme of the treaty, this would not necessarily be the case with regard to reservations to every substantive clause.

The clearly stated aim of this joint separate opinion was to prevent the Court's reasoning in its 1951 Advisory Opinion and its holding in the *Rwanda* case from freezing international law on the subject of reservations generally, thereby preventing the development of a *jus specialis* for reservations applicable to human rights treaties. After pointing to various examples of more recent practice relating to reservations, including, not surprisingly, General Comment No. 24 of the UN Human Rights Committee, the authors of the joint separate opinion noted:

---

23 Ibid., at 83, para. 65.

24 *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*, Jurisdiction of the Court and Admissibility of the Application, Judgment of 3 February 2006, [2006] ICJ Rep. 3.

25 Ibid., at 32, para. 67.

26 Ibid., at 65 (Judges Higgins, Kooijmans, Elaraby, Owada and Simma, Joint Separate Opinion).

27 *Reservations to the Convention on Genocide*, Advisory Opinion of 28 May 1951, [1951] ICJ Rep. 15.

https://doi.org/10.1017/S0922156509990173 Published online by Cambridge University Press

> The Court's Advisory Opinion in 1951 thus did not settle all matters relating to reservations. To observe this reality is not to attempt to fragment a mythical overreaching law on all questions of reservations. The Court's Advisory Opinion in 1951 set out the law as to what it was asked, and no more; and it did not foreclose legal development in respect of hitherto uncharted waters in the future.[28]

Here, as in her other separate opinions, Judge Higgins's concern with the elaboration and development of international law, which also embraces the need not to 'foreclose legal development in respect of hitherto unchartered waters in the future', can be said to have been a constant of her judicial philosophy.

Throughout her judicial career Judge Higgins has also been uncompromisingly committed to ensuring that the Court's judgments and advisory opinions met the highest judicial standards. At the same time, though, she saw no conflict between the achievement of that objective and her belief in the Court's obligation to contribute to the elaboration and development of international law. In her view, these two functions complemented each other and were critical in enabling the Court to perform effectively its important role as the principal judicial organ of the United Nations.

4. The president of the Court

Looking at Judge Higgins's presidency of the Court, it is important to remember that a judge elected to that position is a *primus inter pares*. The president has few independent powers. That means that, to be a good president, the person elected to the presidency has to be a good consensus builder and has to enjoy the respect of his or her colleagues. Without these qualities, the president will not be able to accomplish the judicial and non-judicial objectives she or he wishes to achieve in that position.

Judge Higgins came to the presidency of the Court with an extensive judicial and non-judicial agenda. Her judicial agenda included the commitment to maintain the high quality of the Court's judgments while increasing its judicial output. She achieved both objectives.[29] A good example of the quality of these decisions is the massive 2007 judgment on the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia Herzegovina v. Serbia and Montenegro)*.[30] While this judgment has been criticized in some quarters for its holding on certain factual issues, the case provides the most extensive and thorough legal analysis and interpretation to date of the meaning and scope of the Genocide Convention. It thus makes an important contribution to the elaboration of the law bearing on that subject.

While none of the other judgments of the Court decided during the Higgins presidency equals the *Genocide* case in legal significance, some of them stand out for

28 Ibid., at 68, para. 13.

29 In her speech to the UN General Assembly, delivered on 30 October 2008, President Higgins reported that 2008 was the most productive year in the Court's history as far as its judicial output was concerned.

30 *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment of 26 February 2007, [2007] ICJ Rep. 43.

https://doi.org/10.1017/S0922156509990173 Published online by Cambridge University Press

the important contributions they make to the elaboration of the law applicable to the subjects they deal with. This is certainly true of the 2007 *Amadou Sadio Diallo Case (Republic of Guinea v. Democratic Republic of the Congo)* (the law of diplomatic protection and state responsibility), the 2007 *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)* (maritime delimitations), and the 2009 *Request for the Interpretation of the Avena Case (Mexico v. United States of America*) (consular relations).

Although, as already noted, judgments of the Court reflect the views of the majority that adopted them, it cannot be doubted that presidents of the Court, because they chair the Drafting Committee and preside over the Court's deliberation in a given case, can in some measure influence the formulation and contents of judgments and advisory opinions, and at times even the result, due to their casting vote. In that sense, every president of the Court bears at least some responsibility for the judicial quality of a case, be it good or bad. Applying that standard to her presidency, it is clear that President Higgins deserves credit for the high judicial quality of the Court's output. Reflected in some of these decisions and earlier in her separate opinions, is her strong belief that, in addition to deciding disputes, the Court's case law should also contribute to the elaboration and development of international law. These are particularly important functions for the Court to perform, considering that the development of international law as a legal system is severely hampered by its lack of a legislature with general law-making powers.

The president also has a variety of non-judicial functions to perform, including administrative, diplomatic, and public relations functions. The extent to which a president will focus more on one or the other of these functions will in each instance depend upon that person's specific qualifications and interests, as well as his or her perception of the Court's needs at any given time.

President Higgins's non-judicial agenda on assuming the presidency of the Court included improving services to states and international organizations, and to the international law community in general. She was committed to establishing procedures for fruitful and friendly relations with other international legal institutions and to raising the Court's public profile, particularly in the media. She also wanted to obtain more needed resources for the Court from the United Nations, including an increase in the number of law clerks.

Without going into unnecessary detail, I believe that she achieved to a very large extent what she set out to do. She pioneered a series of successful outreach programmes to encourage greater contact with international legal institutions, national courts, and the media. While she failed through no fault of her own to convince the United Nations to provide the resources needed to ensure a law clerk for each judge, she was at least able to increase their number to eight, which is clearly insufficient. President Higgins also played a very positive role in bringing about some needed changes in the internal administration of the Court and in improving the quality and utility of the Court's website.

https://doi.org/10.1017/S0922156509990173 Published online by Cambridge University Press

Behind the veneer of that brilliant and, to some, intimidating judge, international lawyer and Court president, there was a Rosalyn Higgins who would be the first to offer help and give encouragement to judges and staff members facing personal problems. Her human touch enriched the quality of life of all who worked on the Court during her tenure as judge and president of the Court. While Rosalyn Higgins's presence on the Court will be missed, her legacy will continue to be felt for a long time.

https://doi.org/10.1017/S0922156509990173 Published online by Cambridge University Press