

Brandeis University

Brandeis Institute

for International Judges 2002

The New International Jurisprudence:

Building Legitimacy

for International Courts and Tribunals

June 9-15, 2002





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*The New International
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The International Center for Ethics,
Justice and Public Life

Brandeis University
Waltham, Massachusetts

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Preface

The Brandeis Institute for International Judges (BIJ) is, to my knowledge, the first initiative that brings together judges from international and transnational courts to discuss issues and problems common to their courts. This is not surprising given the fact that until recently there were very few courts with transnational jurisdiction. Today, the number of international judges is approaching 300.

The need for such an institute was reflected in the positive responses to invitations to attend the BIJ and even more so from the enthusiastic reactions of the participants. Recognition of the importance of the event was also illustrated by the subjects that were discussed and the recommendations offered, all of which appear in this report. Furthermore, the participating judges were unanimously in support of future similar institutes being arranged by the Brandeis International Center for Ethics, Justice and Public Life. In response it has been decided to hold the second BIJ at Schloss Leopoldskron in Salzburg, July 20-26, 2003.

I would like to congratulate the Brandeis Center for Ethics, Justice and Public Life for its pioneering work in this field.

*Justice Richard Goldstone
Constitutional Court of South Africa*

About the Institute

Background

Brandeis University hosted the first Brandeis Institute for International Judges (BIJ) in June 2002. The purpose of the BIJ is to encourage the development of the new international jurisprudence, one that is informed as much by the practical application of ethical and moral considerations as it is by legal ones. By providing an opportunity for confidential discussion among judges sitting on international courts and tribunals, the Institute fostered reflection, learning, and judicial innovation.

Participation in the inaugural BIJ was by invitation only. Presidents of selected international courts and tribunals were invited to attend and were also asked to select up to two judges to participate. All sessions were conducted in English.

Participating judges were:

The African Commission and Court for Human and Peoples' Rights

Former Chair Emmanuel Victor Oware Dankwa, Ghana
Angela Melo, Special Rapporteur on the Rights of Women in Africa, Mozambique

The European Court of Human Rights

Judge John Hedigan, Ireland

The International Criminal Tribunal for the former Yugoslavia

Judge Fausto Pocar, Italy

The International Criminal Tribunal for Rwanda

President Navanethem Pillay, South Africa
Judge Mehmet Güney, Turkey

The International Tribunal for the Law of the Sea

Vice President Dolliver Nelson, Grenada

The Structure and Design of the Institute

The Institute addressed the following topics within the overarching theme of "The New International Jurisprudence: Building Legitimacy for International Courts and Tribunals":



Participants in the Brandeis Institute for International Judges

- Global Law: Sovereignty, Jurisdiction, and Enforceability
- An International Rule of Law, Law Making, and Judicial Independence
- Substantive and Procedural International Law
- Ethics and Justice: International Human Rights

Each topic was explored in a discussion format facilitated by Institute faculty. Several seminars focused on the ethical dimensions of topics through the analysis of texts from philosophy and literature. Participants grappled with a variety of issues that have emerged with the development of an international legal order in the context of globalization. Possibilities for practical solutions to dilemmas facing international courts and tribunals were discussed and assessed.

The Faculty

Justice Richard Goldstone, Constitutional Court of South Africa and former chief prosecutor for the International Criminal Tribunal for the Former Yugoslavia and Rwanda; and Jeffrey Abramson, Louis Stulberg Professor of Law and Politics, Brandeis University, served as the Institute's core faculty. Hans Corell, under secretary general for legal affairs, United Nations, delivered the keynote address and also served as a member of the guest faculty. Additional guest faculty was comprised of a group of eight judges, lawyers, and scholars from around the world.

Selected Discussion Topics

A wide range of topics were raised and discussed during the Institute. The issues of greatest interest and concern to participants were grouped around the following themes:

1. Legal and judicial globalization
2. Conflicting customs and procedures
3. Judicial independence
4. Standards of conduct and accountability
5. Law and morality
6. Gender equality and the international courts
7. Fundamental fairness and the criminal courts

1. Legal and Judicial Globalization

Participants explored whether the emergence of legal and judicial globalization marks the growth of historical trends or the creation of a new phenomenon. The judges also discussed the political, structural, and psychological dimensions of judicial cross-fertilization, particularly in the area of constitutional law.

BIIJ participants discussed in depth the degree to which global commerce and legal globalization are two aspects of one process. They agreed that every facet of social and economic life in virtually every part of the world is globalizing. The law, to a significant extent, responds to as well as propels this process of globalization. For example, courts of regional economic integration, such as the European Court of Justice, have an enormous impact on the conduct of transnational commerce.



Richard Goldstone



Jeffrey Abramson

Historically, different legal systems have coexisted within and among nations, including different customary traditions, common law, or civil law practices. This is particularly true of former colonies, where colonial laws were superimposed upon and coexisted with customary and religious laws. From a historical perspective, the creation of the United Nations could be seen as another layer of growth in a preexisting internationalized system of laws.

However, the growing sense of increased “international governance” is new. International courts fulfill functions that are beyond the capacity and legal jurisdiction of national courts, such as resolving disputes between states. Given the recent multiplication of international and internationalized courts and tribunals, it is crucial that the system function in an orderly and predictable manner—a critical pillar of law’s legitimacy.

The very notion of international law and criminal tribunals, and certainly the new and permanent International Criminal Court (ICC), engenders very strong resistance on the part of some sovereign nation-states. The BIIJ group explored the root of this reaction. One explanation advanced was that exercising the power to deprive an individual of his or her liberty and freedom is the ultimate expression of a sovereign over its citizens. The idea that international courts can usurp this power may be perceived as threatening, an attitude clearly held by the United States with respect to the ICC. International courts and tribunals must exercise their power with care so as not to compromise the legitimacy of sovereign states.

The group reflected on the nature of the relationship between national courts and international criminal courts. This topic in turn generated much legal debate as to whether states that have signed and ratified the Rome Statute of the ICC must also pass national legislation to support it. The consensus among BIIJ participants was that cooperation with national legal systems



Brandeis International Fellow Nancy Paterson and Fausto Pocar

is crucial to the success of the ad hoc tribunals and the ICC, irrespective of the enactment of complementary national legislation.

The issue of concurrent jurisdiction is also of great importance. In certain kinds of disputes, the jurisdictions of various international courts may overlap. Parties may also have a choice of various venues for their cases. In addition, questions of hierarchy among international courts remain unresolved. BIIJ participants engaged in a far-ranging debate about the implications of this situation for the development of a coherent body of international jurisprudence and judicial practice.

2. Conflicting Customs and Procedures

International courts, as relatively new institutions, face unique problems. BIIJ participants touched upon several challenges, including language diversity, the harmonization of different legal traditions, and judicial independence and accountability.

Language is one of the most obvious and immediate logistical and substantive issues facing international courts. Language differences among judges sitting on the same court, even hearing the same case, impedes communication, thereby interfering with the efficient resolution of cases. Similarly, language differences among court personnel, lawyers, and witnesses create complications and inaccuracies in the courtroom.

Even with the help of trained legal interpreters, the problem can still persist. Legal terms vary widely across languages. Therefore, finding a

word or phrase that is equivalent in different languages can be very difficult. Factual nuances may be lost in translation, resulting in statements that are inaccurate.

Among the unique set of challenges facing international judges is that of managing a court composed of judges from myriad civil and common law jurisdictions, each with different substantive and procedural traditions. In procedural and evidentiary rules, these differences pose practical as well as legal problems.

This type of problem is exemplified in the ad hoc criminal tribunals with regard to procedures for interviewing witnesses. The judges on these courts have been innovative in creating new jurisprudence that reflects the mix of legal traditions represented on their courts. At the same time, their innovation has raised some concerns about the separation of legislative and judicial functions.

3. Judicial Independence

Judicial independence is a fundamental principle of justice. The complexities of the process of selection of international judges pose some challenges to this principle.

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Candidates for seats on international courts, inside and outside the United Nations system, undergo a grueling process that often involves complex negotiations between countries and political factors beyond the scope of the justice system. The process can subject aspiring judges to political pressures that raise potential problems for judicial independence.



Judges in discussion with Institute faculty and guests

This problem is most acute in international courts where judges are permitted to stand for reelection, in which case they might be subject to pressures while they are sitting members of the courts. BIIJ participants felt that the issue of reelected judges deserves further sustained examination.

The judges concluded that once the standards of conduct are made explicit, then rational mechanisms for addressing ethical and other violations should be put in place.

The BIIJ judges considered the merits of instituting alternative systems for the nomination and election of international judges. The current system puts considerable political pressures on judicial candidates. On the other hand, the current system has the positive feature of allowing for widespread discussion about and involvement in the international courts.

4. Standards of Conduct and Accountability

With their relatively short histories and evolving structures, international courts do not have a full-fledged system for defining standards of judicial conduct and holding judges accountable to those standards.

The group set forth a number of threshold issues that might be addressed in articulating standards of ethics and conduct:

- What constitutes competence?
- What constitutes misconduct, ranging from lesser to serious transgressions and offences?
- What does it mean to hold judges accountable?
- How should judges be held accountable?
- Who should hold judges accountable—should oversight be entrusted to fellow judges, should some external authority perform this function, or should it be some combination thereof?
- How does such a system of accountability guard against misuse? How does it guard against outside encroachment on judicial independence?
- May an international judge engage in other occupations while holding office? For example, may a judge accept honoraria for extra-judicial work, such as teaching and public speaking?

The judges concluded that once the standards of conduct are made explicit, then rational mechanisms for addressing ethical and other violations should be put in place. However, such provisions must be drafted with extreme care, taking into consideration the need to preserve judicial autonomy and independence.

Questions of conduct and accountability for prosecutors, defense attorneys, and others associated with the international criminal courts were also raised. The judges felt that prosecutors should be independent in order to fulfill their mandate. However, unaccountable prosecutorial discretion could undermine the legitimacy and credibility of international criminal courts. It was noted that the Rome Treaty provides for judges to approve investigations and indictments suggested by the prosecutor. Conversely, international

criminal courts must have a highly competent and diverse international defense bar in order for the system to operate efficiently and within the parameters of fundamental fairness. At present, the quality of representation of defendants is uneven.

5. Law and Morality

Several sessions of the BIIJ explored the potential tensions between executing the law and creating morally satisfactory outcomes for individuals and nations.

One topic considered was the doctrine of “necessity,” the argument that in dire circumstances the law must sometimes be suspended in order to achieve a moral good. Cases considered ranged from *Dudley v. Stevens* (the famous 19th-century British case in which three marooned sailors were charged with the murder and cannibalism of a “cabin boy” who was on the lifeboat with them) to the question of whether it was right for the NATO coalition to (apparently) violate certain principles of international law in its humanitarian intervention in Kosovo.

These questions and others stimulated reflective and passionate discussion. The judges faced a key dilemma: If the law invokes necessity to justify illegal acts, does the law not stand to lose its own soul and connection to itself?



Brandeis International Fellow Peter Ford with Emmanuel Victor Oware Dankwa and Angela Melo

The judges also discussed the distinction between legal and moral rights, in the context of the international courts’ role in preserving human rights. The paucity of binding universal treaties on human rights issues presents an ongoing challenge for judges who wish to embrace greater extension of rights enforcement around the world. This is particularly true with regard to social and economic rights; the judges cautiously agreed with the proposition that a starting point may

If the law invokes necessity to justify illegal acts, does the law not stand to lose its own soul and connection to itself?

be for international and other courts to develop jurisprudence in these areas by exercising the declaratory and advisory functions of courts to at least offer some guidance in this field.

The international courts do not operate in a vacuum. Issues of diplomacy and power circumscribe issues of jurisdiction and enforcement. The judges explored the problem of selectivity in the enforcement of justice in the international context. Political and diplomatic considerations often shape decisions about whether and how to enforce the orders of courts, and there are frequent charges that the more powerful Western nations place self-interest before humanitarian considerations in their efforts on behalf of human rights. The appearance and reality of selective international justice can undermine the credibility of international courts and tribunals, and serves as an even more compelling reason for devising ways to safeguard the independence of the international judiciary. To the degree that international courts are in fact the product of international politics, the international judicial community faces strong challenges to achieve the kind of judicial status that some national courts enjoy.



Brandeis University Assistant Professor of Sociology Dessima Williams and Dolliver Nelson

6. Gender Equality and the International Courts

The imbalance of women and men represented on international judicial and quasi-judicial bodies is still great. The group discussed the reasons for this, and identified as being chief among them the legacy of historic patterns of discrimination against women in virtually all countries represented on the courts. The group pointed out the pressing need to remedy this disparity on the international courts.

7. Fundamental Fairness and the Criminal Courts

The judges' starting point for this discussion was unequivocal agreement that achieving fundamental fairness is the overarching, central task of the international criminal tribunals and the International Criminal Court. The procedures followed in international criminal tribunals must express harmonized fundamental norms of fairness according to many different legal traditions.

The task of achieving fundamental fairness across different legal and cultural norms is exacerbated by the tension international courts face between

maximizing resources through expeditious trials and other proceedings and meeting the fundamental fairness and due process requirements of doing justice internationally.

The groups discussed difficult related problems faced by the international criminal tribunals as they attempt to resolve this paradox. These included:

- victim and witness testimony
- witness protection
- safe passage for defense witnesses
- the inability of the court to compel witnesses to appear
- the admissibility of new evidence upon appeal
- sentencing procedures and guidelines
- the handling of sensitive evidence so as not to compromise intelligence sources

The judges grappled in particular with the issue of victim and witness testimony, which

The procedures followed in international criminal tribunals must express harmonized fundamental norms of fairness according to many different legal traditions.

is of great significance and poignancy in the international context. It is extremely time-consuming and costly to require or allow prosecutors to present all the evidence that they have collected in preparation for trial. When dealing with war crimes and crimes against humanity, much of the evidence consists of witness and victim testimony. But given the mission of the international criminal tribunals to promote healing, peace, and reconciliation, it is problematic for victims *not* to be allowed to share their stories. At the same time, given the rights of defendants and the practical considerations regarding resources and time, it is also problematic for certain kinds of highly prejudicial evidence to be heard and for proceedings to continue over long periods of time.

Recommendations

During the course of the Institute, several key conclusions emerged out of the seminar sessions. The recommendations below reflect the judges' agreement that these issues warrant more in-depth monitoring and evaluation, as well as active and sustained attention by the international judicial community.

Judicial Cooperation and Comity

More sustained opportunities for judicial cooperation and comity should be made available—among the international courts and also between international and national courts. Solutions to problems of overlapping jurisdictions, conflicting rules and procedures, and the universality of human rights principles require sustained interaction between individual judges and judicial bodies. Opportunities such as the Brandeis Institute for International Judges and other similar ventures represent important fora for communication and the exchange of ideas about common problems and successes.

A Common International Legal Vocabulary

Word meaning and usage are crucial in hearing evidence and making factual and legal determinations. Steps should be taken to decrease the likelihood of mistranslation and the potential miscarriage of justice by international courts and tribunals.

The members agreed on the need for a glossary of the most common terms used in legal proceedings. Such a glossary should include the many languages present in most of these courts. A group composed of judges, lawyers, linguists,

and scholars should be convened for this purpose. This would be a good first step toward decreasing the confusion arising from mistranslation of meaning and nuance across language and legal culture.

Reconsideration of the Judicial Selection Process

The process of selecting judges for the international courts should be examined and reconsidered in a formal and sustained manner. This reconsideration should explore, among other topics, the following: the need for more transparency and accountability; the possibility of instituting procedures for the nomination, screening, and selection of international judges by an impartial entity; and the question of whether reelection of international judges is productive, and whether courts that now permit reelection should convert to a system of longer nonrenewable terms.

A Code of Ethics for International Judges

BIIJ participants generally agreed on the necessity of drafting a code of ethics that would make explicit the standards expected of international judges. It was suggested that the Institute partner with a European law school on drafting such a code of ethics, or that the International Center for Ethics, Justice and Public Life co-convene such a process by using a future Institute either to draft such a document or to respond to a draft prepared beforehand.

An Association of International Judges

The possibility of forming an association of international judges should also be explored, with the goal of providing a structure for the exchange of ideas and the strengthening of the international law system. This association should be independent of any particular court or justice system.

Keynote Address

“Ethical Dimensions of International Jurisprudence and Adjudication”

Hans Corell

Under Secretary General for Legal Affairs, The
Legal Counsel of the United Nations

June 10, 2002

Welcome

First of all, I would like to thank the International Center for Ethics, Justice and Public Life at Brandeis University for taking the initiative to organize—under the auspices of the Brandeis Institute for International Judges—these sessions on “The New International Jurisprudence: Building Legitimacy for International Courts and Tribunals.”

I am pleased to see among the participants colleagues from the International Tribunal for the Law of the Sea, the International Criminal Tribunal for the former Yugoslavia, the

International Criminal Tribunal for Rwanda, the European Court of Human Rights, and the African Commission for Human and Peoples’ Rights. I am also particularly pleased that I am able to deliver this lecture in public and in the presence of students. I have kept this specifically in mind in preparing this address.

Introduction

The purpose of the sessions is to provide for judges sitting on international courts and tribunals the opportunity for reflection and discussion amongst themselves. Participants will grapple with important problems and themes that have emerged with the development of an international legal order in the context of globalization.

Within the over-arching theme “Ethical Dimensions of International Jurisprudence and Adjudication,” four broad categories will be addressed:

- Global Law: Sovereignty, Jurisdiction, and Enforceability
- An International Rule of Law, Law Making, and Judicial Independence
- Substantive and Procedural International Law
- Ethics and Justice: International Human Rights

My presentation will be on the over-arching theme with the main focus on “an international rule of law and ethics and justice.” It goes without saying, however, that in a short keynote address one can only touch upon a few aspects of these interesting topics. My role as keynote speaker is to call attention to certain questions with the view to stimulating the discussion in the coming sessions.

Today there is much talk about globalization. I agree with the view that the phenomenon of globalization is the product of human society and that, as such, it is motivated by specific ideologies, interests, and institutions.¹ We know that many view globalization with great concern. In my opinion, it is important to participate in this process and, above all, to make sure that the



Hans Corell

positive aspects of globalization benefit not only a few but are equally shared. On the legal side, we definitely see how international law is reaching out into even wider areas, and that institutions are created to address matters of common interest and need.

The Rule of Law in International Relations

The development in the field of international law over the last few years has been remarkable. Yes, there are those who are critical and even deny the very existence of this law. However, the development is there; the international system of rules, based on treaties, is growing exponentially. There is no turning back. We must realize that no state, not even the strongest, can today act on its own. We are all dependent on each other in the so-called "global village."

And those who think that they can turn inward and ignore this development may be wise to listen to those who know better. I have quoted *The Sayings of the Vikings* before in this context. Also on this occasion, I would like to refer to the following lines, written more than 1,000 years ago:

*He is truly wise
who's traveled far
and knows the ways of the world.
He who has traveled
can tell what spirit
governs the men he meets.²*

Efforts aimed at enhancing the rule of law in international relations encompass the field of law making as well as acceptance of and respect for international law by all states. Moreover, they should be accompanied by increased encouragement of dissemination and wider appreciation of international law.

During the 20th century, international law has been developed at the universal and regional levels. It has been incorporated in a great number of universal, regional, and bilateral treaties.

the United Nations has helped create a global legal culture necessary for the promotion of respect for the rules and principles of international law.

The evolution of the new jurisprudence is a major challenge for the international community and, in particular, for the United Nations; justice and respect for the obligations arising from treaties and other sources of international law continues to be a key goal of the Charter. Since its establishment, the United Nations has helped create a global legal culture necessary for the promotion of respect for the rules and principles of international law.

In particular, the United Nations and its agencies have played a critical role in advancing the international rule of law through multilateral treaties. These efforts have led to the elaboration of hundreds of multilateral treaties dealing with essential issues of relations among states as well as the individual rights to which human beings are entitled. They cover the spectrum of human interaction, including human rights, humanitarian affairs, terrorism, international criminal law, refugees and stateless persons, the environment, disarmament, commodities, organised crime, the oceans, transport, communications, space, commerce and trade, etc. The secretary general of the United Nations alone is the depositary of more than 500 multinational treaties.

This process not only put in writing the custom. It also allowed all members of the international community to participate in the formulation of international law. It has been fundamental to the very conduct of international relations and the legitimisation and acceptance of international law. Some of the products of this codification process have laid the structure of an entire field or domain of international law, setting forth principles and rules that define the basic lineaments of the law and the framework within which problems are analysed.

In addition, today's international law making has to catch up with the speed of technological and scientific developments. The latest topic on the agenda of the Sixth Committee of the

Much of the progress in many countries in the field of international law is due to the active engagement of many people of good will and knowledge of the areas that we now discuss...ethics and justice are high on their agendas.

General Assembly is human cloning. Forecasting future needs and making policy decisions about how such needs should be addressed has become part of the required skills of lawyers and policy makers.

However, at the present stage, in securing the rule of law in international relations, focus should be not so much on a further increase in the number of legal instruments, but rather on a strengthening of the political will to apply existing instruments when the need arises and on a more widespread knowledge of their content. This is a matter of law, but it is clearly also an ethical issue.

The level of adherence by states to the rules of international law, whether treaty based or custom based, has gradually become consolidated. Many individual and national activities are undertaken on the basis of existing international legal rules, and there is a growing expectation of the need to comply with international law by States and other entities. Breaches have been widely reported and extensively discussed.

In early 1999, the secretary general of the United Nations, Kofi Annan, and his senior managers sought to identify the key policy goals for the organization for the new century. To my great satisfaction, the consolidation and the

advancement of international rule of law were identified as the second-most important goal for the organization, next to the maintenance of international peace and security. This priority is now clearly reflected in the secretary general's statements and in his reports to the General Assembly.

In its Millennium Declaration in September 2000, the General Assembly further affirmed the importance of rule of law in international relations.³

Since 2000, the millennium year, the United Nations Secretariat has organized treaty events in connection with high-level meetings of the General Assembly or international conferences to encourage wider participation in the multilateral treaties deposited with the secretary general. The response to these events has been impressive.

Users around the world currently access the UN Treaty Collection on the Internet more than 800,000 times every month. It is available free of charge to nongovernmental organizations and users from developing countries in addition to the UN family and governments. The secretariat is also discussing how to increase the assistance provided to countries to enable them to participate in the international treaty framework.

Personally, I have written to legal advisers of foreign ministries around the world seeking their assistance in encouraging law schools to include international law in their curricula, where they did not do so already. A Website developed by the Office of Legal Affairs of the United Nations seeks to provide guidance in locating legal material and sources of assistance within the UN system.⁴

However, maybe even more important is the contribution by academia and the many nongovernmental organizations that are engaged in this work. Much of the progress in many countries in the field of international law is due to the active engagement of many people of good will and knowledge of the areas that we now discuss. Not least their scrutiny of how governments respect their international obligations is an important factor. Ethics and justice are high on their agendas.

Ethics and Justice

When discussing this topic in an international setting, it is necessary to start from a national perspective. Let me, therefore, offer some thoughts based upon my own experience serving in the judiciary at the national level. I will then move to the international level, where I will draw upon experiences from representing my country before international institutions and in international negotiations and my experiences during the last eight years as the Legal Counsel of the United Nations.

At the national level, judges are subject to various standards and disciplinary regimes. This is the first thing you are made aware of when you join the judiciary. I have still in fresh memory December 1962 when I appeared before the full Court in the district where I served to take the judge's oath, as prescribed in the Code of Judicial Procedure of my country. What made the deepest impression on me at the time, however, were the seriousness and the precision with which my senior colleagues went about their daily work.

I recall the encouragement I received from those senior colleagues and the admonition to bow to no one but to the law. The "Rules for the Judges," printed for the first time in 1619 and included in our now yearly law book since 1635, was a particular source of guidance and inspiration. Among them are the following sentences (in an attempt to translate the archaic language):⁵

"All laws shall be such that they serve best the community and therefore, when the law becomes harmful, then it is no more law, but unlaw and should be abolished."

"A good and kind judge is better than good law, because he can always adjust to the circumstances. Where there is an evil and unfair judge, there is no avail because he will twist and do them injustice after his own mind."

"A known matter is as good as witnessed."

I thought of these rules when I read Thomas M. Franck's article, "What? Eat the Cabin Boy? A theory of mitigation in international law." It was included as a reading for these sessions.⁶ Franck argues that it is in the law's interest to bridge the gap between itself and the predominant private perception of what is just and moral. I agree.

Certainly, judges are human beings too, and there were instances where I had views on how my senior colleagues acted. But those were marginal observations. The remaining impression was the example set by persons who independently and impartially exercised their judicial functions without side-glances and to the best of their

The 10 years in the judiciary of my country, in the 1960s and early 1970s, taught me...the importance of experience, confidence, and integrity.

ability. Many times later in life I have thought of these colleagues with gratitude. The 10 years in the judiciary of my country in the 1960s and early 1970s taught me a lot and in particular the importance of experience, confidence, and integrity.

It is important to note that considerable efforts have been made at the international level to elaborate common principles for the independence of the judiciary. These principles can be seen as a common denominator for states under the rule of law.

In this context, I would note first, the Basic Principles for the Independence of the Judiciary, which were adopted by the United Nations seventh Conference on the Prevention of Crime and the Treatment of Offenders, held in 1985.⁷ During the preparatory work, contributions had been made, *inter alia*, by the International Association of Judges and the International Commission of Jurists. I recall that I was involved on the margin when certain preparatory studies were made, and a seminar was held at

the International Institute of Higher Studies in Criminal Sciences in Siracusa, Sicily, in the beginning of the 1980s. However, otherwise I have no experiences of my own from this work.

In these basic principles it is laid down that the independence of the judiciary shall be guaranteed by the state and should be laid down in law, preferably in the constitution. Furthermore, it is made clear that justice presupposes that everyone has a right to a fair and public trial before a competent, independent and impartial court. Reference is made to the United Nations Universal Declaration of Human Rights from 1948 and the International Covenant on Civil and Political Rights from 1966. Other criteria for the status of judges are also laid down, e.g., their qualifications, their education, their conditions of service, and the period during which they are to serve. Confidentiality and immunity are also addressed.

By resolution 1989/60 of 24 May 1989 the Economic and Social Council of the United Nations adopted procedures for the effective implementation of the Basic Principles on the Independence of the Judiciary. In this resolution, States are requested to adopt and implement the basic principles in accordance with the national constitutional rules and practice. States are also requested to publish the principles and make the text available to the judiciary. Seminars and courses about the judiciary and its independence are also encouraged.

It should be noted that the work of the United Nations in this important field not only focuses on the judiciary. Obviously, all who have functions in the justice system must fulfill certain requirements and observe certain

standards. Reference can be made to the United Nations fundamental principles for the role of the lawyer and guidelines for the profession of the prosecutors.⁸

Another measure taken by the United Nations is that the Commission on Human Rights has appointed a special rapporteur for the independence of the judiciary who reports on his work to the Commission on a yearly basis.⁹

The documents to which I have referred can easily be found on the Internet.¹⁰

In this context it is also important to note that the Council of Europe has been engaged in this work. Certainly, guidance can be sought in the European Convention on Human Rights and in the case law of the European Court of Human Rights. But there is also a recommendation on the independence of the judiciary. A European Charter on the statute for judges was adopted on July 10, 1998 and is an additional contribution to the strengthening of the judicial institutions.¹¹

International Judicial Institutions

In some cases these institutions have existed for a long time: the Permanent Court of Arbitration since 1899, the International Court of Justice since 1945, when it took over from the Permanent Court of International Justice instituted by the League of Nations in 1920.

However, in the last 50 years we have seen many more instances appear: the European Court of Human Rights in 1950 (including the right of individual application which became effective in 1955); the European Court of Justice in 1958 with jurisdiction over European Community law, the Inter-American Court of Human Rights in 1978, the African Commission for Human and Peoples' Rights in 1986, the International Criminal Tribunal for the former Yugoslavia in 1993, the International Criminal Tribunal for Rwanda in 1994, and the International Tribunal for the Law of the Sea in 1996. On July 1, 2002, the Rome Statute of the International Criminal Court will enter into force. For the first time, we will have a standing international criminal court to deal with the most serious crimes against humanity, war crimes, and genocide.

Also, other institutions could be mentioned here, such as the mechanisms introduced within the World Trade Organization (WTO) and the Administrative Tribunals within the United Nations, the International Labour Organization, the International Monetary Fund (IMF), the World Bank and the Council in Europe. In addition, on a daily basis various international arbitration panels are addressing disputes mainly of a private law nature.

It is reassuring to note that the services of the International Court of Justice are requested to a greater and greater extent. However, the most dramatic development has been in the area of international criminal law. It is true that we do not have at the international level the same means of legislation, adjudication, and enforcement as at the national level. States can conclude agreements and ratify them, they can establish courts and appoint judges to adjudicate, but there is very little muscle when you come to the enforcement. Certainly, the Security Council has a special role in this context (see Articles 36 and 37 of the United Nations Charter), but this is a measure that is hardly used.

Therefore, it is important that states do adhere to their undertakings under the various treaties setting up these international institutions and accept their rulings also when they are not in their favour. This is a matter of law, but again with ethical dimensions.

It is against this background that we should take a closer look at what is required from those who are set to administer justice in international organs. It is, of course, natural for every person serving as a judge in an international court or tribunal to draw upon the national experiences and seek guidance in the instruments on the independence of the judiciary that I just mentioned. But let us now look at the specific requirements at the international level.

International judges are operating under the eyes of the whole world, and the impression they give and the way in which they perform their work will directly reflect on the standing of the institution that they serve.

Needless to say, there are provisions of a disciplinary nature in the instruments that govern the respective international institution.¹² Such provisions are necessary, but I do not intend to go into detail about them here. It is evident that they should not have to be applied. And if they are, we have certainly left the scope of our discussions, which should address elements of a much more subtle nature.

The point that I would like to make is that the standards that international judges must uphold must be set even higher than at the national level. International judges are operating under the eyes of the whole world, and the impression they give and the way in which they perform their work will directly reflect on the standing of the institution that they serve. This is a very important aspect of international rule of law that I think should be addressed in our sessions. We have already touched upon some of them.

In discussing these aspects, it may be necessary to look at the specific circumstances under which judges serve in the different institutions that are represented here. What is characteristic at the international level is that judges must always possess the general qualifications of a judge. But these qualifications must also in most cases be combined with extensive expertise in a particular field of law.

The International Tribunal for the Law of the Sea has just recently been set up. The judges are all recognized experts in the law of the sea and ocean affairs. To date, the court has only heard a few cases, but it has already established itself as an institution that reacts expeditiously in the matters entrusted to it. It will be interesting to hear from the representatives of this Tribunal about the special circumstances that apply there.

the adjudication of international human rights courts may cause a certain strain on the patience of governments...States must be allowed a certain “margin of appreciation” in applying the international standards.

I know that you have discussed one issue of particular interest in this context, namely what kind of other occupations you may engage in, in view of the fact that you do not serve full-time on the Tribunal (except for the president). This issue is important and could be examined in a broader perspective during the discussions.

Courts dealing with human rights issues have their special characteristics. Not only would judges serving on such courts have to observe the standards that apply generally to persons holding judicial office. In practice, these courts, and in particular, the European Court of Human Rights, function as constitutional courts at the international level. In the 11 years (1983-94), during which I acted as agent for my government before the European Court of Human Rights, I had the privilege of seeing this court in action.

Certainly, for a state to lose a case before this court and be found in violation of international human rights standards is a painful experience. Also, almost invariably, the conclusion is that the case was lost because the national legislation is deficient in some way. This is so, since the decision at the national level must always be taken by the highest instance (mostly the Supreme Court or the government) before the case can be brought before the Human Rights Court. This means that the national legislation as it exists has been applied correctly; the highest instance has had its say. Consequently, if the

case is lost before the international court, the conclusion to be drawn at the national level is that the law must be amended in order to avoid similar situations in the future.

Seen in this perspective, the adjudication of international human rights courts may cause a certain strain on the patience of governments. Therefore, these courts must strike a delicate balance here. States must be allowed a certain “margin of appreciation” in applying the international standards. At the same time, those who rightly seek justice before them are entitled to a fair hearing and a just treatment. This exercise becomes a delicate interaction among the international human rights courts and the states that have established them.

I have in the past expressed some caution here since there are limits to what a few judges of international institutions of this kind can manage. It is necessary that the members of these courts be looked upon as prominent personalities from member states and not as a bureaucracy that may risk being alienated from the conditions in member states. It is also important that the members of these courts exercise their functions with great wisdom in order to maintain the integrity of the system so that it can function in situations where the need is the greatest; these courts must be able to act as beacons in times when fundamental human rights and freedoms risk being trampled under the feet.¹³

The International Criminal Tribunals and the International Criminal Court

In my opinion, it is important that judges of these courts have extensive experience of criminal justice and of serving in the national systems as judges. This question first came to my close attention when two colleagues and I elaborated, under the auspices of the Conference on Security and Cooperation in Europe (CSCE), the first proposal for an International War Crimes Tribunal for the Former Yugoslavia in 1992-93.

In the commentary to the provision on appointment of judges we stated: “In corresponding provisions of other drafts there is a reference to knowledge of international law. No

doubt, knowledge of international law in addition to the requirements proposed in [paragraph 3] would be of great importance. This is, however, not specifically included in the provision. The reason is that in view of the tasks that the judges are facing it is more important that they are well acquainted with the adjudication of criminal cases in their respective States. Once the Tribunal is set up, the main feature of the work of the court will be very similar to the work in an ordinary criminal court at the national level. A demonstrated ability to deal in a competent and expedient manner with complex criminal cases ought therefore to carry particular weight. Judges with such qualifications will no doubt rapidly acquaint themselves with the international elements of the work.”¹⁴

The corresponding provision in the Statute for the Tribunals for the Former Yugoslavia and Rwanda reads as follows (ICTY, Article 13, paragraph 1):

The judges shall be persons of high moral character, impartiality, and integrity who possess the qualifications required in their respective countries for appointment to the highest judicial offices. In the overall composition of the Chambers due account shall be taken of the experience of the judges in criminal law, international law, including international humanitarian law and human rights law.

It is interesting to note that the Rome Statute is more elaborate in this context and foresees two categories of judges in the court. In accordance with Article 36, paragraph 3 (a), the judges “shall be chosen from among persons of high moral character, impartiality, and integrity who possess the qualifications required in their respective states for an appointment to the highest judicial offices.” Furthermore, in accordance with

when the judges are to be elected for the International Criminal Court, it is of utmost importance that the persons elected will be seen as competent not only by fellow judges at the national level but, more importantly, by the general public.

subparagraph (b) of the same provision, every candidate for election to the court shall: (i) have established competence in criminal law and procedure, and the necessary relevant experience, whether as judge, prosecutor, advocate, or in other similar capacity in criminal proceedings; or (ii) have established competence in relevant areas of international law such as international humanitarian law and the law of human rights, and extensive experience in a professional legal capacity that is of relevance to the judicial work of the court.

Interestingly, in accordance with paragraphs 5 and 6 of Article 36, the candidates shall be listed in two separate lists: list A for candidates with qualifications specified in paragraph 3(b) (i), and list B for candidates with qualifications specified in paragraph 3 (b) (ii). At least nine judges shall be elected from list A and at least five judges from list B.

Let me state emphatically that, when the judges are to be elected for the International Criminal Court, it is of utmost importance that the persons elected will be seen as competent not only by fellow judges at the national level but, more importantly, by the general public. It is therefore imperative that States present candidates for the International Criminal Court and the international criminal tribunals who have extensive experience of serving in the criminal justice system of their own states.

A few days ago, someone drew to my attention to an advertisement in *The Times* by the Government of the United Kingdom. Advertising under the job title “Judge of the International

Criminal Court,” the government invites applications from candidates possessing the necessary qualifications and expertise for election for this senior judicial appointment. The “job description” makes clear in no uncertain terms that the government is looking for a candidate with significant judicial experience. I was very glad to see this approach, and I have brought with me the material that the Foreign and Commonwealth Office sends to those who express an interest in the position. It is my hope that other states’ parties to the Rome Statute will follow this excellent example.

It is important to note, and this is evident to anyone who has served as a judge in a criminal court, that this function puts heavy demands on the person in question. First of all, a judge must be able to uphold the order in the courtroom and to see to it that cases are moved forward. This is of paramount importance in order to maintain respect for the judicial institution. Furthermore, the personal convenience of a judge in a criminal court must be second to the interest of the proper administration of justice. For example, according to international standards, and in particular Article 9 of the International Covenant on Civil and Political Rights and Article 6 of the European Convention on Human Rights, anyone arrested or detained on a criminal charge has the right to be brought promptly before a judge or other officer

The moment a case is ready for a hearing, the trial should take place. This is in the interest not only of the person detained but also of victims and the general public—in short, it is in the interest of justice.

authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. International criminal courts must uphold these standards scrupulously.

I have heard the argument that, since the persons detained by the international tribunals are suspected of very grave crimes, it does not matter much if they have to spend a little more time in detention than in ordinary cases. Unfortunately, it is inevitable that persons detained as suspects of genocide, war crimes, or crimes against humanity are detained for long periods because of the complexity of the investigations. However, it is only that element that should determine the length of the detention. It is wholly unacceptable that other elements (e.g., the convenience of the judges) should be allowed to influence the time under which persons are being detained. The moment a case is ready for a hearing, the trial should take place. This is in the interest not only of the person detained but also of victims and the general public—in short, it is in the interest of justice.

Those appointed as judges of international tribunals (and for that matter also prosecutors) have high visibility in the media and elsewhere. They will often be invited to various functions and, maybe, sometimes also offered awards and other recognitions. Whether such awards should be accepted is also an ethical question. In the United Nations, such awards may not be accepted if they originate from a government. If they originate from other institutions, however, they may be accepted if the secretary general gives his permission. In my humble opinion, this kind of recognition should not be offered to judges and other high officials of international courts while they hold office.

Conclusion

It is not possible in a short keynote speech on ethical dimensions of international jurisprudence and adjudication to cover all the many issues that arise under the topic. I have focused on a few of them and hope that my reflections will serve the purpose that I indicated at the outset—to stimulate the discussions. My comments are certainly not meant to offend anyone, but I think

that it is important that we talk about these issues in view of the very delicate situation in which international judges operate. In particular, it is important to focus on the problem that stems from the fact that it is difficult to establish accountability at the international level in the same way as you can do at the national level. By accountability in this context, I do not mean how judges adjudicate a particular case but the way in which they perform and conduct themselves in exercising their function.

At the international level, a classic dilemma presents itself: *Quis custodet custodes?* Who supervises the supervisors? This must always be present in the minds of judges who serve at the international level. I can think of no higher calling for a lawyer than to serve in this capacity. But precisely because it is a high judicial office with limited ways of establishing accountability, it must be assumed with a humble mind. What is required is a deep insight that a competent, independent, and impartial international judiciary is an indispensable element when we are making our best efforts to establish the rule of law in international relations.

Thank you for your attention.

Endnotes

¹ Globalization and its impact on the full enjoyment of human rights. *A progress report to the SubCommission on the Promotion and Protection of Human Rights*, E/CM.4/Sub.2/2001/10, para. 12.

² *The Sayings of the Vikings*. Translated from the original by Björn Jónasson. Gudrun Publishing, Reykjavik, 1992.

³ See GA RES/2000/2, paras. 9, 24 and 25.

⁴ www.un.org/law.

At the international level, a classic dilemma presents itself: *Quis custodet custodes?* Who supervises the supervisors?

⁵ *Nordisk Familjebok*, Volume 5, Aftonbladets Tryckeri, Stockholm, 1926, sp. 1116, and e.g. Sveriges Rikes Lag, 1993, page LXXVI.

⁶ To be published by Cambridge University Press under the title *Recourse to Force: State Action against Threats and Armed Attacks*.

⁷ See *Committee on Crime Prevention and Control, Report on the Eighth Session* (E/AC.57/1984/18) and *Basic Principles on the Independence of the Judiciary* (A/CONF.121/22/Rev.1) and note 10. The adoption of these principles was noted with satisfaction by the UN General Assembly in resolution 40/146 of 13 December 1985.

⁸ UN doc. E/AC.57/1988/15 and General Assembly resolution 45/166 of 18 December 1990.

⁹ See Commission on Human Rights, resolution 1999/31.

¹⁰ See the Compendium of United Nations Standards and Norms in Crime Prevention and Criminal Justice at www.uncjin.org/Standards/Compendium/compendium.html

¹¹ Council of Europe, DAI/DOC (98) 23.

¹² See e.g. Article 18 of the Statute of the International Court of Justice in conjunction with Article 6 of the Rules of Court, and articles 46 and 47 of the Rome Statute of the International Criminal Court.

¹³ "The European Convention on Human Rights: Swedish Experiences—Thoughts for the Future," *Festschrift till Lars Hjerner, Studies in International Law*, Norstedts Förlag, Stockholm (1990), pages 120-122.

¹⁴ Proposal for an International War Crimes Tribunal for the Former Yugoslavia by rapporteurs (Corell-Türk-Thune) under the CSCE—Human Dimension Mechanism to Bosnia-Herzegovina and Croatia, page 151.

Biographies

Core Faculty

Jeffrey Abramson is the Louis Stulberg Professor of Law and Politics at Brandeis University. He received his Ph.D. in political science in 1977, and Juris Doctor *cum laude* in 1978 from Harvard University. He served as a law clerk to the chief justice of the California Supreme Court, and then as an assistant district attorney and assistant attorney general in Massachusetts before beginning his teaching career. In addition to teaching at Brandeis, Abramson has taught at Harvard University and Wellesley College. He teaches courses on the History of Political Thought, Ancient, Medieval, Modern; Contemporary Political Theory; Constitutional Law; Human Nature and Politics; Topics in Political Theory: Liberalism and its Critics; and, Topics in Political Theory: Radical Politics.

He is the author of *We, the Jury: The Jury System and the Ideal of Democracy*, *The Electronic Commonwealth: The Impact of New Media Technologies on Democratic Values*, and *Liberation and its Limits: The Moral and Political Thought of Freud*. Abramson is also the recipient of numerous academic awards and fellowships, including the American Bar Association Citation of Merit for *We, the Jury*, the National Endowment for Humanities Constitutional Fellowship, and the Woodrow Wilson Honorary Fellowship.

Justice Richard Goldstone is a justice of the Constitutional Court of South Africa. He earned his B.A. LL.B. *cum laude* in 1962 from the University of the Witwatersrand. In 1980 he was made judge of the Transvaal Supreme Court. In 1989 he was appointed judge of the Appellate Division of the Supreme Court. Since July 1994, he has been a justice of the Constitutional Court of South Africa. From 1991 to 1994, he served as chair of the Commission of Inquiry regarding Public Violence and Intimidation, which came to be known as the Goldstone Commission. From August 15, 1994 to September 1996 he served as the chief prosecutor of the United Nations

International Criminal Tribunals for the former Yugoslavia and Rwanda. From August 1999 until December 2001, he served as chair of the International Independent Inquiry on Kosovo. In December 2001 he was appointed as chair of the International Task Force on Terrorism established by the International Bar Association.

Goldstone is the recipient of many local and international awards, including the International Human Rights Award of the American Bar Association (1994) and Honorary Doctorates of Law from the Universities of Cape Town, Witwatersrand, Natal, Hebrew University, Jerusalem, Notre Dame, Maryland University College, Wilfred Laurier in Ontario, the University of Glasgow, the Catholic University of Brabant in Tilburg, the Netherlands, the University of Calgary, and Emory University. He is an honorary bencher of the Inner Temple, London, an honorary fellow of St. Johns College, Cambridge, an honorary member of the Association of the Bar of New York, and a fellow of the Weatherhead Centre for International Affairs of Harvard University. He is a foreign member of the American Academy of Arts and Sciences. He was a member of the faculty of the Salzburg Seminar in 1996, 1998, and 2001. From October to December 2001, he was a visiting professor at the School of Law of New York University.

Keynote Speaker

Hans Corell is under secretary general for legal affairs and the legal counsel of the United Nations. He has held this post since March 1994. In this capacity, Corell is head of the Office of Legal Affairs in the U.N. Secretariat. Before joining the United Nations in 1994, Corell, a national of Sweden, was ambassador and under secretary for legal and consular affairs in his country's Ministry of Foreign Affairs from 1984 to 1994.

He served for 13 years in the Ministry of Justice, in the capacity of under secretary for legal affairs (1981-84), assistant under secretary (1979-81), and legal adviser (in 1972 and 1974-79). Interspersed with his service in the Ministry of Justice, Corell served as an additional member of the Svea Court of Appeal (1973), as associate judge of appeal (1974), and as judge of appeal (1980).

Corell began his career in 1962 as a court clerk, later becoming a presiding judge in petty criminal cases and then an assistant judge in a district court, before entering the Ministry of Justice in 1972. Corell was a member of his country's delegation at the United Nations General Assembly from 1985 until he took his current U.N. appointment in 1994. In addition, Corell was a member of the Permanent Court of Arbitration at The Hague from 1990 until 1994. He has also been a member of various expert committees in his country, within the Council of Europe, the Organisation for Economic Cooperation and Development (OECD), and the Conference on Security and Cooperation in Europe (CSCE), including the CSCE Moscow Human Dimension Mechanism to Bosnia and Herzegovina and Croatia (1992-93), which presented the first proposal for the establishment of an international criminal tribunal for the former Yugoslavia. He was chair of the working group at the 1992 CSCE Expert Meeting on Peaceful Settlement of Disputes, held in Geneva. He was the secretary general's representative to the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, held in Rome from June 15 to July 17, 1998.

Corell holds board memberships in several Swedish legal societies and is the author of many publications, including "The European Convention on Human Rights: Swedish Experiences—Thoughts for the Future," which appeared in *Studies in International Law*, "Legal Advisers Meet at United Nations Headquarters," and "Third Legal Advisers Meeting at United Nations Headquarters in New York," published in the *American Journal of International Law*.

Born in Västermo, Sweden, on July 7, 1939, Corell received a law degree at the University of Uppsala. He holds an honorary Doctor of Law degree at the University of Stockholm.

Guest Faculty

Balakrishnan Rajagopal is the assistant professor of law and development at the Massachusetts Institute of Technology (MIT). He is also the director of the MIT Program on Human Rights and Justice, Center for International Studies. He earned a B.L. from the University of Madras in 1990, an LL.M. from Washington College of Law at the American University in 1991, and an S.J.D. from Harvard Law School in International Law and Development in 2000. Rajagopal has served with the United Nations High Commissioner for Human Rights in Cambodia between 1992 and 1997 and as a consultant to the United Nations Development Program in Cambodia. His current research interests include the theoretical and institutional issues arising from a human rights approach to development planning; legal aspects of social movements including property, land use, and local government; and the larger relationship between international and domestic legal structures, mass politics, and development. His research focuses primarily on South and Southeast Asia.

Rajagopal's publications include: "International Law and the Development Encounter: Violence and Resistance from the Margins," *American Society of International Law 93rd Annual Proceedings* (1999); "Locating the Third World in Cultural Geography," *Third World Legal Studies* 1999; "Corruption, Legitimacy, and Human Rights: The Dialectic of the Relationship," *Connecticut Journal of International Law* (1999); and "The Pragmatics of Prosecuting the Khmer Rouge," *1998 Yearbook of International Humanitarian Law* (Asser Institute, Hague, 1998).

Stephen M. Schwebel is a former judge of the International Court of Justice, where he served from 1981 to 2000, and as the president of the Court from 1997 to 2000. He earned his LL.B. from Yale Law School in 1954, and his B.A. *magna cum laude* with highest honors in government from Harvard College. He currently serves as the president of the Administrative Tribunal of the International Monetary Fund, a position he has held since 1994. He has been chair or party-appointed arbitrator in more than

a score of international arbitrations, concerning interstate and international commercial cases. Schwebel was formerly a member of the International Law Commission of the United Nations, and a deputy legal advisor of the U.S. Department of the State. He also taught law at Harvard Law School from 1959 to 1961.

He is the author of three books, *Justice in International Law*, *The Secretary General of the United Nations: His Political Powers and Practice*, and *International Arbitration: Three Salient Problems*, and over 150 articles in the field of international law, international arbitration, and international relations. He is the recipient of numerous awards and honors, including honorary LL.D. awards from Bhopal University and Hofstra University, the Medal of Merit from Yale Law School, and the Manley O. Hudson Medal from the American Society of International Law.

Anne-Marie Slaughter is dean of the Woodrow Wilson School of Public and International Affairs at Princeton University in New Jersey. She was the J. Sinclair Armstrong Professor of International, Foreign, and Comparative Law at Harvard Law School. Slaughter received her B.A. from Princeton University, an M.Phil and D.Phil from Oxford University in international relations, and a J.D. from Harvard Law School. She teaches International Law and International Relations, International Litigation, Civil Procedure, Perspectives on American Law, and Transnational Regulatory Cooperation. Since 1997, she has served as director of graduate and international legal studies, the division of Harvard Law School responsible for the Master of Laws (LL.M.) and the Doctor of Juridical Science (S.J.D.) degrees, and for various aspects of graduate legal studies, including the visiting scholar and visiting researcher program.

Slaughter has written and lectured extensively in the areas of international law and international relations. Recent publications include: "Judicial Globalization," *40 Virginia Journal of International Law* 1103 (2000); "Plaintiff's Diplomacy" (with David Bosco), *79 Foreign*

Affairs 102 (2000); "Governing the Global Economy Through Government Networks" in *The Role of Law In International Politics* (Michael Byers, ed., 2000); "Toward a Theory of Effective Supranational Adjudication" (with Laurence Helfer), *107 Yale Law Journal* 273 (1997). Her article, "The Real New World Order," (1997) is now widely taught in colleges and universities. She is currently working on a book about the formation of transnational networks of courts, regulatory agencies, heads of state and legislators, and the implications of these networks for global governance. Prior to coming to Harvard, Slaughter was professor of law and international relations at the University of Chicago Law School.

Patricia M. Wald served from 1999 to 2001 as the American judge on the 14-member panel of international judges of the International Criminal Tribunal for the former Yugoslavia (ICTY). She had previously served 20 years as a judge on the U.S. Court of Appeals for the District of Columbia Circuit. She was the chief justice of that court from 1986 to 1991 and was the first woman to sit on that court. During her tenure on the court, Wald authored more than 825 opinions dealing with a range of issues including civil rights, the environment, utilities, communication, health care, and criminal courts. Wald was graduated from Connecticut College in 1948, Phi Beta Kappa. She received her law degree in 1951 from Yale Law School, where she was an editor of the *Yale Law Journal*. Following law school, Wald clerked for Judge Jerome N. Frank of the U.S. Court of Appeals for the Second Circuit, and then worked in Washington with the law firm of Arnold & Porter. Wald also served as an assistant attorney general in the U.S. Department of Justice, 1977-79.

Wald is the recipient of numerous honors and awards, including the Annual Merit Award from the national Association of Women judges in 1986, Award of Judicial Excellence from the Trail Lawyers' Association of Metropolitan Washington in 1998, and the District of Columbia Bar Thurgood Marshall Award also in 1998. She received the Yale Law Schools' Award of Merit in 1987 and a Doctor of Law from Yale University in 2001.

Brandeis International Fellows Serving as Guest Faculty

David Benatar is associate professor of philosophy at the University of Cape Town, South Africa. Benatar teaches courses in applied ethics, contemporary moral and political philosophy, critical thinking, bioethics, and philosophy of law. He is the author of numerous articles and a book, *Ethics for Everyday*.

Peter Ford is British ambassador to Bahrain. He is also a linguist and a Middle East specialist with extensive experience in the politics and economics of the region. Prior to becoming Ambassador, Ford served as head of the Near East and North Africa Department in the British Foreign Office and Senior Advisor to the Foreign Secretary on the Middle East peace process. His other diplomatic posts have included Riyadh, Paris, Cairo, and Beirut.

Naina Kapur is an attorney and director of Saskhi, a violence intervention center in New Delhi, India. She is also cochair of the Asia-Pacific Advisory Forum on Judicial Education and Equality Issues, an ongoing judge-led effort to mainstream gender equality issues within the judiciary with specific emphasis on violence against women. In addition, she is legal counsel for a test case before the Supreme Court of India focused on reinterpreting the existing law on rape.

Shiranee Tilakawardane is acting president of the Court of Appeal in Sri Lanka. Previously, she was a high court judge and an admiralty court judge. Tilakawardane's efforts are focused on the fields of equality, gender education, and child rights. She has been active in Sakshi of India's gender workshops for judges, the Asia Pacific Forum for Gender Education for Judges, and serves on the International Panel of Judges for the Child Rights Bureau.

Participants

Emmanuel Victor Oware Dankwa, former chair of the African Commission on Human and People's Rights, is an associate professor with the University of Ghana and a member of the Ghana Law Reform Commission. Dankwa has earned an LL.B. (Ghana) in 1969, an B.C.L. (Oxon) in 1972, and an LL.M. in 1977 and a J.S.D. in 1985 from Yale University. He also has a Certificate in International and Comparative Law from the Academy of American and International Law, Texas. His professional experiences include: member, Committee of Experts, who drafted proposals for the constitution of Ghana in 1991; rapporteur on prisons and detention centres in Africa; chair, African Commission Working Group; and member, International Editorial Advisory Board, *African Human Rights Law Journal*. Dankwa also taught in The Netherlands, serving as a visiting scholar at the faculty of law, University of Leiden (1994) and a senior lecturer at the faculty of law, University of Linburg, Maastricht (1985-87). Dankwa regularly contributes to scholarly publications.

Mehmet Güney is a judge on the International Criminal Tribunal for Rwanda. After becoming a member of the Ankara Bar Association in 1964, he joined the legal department of the Ministry of Foreign Affairs and eventually became chief legal adviser until his appointment as ambassador of Turkey to Cuba, then to Singapore, and to Indonesia. He worked for several years in the Turkish Permanent Mission to the United Nations in New York and in the Turkish Embassy in The Hague. Between 1984 and 1989, he was judge at the European Nuclear Energy Tribunal in Paris. In 1991, Güney was elected a member of the International Law Commission (ILC) by the United Nations General Assembly for a five-year term. He also served as vice president of the ILC. In 1995, he was appointed by the Secretary General of the United Nations to the International Commission of Inquiry for Burundi, established by the Security Council.

John Hedigan, judge in respect of Ireland to the European Court of Human Rights, was elected to the court in January 1998. He sits on the following committees of the Court: Information Technology, Reform of the Convention, Languages, Library, Publications, and Status and Conditions of Judges. Hedigan was educated at Belvedere College, Trinity College, Dublin and Kings Inns. In 1971, he helped refound the TCD (Trinity College Dublin) branch of Amnesty International (AI). Hedigan represented the branch on the National Committee of Amnesty International for eight years and served as the national coordinator of the AI Campaign against Torture. Called to the Bar of Ireland in 1976, he practiced as a barrister for 22 years and had a wide-ranging practice stretching from constitutional to criminal to commercial law. He was called to the Inner Bar of Ireland in 1990 as senior counsel. Hedigan was also called to the English Bar (1993) and the Bar of New South Wales (1983). In 2002 he was made a bencher of the Honourable Society of Kings Inns.

Angela Melo is the special rapporteur on the rights of women in Africa, with the African Commission and Court of Human and People's Rights in Banjul, The Gambia. She is also the elected commissioner on human and people's rights, by the Organisation for African Unity (Lusaka-African Union). Melo earned her B.A. and M.A. in law from the Universidade Eduardo Mondale, and in 1995 she received an L.L.M. degree with specialization as an international jurist from the Universite de Toulouse in France. An attorney specializing in human rights, criminal, and international law, she has negotiated on behalf of the Government of Mozambique with the World Bank, the Organisation for African Unity, and the Southern Africa Development Community on issues as varied as extradition policy, international water course management, and Mozambique's structural adjustment program. Melo is fluent in French, Italian, Portuguese, and Italian.

Dolliver Nelson, vice president of the International Tribunal for the Law of the Sea, is also a visiting professor at the London School of Economics, from where he earned his LL.M. and Ph.D. After completing his Barrister-at-Law at Gray's Inn, London, Nelson was admitted to the Bar of Grenada in 1972. His professional experience includes: senior law of the sea officer (1976-84), deputy-director, Office of Legal Affairs, Division for Ocean Affairs and the Law of the Sea (1984-94); executive secretary, Preparatory Commission for the International Seabed Authority and for the International Tribunal for the Law of the Sea (1983-94); and legal adviser in the secretary general's consultations on deep seabed mining (1994). He is chair of the Committee on the Outer Continental Shelf, International Law Association, and a member of the various committees including the Committee on Coastal State Jurisdiction relating to marine pollution and the research team responsible for the Commentary on the U.N. Convention on the Law of the Sea. Nelson contributes to various international legal periodicals and publications.

Navanethem Pillay is the president of the International Criminal Tribunal for Rwanda Judges. She holds the B.A. and LL.B. degrees from Natal University and the LL.M. and Doctorate of Juridical Science from Harvard University. As an attorney in Durban from 1967 to 1995 she represented members of the African National Congress, Unity Movement, Azapo, Black Consciousness Movement, Trade Unions, and Swapo. The first woman to start a law practice in Natal Province, South Africa, she was instrumental in bringing a ground-breaking application in the Cape High Court, which spelled out the rights of Robben Island political prisoners, particularly their right of access to lawyers. Pillay was also the first black female attorney appointed acting judge of the Supreme Court of South Africa. Pillay is a trustee of Lawyers for Human Rights and was a trustee of The Legal Resources Centre, a member of the Women's National Coalition, the Black Lawyers' Association, cofounder of the Advice Desk for the Abused, and vice president of the Council of University of Durban Westville.

Fausto Pocar is a judge on the International Criminal Tribunal for the former Yugoslavia. Elected in 1984 as a member of the Human Rights Committee of the United Nations, he was its chair in 1991 and 1992. In 1993, he took part in the World Conference on Human Rights in Vienna. Pocar also conducted various missions for the high commissioner for human rights (among others in Chechnya in 1995 and in Russia in 1996). He served several times as a member of the Italian delegation to the General Assembly in New York and to the Commission on Human Rights in Geneva. Pocar was also a member of the United Nations Committee on the peaceful uses of outer space. He has served as a professor of international law at the University of Milan, Italy, and has taught at the Hague Academy of International Law. Author of numerous legal publications, Pocar is a member of various associations, such as the Institut de Droit International and the International Law Association.

Center Description and Contact Information

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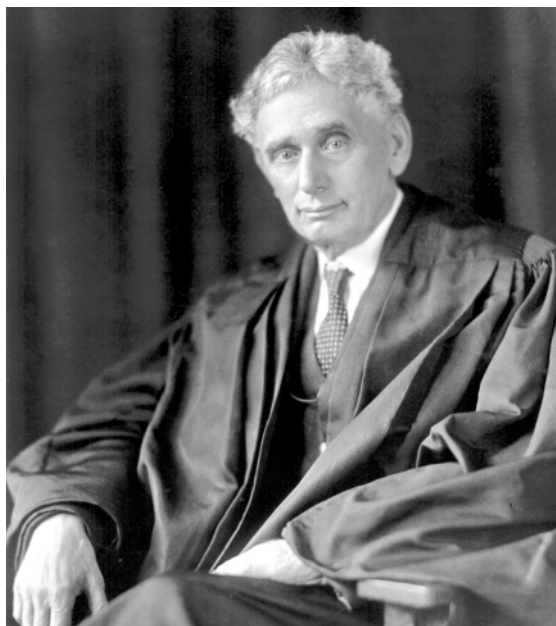
About Brandeis University

Brandeis University is the youngest private research university in the United States and the only nonsectarian college or university in the nation founded by the American Jewish community. Named for the late Louis Dembitz Brandeis, the distinguished associate justice of

the U.S. Supreme Court, Brandeis was founded in 1948. The University has a long tradition of engagement in international law, culminating in the establishment of the Brandeis Institute for International Judges.

Brandeis combines the faculty and facilities of a powerful world-class research university with the intimacy and dedication to teaching of a small college. Brandeis was recently ranked as the number one rising research university by authors Hugh Davis Graham and Nancy Diamond in their book, *The Rise of American Research Universities*.

A culturally diverse student body is drawn from all 50 states and more than 56 countries. Total enrollment, including some 1,200 graduate students, is approximately 4,200. With a student to faculty ratio of 8 to 1 and a median class size of 17, personal attention is at the core of an education that balances academic excellence with extracurricular activities.



Louis Dembitz Brandeis

