

The clerkship program

The clerkship program is organized by the Court in conjunction with a small group of law schools. Initiated by NYU, the law schools currently participating, alongside NYU, are Australian National University, Columbia, Geneva, McGill, Michigan, Strasbourg, Virginia and Yale. Other universities such as Heidelberg and Georgetown have taken part in previous years. Students and graduates from these institutions apply to the program and the Court makes the final selection of individuals to work with one or two of the Judges. While the pool of schools is small, the group is often representative of many of the major legal systems of the world: members of the 2005-6 group hailed from Canada, France, India, Ireland, Japan, Switzerland and the United States.

The program lasts nine months, beginning each September. I came to the Court in September 2005 after completing my LL.M. at NYU. I worked first with Judge Nabil Elaraby from Egypt. Upon completion of Judge Elaraby's term at the Court, I began working with Judge Keith from New Zealand who started his term in February 2006. Law clerks work for either one or two judges of the Court: three members of this year's group were assigned to two judges while the remaining clerks worked with one judge. The Court has a permanent legal staff attached to the Registry which does much important legal work. The clerks, known as 'university trainees' within the Court, complement this staff by providing individual legal assistance to judges, researching and writing on legal matters of relevance to the cases before the Court. The Court also organizes a summer internship program which is open to all; details appear on the Court's website each April.

The Court

The Court is a fascinating place to work. Based in the Peace Palace in The Hague, its home has long been a centre of international law and also hosts the Permanent Court of Arbitration, the Peace Palace Library and the Hague Academy of International Law. The Hague Conference on Private International Law is located across the road from the Peace Palace. Closeby the International Criminal Tribunal for the former Yugoslavia and the Iran-US

Claims Tribunal conduct their work while in nearby Voorburg the International Criminal Court is quickly getting off the ground. This creates a lively international law community in the city, from the humble interns to the lofty *club judiciale*.

As the principal judicial organ of the United Nations, the Court settles disputes between States and offers advisory opinions to other organs of the UN when so requested. For this reason, there is understandably quite a formal air about the institution. This is clearest when formal sittings of the Court take place. Given the nature of the Court and its cases, sittings take place only on an occasional basis, either for oral pleadings in a case or for the delivery of an order, judgment or opinion in such a case: generally this happens just a few times in any given year. When they do occur, the formal sittings are a vivid reminder of the role of the Court in the settlement of disputes between States and are a great occasion to see international law in action. In April 2006, the Court celebrated the sixtieth anniversary of its first sitting with a formal sitting attended by the Secretary-General, the President of the General Assembly alongside the Dutch Queen, Foreign Minister and other dignitaries.

Behind the outward appearance of much solemnity lies the warmth of a relatively small institution of individuals engaged in and committed to the important work of the Court. The relatively small size of the Court's staff makes for a positive and friendly atmosphere.

The working day

Each clerk's experience is different depending upon the judge or judges with whom he/she works. Matters also depend to a great extent upon the stage of proceedings at which different cases may be: at the written or oral pleadings stage, in deliberation, reading of the draft judgment or preparation of separate and dissenting opinions.

Generally, the hours of the Court are between 9/9.30 am and 6pm with a lunch break between 1 pm and 2.30 pm. The Court has a series of official holidays, combining UN holidays with certain Dutch national holidays; clerks are entitled to holidays akin to the general Court

allowance although these matters are normally informally worked out between clerk and judge.

The languages of the Court are English and French. All the official work of the Court is conducted in both languages although most judges generally work in one or the other (a majority working in English). Depending upon the judge to whom one is assigned, a clerk may not generally need to use the other language in his/her work. Nevertheless, it is definitely helpful to have a good grasp (and at least a passive understanding) of the other language.

Clerks are given individual or shared offices in the New Building of the Peace Palace, where the judges are based. Telephones, computers and other facilities are provided for the clerks' use. There is direct access to the Court's own library and, through this library, to the main Peace Palace Library collection.

The Hague, as already mentioned, has a vibrant international community. Although the Court's staff is small, there are a large number of interns and young professionals living and working in the city, for example at the ICTY and ICC. Alongside the international legal institutions, a host of other international organizations and corporations have a presence in the city. English is widely spoken. There is a reasonably good selection of places to eat, drink and go out and bigger Dutch cities such as Amsterdam and Rotterdam – as well as smaller university towns such as Leiden – are all just a short train journey away. There are also great transport links – rail, air and sea – to many other destinations in Europe and beyond.

The nature of the work

The clerkship program is a unique opportunity to work directly with the judges of the leading judicial institution in the international legal system. It is also a rare opportunity to work in public international law at a junior level.

The work consists of the legal research and drafting which are the cornerstones of judicial clerkships. Because of the nature of the Court's drafting process, however – the judges select a drafting committee but then conduct exhaustive readings in plenary – the emphasis is obviously on research and drafting of legal memoranda for the individual judges rather than drafting of orders or judgments themselves. Depending upon the stage and status of the case – whether it be provisional measures, jurisdiction or merits - the research may focus on procedural and substantive requirements of the Court's Statute as they have been developed in the Court's jurisprudence or on the substantive international legal questions at the core of the dispute. Furthermore, depending upon the nature of the dispute – and the basis for jurisdiction therein – the work may focus upon very specific areas of international law – for example a specific convention such as the Genocide Convention - or international law generally, as is the case where the Court has jurisdiction upon the basis of declarations under Article 36(2) of its Statute.

During my time at the Court, I was fortunate enough to witness a number of different aspects of the Court's work. When I arrived at the Court, deliberations were underway, following oral pleadings during the summer, in the *Armed Activities on the territory of the Congo* cases concerned with troubles in the Great Lakes region in Africa. In one case, *Armed Activities on the territory of the Congo (Democratic Republic of the Congo v. Uganda)*, the Court, having jurisdiction upon the basis of Article 36(2), was able to examine a broad range of claims put forward by the DRC relating to the matters such as the use of force, non-intervention and international humanitarian and human rights law. This case is one of the first cases in which the Court has had to grapple with the evidentiary problems of highly complex factual situations involving manifold violations of principles of international law. After a number of readings by the full Court of the draft prepared by the drafting committee, the judgment was finalized and separate and dissenting opinions prepared. This important judgment was delivered in late December and is available on the Court's website at www.icj-cij.org.

In its sister case, involving Rwanda, the Court had to determine whether it had in fact jurisdiction to consider the merits of the case brought by the DRC. Following deliberations, a judgment was finalized along with separate and dissenting opinions. The Court delivered

its judgment in February 2006, finding that it lacked jurisdiction to consider the merits under the jurisdictional bases asserted by the Applicant.

The next case to demand the attention of the Court was the *Application of the Convention on the Prevention and Punishment of Genocide (Bosnia and Herzegovina vs. Serbia and Montenegro)*, which has been on the Court's docket since 1993. This is the first time a State has brought another State to the Court alleging a violation of the Genocide Convention. Although in 1996 the Court had determined that it did indeed have jurisdiction to consider the case, it was only in 2006, following a host of procedural and political changes, that the merits of the dispute were heard by the Court. Furthermore, the issue of jurisdiction was raised once again by the respondent during the lengthy oral pleadings alongside the merits of Bosnia's application. As in the earlier *DRC v. Uganda* case, the Court was presented with much highly complex factual material by the parties in the midst of the thousands of pages of written pleadings as well in the new evidence introduced during the oral pleadings. The Court's judgment in the case is eagerly awaited and it is further evidence of the important role for the Court in settling disputes between States involving matters of great political sensitivity and allegations of the gravest violations of international law.

In the last few weeks of my tenure, a new case was added to the Court's docket concerning the construction of pulp mills on the River Uruguay. Argentina claimed that the construction of these mills near the River Uruguay violated its rights under a bilateral treaty with Uruguay, having recourse to the Court under that treaty's jurisdictional clause. Alleging serious environmental harm, Argentina requested that the Court indicate provisional measures to halt the development of the pulp mills in Uruguay. Thus, this extremely controversial bilateral issue – straining otherwise friendly relations between the two States – was brought to the Court in an effort to find a peaceful third-party settlement of the dispute. The Court delivered its Order in July 2006, rejecting the request for interim relief without prejudice to full consideration of the jurisdiction and merits.

Having the opportunity to work for two wonderful judges on these extremely interesting and important cases has been a great honor and an extraordinary learning experience.