



NEWS & EVENTS

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International Court of Justice Represents Unique Blend of Legal Systems, Says Judge Joan Donoghue



Donoghue was elected in 2010 to the International Court of Justice, also called the World Court, after a long career at the State Department. *Photo by Dan Addison/UVA Public Affairs*

The International Court of Justice operates through a unique blend of the legal traditions of the nations represented on the court, Judge Joan E. Donoghue told an audience at the University of Virginia School of Law on Monday.

Donoghue, this year's recipient of the Thomas Jefferson Foundation Medal in Law, is the first American woman to serve on the court, also called the World Court. She was elected to the bench in 2010 after a long career at the State Department that culminated in her role as principal deputy legal adviser from 2007-10. ([More](#))

Established by the U.N. Charter in 1945 following World War II, the World Court renders advisory opinions to the United Nations and considers issues among states involving violations of international law or treaties, including a "steady diet of land and maritime boundary cases," Donoghue said in remarks that painted a picture of how the court operated.

"When you hear the expression 'border skirmish,' it sounds like something small, but it's probably not small if you're one of the people being shot at in that disputed border territory," she said.

Only six of the 15 judges, including Donoghue, come from a nation based on common law principles — meaning courts operate under an adversarial system in which judges serve as referees, jury trials are common, witnesses testify in court and rulings set precedent. The United States, England and Australia

new to a common law system, while much of continental Europe and many international courts operate under a tradition heavily influenced by the French civil law system.



"There is something of a mix there, but I would say [the World Court's] tendency over time [is] to operate and communicate in a manner that's a bit closer to a common law court than a civil law court," she said.

The civil law system emphasizes statutes over case precedent and concentrates power in judges' hands. Rulings are typically short and refer to the related statute rather than expounding on the reasons behind the decision.

"I think the most important responsibility of any judge in any court and certainly our court is to bring an element of self-awareness to our jobs," Donoghue said. "We are all creatures of our history. I am American-trained, and I am a U.S. national, and when I have an immediate instinct to a question of law, to a question of fact, to a question of procedure, I have always to ask myself, why do I have that reaction? Why does my colleague from Uganda, or my colleague from Mexico have a different reaction? And sometimes when you scratch the surface, it turns out that one of the reasons is this difference in training on the civil law and common law side."

The World Court offers a stage for nations (or states, in court parlance) to have their argument heard, Donoghue said. While 20 percent of the court's work is advising the U.N., the remainder is devoted to deciding such "contentious cases."

"Those look a little bit like a civil case in our system, in the sense that you have one state bringing a case against another state," she said.

Though the United States no longer consents to ICJ jurisdiction across the board, the U.S. has appeared before the court in more contentious cases than any other state, and also in more advisory opinion proceedings than any other state, she said.

The court is developing a body of international law through the cases it considers, Donoghue said.

"If you think about it, it's impossible to do otherwise," she said. "Treaties and international law, like any legal instrument, don't answer all questions as nicely as we might sometimes like within the four corners of the instrument. They require interpretation, they require application, and when the court interprets those instruments as it does in every decision, we inevitably develop international law."

UVA Law Connections

Donoghue said she worked with UVA Law professors [Ashley Deeks](#), [John Harrison](#) and [Paul Stephan](#) in the past while at the State Department. They were "terrific colleagues [who] were very much my teachers while I was there," she said.

Former UVA Law Dean Hardy Cross Dillard also has a connection to the World Court — he served as a judge there from 1970-79.

Unlike in traditional common law courts, ICJ decisions do not serve as precedent and only bind the parties before the court, she said.

"But of course when lawyers look to figure out the content of international law generally, they give weight to what the International Court of Justice has said about international law, so states have to be concerned about the possibility that their conduct could be judged in our court."

Donoghue discussed how the World Court judges conduct oral proceedings, how they assess evidence and how they draft decisions. The judges play a larger role in proceedings, like in the civil law system, she explained, and sometimes with good reason. There are no juries involved, for example, so the judges are better equipped to weigh the value of evidence under inclusive admissibility standards.

Because the orders and judgments the court writes involve a collaboration of legal systems, Donoghue said, there is push and pull among the judges about what to include and what to leave out in rulings.

"Our judgments are hard to read — they are hard to read partly because the drafters come from these two legal traditions, and the more time I spend there, the more time I understand that," she said. "We frequently have differing ideas as we are working through the draft about why we think a certain result is right in a particular paragraph, and we also have different ideas about how much reasoning we should lay out."

They do largely contain the reasons behind the decision, however, unlike traditional civil law rulings.

"We need to equip those leaders in those countries with a set of reasons that can be used by them in dealing with their own domestic political environment to explain why the court reached a particular decision, why a particular result needs to occur," she said. "The more we can lay out the reasons for our decision, the easier it is for the state to discern why we acted and therefore what the implications might be elsewhere."

Offering an explanation of the judges' reasoning also has an added benefit, she said.

"It's very clear that this court is by no means a court of unquestioned legitimacy. The court has in fact been criticized for many of its decisions, especially from within the United States. And so the more we can do to lay out our reasons, the better off we are being in a position substantively to justify the results [of the decision]."

The Thomas Jefferson Foundation Medals are conferred each year during the University's Founder's Day celebrations, held around Jefferson's April 13 birthday. In addition to receiving a medal struck for the occasion, recipients attend ceremonies in the Rotunda and a dinner at Monticello.

Sponsored jointly by UVA and the Thomas Jefferson Foundation, the nonprofit organization that owns and operates Monticello, the Thomas Jefferson Foundation Medals are awarded each year during the University's Founder's Day celebrations, held around Jefferson's April 13 birthday. The awards — UVA's highest external honors — recognize the achievements of those who embrace endeavors in which Jefferson, author of the Declaration of Independence and the third U.S. president, excelled and held in

high regard, including law, architecture and leadership.

Other recipients of the Jefferson Medal this year include U.S. Rep. John Lewis (D-Ga), who is receiving the medal in citizen leadership, and Herman Hertzberger, who is receiving the medal for architecture.

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