program, and we agreed with Australia. Japan has indicated that it will not go forward with the full program in light of our decision.

A mainstay for the Court has been boundary disputes, especially maritime boundary disputes. Our most recent maritime boundary case was one that Peru brought against Chile. It involved large areas of water, with significant resources, living resources, and we reached a result that wasn't what either side wanted but also neither of them entirely won or entirely lost. They've gotten together and have announced that they have agreed on the specific coordinates to implement that judgment.

So that gives you a flavor of the kinds of cases we hear and the work that we do.

Abiodun Williams

Thank you very much for the overview, Judge Donoghue.

I said that we are going to touch on the issue of diversity, so let me say that the ICJ Statute requires diversity in terms of legal systems, such as the distinction between common law traditions and civil law traditions, and I was wondering, Judge Xue, whether you could comment on how those different traditions manifest themselves in the work of the Court.

Judge Xue Hanqin

First of all, I would like to say that it is a great honor to be here. When we discuss issues, we like to relate them to the audience. Whenever we start to talk about the Court, we tend to think that we should provide a general introduction of the Court to the audience first, because, although the Court is the longest serving legal institution in The Hague, people still tend to ask us ''Are you from the ICC? Are you trying Charles Taylor?'' Those are the questions we often receive. When I look at this audience, however, I realize that perhaps our introduction may not be necessary after all.

In terms of Dr. Williams' question of diversity, this time the Dutch government kindly invited three women judges to this session, in a way to show the progress of the Court in terms of gender balance. According to the Statute of the Court, members have to be elected from the main forms of civilization and legal systems of the world. Consequently Judges on the bench are from different countries and regions, with different professional backgrounds. When we work together in a case, even presented with the same facts, evidence, and legal arguments, we may have different appreciation and understanding of the facts and evidence, which directly affects our position on the conclusions drawn by the Court. This can be observed from the Court's Judgments, individual opinions of the Judges, either appended singularly or jointly. The full Court procedure usually takes a longer time, but in most cases State parties would still prefer to use this regular procedure rather than the chamber procedure, which can be chosen by the parties under the Statute.

Diversity for the Court is not something abstract, but tangible, as it is reflected in our daily life and work. This is very important for the World Court.

Abiodun Williams

I was just going to say that, Judge Sebutinde, you come from a different legal tradition from Judge Xue. Would you like to comment on how coming from a different legal tradition manifests itself in the Court?

https://doi.org/10.5305/procannmeetasil.108.0385 Published online by Cambridge University Press

Judge Julia Sebutinde

First of all, I would like to endorse the comments of my two colleagues, thanking the audience for being here and for the honor and opportunity that we have been given to speak on behalf of the Court.

The question on the table is how these differences play out in our work. For me, I have seen one area, perhaps in the area of the evidence being received. In the common law system where I was brought up and trained, we are very adversarial. The civil law is very inquisitorial, and so notions of not leading a witness, notions of cross-examination of a witness to the common law lawyer come as second nature, but they are notions that are not very easily understood by the civil law lawyer. There are other differences, as well, and oftentimes you wonder how we actually get along. But I think it is a very beautifully designed system where you even have diversity in professions, because you have former people from academia, former diplomats looking at a case from various angles, former judges . . . the outcome of the judgment ultimately is that this is a judgment that has been examined from different facets.

Of course, all cases have a deeply political element, and you can't say that because you are judges, you are going to completely ignore the political sensitivities of the parties, but that's where the diplomatic colleagues come in, and really they are quite open and sensitive to this.

The academic people will come in, and perhaps their reasoning goes deeper than most, but all these beautifully come together to create an institution that is wholesome and in which, even though we're different, we have this unity among us.

Judge Xue Hanqin

I know that international lawyers attach great importance to gender balance, and I am sure people are very happy to see that three women Judges on the bench gather here. However, I wish to tell you that in our work, we may take totally different positions, with two on each side, and the third one in the middle.

[Laughter]

So gender doesn't make that much difference in our work. However, on issues concerning women's rights, for instance, on the question whether the Court should maintain the masculine form for the title of a woman Judge in French, *madame le jude*, we immediately took the same stand, proposing that it should be changed to *madame la jude.*

[Laughter]

So that's the difference you can tell.

Abiodun Williams

That is an interesting point. Gender is another obvious aspect of diversity. Before your arrival on the Court, there was only one regular female judge, Dame Rosalyn Higgins, and I wonder whether the presence of three serving female judges has changed the dynamic on the bench at all. Judge Xue says there's no essential difference in terms of judgments, but

the exception which she mentioned. But I wonder, Judge Donoghue and Judge Sebutinde, whether you agree or you have a different view. For example, does it provide a different perspective in any way at all on peaceful settlement of international disputes and how you reach those decisions?

Judge Joan Donoghue

Well, of course, we can't really speak to what the dynamic was before we got to the Court because we weren't there, but the thing that has really impressed me since joining the Court—and the question I get most often about the way judges approach issues—is that the presumption tends to be that nationality must be the dominant aspect of a judge. My own experience has been that judges aren't paper dolls. We are not one-dimensional. We all are the product of many experiences.

Of course, our nationality influences the way we think. That's true for everybody in this room. We don't represent our governments, and we shouldn't represent the governments that advanced us as candidates. So there are these many different ways that the Court varies from one judge to the next, and at least in our current conversation, you can see on one issue several judges clustering together very passionately believing something, and then the next case or the next issue might be a very different grouping. In the United States one sees the literature about the Justices of our Supreme Court that categorizes them into two groups. That wouldn't work well at all for our Court, at least not now.

Certainly, one reads about earlier periods in our Court where the situation was not so comfortable and where there was more of a divisive atmosphere. We don't always agree, and our job is to disagree publicly, too. I mean, that's different from any other institutions. But I'm lucky that we do it at least for the time being collegially.

That can change. Our terms are nine years, so the Court turns over rather quickly, actually, so the composition can change, and the atmosphere changes with it.

Judge Julia Sebutinde

When we are looking at some of these institutions and aspects of gender and so on, there is the tendency to ask the rhetorical question: Is it necessary to have women judges on this Court? What difference are they going to make? I think we are asking the wrong question. The thing is: Is it right for women to participate in an institution, a UN institution that is promoting peace, world peace? Then you find that the answer is, resoundingly, yes. Of course. Why not?

And for me, I have in mind Resolution 1325, which mandates member states to ensure that women participate on an equal basis with men in the promotion of world peace. The ICJ is the ultimate court engaged in this, and even if our presence as women did not change anything, which I'm not saying it didn't, but even if it didn't change anything, the fact that we are participating equally with men makes it all right and makes it legitimate.

But on a personal note, you asked whether we are making a difference, and Joan is quite right. We weren't there before, so we don't know. But one judge, who shall go nameless, did confide in me recently and said to me, after one very heated debate—and I must tell you that the aspect I enjoy most in the Court is the deliberations behind closed doors, because there's no pretensions. The gloves are off. The language is not refined. It's not diplomatic.

So after one such morning of a heated debate, I walked up to this judge and expressed my sympathies at the biffing that he had got during the debate, and he said, ''But you know

https://doi.org/10.5305/procannmeetasil.108.0385 Published online by Cambridge University Press

what? The presence of you ladies has made a big difference, Julie. If you had been here three or four years ago, it would have been even worse, but since you people came, we have tempered our language. We are more focused on the issues rather than on each other.'' So, yes, I think probably that is one good aspect that the women judges have brought to the Court.

[Laughter]

Judge Xue Hanqin

On that note, I wish to quickly add that we don't want to sound too critical about our male colleagues. Collegiality, after all, should prevail in any case.

Here I want to add one word about nationality, which Judge Donoghue has rightly pointed out that we are not representing the governments that put forward our candidature for the ICJ elections.

However, nationality is relevant. Fifteen judges must be elected from five regional groups in the U.N. Does it make sense? I would say yes. For instance, in a case between two Asian countries, as a member from that region, I would be more sensitive to the factual background of the case and its impact on the peace and security of the region, if armed conflict was involved. Very often I would give more thought to the views of the Judges who have better knowledge about the region and the countries where the dispute arises. I believe many other Judges do the same. We are living in a globalised world. However, when it comes to international disputes, we need to take a ''local'' view to fully understand the issue. From that perspective, I think that nationality is a relevant element for the peaceful settlement of international disputes.

Abiodun Williams

You have touched on gender, and you have touched on nationality. I wonder whether perhaps you could reflect a little bit on the different career paths, because we have on this panel judges who have served as foreign ministry lawyers, and in the case of Judge Sebutinde, she was a high court judge.

Judge Donoghue, would you reflect on the case similarities and key differences between your role as a foreign ministry lawyer and now your role as a judge on the ICJ?

Judge Joan Donoghue

The obvious similarity is that we are applying public international law. I often say—and I don't have to worry about the details of U.S. law in this job, and I am not complaining about that.

[Laughter]

The other thing that is similar is that in neither job does one control one's inbox. We don't control the kinds of cases we'll get in the ICJ, and as a senior foreign ministry lawyer, you must also be prepared to receive questions on every aspect of international law. So it is a job like senior foreign ministry jobs where being a true generalist in international law is valuable and important, and someone who is highly specialized, I think, would have greater challenges in settling in our Court.

Some of the differences are, I think, that on a court one paints on a smaller canvas and with a more limited palette. What I mean by that is if you have questions that are presented as a foreign ministry lawyer, first of all, the question is often presented before there is a clear and defined legal dispute. The job of the lawyer is to try to diffuse that dispute and reconcile it and prevent it from erupting. If the lawyer is successful, the case doesn't end up with us or in some other form of dispute resolution. We don't have that role, and we can only consider legal disputes. So if a legal dispute, as is generally the case, is kind of nested within a broader dispute, the other aspects of that broader dispute need to be worked out by other parts of the international legal system, by other actors, and they can make sure of our judgment or orders as part of that. But we don't control any of that.

So we have a different role, a more limited role. There is still space for many decisions and choices that we have to make, how broadly and how narrowly to write on legal issues. We face that in every issue, in every case, but it is a narrower job, and on specific cases, we are looking back to settle a dispute. But at the same time, because inevitably a case calls on us to refine and elaborate the content of international law to some degree or another, we are also looking forward, because we know that although what we say isn't legally binding on states that are not parties, we know that the jurisprudence will get great attention, and we consider the implications of that with great care.

Abiodun Williams

Judge Sebutinde, coming from the background of a national judge in Uganda, what are the key similarities and differences between that role and being on the ICJ?

Judge Julia Sebutinde

Maybe I also should discuss a little bit my life before becoming a judge. I was a government advisor as well, but in the role more of legislation and treaties. In my former life I was a legal drafter, and I think that comes in every handy for me in the ICJ when we are trying to interpret and apply treaties.

As a judge in the High Court of Uganda, of course, the main difference was that one sits alone as a single judge, applying purely domestic law. Whatever mistakes you make, the court of appeals has to deal with that. Here, we are a court of first and final instance; furthermore, none of us sits alone. Each one of us has 14 other colleagues, and you can always say, ''My tentative view is thus and thus, but I am open to persuasion, this way or that way.'' And at the end of the day, you comfort yourself that way.

In the Special Court for Sierra Leone, which is the first court I was sitting on with a panel, transitioning from working alone to working with a team was, I must confess, a little new for me. To learn to listen to your colleagues, to learn to amicably disagree, and to articulate your disagreement in a separate opinion, I think is one of the greatest lessons that I learned and that I've carried with me into the ICJ.

Abiodun Williams

Let me turn now to some contemporary and current political issues, if you will. In recent weeks and months, newspapers have been filled with stories about Syria and about Crimea, and if you look at the international law blogs, you have debates on the legal aspects of both issues. This gives rise to two questions. First, we sit here at a meeting whose theme is ''the

effectiveness of international law.'' There are voices asserting that Syria and Crimea illustrate that international law is not effective in shaping state behavior, especially when the stakes are high and when views within the international community are sharply divided. Are they right? And more specifically, the ICJ is not playing any role in addressing the disparate legal views on either matter. Could they do so? Judge Donoghue?

Judge Joan Donoghue

I'm glad we have a chance to talk about that. The meeting is about the effectiveness of international law, so we should be thinking hard about difficult cases.

If you look at the situation of Crimea, for example, you see the assertions by the Russians and by those who are critical of the Russians, very largely framed in terms of legal issues. We are a court of general jurisdiction, and we have scope to apply all aspects of international law. So in principle, there is nothing that precludes us from exercising jurisdiction over this kind of dispute, but as I said earlier, there has to be a basis for jurisdiction.

Leaving aside the specific, which I don't want to comment on, but just speaking more generally from my experience in a foreign ministry, when a foreign ministry team is looking at a problem, concerned about an issue, trying to figure out paths forward, typically what one does is generate a list of options. One would expect that those who are thinking about how to advance the interest of a particular state in trying to achieve its objectives would ask: Are there mechanisms of third-party dispute resolution that might be available? This would cause them to consider whether there is a basis for our Court to exercise jurisdiction in a particular matter. Maybe they'd conclude surely there is or surely there isn't; it's a gray area, and they would have to make their own calculations. There are many reasons to pick our Court, and there are many reasons to pick another court.

For example, our proceedings are public, and generally, arbitral proceedings are not. Sometimes parties like the fact that they can make their statements publicly in our Court. And by the way, for those of you who are students of international law, our hearings are webcast, and they are also available on the UN television website. You can find the link on our website, but if somebody wants to take a peek at what our hearings look like at some time, you don't have to come to The Hague, although you are welcome to do so.

So, in principle, these kinds of hot conflicts can come to the Court, and there has been some precedent for that, although not a lot. Of course, we also can serve a role in resolving disputes that have the potential to become even hotter but haven't gotten that hot yet, and I think that one of the reasons why I think that our boundary dispute function is so important is because there are so many hot conflicts that arise over disputed territories. If we can help parties to settle those in a way that sticks, then I think we can make a real contribution in that way as well.

Abiodun Williams

Judge Xue, do you have a comment on this?

Judge Xue Hanqin

I think we have to clarify one point first. When we talk about effectiveness of international law, the Court is not the only place to show it. It doesn't mean everything has to come to the Court so that the effectiveness of international law can be demonstrated. With the hot

issues, the international community now has a lot of debates on their legal aspects. That shows international law works. People are thinking in legal terms.

When we talk about international law, it is not only the Court, ICJ, that provides a forum. At legal advisor's offices, university law schools, and many other legal institutions, people are considering the problems in light of international law.

Within the UN system, the general international organization, it is the Security Council that bears the primary responsibility for the maintenance of international peace and security. Those hot issues should be, first and foremost, considered there. Of course, if the Security Council or the General Assembly decides that it is time that such hot issues should be referred to the ICJ for an advisory opinion, we will do it accordingly. But that is the decision of the States.

The Court has its jurisdictional limits. It is bound by the Statute to exercise its jurisdiction, in either contentious or advisory cases. I don't think each time when hot issues come up, it is always wise to refer them to the Court right way. When we talk about law, we have to remember that law is a two edged sword. Regarding Crimea issue, I read Putin's statement carefully. I don't think he is talking about the case of the Court, but questioning whether the law should be or can be applied equally. That is the challenge. The effectiveness of international law requires us to think about what would be the best solution to settle the dispute or situation in question peacefully. Today, we talk about multidisciplinary approaches. In international affairs, this is even more important. We should not approach the matter from one single and isolated angle, but examined it in the overall context of international relations. We are not just striving for the beauty of the rules, but working to find the proper solutions for the parties.

This is something that international lawyers have to keep in mind all the time. What is the ultimate goal of international laws? In other words, what is our real mission?

Abiodun Williams

Judge Sebutinde, Judge Xue said earlier in a humorous way that there is a lot of confusion between, if I might say it, the venerable ICJ and the newcomer, the ICC. So let me add to the cardinal sin and ask about the ICC and ask: How has the advent of the ICC affected the jurisprudence of the ICJ, if at all? Does the focus of the ICC on accountability have an effect on the peaceful settlement of disputes, or does the growing controversy over the ICC's role, for example, in Africa have an impact on the willingness of states to submit to the jurisdiction of international course?

Judge Julia Sebutinde

I think I will comment on that last aspect that you mentioned. The advent of the ICC has been fraught with—how shall I even put it?—debatable views, especially from the African continent. The African countries were very enthusiastic. In fact, it was the largest global bloc to accede to the Rome Statutes. Enthusiastically, they were the first nations to refer situations to the ICC, and so they started off very well until, I think, certain entities started appearing before the Court, and then things began happening. The state parties became disenchanted with the Court, and not only that, but anything coming from The Hague has tended to be disenchanting to the African member states.

And I think it's a challenge for the ICJ to reach out and explain what it does. For example, everywhere I go, I am referred to as the ''ICC judge.'' So I think the ICJ has a challenge to explain, as we are doing now, what it is that the Court does.

That is not to say that the perspective that castigates the ICC is a correct one. I disagree with that perspective, particularly, but of course the ICC has their own challenges that they must work through. The prosecutor has her own challenges she must work through.

But I am happy also to say that whenever states from Africa have agreed to bring cases before the ICJ, they receive the judgments of the Court very well. They cooperate well with the Court, and when it comes to implementation, we never get any issues with them. So far, we might even get a very nice and kind letter signed by the agents of both countries, a few weeks after the judgment, to say, ''We thought you would like to know we have started demarcating the boundary according to the judgment that you gave.'' That is very encouraging to the Court to see that even though sometimes the judgment is not pleasing to either one or the other, the countries do accept it. And for me, there is hope at least from the African continent—again, coming personally from an area where we've experienced conflicts (the Great Lakes region). Throughout my lifetime, we have known nothing but war and conflict, and we are always on the brink of war with one or the other neighbors.

I think that the ICJ has a big role it could play, if the African states care to refer cases like their disputes there for peaceful resolution, rather than resorting to armed conflict, for instance. It certainly is a concern to me personally because I have seen what war does to women and to children. They suffer most when the war breaks out. It takes back countries economically, and nothing good comes out of armed conflict.

So I would really encourage African states to take advantage of the Court. When I was appointed to the Court, I told myself, ''I will take every opportunity. I may be just one person, but they are going to listen to me whenever I speak concerning conflict resolution in Africa and the avenue of the International Court of Justice as a possible way of settling disputes peacefully.''

Abiodun Williams

Now I would like to give the audience an opportunity to ask questions. As I said, I will take them in groups of three. I see there are two microphones at both sides of the hall. It might be easier if you need to ask a question, perhaps, to go to the mic.

Audience Member

My name is Mark Wojcik. I'm a professor at the John Marshall Law School in Chicago. It seems to me that countries are going to the Court more often now and also seeking preliminary measures. In the recent decision with East Timor and Australia, one paragraph of the decision said that the Court doesn't always have to give the preliminary measures that the parties are asking for, and you might come up with something else instead. I'm just wondering what might influence your decisions on coming up with preliminary measures other than those that the parties are seeking.

Audience Member

I am Alain Pellet, Université Paris Ouest Nanterre La Défense. I have two brief questions. First, seen from non-common law countries and not just France, the Court is seen more and

more as being dominated by the common law way of thinking, and I am saying as a practitioner, you enjoy me quite often. I am not far from sharing these concerns. In particular, concerning the rules of evidence, I think that now you are more and more unbalanced in your approach to evidence and that you have clearly an Anglo-Saxon or a common law approach to evidence. I would like to know what your reactions are about this, which again I think is quite widely shared in non-common law countries at least.

My second question will be very brief, but maybe you will think it is self-serving. The question is: What is the role of oral pleadings in the outcome of cases?

Audience Member

My name is Cornelia Weiss, and I'd like to find out what your plans are to actually make your website more user-friendly for research. Thank you.

[Laughter and applause]

Abiodun Williams

So who would like to go first? Judge Donoghue?

Judge Joan Donoghue

I'd like to respond to Professor Pellet's questions, but I can't answer the question about our website without a better identification of what its flaws are seen to be, which obviously we'd be interested in taking back for consideration. So I would just suggest that the speaker come back up and tell us more about what are seen as the problems.

Professor Pellet has suggested that the small minority of common law judges on the Court (we are five out of 15 now) is so muscular that we are able to squeeze out those lazy civil law judges, those shy, rich hiring judges from the civil law countries. We just bowl over them. But that can't be right.

So another hypothesis would be, well, the common law system is clearly better . . .

[Laughter]

There might be some people in the room who think that. I am not going to advance that, but what I would say is that a significant amount of what we do is party-driven. Let's use a case that you know, a recent case, *Australia-Japan*. Australia is a common law country. It came to the Court and put forward expert witnesses, and it said, ''We want to come to the hearing with expert witnesses.'' Civil law countries are not enthusiastic about party-appointed witnesses. Our Court provides for the appointment by the Court of experts. In that case, the way the case played out, was that Australia put the witnesses on the stand. They were cross-examined, and judges asked questions, and then Japan put an expert on the stand, and the same thing happened. Now, if the case had been brought by a civil law country against a civil law country, we might not have seen the same thing, so there is an example, I think, of party-driven.

The role of oral proceedings is another instance. Many people are surprised to know that it is very rare that ICJ judges ask questions from the bench. We have started more recently to ask questions in which we ask in the first round of oral proceedings for the party to

https://doi.org/10.5305/procannmeetasil.108.0385 Published online by Cambridge University Press

respond to our question in the second round, and I find that very useful. I imagine that it's helpful to the states as well, because they feel like they have a chance to answer questions that are bothering a judge, that we don't just go away and feel unhappy that we never got an answer.

But do our oral proceedings look like they come from the common law tradition or the civil law tradition? I have to say, certainly, common law judges are very surprised to hear that we sit mostly silent. So I find it a mix.

I will say, however, that former President of the Court Manfred Lachs once said we had the best of both worlds. I think there is a significant risk that we can at times have the worst of both worlds, because since we don't have well-articulated rules on certain of these issues, we sort them out often on a case-by-case basis. And when you pick and choose from one system and another, you lose the idea that there exists a coherent system that fits pieces together. So we have to be careful, as we operate in this space where we are drawing from two systems, that we don't pick and choose in a way that is less functional than either system on its own might be.

Judge Xue Hanqin

I belong to neither system, so I may say something just as my personal observation. I'm not so sure the Court is now common law dominant. I found the Court actually to be more influenced by civil law still, to be frank. Like it or not, I think it maintains that tradition.

In terms of its composition, it is really not up to the Court, but to the States to elect judges. Of course, members matter. When the composition changes, you may indeed discern some nuanced change in its practice.

I have to say oftentimes lawyers, not particularly international lawyers, tend to judge the Court's work from a domestic perspective, often compared it with national courts.

The Court, as I see it, is much more complicated than what is said about the common law and civil law. For instance, in the oral proceedings, whether to raise questions or not is something that members have to be very careful about, because such questions are directed at the State parties. They could concern very nuanced factual issues, which may be decisive for the outcome. When it comes to national interests of a sovereign State, the matter has to be handled with great caution.

Professor Pellet is one of the most experienced counsels before the Court, so I won't dwell on that anymore. In my practice, I have been very cautious in raising questions. I find it very important for the members to hear out the parties.

Regarding the question relating to provisional measures, the Court's practice is governed by its Statute. The Court has the discretion to render provisional measures in light of the facts and in accordance with the conditions as laid down in the Statute.

Judge Julia Sebutinde

The questions were raised: What influences the Court's decisions on provisional measures, and why is it that sometimes the Court will grant different measures than have been asked? One of the things that influences whether the Court will or will not grant provisional measures is whether they are necessary. They are not necessary just because a party says they want measures. Very often it happens that the effect of the measures requested, if granted, will be to prejudge the merits. So that is one example of a requested measure actually being the

same as in the final prayer of the merits. Then, obviously, the party is trying to prejudge the issue, and the Court will not grant such a measure.

Another instance of where the Court will not grant a measure is where the irreparable prejudice has not been illustrated or demonstrated by the applicant, or where the applicant has demonstrated irreparable damage but has not been able to articulate the kind of measure that the Court thinks will prevent the irreparable prejudice. So there again, the Court will substitute its own measure with the aim of maintaining the status quo and preventing the irreparable prejudice until the merits case. I think that is all I would say.

We would really be interested to hear the audience member who said that the Court's website is not efficient and not friendly. We would appreciate it if you would be a bit more specific, maybe in the subsequent comments, to tell us what it is that is unfriendly about the website.

Judge Xue Hanqin

I have to say I am really surprised to hear that remark. To my knowledge, our registry has been working quite hard to improve the website and try to assure high quality of our website. In terms of research needs, please let us know what you really wish to improve.

Abiodun Williams

Well, this is an area in which a young and vibrant ''think and do tank'' called the Hague Institute for Global Justice in The Hague might play a role. If you go to our website, you can send the questions and your analysis, and I will be very happy to play this facilitation role when we get back to The Hague and pass it to the registry, okay?

Let's take the second round of questions, and I see three members of the audience at the microphone. Just your name and again your institutional affiliation.

Audience Member

I am Richard Allen, and I am from Baker & McKenzie in London. You mentioned briefly the choice that states have between arbitration, the ICJ, and various other fora, and you have also mentioned how the Court has adapted some of its procedures in the taking of evidence, for example, just when the parties will. I would be interested in your respective views on how far the Court should go in that respect; for instance, the debate about the chambers procedure and whether a party should be able to choose particular judges to form part of that chamber; whether any motivation for the ICJ to do so is purely on the basis of competition with other fora; or whether there is a general reason why the Court should adapt to suit all of the parties perhaps on the basis of consent upon which the whole Court's jurisdiction lies.

Audience Member

My name is Ved Nanda. I teach at the University of Denver Law School. Some of us in academia feel that there are so many international tribunals now, and with their interpretations, that there might be some confusion about the jurisprudence that is being developed all over. Would you kindly comment on it? Obviously, there might be some consultations. There might be some avenues open where there is a possibility of judges getting together or finding a way to see that there is some kind of cohesion and common way of interpreting international law doctrines.

Audience Member

My name is Christina Cerna. I teach at Georgetown University Law Center, but more importantly, in this context, I am Chair of the ILA, International Human Rights Law Committee. I have a question and a recommendation.

The question is: Would you comment on the impact of international human rights law on the ICJ? Do you think that the background of Dame Higgins and Judge Buergenthal, for example, having been on the UN Human Rights Committee, made the ICJ more sensitive to concerns of the individual and not just of states?

And my recommendation is on the basis of what Judge Sebutinde said about the deliberations. One thing I have learned from my ILA colleagues is that in the Brazilian Supreme Court, the deliberations of that court are public and televised. I would recommend that maybe the deliberations of the ICJ should be televised.

[Laughter]

Judge Xue Hanqin

Let me start from the last one. It's a very interesting question, I think.

When I first came to the Court, our university trainees and law clerks had a meeting with each one of the judges. One of the first requests they put to me was whether they could participate in the Court's deliberations. As a new member, I gave a negative reply. The reason is simple. In the deliberations, the Judges must feel no pressure and no constraint in expressing their views and positions. They must be able to freely exchange views and debate their differences. This part of their work should be kept confidential.

Yesterday, three of us visited the Supreme Court of the United States. We were honored to meet two Justices of the Supreme Court. We were told that in so many years the internal deliberations of the Supreme Court has never been leaked. This is a very impressive record, demonstrating a high standard of professionalism. At the same time, it tells us the importance of maintaining the confidentiality of the internal deliberations of the court. They have to be confidential if independence of the members is to be ensured.

For human rights, I have to say the Court as a whole has been quite conscious about human rights promotion. If you look at its case files, the Court has dealt with a number of cases relating to human rights. For example, traditionally in dealing with diplomatic protection, the Court would not look at human rights aspects. The change began in the *Diallo* case, where the Court particularly addressed the issue of human rights protection.

Now regarding the second question about fragmentation, the issue has been under the discussions among international scholars for quite a while. People are often concerned about whether there should be a court that can play the role of a constitutional court and whether the courts could come up with coherent interpretations. Actually, ILC has dealt with the issue through a special study group. On purpose, the Law Commission did not touch upon the institutional relationship between different judicial organs.

Personally, I don't consider that this is the right approach, because there is no constitutional framework at international level. Secondly, those alleged fragmentation issues are not genuinely posing problems to international law. Of course, we are aware of one instance, where the criterion of ''control'' was interpreted differently by different judicial organs, one refers to ''effective control,'' the other insists on ''overall control.'' Here I think the ICJ has handled the matter quite properly by following its established jurisprudence.

https://doi.org/10.5305/procannmeetasil.108.0385 Published online by Cambridge University Press

JUDGE JULIA SEBUTINDE

I will say something on the alleged proliferation of courts, because I don't think it is a reality. These institutions—I suppose you are referring to the ad hoc tribunals—each have a different mandate. They are dealing with a specific mandate that could not be brought under the ICC for obvious reasons. Although they all deal with similar conventions, the Geneva Conventions and atrocity crimes and so on, and the way that these courts interpret certain of these provisions, I think it has to be seen in that context that they are dealing with specific mandates and that none is binding on the other. I think with the establishment of the permanent court, the ICC, we are going to be in for a very big surprise when the judgments start coming out, because the ICC does not consider itself bound by the decisions, for instance, of the ICTR or the ICTY appeals chambers. They are trying to develop their own jurisprudence for obvious reasons. They are sitting with their own statutes that they have to administer, developing jurisprudence that way.

But really, as a person from academia, I would have thought that the greater the variety, the merrier the meal.

[Laughter]

But, you know, I am surprised that you are complaining about the different decisions and the interpretations that are coming out of these courts. The courts are here to stay. Some have come and gone. They have left the jurisprudence out there. I think it is a very rich source of jurisprudence, none of which is binding particularly, but I think it's a very good source for upcoming academicians to debate and to identify similarities and differences and to draw parallels. I am really grateful that I am seeing all these different cases coming up. Each case is different. For me, it is particularly interesting when a case comes up that involves human rights issues or atrocities or genocide or torture, and that involves perhaps aspects that have been dealt with before by other international courts from a different perspective.

This morning, we were having a similar debate in which, for instance, the ICTY looking at the conflict in the former Yugoslavia dealt with certain aspects of that conflict and dealt with certain individuals, apportioning individual criminal responsibility. Now, the same situations have been before our Court in the Bosnia-Serbia case and others where the Court did look at the judicial findings of the ICTY appeals chamber and trial chambers, where those were relevant, and treated them as persuasive. They were not binding, but they were persuasive, and the Court did not think that it was in the interest of judicial economy to revisit and call the evidence afresh. So those findings of fact that had been made by ICTY judges became very valuable findings in helping the Court deal with state responsibility, not individual criminal responsibility but state responsibility under the Genocide Convention. That, I think, is one of the impacts of international human rights law on the ICJ.

So again, to go back to the gentleman who was complaining about a proliferation of courts, I think it is interesting to see how these courts complement each other and how the jurisprudence of one is treated by another. I mean, this is a wealth of experience for the academicians coming up. That is my own personal view.

https://doi.org/10.5305/procannmeetasil.108.0385 Published online by Cambridge University Press

Abiodun Williams

Judge Donoghue, do you want to reflect on it, or should I take the final round of questions?

Judge Joan Donoghue

Let me just make two comments. First, we didn't hear any reactions on the question of chambers, so let me just say on chambers, we can't impose them on the parties. The parties have to request them. They rarely do, and my hypothesis has been (although those who have represented states more frequently than I have might offer their own perspective) that frequently the assessment of the state is that it is looking for the seal of approval from the World Court, and there might be a perception that a smaller chamber doesn't deliver the same punch. That could be, for example, looking at how they will move forward to implement a judgment, favorable or unfavorable, after a decision.

On the question of the multiple courts, it never bothered me when it became a topic of great interest, because I think of the international legal system as inherently decentralized anyway. When we face a question that is common to issues that have been looked at by another court—and that is exactly what we are doing now in the Croatia-Serbia case, because in that case we have competing contentions by the two parties about how we should take stock of ICTY and Rwanda jurisprudence—we have to do it with great delicacy. There is no doubt about that.

The one area that I think is the trickiest—and it is something scholars have written on but doesn't present itself in real life very often, and maybe it will—is what you might think of as a double jeopardy problem. It is problematic, at least hypothetically, for State A to bring the same dispute to multiple jurisdictions that happen to have jurisdiction over the same dispute. That is not the same as related disputes. One is a question about individual accountability, and one is a question about state responsibility, for example, but the same dispute, the same legal question before two bodies feels unfair. It's the kind of concrete problem that needs to be addressed since the courts, because we're all created separately, won't have immediately obvious ways to sort through it. We can't kind of pick up the phone and say, ''Hey, let's just flip a coin on this one,'' or something like that.

Abiodun Williams

Let me take the final round of three questions.

Audience Member

Dr. Marie-Claire Cordonier-Segger. I am from the Lauterpacht Centre for International Law, Cambridge University, and I'm also a senior legal expert on sustainable development with the International Development Law Organization. We just launched our office in The Hague last week.

I have a question for you. First, in terms of the question about research and the website, our committee here in the ILA over the last 10 years has been working on comparisons of different courts and tribunals and how they address certain ILA principles on sustainable development that were launched with our New Delhi Declaration. We have been spending a fair bit of time on a new book on sustainable development in international courts and tribunals, going through using the websites of the various courts. I would have to say you're

not among the worst. Your registry's efforts have been noted, and we're using them. So if you are going to have a dialogue about improving it, we are happy to help, but I think you have already made some progress. Thank you for that.

My question following on this is that in our new committee, which was launched here in Washington, we actually reviewed your case on whaling yesterday. We have the impression with the scoping we're doing and with the literature that we're reviewing that there are more cases on sustainable use of natural resources and on the environment coming forward in the Court now. Why do you think that is, and is this also your impression?

Audience Member

My name is Lauri Mälksoo, and I am an international law professor at the University of Tartu in Estonia.

I was wondering if you have read the book by the late Antonio Cassese, *Realizing Utopia*, which has a chapter on the ICJ. The book is about how international law and international institutions could be—not how they are. He compares the ICJ with a grand old lady and basically comes to the conclusion that it is a little bit old-fashioned in some way or constituted in an old-fashioned way. I was just wondering whether you think that the ICJ would need reform in some way, as many say that the UN does.

Audience Member

Hans Corell, former Legal Counsel of the United Nations. I now have a piece of information that I share with you in my capacity as a member of the Advisory Board of the Brandeis Institute for International Judges. This institute was founded in 2004, and the first Chairman of the Board was Ted Sorensen, and he has now been succeeded by Richard Goldstone, and Tom Buergenthal is also on that board. They offer an opportunity for judges from all the different international courts to get together at an institute and discuss with each other commonly shared views and so forth. I must say I have been present in the Institute, and it has been fascinating to participate in those discussions and particularly listen to the judges.

May I suggest that you look at the latest report from the Institute held last summer in Sweden in cooperation with Lund University and the Raoul Wallenberg Institute? The ICJ was represented there by two judges, including Hisashi Owada, former President of the Court, and the latest report has his foreword and his very appreciative comments about it. So I suggest that you all Google ''Brandeis Institute for International Judges,'' and then you can look at the reports. And I hope that many more judges from the international courts will have an opportunity to participate in this Institute.

Abiodun Williams

Thank you. Judge Donoghue?

Judge Joan Donoghue

I will take on the question about the ICJ being an old lady. I'm American, so we don't have very long traditions. We change things rapidly, and I think we have a relaxed attitude towards that. So my natural instinct—if I see something that works—is to say, ''Great.'' If

https://doi.org/10.5305/procannmeetasil.108.0385 Published online by Cambridge University Press

I see something that looks like it could be improved, I say, ''Improve it.'' Some others, maybe culturally, maybe personally, like to stick with what's familiar, and that is, I think, not a huge surprise.

We have made some changes, though. The Court never used to cite the jurisprudence of other courts. For example, we were talking about human rights cases. Well, the Court was recently asked to set compensation for a breach of international law that was a violation of human rights obligations. We don't get that kind of case very often, and we sorted through the best way to do that, drawing significantly on jurisprudence of regional courts that do that regularly.

We used to deliver our orders in one long sentence. However, we decided to change it, and now we use a narrative style for our orders and for our judgments.

I often say that the younger judges and Judge Keith—who is one of our judges who is not terribly young but is quite modern-oriented—are often looking at ways that we can change and improve, and of course, we can get ideas from looking at other courts. So I think change may be slower than some people would wish it would be. We can't change the Statute. And frankly I don't see a prospect that the Statute will be changed anytime soon, because to open up our Statute potentially opens up the UN Charter. It would surprise me if there is an appetite to weigh into that, but if it does happen, it will be quite interesting.

Abiodun Williams

Judge Sebutinde?

Judge Julia Sebutinde

I haven't read Judge Cassese's book, and I'm not sure when it was published, but I think it is not fair for the late Judge Cassese to have described the 15 gentlemen who have dominated this Court for six decades as an ''old woman.''

[Laughter]

It's just incredible, and then to address that to us—it is really funny.

[Applause]

Judge Xue Hanqin

''Old man,'' not ''old lady.''

Judge Julia Sebutinde

I don't know, but I think that should probably be put to our brothers that we left in The Hague. They might have comments on that.

[Laughter]

But I think Judge Donoghue is absolutely right. There have been changes that are happening. I think they are good changes in the Court. One thing is that the judges being appointed are

coming younger and younger every year, and that obviously means that they come with fresher ideas. The ideas are not always accepted by the older colleagues, but I think, by and by, they are changing slowly. I for one think the current President that we have is very good for the Court. He belongs to the younger generation, and he is vibrant. The pace at which the Court is moving and handling cases, keeping on top of our schedule, is to be commended.

I was told that there was a time when a judge in his or her nine-year term would probably handle three cases if he or she was lucky. Now, I have been in the Court two years and have done, I think, six cases so far in two years. That is commendable. That is a good, good change that comes and goes without being noticed, but I think the Court is moving in the right direction.

The judges can change the rules, and there, I'd have to agree with you that perhaps there is room for reform in the rules. I for one have always wondered why we refer to the rules by article. You refer to the Statute by article. You refer to the rules by articles, and sometimes people don't even bother to differentiate. Article 24 of what? Being a former legal drafter, I don't know why we don't call rules ''Rule 1,'' ''Rule 2,'' ''Rule 3,'' instead of ''Article 1,'' ''Article 2,'' ''Article 3'' of the rules. I don't understand that, but I am signing up for the Rules Committee.

[Laughter]

And I hope that I will be listened to when the time comes, because it is quite logical for me to call the rules by their name. That's just one example.

Abiodun Williams

I think Judge Donoghue and Judge Sebutinde both touched on reform, but I wonder whether perhaps Judge Xue would like to touch on the issue of the increasing number of cases delivered and sustainable resources coming to the Court.

Judge Xue Hanqin

Well, that is a very good observation, but I have to say what kind of cases that would be submitted to the Court does not depend on the Court. It is really the State's choice. That tendency shows that States have more confidence in the Court and are more willing to submit their disputes to the Court for settlement. Indeed, through its Judgments, the Court makes its contribution to the development of environmental law and sustainable development.

As to the last information by Mr. Hans Corell — we will certainly pass on the message to the Court, and hopefully, we can make best use of this exchange.

Lastly, a word about old tradition. I endorse many points of my two colleagues, either old lady or old man, it doesn't matter. However, I wish to emphasize that oftentimes we may take things for granted. ICJ carried on a lot of practice from its predecessor, PCIJ. If we take a look at what PCIJ laid down and what ICJ has developed from there, it is really quite amazing. From its inception, PCIJ laid down procedural rules, built up its institutional structure, and formed a quite solid foundation. Recently the Court had compiled some books introducing the Court and its history for the celebration of the Centennial of the Peace Palace. Here I would like to take this opportunity to do a little bit PR for The Hague and the Peace Palace. From the books, one can have a better appreciation of the historical link between these two legal institutions. Although I am quite critical of Euro-centrism, I must

say this is a great contribution that Europe has made to the world. Their judgments are good sources for international legal studies. There is no surprise that States as well as scholars attach great importance to the judgements of the Court, even when they are not the parties in the case.

After I have lived and worked in Europe for some time, I learn to better appreciate and respect history. I may sound a bit conservative, but I regard it as positive.

Abiodun Williams

Thank you to the ICJ judges.

[Applause]

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