

**SPEECH OF H.E. JUDGE JOAN E. DONOGHUE,  
PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE,  
TO THE SIXTH COMMITTEE OF THE GENERAL ASSEMBLY**

**28 OCTOBER 2022**

**A view of the International Court of Justice from within**

**Introduction**

Mr. Chair of the Sixth Committee,  
Excellencies,  
Ladies and Gentlemen,

It is a great honour for me to address the Sixth Committee of the General Assembly for the second time as President of the International Court of Justice (ICJ), and a pleasure to have this further opportunity to strengthen the ties between our two institutions. I would like to congratulate H.E. Mr. Pedro Comissário Afonso on his election as Chair of the Sixth Committee for the seventy-seventh session of the General Assembly and I would like to thank him for his warm welcome to me upon my arrival in New York this week.

Among the speeches the President of the Court is called to give during the year, the yearly remarks before the Sixth Committee stand out as an opportunity for discussion with experts who advise States on public international law and dispute settlement. As I mentioned when I spoke before this Committee last fall, prior to joining the ICJ, I was one of you, serving as a foreign ministry lawyer. My perspective on the functioning of the Court was that of an outside observer. After twelve years inside the Court, I have gained a deeper understanding of certain aspects of the ICJ's work and procedures, some of which I propose to discuss today.

I intend to touch upon three points in particular. First, I shall speak about the institution of the judge *ad hoc* within the framework of the ICJ. Secondly, I shall address the Court's often-overlooked role as a court of first instance. Finally, I shall say a few words about the pace of proceedings before the Court.

**The institution of the judge *ad hoc***

I turn first to the institution of the *ad hoc* judge. Prior to my election to the Court, I was aware that the value of this institution had been questioned as far back as the drafting of the Statute of the Permanent Court of International Justice (which I shall refer to as the PCIJ), and that the institution had also been criticized in more recent times.

Before I expand on those criticisms, let me briefly recall that, under Article 31 of the ICJ Statute, a State that is party to a case may choose a judge *ad hoc* whenever the Court does not include upon the Bench a judge of that State's nationality<sup>1</sup>. Once appointed, the judge *ad hoc* takes part in the decisions in that case on terms of complete equality with the 15 Members of the Court<sup>2</sup>.

The ICJ inherited the institution of the judge *ad hoc* from its predecessor, the PCIJ<sup>3</sup>. The Advisory Committee of Jurists appointed by the League of Nations to draft the PCIJ Statute in

---

<sup>1</sup> ICJ Statute, Article 31, paragraphs 2 and 3.

<sup>2</sup> ICJ Statute, Article 31, paragraph 6.

<sup>3</sup> PCIJ Statute, Article 31.

the 1920s was sharply divided on the issue, with some of the drafters voicing concerns that the figure of the *ad hoc* judge was a creature of arbitration that had no place in a standing judicial body<sup>4</sup>.

Records of the 1920 discussions within the Advisory Committee of Jurists reveal that proponents identified a number of objectives that they hoped would be achieved by allowing States to appoint judges *ad hoc*. It was suggested that the *ad hoc* judge would contribute to the Court his or her “specialised knowledge” of the appointing State’s legal system<sup>5</sup>, and that the possibility of these appointments would serve to maintain equality between the parties in cases where only one of them had one of its nationals among the sitting judges<sup>6</sup>. I shall offer some thoughts on the question whether these objectives remain relevant today.

The working assumption in the drafting of the PCIJ Statute was that a State would choose a judge *ad hoc* among its own nationals. In fact, the Advisory Committee’s exchanges, as well as relevant provisions of the 1922 Rules of the PCIJ<sup>7</sup> and the early judgments of that Court<sup>8</sup>, used the expression “national judge” to describe the judge *ad hoc*. Although the reference to nationality was subsequently removed from the Rules of Court<sup>9</sup>, during the era of the PCIJ and the early decades of the ICJ, States continued to select their own nationals as judges *ad hoc* in the vast majority of cases. In contentious cases initiated during the first 10 years of this Court’s existence (1946-1955), over 80 per cent of the judges *ad hoc* appointed were nationals of the appointing States.

Over time, this practice has changed markedly. If we look at the appointments made in cases instituted over the last 10 years (2012-2021), the percentages are reversed: about 80 per cent of the judges *ad hoc* appointed were *not* nationals of the appointing State. This trend suggests that, in many cases, appointing States have not attached importance to the judge *ad hoc*’s expertise in national law.

As for the Advisory Committee’s goal of ensuring equality between two parties to a case, this objective comes into play where there is a judge of the nationality of only one of those States on the Bench. However, the appointment of a judge *ad hoc* is not the only way to achieve equality. Another option could be to preclude a Member of the Court from sitting in a case to which his or her State of nationality is a party.

The possibility of putting the parties to a case on equal footing by “subtracting” a Member of the Court, rather than “adding” a judge *ad hoc* may seem to be an attractive alternative if one believes that the primary value of the judge *ad hoc*’s appointment lies in the potential to neutralize the opposing views — and vote — of a judge of the nationality of the other party. But it is apparent, as a matter of arithmetic, that even assuming that a State names as judge *ad hoc* someone who will slavishly vote in its favour, a guarantee of one favourable vote out of 16 or 17 is of very limited value to the appointing State in most cases.

I note in this regard that the Statute of the Court permits, but does not mandate, the appointment of a judge *ad hoc*<sup>10</sup>. Two States that are parties to a case may agree that neither of them will make

---

<sup>4</sup> Advisory Committee of Jurists, *Procès-verbaux of the Proceedings of the Committee*, 16 June – 24 July 1920, p. 531 (*per* Loder).

<sup>5</sup> *Id.*, pp. 528-529 (*per* Lord Phillimore).

<sup>6</sup> Advisory Committee of Jurists, *Procès-verbaux of the Proceedings of the Committee*, 16 June – 24 July 1920, p. 528 (*per* Lord Phillimore).

<sup>7</sup> PCIJ Rules of Court of 24 March 1922, Articles 2, 3 and 4.

<sup>8</sup> See e.g. *S.S. “Wimbledon”, Judgments, 1923, P.C.I.J., Series A, No. 1* (17 August 1923) and *Mavrommatis Palestine Concessions, Judgment No. 2, 1924, P.C.I.J., Series A, No. 2* (30 August 1924).

<sup>9</sup> PCIJ Rules of Court of 11 March 1936, Articles 2, 3 and 4.

<sup>10</sup> ICJ Statute, Article 31, paragraphs 2 and 3.

such an appointment. In practice this has only happened a handful of times in the Court's history<sup>11</sup>, and never during my twelve years at the Court, suggesting that States regard the possibility of appointing a judge *ad hoc* as valuable even in cases where no question of equalizing their respective votes arises.

In the Advisory Committee, a third rationale for permitting States to appoint judges *ad hoc* was enmeshed with the larger goal of persuading States to place their trust in a World Court. According to Mr. Elihu Root, the United States member of the Advisory Committee of Jurists, the institution of the judge *ad hoc* would assure States that "there will be at least one person upon the Court who is able to understand them". He noted in no uncertain terms that if States could not be assured of representation on the Court, it would prove impossible to obtain their assent to its jurisdiction<sup>12</sup>. This *realpolitik* observation may well be an accurate depiction of a widely-held perspective among States. A different question, however, is whether States are correct in attaching value to the appointment of a judge *ad hoc*. If specialized knowledge of national law and the equalization of votes are not convincing rationales for this institution, what truly is the benefit of those appointments? To answer that question, I offer some thoughts about the way in which the institution of the judge *ad hoc* has evolved within the Court.

Judge *ad hoc* Elihu Lauterpacht eloquently described his appreciation of the role as a judge *ad hoc* in a separate opinion in 1993:

"[C]onsistently with the duty of impartiality, by which the *ad hoc* judge is bound, there is still something specific that distinguishes his role. [The judge *ad hoc*] has, I believe, the special obligation to endeavour to ensure that, so far as is reasonable, every relevant argument in favour of the party that has appointed him has been fully appreciated in the course of collegial consideration and, ultimately, is reflected – though not necessarily accepted — in any separate or dissenting opinion that he may write"<sup>13</sup>.

Thus understood, the appointment of a judge *ad hoc* allows each party to a case to be assured that there is somebody in the room during the Court's private deliberations who is especially attentive to that State's interests and equities, and who can bring those insights to bear in confidential exchanges within the Court.

At the same time, judges *ad hoc*, like Members of the Court of the nationality of a party, will lose credibility within the Deliberation Room if they constantly take the floor to advocate the views of the appointing State or State of nationality. As former President Higgins noted, "the best of the *ad hoc* judges will not be an extra advocate for the team . . . there is a strong feeling in the Court that that is not what the *ad hoc* judge should be doing"<sup>14</sup>. These reflections align with my observations about the ways in which *ad hoc* judges can best contribute to the Court's work.

Having seen how judges *ad hoc* behave inside the Court, my impression is that appointing States increasingly have in mind the model suggested by Judge Lauterpacht and President Higgins,

---

<sup>11</sup> See e.g. *Kasikili/Sedudu Island (Botswana/Namibia)*, Judgment, *I.C.J. Reports* 1999, p. 1045; and *Temple of Preah Vihear (Cambodia v. Thailand)*, Merits, Judgment, *I.C.J. Reports* 1962, p. 6.

<sup>12</sup> Advisory Committee of Jurists, *Procès-verbaux of the Proceedings of the Committee*, 16 June – 24 July 1920, p. 538 (*per* Root).

<sup>13</sup> *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro))*, Provisional Measures, Order of 13 September 1993, *I.C.J. Reports* 1993, p. 325, separate opinion of Judge *ad hoc* Lauterpacht, para. 6.

<sup>14</sup> C. Brower, E. Weiss, R. Higgins & T. Meron, "Plenary Keynote: Decision-making in International Courts and Tribunals: A Conversation with Leading Judges and Arbitrators", (2011) 105 *Proceedings of the ASIL Annual Meeting* 220, p. 230 (Higgins).

and endorsed by several judges *ad hoc* in subsequent cases<sup>15</sup>. There is a focus on identifying persons who — irrespective of their nationality — have extensive knowledge of the Court and its procedures, persons with particular expertise relevant to the subject-matter of a case and persons who are likely to be seen as credible and fair by the Members of the Court.

In sum, recent practice confirms the importance and continued relevance of the institution of the judge *ad hoc*. The basic proposition put forward by the drafters of the PCIJ Statute a century ago is still sound: there is real value in an institution that strengthens the confidence of every State that its arguments and equities will be fully appreciated and duly considered as part of the Court's deliberations. I am convinced that judges *ad hoc* do perform an important role in the Court's private deliberations, and that the Court as a whole benefits from their appointment.

I have left you with a favourable impression of the role played by the appointment of judges *ad hoc*. But before moving to my next topic, I wish to voice one disappointment. The judges *ad hoc* named by States are overwhelmingly nationals of developed countries and, with rare exceptions, they are men. I appreciate some of the considerations that may lead to this result. But I encourage each of you, when considering those appointments, not to overlook the members of our profession who hail from developing countries, as well as those who are women. Whatever their background, they will be welcomed in our Court and any diversity that they bring will surely enrich our deliberations.

### **The ICJ's role as a court of first instance**

I shall turn next to the second portion of my remarks, focusing on the ICJ's often-overlooked role as a court of first instance.

When the President of the ICJ reads a judgment in the Great Hall of Justice, the representatives of the parties, seated a few metres in front of the Bench, are primarily focused on one question: "did we win or lose?"

The Court's pronouncements on questions of law attract interest beyond the parties to a case. Soon after the Court issues a judgment, there may be tweets and blogs that comment on the Court's views of the law, followed in time by more detailed scholarly analysis.

The attention to the outcome of a case and to the Court's legal pronouncements can obfuscate another important dimension of the Court's work. The Court is not a court of cassation or an appellate court that is charged only with answering questions of law. It is also a court of first instance. As such, it performs certain functions akin to a trial court in your home countries.

In national legal systems, a first instance court faces numerous procedural issues, some significant and others that are rather mundane. Such a court also decides questions of fact based on the evidence before it.

I invite you to consider the kinds of procedural issues that might be presented to a national court of first instance. Should a party's request for an extension of time be granted? How will the examination of the parties' experts and fact witnesses be structured? Will a party be permitted to

---

<sup>15</sup> See e.g. *Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the Nuclear Tests (New Zealand v. France) Case (New Zealand v. France)*, Order of 22 September 1995, *I.C.J. Reports 1995*, p. 288, dissenting opinion of Judge *ad hoc* Palmer, para. 118; *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)*, Judgment, *I.C.J. Reports 2002*, p. 100, separate opinion of Judge *ad hoc* Bula-Bula, para. 3; *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*, Judgment, *I.C.J. Reports 2002*, p. 625, dissenting opinion of Judge *ad hoc* Franck, para. 9; *Frontier Dispute (Benin/Niger)*, Judgment, *I.C.J. Reports 2005*, p. 152, dissenting opinion of Judge *ad hoc* Bennouna, para. 3; and *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Provisional Measures, Order of 28 May 2009, *I.C.J. Reports 2009*, p. 201, separate opinion of Judge *ad hoc* Sur, para. 2.

introduce new evidence a few hours before the hearing starts? In many national courts, a single judge would decide such issues and might rule from the bench immediately after being presented with a procedural question.

The ICJ faces similar issues with some frequency, but our decision-making process is very different. The International Court of Justice is a first instance court comprised of fifteen judges. It takes procedural decisions after internal discussions in which the full court participates.

Observers may wonder whether it would be more efficient if certain procedural decisions were taken by the President of the Court alone. That is permissible, in some circumstances, under the Court's governing instruments, which empower the President to take certain procedural decisions when the Court is not sitting<sup>16</sup>. However, even when an issue is one as to which the President is in a position to take a decision alone, the practice, with rare exceptions, is that the full Court participates in decisions on procedural matters, including those that might be seen as relatively minor, such as the number of minutes reserved for the parties' pleadings in each round of oral proceedings or the question whether a party should be allowed to display a certain video exhibit during the hearing.

What accounts for this approach? The answer is not that judges lack confidence in particular Presidents. Rather, our approach responds to the importance that parties attach to procedural matters, about which they often strenuously disagree. All judges are keenly aware that our procedures must conform to the principles of fairness and equality of arms, but we often have differing ideas about how those principles should be given effect. Our respective views may be shaped by practices in our national courts, experiences as counsel or service on another international court. Collective decision-making on procedural questions ensures that the diverse views of all judges are taken into account and helps to build a consistent practice over time that draws on the diverse perspectives of judges from many different legal systems.

Another aspect of the ICJ's work as a first instance court relates to evidentiary matters. A first instance court assesses the evidence presented by the parties to prove their claims and defences. To understand how a particular court approaches questions of proof, the topics into which we might inquire include the methods of proof that it considers persuasive, the ways in which it weighs evidence, and the manner in which it obtains scientific and technical evidence.

When we look at the ways in which these sorts of evidentiary issues are approached in national first instance courts, we see significant distinctions between the approaches favoured by courts influenced by common law traditions and those that adhere more closely to civil law traditions. The ICJ is neither a common law court nor a civil law court. In relation to questions of evidence, its Statute and Rules largely reflect a desire to keep the door open to approaches drawn from both traditions, leaving the Court free to develop its practices over time.

When we speak of methods of proof, we refer to the types of evidence on which the Court will rely in reaching its factual findings. Under the Court's Statute and Rules, the parties may introduce documentary evidence and witness testimony<sup>17</sup>. No hierarchy among various kinds of evidence is specified. However, in its judgments, the Court has said quite a bit about the types of evidence that it finds most convincing and those that it tends to find less probative.

In common with practice in civil law States, the Court has stated its preference for documentary evidence over witness testimony<sup>18</sup>. It will treat with caution evidentiary materials

---

<sup>16</sup> Rules of Court, Article 44.

<sup>17</sup> ICJ Statute, Article 43; Rules of Court, Articles 50, 56, 57 and 58.

<sup>18</sup> *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, *I.C.J. Reports 2005*, pp. 201-204, paras. 60-68; *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, *I.C.J. Reports 2007 (I)*, p. 130, para. 213.

prepared for the purposes of a case, as well as evidence from secondary sources<sup>19</sup>. As a further example, the Court will usually give particular attention to reliable statements acknowledging facts or conduct unfavourable to the State with which the person making the statement is associated<sup>20</sup>.

When we shift to the weighing of evidence, the concepts of burden of proof and standard of proof come to mind.

In relation to the allocation of the burden of proof, the Court's judgments have made its approach increasingly clear. In general, it falls to the party asserting a particular fact to prove that fact<sup>21</sup>. However, the Court has shown flexibility in certain circumstances, such as where evidence relevant to a particular fact is not available to the party asserting it, but is instead available to the opposing party<sup>22</sup>.

As to the standard that guides the Court's conclusions about the evidence, the ICJ's practice is not to articulate a particular standard of proof, as is often done in first instance courts following the common law tradition. Instead, the standard of proof to which parties are held in a particular case must be inferred by the reader. The Court's reticence to articulate a specific standard of proof fits within approaches drawn from the civil law tradition and has been criticized at times by judges hailing from the common law tradition<sup>23</sup>.

As a final example of the Court's approach to evidence, I mention expert evidence, usually relating to scientific or technical matters. Under the Court's Statute and Rules<sup>24</sup>, the parties have the option of presenting the views of experts and, when they do so, these experts can be cross-examined by the opposing party during the hearing, much like the practices in common law courts<sup>25</sup>. The Statute and Rules also provide that the Court itself may appoint experts, as is often done in first instance courts in civil law countries<sup>26</sup>. The ICJ has done this occasionally, including in two recent cases: *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, where the Court appointed four experts to assist with regard to the assessment of compensation for three heads of damage alleged by the DRC<sup>27</sup>, and *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua)*, where the Court arranged for an

---

<sup>19</sup> *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, Judgment, *I.C.J. Reports 2007 (II)*, p. 731, para. 244; *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, *I.C.J. Reports 2005*, pp. 201, 204 and 225, paras. 61, 68 and 159; *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, *I.C.J. Reports 1986*, p. 41, para. 65.

<sup>20</sup> *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Judgment, *I.C.J. Reports 2005*, p. 201, para. 61, citing *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Merits, Judgment, *I.C.J. Reports 1986*, p. 41, para. 64.

<sup>21</sup> *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, Compensation, Judgment, *I.C.J. Reports 2018 (I)*, p. 26, para. 33; see also *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Merits, Judgment, *I.C.J. Reports 2010 (II)*, p. 660, para. 54.

<sup>22</sup> *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Merits, Judgment, *I.C.J. Reports 2010 (II)*, pp. 660-661, paras. 54-56.

<sup>23</sup> *Oil Platforms (Islamic Republic of Iran v. United States of America)*, Judgment, *I.C.J. Reports 2003*, p. 161, separate opinion of Judge Higgins, p. 233, para. 31; *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*, Judgment, *I.C.J. Reports 2010 (I)*, p. 14, separate opinion of Judge Greenwood, p. 230, paras. 25-26.

<sup>24</sup> ICJ Statute, Articles 43 (5) and 51; Rules of Court, Articles 57 and 63-65.

<sup>25</sup> *Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)*, Judgment, *I.C.J. Reports 2014*, pp. 237-238, paras. 20-21; *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Judgment, *I.C.J. Reports 2015 (II)*, pp. 677-678, para. 34 and p. 680, para. 45.

<sup>26</sup> ICJ Statute, Articles 48 and 50; Rules of Court, Article 67.

<sup>27</sup> *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, Order of 12 October 2020, *I.C.J. Reports 2020*, p. 295.

expert opinion on the state of a specific portion of the coast relevant to the establishment of the maritime boundary between the two States<sup>28</sup>.

As these examples suggest, and as borne out by exchanges within the Court, the approaches to evidence and procedure that may be fully convincing before first instance courts in a particular domestic legal system may not be persuasive to the Members of the Court. Speaking in the Sixth Committee, I am in the presence of persons who may be involved in presenting cases to the ICJ. When disagreements over evidence are an important aspect of your case, or where procedural decisions are believed to be particularly important, it is crucial for your legal team to be well-versed in the Court's practices and case law on evidentiary and procedural matters, as well as its pronouncements on the law.

### **Pace of proceedings before the Court**

Moving to the third and final part of my remarks, concerning the pace of proceedings, I recall comments that were made to me when I was nominated for election to the ICJ. I was told that I would find the pace of work to be leisurely, that the Court worked on only one or two active cases at any given time and that its internal proceedings were needlessly inefficient. I was encouraged to do what I could to expedite the work of the Court.

Over time, I have come to appreciate that some critiques of the Court may have been outdated, while others did not reflect a sufficient appreciation of the reasons for certain of its working methods.

The path from the initiation of a case to a final judgment can be divided into three phases — the written pleadings, the hearings, and the Court's deliberations and preparation of a Judgment. I'll make a few points about each phase.

The Statute and Rules of the Court provide that the number of written pleadings and the time-limit for their submission are determined by the Court after consultation with the parties<sup>29</sup>. Soon after a special agreement or application instituting proceedings is filed with the Registry, the President meets with the parties to hear their views on the amount of time to be allocated for one round of written pleadings. Taking into account these views, the Court then sets time limits for each party's submissions. After these pleadings are filed, and after further consultation with the parties, the Court decides whether a second round of pleadings is warranted and, if so, sets the relevant time-limits.

The Court does not reflexively defer to the parties' wishes on the tempo of written proceedings. Those views, however, are important considerations when the Court sets the applicable time-limits.

Outsiders tend to assume that applicants before the Court want proceedings to move quickly to the final judgment, while respondents have an interest in delay. It may be true in general that an applicant only initiates a case if it expects to prevail and thus that it is eager to arrive at a final judgment. But as the case unfolds, the parties' views on both the pace of the proceedings and the substance of the case inevitably evolve. For example, it is common that applicants favour a second round of written pleadings, rather than proceeding expeditiously to a hearing after one round of submissions. Often, both parties request long periods, even as long as a year, for the preparation of their respective pleadings.

I should also note that the written proceedings in a case are frequently interrupted by incidental proceedings. In particular, if a party files preliminary objections to jurisdiction or admissibility, the case on the merits is suspended until the Court delivers a judgment on those objections. Other

---

<sup>28</sup> *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua)*, Order of 16 June 2016, *I.C.J. Reports 2016 (I)*, p. 240

<sup>29</sup> See e.g. ICJ Statute, Article 43, paragraph 3; ICJ Rules of Court, Articles 31, 44, 46 and 48.

incidental proceedings include those concerning requests for the indication of provisional measures, the filing of counter-claims and requests by third States to intervene. These matters must be addressed before a final judgment can be delivered. Incidental proceedings, which have been frequent of late, may also require the Court to postpone its work on other cases.

Once the written pleadings have been submitted, the Court is called to fix the date of the hearings. As is well-known, the Court faced challenges in the past in its efforts to keep pace with the growing size of its docket, which resulted in a notable backlog of cases ready for hearing before the Court and excessive delays between the closure of the written phase and the opening of the hearings. Through progressive reforms of its procedures and working methods, the Court gradually cleared this backlog<sup>30</sup>.

One important evolution in this regard concerned the number of cases that the Court considers simultaneously. In 1996, a Study Group on the efficiency of the ICJ's procedures and working methods composed of experts closely familiar with the work of the Court identified as one of the main challenges the fact that "the Court deals with only one case, which has reached an advanced stage (i.e. after pleadings have closed), at a time"<sup>31</sup>. Well before I joined the Bench in 2010, it had become abundantly clear that considering one case at a time was a luxury the Court could no longer afford, in light of its growing docket.

Nowadays, as is obvious from this year's annual report, the Court is consistently engaged in the substantive consideration of multiple cases at any one time, in parallel with the individual and collective examination of a steady flow of procedural questions in pending cases that are not yet ready for hearing. I have found successive Presidents, as well as the other judges, to be keen to schedule hearings as soon after the closure of the written phase as the particulars of the case and workload of the Court permit.

As I noted in my remarks before the General Assembly yesterday, the Court held hearings in seven cases in the period covered by its last annual report, from August 2021 to July 2022. Yet another hearing was held in September, and the Court was planning to hold hearings in three additional cases before the end of this calendar year, although one of the hearings will be cancelled as a result of the withdrawal of the request for the indication of provisional measures, last week, by the applicant in that case. We have been faced with a number of request for the indication of provisional measures and other incidental proceedings, all of which have proved resource-intensive. I also call attention to the fact that there is a tendency of parties to submit very long written pleadings and annexes.

What does the recent pace of the Court's judicial work suggest about the Court's ability to keep up with the inflow of cases, which may continue to increase in the future? I answer this question by voicing one concern. The size of the Court's Registry has not matched the increase in the Court's workload in recent years. The Court has been very circumspect in its budget requests, and it is not my purpose today to propose any particular increase in the resources made available to our Registry. However, given the current size of the docket and the frequency with which the ICJ is seised with complex and time-sensitive incidental proceedings, notably requests for the indication of provisional measures, it is only thanks to the hard work and dedication of its small Registry that the Court has been able to keep abreast of its casework. I question whether the situation is sustainable. Another solution may be necessary.

Let me now offer some observations about the final stage of the Court's work on cases submitted to it: the Court's deliberations and the drafting of a judgment. I was repeatedly told before

---

<sup>30</sup> Annual Report of the International Court of Justice: 1 August 2009 – 31 July 2010 (UN doc. A/65/4), 1 August 2010, p. 6, para. 22.

<sup>31</sup> "Report of the Study Group established by the British Institute of International and Comparative Law to examine the efficiency of procedures and working methods of the International Court of Justice", 45 *ICLQ* S1 (1996) 1, para. 28.

joining the Court that this process moved too slowly. I have come to disagree with that assessment, for reasons upon which I shall briefly expand.

In respect of judgments on the merits, the main steps that the Court follows after a hearing are as follows. Each judge prepares a detailed written note setting out, on a preliminary basis, his or her views on the case. This is followed by several days of deliberations and the election of a committee of judges who prepare an initial draft of the judgment. Next, written amendments are submitted by each of the plenary's judges. Two rounds of readings are then held, where successive drafts are reviewed, paragraph by paragraph, by the full Court and ultimately voted on. Throughout its deliberations, and in all written and oral phases of its work, the Court functions equally in its two official languages, English and French, with the attendant requirements in terms of translation and interpretation. Recently, this entire process has consumed, on average, approximately six months from the close of the oral hearing to the delivery of the judgment in the Great Hall of Justice.

Could this process be more efficient? Absolutely. For example, the practice of circulating written notes among judges could be abandoned. One judge could draft each judgment with more limited opportunity for input by the other Members of the Court. However, there would be a price to pay for such efficiency. For instance, I am convinced that the drafting and sharing of judges' notes greatly enhances our individual and collective appreciation of the questions to be answered in a case. As I sit at the desk writing my note, with some distance from the advocacy of the parties, the most difficult issues come into sharper focus. And when I study the notes of other judges, the variations in their analysis and conclusions allow me to refine my own ideas. These written exchanges enrich our subsequent in-person deliberations and improve the quality of our judgments and orders. Further, the extensive opportunities for the full Court to review the text of decisions, paragraph by paragraph and in a group, ensure not only that each judgment is carefully drafted, but also that it is truly reflective of the views of the majority on a given matter.

To wrap up my comments on the pace of the Court's work, some of the observations that I had heard before joining the Court are no longer relevant, such as complaints about the number of cases on which the Court deliberates simultaneously. Other critiques of the Court's working methods that resonated with me before I joined the Court now seem unpersuasive. For the International Court of Justice to be a "World Court" not only in name, but also in fact, it is essential that all of its Members be given sufficient opportunities to exchange, debate and adjust their views based on those of colleagues, and that each of them be actively involved in all stages of the decision-making process.

## **Conclusion**

Mr. Chair,

This leads me to the end of my remarks. I have tried to put into perspective certain aspects of the "inherited wisdom" that was shared with me by close observers of the Court in the period preceding my election, and which I have often seen reflected in scholarly works, as well as to share my reactions on the basis of my experience inside the Court.

On this note, Mr. Chair, I would like to thank participants for their attention and I look forward to a fruitful exchange of views. I am confident that those of you here today will be careful not to raise questions about pending cases. With that exception, I am open to a discussion of whatever topics interest the members of the Sixth Committee.

Thank you, Mr. Chair.

---