

Sibley Lecturer explores the role of the World Court

The International Court of Justice is a “potent” force in international law, according to Judge Joan E. Donoghue, who sits on the global governing bench. The judge said she chose the word deliberately as a medicine can be potent but so can a poison, and people often put the court into one of the two categories.

In her role as Georgia Law’s 108th Sibley Lecturer, Donoghue explored these opposing views and educated a packed Hatton Lovejoy Courtroom about this judicial body and its role in the growing area of international law and dispute resolution authorities.

The International Court of Justice, also known as the World Court, was established in 1945 by the United Nations and replaced its predecessor, the Permanent Court of International Justice, which was created in 1920 under the League of Nations.

With 15 judges from countries around the world, and only one from any particular nation, the International Court of Justice hears two types of cases – ones where two states have a dispute and ones where the judicial body is asked to render an advisory opinion in response to other organs of the U.N.

“Most of the court’s caseload, though, about 80 percent, is in the form of contentious cases, where one state brings a case against another state,” Donoghue said.

“[The World Court’s] U.N. charter does not require all states to come before the court – there is no mandatory jurisdiction. ... The court has jurisdiction in contentious cases only if a state consents to the court’s jurisdiction,” she added.

Donoghue estimated that about one-third of the states in today’s world accept the court’s compulsory jurisdiction and said the United States initially consented but withdrew its support approximately 25 years ago when a controversial ruling was made in a case between the United States and Nicaragua.

“Since the 1980s, the U.S. has avoided treaties requiring disputes going to the World Court and participates only in the optional treaties now,” she said.

In addition to settling disputes, Donoghue said the court’s other main purpose is to clarify and fill out the content of international law.

It is this role, according to the judge, that is the most sensitive and the most controversial of the court.

“International law, like domestic law, is not always precise and clear. The court has to elaborate and interpret as it’s working



Photo by Bob Brussack (JD/76)



Watch Donoghue’s lecture online at www.law.uga.edu/multimedia-gallery-recent-events.

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through its cases. In many of our cases we, on the court, face delicate questions about whether to address issues narrowly or broadly. These are all factors that influence the way members of the world community view the World Court.”

It is notable that the jurisprudence of the court does not bind anyone other than the parties to the case, its decisions cannot be appealed, and the court is not bound by its own precedents in the way a common law court is.

“The law-shaping function of our court is not limited precisely to the pronouncements in our judgments themselves. I think it also percolates in the background of many national decisions that have implications with respect to international law. The prospect of adjudication in the ICJ might deter certain national behavior but it might also embolden a state that makes a judgment that whatever action it’s considering would be upheld by the ICJ, if there were a case,” she said.

Donoghue added that when lawyers go to look at international law on a particular question, one of the first sources they go to is the World Court and where they cannot find a specific case that answers the question they attempt to extrapolate from other cases to try to figure out how they think the court might react.

In her closing remarks, Donoghue said, “As students in a great American law school your professors constantly challenge you by first asking you to embrace one position; and just when they’ve got you convinced that position is right, they then tear it to shreds. But it’s that process of constantly questioning and reflecting on things that you as law students need to hold on to as you move forward in your career, because it’s when you become too certain in your views that you lose your ability to really think carefully about questions like, ‘Is the World Court a good idea or not?’”

The Sibley Lecture Series, established in 1964 by the Charles Loidans Foundation of Atlanta in tribute to the late John A. Sibley, is designed to attract outstanding legal scholars of national prominence to Georgia Law. Sibley was a 1911 graduate of the law school.