

Transcript
Distinguished Fellows Lecture Series
November 9, 2005
Speaker: Judge Hisashi Owada

Professor Weiler:

Ladies and gentlemen, good evening. My name is Joseph Weiler, and it is my pleasure to welcome you to this installment in our series of Distinguished Global Fellow Lectures. In this lecture series, we try to get to know a little bit more about the person behind the official judge, be it a judge on the Constitutional Court of France, which was our last encounter a few weeks ago, or, as we have today, Judge Owada from the International Court of Justice.

Normally, when one introduces somebody like Judge Owada of the International Court of Justice, one goes through a distinguished curriculum vita. We are not going to do it here because you are going to do it for us.

We are, of course aware, of articles and judgments written by the people who sit in the hot chair; what we really try to explore is the person behind the judgments and the articles we analyze intellectually.

One thing I can assure you, Judge Owada: the majority of the people here are not from the United States; that is the nature of this institution. It is interesting for us because, in the spirit of the Global Law School, we want to get to know people from different cultures, from different legal systems, and to see how that shapes their persona and their legal philosophy.

So, I read in your official curriculum vita that you were born in 1932, and that means that as a child you were living in Japan during the Second World War.

Judge Owada:

That's right.

Professor Weiler:

My first question for you: Do you remember the day that the atomic bombs were dropped on Hiroshima and Nagasaki? You were about thirteen years old then.

Judge Owada:

That's right. Yes, I do remember, but in fact I did not understand exactly what was happening. The official announcement of the Government itself was very vague, and simply said that the Americans had dropped a new type of bomb, completely different from the conventional type of bombs. That was the whole announcement and no details were given.

Professor Weiler:

You were in Tokyo at that time?

Judge Owada:

No, I was in a provincial city in the center of Japan on the Japan Sea side. This was a part of Japan which was comparatively calm, even towards the end of the war, so I was not really feeling the impact of the war acutely.

Professor Weiler:

So when and how did you come to realize what had actually happened in Hiroshima and Nagasaki?

Judge Owada:

The details of it came only after the acceptance of the Potsdam Declaration. But what was really impressive to me was the day when Japan accepted the Potsdam Declaration and announced the cessation of hostilities as act of war. This announcement to the people of Japan came in the form of a speech by the Emperor who made the statement in his own voice, which was broadcast by radio on August the 15th. That was a tremendous shock to me, because I was a small child, and I did not know much about what was going on. I did know that the war had not been going on very well and that Japan was not going to win this war; nevertheless, the announcement by the Emperor himself was really a shock to us.

Professor Weiler:

And you actually remember that as a child?

Judge Owada:

Yes, that occasion I remember very well.

Professor Weiler:

How did you parents deal with that? What did they tell you?

Judge Owada:

Well, that I do not remember. What I remember is that I talked about the event very much with my parents, but I do not recall what we discussed at all.

Professor Weiler:

Was it a shock? Was it a feeling of shame, or...?

Judge Owada:

Well, it was certainly a shock. It was however not a feeling of shame. In fact, my recollection is that as a very small child, I felt suddenly as if the dark cloud had been suddenly cleared and the blue sky opening up.

Professor Weiler:

You then grew up as an adolescent under the American occupation in Japan. Can you tell us a little bit about that experience?

Judge Owada:

The Americans as an occupying power came all over Japan, but the occupation was carried out by the Allied Powers, so part of Japan was occupied by the British. The Russians tried to occupy Japan but they did not succeed, except in the Kuril Islands. Not only the British forces came, but also the soldiers from the Commonwealth, like Australia and New Zealand.

In that part of the country where I lived, it was the American forces who came as the occupying power. When we were notified that the Americans were coming to occupy the city, we had been warned to be very careful because one could expect anything to happen. But when they came, they were just human beings like us, and they behaved in a very civil way, so the warning we had been given we found totally unnecessary.

Professor Weiler:

Tell us a little bit about growing up in Japan at that time. You went to high school where?

Judge Owada:

In the same city.

Professor Weiler:

Just give us a little bit of the flavor of what it was to be in a Japanese high school in the late forties and early fifties.

Judge Owada:

When the war ended and when the Americans came, they wanted to carry out an overall reform of everything in Japan. Sometimes they overdid it, as they tried to reform things which they did not have to reform; the educational system was one of them.

They thought the educational system had been geared towards the promotion of militarism. This was not true. Traditionally, our educational system, after the opening of the country in the Meiji period 100 years before, had been modeled after the continental system of Europe, very much after the model of the German system.

When the Americans came, they tried to introduce the educational system which was being experimented at that time in the United States. At the time in Japan, after six years of compulsory primary school, we used to have four to five years of gymnasium, and then you went into university.

The Americans tried to change that, and changed this eleven years into six years at primary school and three years at Junior High plus three years at Senior High, followed by four years at the university. I was to go through that process just at the time when this new educational system was coming to be implemented. As the result, I remained at the same school for six years, three plus three, instead of having four or five years in gymnasium.

The result was beneficial to me in the sense that in that critical period of growing up, staying at the same school for six years without worrying about the entrance examination for getting into high school, getting into a university, and so on; there was no competition or psychological pressure, and so we could do all kinds of things.

I look back over it and think that it was a very enriching period for my personal development; I could read many books — Japanese classics, Chinese classics, English literature, etc. Also, I was interested in learning foreign languages, so I started learning German and French, at that stage. We had a very good teacher at our school who taught us even introduction to philosophy, which was not in the curriculum, and I enjoyed that very much.

Professor Weiler:

Let me fast-forward just a little bit. We will talk in a second about your university experience, but almost everybody who has sat in that seat, I have asked if in their recollection of their early formation either high school or at university, there was a particular person or a particular book that they will recall now was illuminating in shaping their world view. Do you have a recollection of such a personality?

Judge Owada:

Yes, I do indeed. In this course that I have just described, the middle school and the high school combined for six years, I had a very good philosophy teacher who used for the introduction to philosophy a textbook by the German philosopher Simmel; this was a very enriching experience because I became fascinated by what I learned. That was really the beginning of my interest in what I am doing; although it was not law, I got an excellent introduction to social sciences through this introduction to philosophy.

Professor Weiler:

And at what point, if you remember, did you realize that law or international law would be an important part of your life?

Judge Owada:

At a very late stage. When I applied for university, I went to Tokyo to get into the University of Tokyo. My intention was to study either philosophy or literature. My father was not very happy about it, and he recommended that I apply for the department of law. I was not happy at all, because, as is the case in many countries, law is not a subject that you learn at the school level, middle school or high school. So, law was not something which was really appetizing to me at that stage in life.

On the other hand, because of the new environment opening up to me after the war, I became very much interested in the outside world and things international. But the interest in things international does not necessarily mean an interest in international law. It was only after I got into the university and studied the introduction to law and elements of international law that I became very much interested in international law.

Professor Weiler:

And tell us just a minute or two about the experience of university at that time. We have an image of University of Tokyo, even today, as being a pretty formal place. It might have been even more so. Can you bring it to life a little bit? When I went to university I had to wear a gown. Those were the days.

Judge Owada:

I was going to say that it was even more formal in Japan at that time than in Europe or in the U.S. No, we did not have the system of wearing gowns, neither students nor professors, but it was an extremely formalistic place.

As some of you may know, before the war we in Japan only had seven imperial universities, which were regarded as prestigious places, created by the state and regarded as special. After the war, when the Americans came, as part of the educational reform they abolished this system, and they immediately created more than three hundred universities in the whole country where there had been only seven imperial universities plus a dozen private universities.

Nevertheless, because of this tradition, the atmosphere at the University of Tokyo was very authoritarian and very formalistic. In fact, when I went to university, I was so disappointed by what I experienced there that I thought about quitting the university. I was to endure this, but deciding to do only what I liked and not really attending my classes very faithfully.

The difference between the American universities and the Japanese universities is that the Japanese universities are very hard to get into, but very easy to get out. You do not have to work hard. Once you are in, you are automatically promoted to the graduating year and then you get the degree. So you do not have to be so diligent in terms of the course instruction. Of course,

there is one beneficial side to it in the sense that you can do whatever you like during your four-year stay at the university.

In any case, after I graduated from the University of Tokyo I went to England and I went to Cambridge University, and my very vivid memory is “Here is what I have been looking for as University!”

Professor Weiler:

Which College did you go to?

Judge Owada:

I was at Trinity College.

Professor Weiler:

And how many Japanese students were at Trinity College?

Judge Owada:

That is a good question. There were none at Trinity College. In the whole Cambridge University, which had about ten or twenty thousand students, there were only half a dozen Japanese in those days; it is a very different situation now.

Professor Weiler:

Did they treat you like some person from Mars?

Judge Owada:

One interesting episode that I can tell you about that question is that, after my arrival, Trinity College, being very kind to me, tried to organize some tea to greet me and introduce me to my fellow students. One of the students came to me and asked, “Is there an underground in Japan?” Another one was even more outrageous: “I know that while we have winter here you have always summer.”

Professor Weiler:

This is at Cambridge. And the reason there were so few Japanese students is because you were the exception in Japan, somebody actually wanting to go and study in Europe?

Judge Owada:

I very much wanted to go to Europe, or the United States. The fact that I went England was, in a sense, accidental, and in a sense intentional. In those days, contrary to the present time, you just could not go abroad to study in foreign countries, for obvious reasons.

There was a very strict restriction imposed by the occupying forces and it was the same even after the occupation regime had terminated. First of all there were not too many people who could go abroad even if you had means to go. Secondly, of course, there were very few people who had means to go to study at foreign universities.

When I graduated from the University of Tokyo, my professor asked me to stay on in the university as his assistant, suggesting that I was to be stepping into his shoes as his eventual successor. I declined that offer, partly—or maybe solely—because I had already passed the diplomatic service examination of the government, which ensured me to have the opportunity of studying at a foreign university for two to three years.

I thought that this opportunity was very attractive, and while I was not particularly interested in working in the field of diplomacy, I thought that this would give me an opportunity to go to foreign university and study international law. At that time, I had already decided that my interest was in international law. As for the country to go to for study, however, I deliberately chose Great Britain, because of what I had learnt about that country, especially English literature.

So the decision was accidental in the sense that getting into the Foreign Ministry was not really something which I did by my own choice, but at the same time, it was intentional in the sense that I chose to go to Great Britain in order to make use of this opportunity.

Professor Weiler:

That is very interesting. You were in Cambridge, and it turns out that you and I shared some of the same professors. You were taught by Clive Parry and Robbie Jennings, and some others. Did you like them?

Judge Owada:

Yes. It was a really marvelous experience. There was an American film shown many years before all of you here were born called “The Best Years of My Life.” I really look back over the period of my stay in Cambridge and think that those were indeed the “best years of my life.

Professor Weiler:

Why? Because of the intellectual excitement, or simply because, for every young person, the first three years they are away from home are the best three years? Did you meet your wife there, maybe?

Judge Owada:

No. I got married after coming back to Japan. Those were the best years of my life because I found in Cambridge, as I said, what I had been really dreaming of about what a university should be like. And I met many friends of mine who have since been my friends and who are now in the same profession.

Let me give you some examples, may I? Ted Meron, who is the president of the ICTY, I met in Cambridge. Of course, you all know him, since Ted Meron is a faculty member of NYU. I met Ian Brownlie, who became later the Chichele professor of international law at Oxford University. Rosalyn Higgins, who is my colleague at the International Court of Justice I also met in Cambridge. Hans Blix, who became famous in his role in the U.N. inquiry into the Iraqi weapons of mass destruction, is another friend of mine whom I met for the first time in Cambridge. Georges Abi-Saab, who also is a member of the NYU Global Law School, is yet another person I met there, though, in fact, he came just at the time I was leaving. In any case, those are the kind of people that I met and the friendship that developed has lasted until now. So it was an exciting period. Apart from the field of law, one person that I cherish my friendship which started in my Cambridge days is Amartya Sen who got the Nobel Prize for economics. He is now at Harvard. I met him in Cambridge at Trinity College. He was majoring in economics and I was doing international law, but since that period we have been close friends, in fact I had dinner with him yesterday.

Professor Weiler:

So you did in Cambridge what used to be called the LLB: a master's degree, and now— for commercial reasons—they call it the LLM, as you know. Then you wrote your doctorate, and you had an interesting story in the docks of London, did you not?

Judge Owada:

I do not know whether it should be called interesting; it was a very traumatizing experience to me. I hope this is not going to happen to any one of you.

In my third year, Cambridge University decided to award me a special prize called Humanitarian Trust Studentship. On that basis I continued to do my doctorate and by the time I was leaving Cambridge I almost completed my dissertation, but I wanted to brush it up and submit it later. I decided to go back to Japan to finish it; after all I had been sent by the government and I had to go back at that moment.

Those were the days when you had to send everything by boat in cabin trunks, so I put all my belongings in cabin trunks. One of the trunks disappeared in the London dockyard. And that contained—among other things—the precious manuscript for my dissertation, together with other small things, like my clothes, books, and so forth. And it never came out. So I lost my opportunity to get my doctorate.

Professor Weiler:

These days it is a hard disk crash that creates those problems. So you went to Japan and you joined the Ministry of Foreign Affairs and you worked in the legal advisor's office, and eventually you became the legal advisor to the Foreign Ministry of Japan. So I remember when Stephen Schwebel was here—

Judge Owada:

By the way, Stephen Schwebel was another person that I met in Cambridge.

Professor Weiler:

And then we wonder when people talk about the old boys' network. Old boys and girls—there was also Rosalyn Higgins, you tell us. In a minute we'll ask how you got to the International Court of Justice.

So, when Stephen Schwebel was here, I asked him the classical question, which was, the impression is—and decidedly so in the United States—that the role of the legal advisor of the state department is to find apologies for the actions of the administration. In other words, very often, one gets the impression that the legal advisor has very little impact on actual policy decisions, and that his or her real role is to make up the legal excuses after the policy decision is taken.

That, of course, is a vulgar characterization of a far more difficult and nuanced situation that legal advisors face. Even in our classes we know that sometimes in international law, states have to break the law in order to change the law, given the system, and then they act proto-normatively.

He gave a more nuanced view than the vulgar one that I presented to him, but at the end of the day he said in many critical issues, yes, when I look back, what you asked tends to be the case. Now that may be to some extent an American phenomenon, not because of a particular American disrespect for international law, but as a consequence of size and power and the ability to do things.

Can you give us your experience? As legal advisor to the Japanese Foreign Ministry, did you have a feeling that legal considerations were really important in shaping Japanese policy? Where would you locate Japan on this kind of continuum of realpolitik and the role of law?

Judge Owada:

Before answering your question, which I am more than willing to do, I would like to say that you have already halfway answered the question. I think the difference between a country like the United States, which is a superpower, and a country like Japan which is a small power, is that the pressure upon the legal advisor from a political circle will be much stronger in the case of the United States. I think that the situation in this respect is very different in the case of Japan as far as I can recall from my experience.

First of all, the Japan that I served was a post-war Japan. Before the war, Japan did many things which were devious, to say the least, and sometimes even things which were patently in violation of rules of international law. This was a time when the military were very much in control of the Government, almost dominating the scene; the Foreign Ministry as an institution had to obey whatever the military dictated them to carry out. In such an environment, the function of the legal advisor must have been terribly miserable.

But in the post-war Japan when I was working there, the situation in the Ministry was very different. First of all, we do not call the position the legal advisor; it is not an advisory function. Legal service is part and parcel of the function of the Ministry of foreign affairs. The head of the Legal Department in the Foreign Ministry has his own jurisdiction, and has a very powerful function. If the head of the legal department says no on a policy proposal which is not in line with international norms, then you cannot carry it out, even if you go to the top of the hierarchy up to the foreign minister and the prime minister. As long as you say that this is against law, everyone obeys.

Having said that, of course there are pressures. I still remember that when I was a young officer in the legal department, I had a big quarrel with a senior official in the Economic Affairs Bureau of the Ministry who said, "You guys in the legal department should try to find explanations and justifications for what we decide to do. Your function is to find the justification to explain what we are doing." I, as a very junior officer, contradicted him and said "No, that's not right. The legal advisor's function is like the function of an attorney in a company or counsel to a company. You can say that there is this much of a latitude for what he can do. You can explain something is within that range, but if that something falls outside this range of freedom, you simply cannot defend it, and to try to justify it in such a situation is not the function of someone in the legal department of the Ministry." We of course parted in disagreement, but I had my way. I think that is the sort of atmosphere in which we worked, and which I hope is still prevailing in the Ministry of Foreign Affairs of Japan.

Now, the other factor, which is historical, is that when Japan opened the country 150 years ago in the middle of the 1850's, one of the first things the Americans who forced us to open the country insisted on was that Japan "as a member of the community of civilized nations" conduct her foreign affairs in accordance with what they called the "law of nations"; it was a condition *sine qua non* for being admitted into the community of civilized nations.

Of course, there was a big misunderstanding about this concept on the part of the Japanese at that time; some of you, no doubt, were attending the class of Professor Kingsbury yesterday, and we did discuss that problem in the context of my article concerning the opening of Japan and the role of international law in Japan during that period.

In any case, it was at that time that the legal department of the Ministry was created as one of the first departments in the Ministry of Foreign Affairs. Throughout its history the Legal Department has had a very strong power in the Ministry, so much so that quite recently, the Diet and the Government Party came to demand that the legal department be abolished in the Ministry of Foreign Affairs, because they claimed that it was dictating the foreign policy of Japan.

We have fortunately succeeded in maintaining the legal department, but you can see what kind of pressure was exerted on the Legal Department at that time, not because politicians wanted to act in violation of international law, but because they thought that the foreign policy which should be a political decision was too much influenced and dictated by the legal department of the Foreign Ministry.

Professor Weiler:

I want to ask you two questions related to this, still within the way we are trying to relate your biography to your public functions and professional experiences. Did your years in Cambridge, apart from being intellectually stimulating and corresponding more to the ideal of the university that you had in mind, did they also have an impact on shaping your view as an international lawyer, as the role of international law in the world? Was it something that you brought back?

Because we remember you said there were so few Japanese students, so when you came back with a Cambridge experience, were you a little bit the “odd man out” in the Ministry? Was there a particular input that that international experience gave you? In this institution, we are great believers in the transformative effect of going to another country, whether it is studying abroad, experiencing other sensibilities, or otherwise. Can you just talk a little bit to that, in your case?

Judge Owada:

I am glad you brought out that problem, because that is exactly what I wanted to talk about. One thing which really shocked me when I went to Cambridge, apart from the intellectual environment and the stimulus I got and so forth, was that I found what I learnt there as international law was very different from what I had learned at the University of Tokyo.

When Japan decided to open the country and the process of modernization started, Japan had to emulate the European legal system, and the models which were introduced to us were the French legal system and the German legal system. The civil code came from France and the criminal code from Germany, and their influence upon the legal system of Japan was predominant; the German influence in particular was very strong in the legal profession of Japan before the war.

That really affected the legal thinking—not just on international law, but legal thinking in general in Japan—very much. When I was studying law in Japan, what the Germans describe as *Begriffsjurisprudenz*, the conceptual theory of law, was very much in the mainstream. It was really dominating the whole legal teaching. To put it in a very simplistic way, the *Begriffsjurisprudenz* consists in a methodology of logical syllogism. You start with a general abstract premise and then you have a concrete situation. You apply that premise to the concrete situation, and logically the conclusion follows. It is a process of logical operation which often has very little to do with the reality of the situation.

In particular in the field of international law, my professor, whose name was Kisaburo Yokota, was a disciple of Hans Kelsen, the master of the Vienna School of the Pure Theory of Law. As you know, Hans Kelsen started this pure theory of law, which consists in excluding all the extraneous factors from the legal analysis of the situation; the law should be determined in a pure

logical way. Maybe that statement is an oversimplification of the situation, but more or less that is what has been impacting the Japanese legal thinking.

Such was the climate in which I was brought up in Japan, and I must confess that throughout the period when I was at the university, I do not recall learning any case law, either international or national, that is, case law developed from decisions of international courts such as the International Court of Justice. It was only when I came to Cambridge that I was exposed to so many judgments of the International Court of Justice. As I said, the whole process of international law that I had been taught at the University of Tokyo had been the product of a logical process and logical reasoning.

When I came to Cambridge, what I learned was that in international law, and at least in the legal positivism which was very strong in the British tradition, you had to study the state practice, the jurisprudence of international courts, and the rules of customary international law as evidenced by State practice, which formed the basis and the sources of international law. This was quite an experience for me, and I came to be convinced that we had to base ourselves on this legal positivism, as I have explained.

That experience influenced me a lot, and since I was going to work in the Foreign Ministry, where you were really to apply the law to concrete situations, this training I had in Cambridge was very helpful. Contrary to what you said, Professor Weiler, I was not an odd man out there. In fact, I could really take people into my direction. And that is the background against which in 1962, only three years after I went back to Japan, I started to work on the compilation of the Japanese practice of international law with my colleague and friend, Judge Oda, to introduce the state practice of Japan in the field of international law, not only to foreigners but also to the Japanese colleagues.

Professor Weiler:

If we fast-forward, how is it now in Japanese universities?

Judge Owada:

I think it has changed a lot. Now they study a lot of cases decided by international courts, and it has become much more positivist in approach in the sense that they base their argument on treaty law, customary law, on the basis of state practice and jurisprudence of international courts.

Professor Weiler:

Let me ask you something—for many years, you worked in the Ministry, and you eventually became legal advisor yourself to the Ministry of Foreign Affairs. You were appointed as Deputy Foreign Minister—that's probably the top civil servant position one can have in that career. You served as Ambassador of your country to the United Nations, and we will talk a little bit about that.

What I am trying to first establish is that you have been occupying the upper echelons of the Japanese public service and administration. The person that preceded you in our Distinguish Global Fellows Lecture series was Judge Dutheillet de Lamothe from the French *Conseil Constitutionnel*, and he had a similar career. When he came out of the university, his first appointment was at the *Conseil d'Etat* and he had a distinguished career at the *Conseil d'Etat* eventually becoming a *Conseiller d'Etat* and moving on to a French Constitutional Court.

The question I asked him and I am going to ask you is, "Is it not still the case that even today in France, the type of person like yourself that occupies this kind of position, they all come from the same background? In other words, there are certain types of families that can afford to send their children to certain types of schools, and they go to their Cordon, and then they go into their Sciences Po, and then they go into ENA, and then they come out of ENA. So if we look at the sociological cut of who occupies those positions of power in the French administration, it is a very narrow and predictable group of people."

He did not agree entirely but to a large extent, he said, "There are some exceptions." I want get a feel of how it is in Japan, both when you started your career and today. How open is the public service? If we looked at the upper echelons of the public service in Japan, would it be a reflection of Japanese society or just a predictable elite?

Judge Owada:

I think your comparison with the French system is, if I may say so, wide of the mark. Our system in Japan is quite different from the French system in this respect. Japan since the Meiji Restoration, modern Japan, has been based primarily on meritocracy. That is why in the past getting into what I described as imperial universities was difficult and very competitive, but at the same time, it was regarded as very prestigious in the sense that once you got into that, then the way was open for whatever you would like to do.

There is no such thing as ENA in Japan; if you graduate from those universities, then you get into the government and get into major companies and so on. It is not a class system in the hereditary sense, nor is it based on the family background. It is based totally on meritocracy. At the same time, once you go through that process, then you get into the mainstream of the governing elite of the country. At any rate, that has been the system.

Professor Weiler:

Can I just press you on that a little bit? In my discussion with Dutheillet de Lamothe, the same point came up and he explained and I also acknowledge that every level of that system, the exam is meritocratic, so to get into the ENA it is meritocratic, there is no favoritism. It does not help you if you are from some sort of aristocratic name. If you do well on the exam, you are in and if you do not do well, you do not get in and it does not matter who you are. When you do the *concours* for ENA it is the same thing, and when you are in the ENA it is the same thing.

So one does not dispute the meritocratic element, but he explained that nonetheless, when you see who are the people who actually become candidates and who win the exams on merit, you see that somehow, strangely, they come from a very narrow cut of French society. So each one of them won it fairly and squarely, but somehow it comes from a very narrow, well-educated, fairly affluent, middle-class or upper middle-class of French society, and to that extent he said there is some hard thinking taking place in dealing with that.

Is that different also in Japan, or am I still wide off the mark?

Judge Owada:

I think that there is some difference between Japan and France, judging from what you described in your first part of the comparison with the French system. Probably there is also some similarity. Once you get into a major university like the University of Tokyo, you can get into the mainstream. In that sense, it is somewhat similar to France; but when you look over to the background, there is no such thing as a small group of people from the same background. That is very different.

Professor Weiler:

Okay. That is very interesting to us. You also had a stint as the Ambassador of Japan to the United Nations in the mid-90's, 1994-1998, and during that time there was a period when Japan was a member of the Security Council, so you were sitting on the Security Council. It is a striking period, after Iraq I and before Iraq II—do you have any sort of striking memories of the period of your ambassadorship in the United Nations, of your period on the Security Council?

Judge Owada:

There are many memorable events, but what impressed me most during that period of the United Nations was the problem of Africa. That is why, during my tenure in the United Nations, I became very much devoted to the questions of development in a broad sense of the word. I am not only talking about economic development as measured by the GNP and so forth, but those problems of development including social development, human development, human capacity development, infrastructure and so forth.

When I was ambassador to the OECD, I was a member of the DAC, and that was the time when I got interested in the problem of development. I still maintain a very keen concern about the issue of development. When an issue comes before the Security Council, it is as a question of conflict resolution. Invariably, as you can understand, however, the issue of conflict resolution, peace-building, and all these things are inseparably linked with the question of development.

I am not saying that poverty is the cause of everything. Poverty is a very important factor for causing a conflict, but social inequality, the character of society that they have, and the legacy of colonialism have all their relevance to the issue of conflict. Thus, development of society in a comprehensive way is a key to all these problems. I came to be convinced of that, and that is

why, when I was at the United Nations, Japan took the initiative for starting a new diplomatic initiative calling for a “new development strategy”. In essence it consisted in a comprehensive strategy for development with emphasis on an output-oriented approach rather than the traditional input-oriented approach.

Up to the 1990’s, what was the central issue of development had been how much of their GNP the developed nations contributed for the development of undeveloped nations; the original target had been 0.36 per cent, and then the new target was set at 0.7 per cent. In other words, it was the input that was regarded as central, the theory being that without money, you could not do anything. However, money is a necessary condition but not at all a sufficient condition for development.

During the Cold War days, money was given for strategic purposes. If the United States did not offer money, the Soviet Union offered the money, and as a result, the money was spent, but not for a good cause, not to produce good results in development. I thought that in the post-cold war era, we had to change that culture, and that was why Japan started to embark upon a campaign for a new development strategy, which in fact came to bear fruit in the form of the Millennium Development Goals. We thought that the output was more important, and if the output was important, you had to have some indicators to assess the output by way of the results achieved, and to think about the strategy to achieve those results. That is something for which Japan made some modest effort while I was at the United Nations. This is something which still remains very dear to my mind.

Professor Weiler:

There are some who claim that on this issue of development and inequality, central structures of international law, like the WTO system, the network of international investment, or bilateral investment agreements are in some way biased against development in that they facilitate the movement of capital but they do not necessarily facilitate equitable transfer or redistribution of resources between rich and poor. Is there something you could say about that?

I remind everybody Judge Owada is speaking in his personal capacity; this is a private forum.

Judge Owada:

I am not a protagonist of the unbridled laissez-faire market principles to govern all these things. I think you have to remember the historical lesson about the negative results which came out of the Industrial Revolution in Great Britain. People in those days quite naively or optimistically thought that the “invisible hands of God” would settle the matter in a harmonious way, but the result showed that that was not the case. The 19th-century England, as described particularly well in the novels of Charles Dickens, is a good illustration of this situation, and against that background, Karl Marx wrote his Communist Manifesto and *Das Kapital* and all those things. I am not really saying that what Karl Marx claimed in his dialectic theory of historical materialism is the truth, but he had good reason to have to write those books against the background of the 19th-century England which he was witnessing.

I lived in the Soviet Union for some time also and I can say that the totalitarian control of the government is no good either. In fact, it is even worse in the sense that it deprives the people of the sense of responsibility and the initiative to do things. But I do not think that unbridled laissez-faire economic principles would really solve all the problems, particularly in the present day world when you have so much discrepancy between different segments of society in social terms and in financial terms.

For instance, in the United States, you have had this affirmative action, which is contrary to the free market principles. According to the laissez-faire principle, as long as you get equal opportunities, then the rest should be up to your own efforts, but affirmative action is not really doing that. Affirmative action is a modification of that principle. Even in a country like the United States, affirmative action is needed in order to create a more just, fair society. I think that is much more needed in the international community. Therefore while I do not disagree with everything that the WTO is proposing—I think WTO is basically doing good things—but there are certain things which should be brought into the picture to adjust the existing situation.

Professor Weiler:

Okay. While we are still with the background of your ambassadorship to the United Nations, what are your views on the discussion now of the reform of the United Nations in the Security Council?

Judge Owada:

I believe that the Security Council reform is absolutely essential for our future. I am convinced of that. Why? Because the Security Council is growing to be the most crucial institution in the United Nations. It is becoming like the Council of the League of Nations. Of course, according to the Charter, the function of the Security Council remains in the area of maintaining international peace and security and nothing more. But in the present-day world, the issue of international peace and security is inseparably linked with the issues in economic and social domains, and in order to solve the problem of international peace and security, you have to get into the area of economic and social issues of development surrounding the countries in the world.

Take the refugee question, for instance. The refugee question had not been on the agenda of the Security Council for many years, but when I was sitting on the Security Council, the UNHCR came for the first time to the Security Council to report on the state of the refugees in African countries. This was because the issue of refugees was inseparably linked with the resolution of conflicts in the area in question.

All these questions are interlinked with each other and, in order to be successful in conflict resolution, you have to deal with those issues at the same time. Of course, the Economic and Social Council has to play its role, and it must have the primary responsibility in this area. But nevertheless, it cannot do so independently. In the present-day world, we have all these issues interlinked with each other. The importance of the Security Council is becoming paramount, and

from that point of view, the Security Council has to have both the legitimacy and effectiveness to be able to perform its functions as the central organ of the UN activities.

In order to have the Security Council which can function with legitimacy and effectiveness, you have to recreate a Security Council which ensures a fair representation of the whole world as it is now, not a reflection of the world as of 1945. There was some revision of the Charter in 1963, but that was a very technical modification.

Having said that, the responsibility of each of the members of the Security Council is also extremely important, and it is as important in this context to reflect upon the issue of the political culture of the Security Council. This also should be part of the reform of the Security Council, although it is not necessarily the issue of the revision of the Charter. What I witnessed in the Security Council when I was sitting there was that some of the members of the Security Council, who were not necessarily its permanent members, behaved in a somewhat less than responsible way, knowing that they were really not the central players in the game and that the game in fact was being played primarily by the permanent members.

I think that this is a wrong notion; once you are in the Security Council, you should be willing and able to carry out the responsibility placed upon you. Therefore I feel that while the Security Council seats allocated for non-permanent members are based on geographical distribution, more importance should be placed on the other criterion, also written into the Charter of the United Nations, namely the capacity and the willingness to carry out the responsibility of the Security Council in the field of its competence. Those are the things which should be thought through in order to make the Council more legitimate and much more effective.

Professor Weiler:

The Security Council is perhaps the most visible institution of international law and governance, but there is also a whole network of other international organizations, whether it is the Codex Elementarius which has a major impact on certifying the health of certain products, or the WTO about which you expressed some guarded critique a few minutes ago, or the World Health Organization, do you think that there is a more general problem of legitimacy of international governance? One which does not derive simply by skewed representation, because in that respect the Security Council is a very particular case? I mean a problem of legitimacy because of a disconnect between the international functionaries and the diplomats which represent and operate these international organizations and their actual citizens in their countries?

Judge Owada:

As a general proposition, my answer is yes. If, however, you ask for the specifics on my concrete proposals, I have no good solution for it, because it is a very complicated issue.

For example, people talk about the democratization of international institutions, which, as a general proposition, I have no opposition to. On the other hand, what is democracy in international institutions? The United Nations is based on the principle of “one state, one vote,” so in that sense democracy is a basic principle of the United Nations.

Are you talking about the need for democracy on that basis? In this context the veto system clearly is a privileged status recognized to a certain number of countries. Or are you really talking about something different? And then, when we come to think about the issue of effectiveness, is it really effective to have a system where everything is decided by the number of votes cast by a number of members on the basis of numerical majority?

For example, if you had a system by which a decision would be taken by the Security Council by an overwhelming majority, say two-thirds of the whole membership of the organ, to apply military sanction, who would be responsible for its implementation? Only those countries which could exercise such power. However, the greatest number of countries who would be voting for that authoritative decision would not be able to contribute effectively to the implementation of that decision.

So it is a very complicated question, although in general terms, one can say that much greater effort should be exerted in increasing legitimacy and effectiveness. Talking about democracy, some people have suggested—for instance, Louis Sohn, who used to be my colleague at Harvard Law School, suggested that the new world law should be based on what was to be decided by the General Assembly of a world organization like the United Nations, where the size of the population of the states should be the yardstick for the proportional representation system in this world organization.

That would mean China, with its population of 1.2 billion, which is more than one-quarter of the whole population of the world, would have at least one-quarter or one-third of the votes. Would that be democratic? It may be democratic if you simply apply that principle in terms of the number of people represented in the whole world, but if you think about the lack of homogeneity in the international community which in reality exists, it will not be that easy to talk about democracy of this type to be applied in international relations. Again, I must make it quite clear that I have nothing against the democratization of the system as such, but one has to be much more elaborate and cautious in defining what is meant by democratization of the system in the international context.

Professor Weiler:

That could take the subject of an entire seminar, but associated with the notion of democracy or legitimacy, your life has spanned almost half a century of international law. Do you have a feeling that if we look at the rule of international law, has it been a trajectory of progress or a trajectory of decline? If you step back and try and give us some kind of synthetic view where the paradigm is the rule of international law or respect for the international law, what kind of image comes up on your radar screen?

Judge Owada:

My answer is that yes, in a longer-term perspective and as a broader picture, progress has been and is being made. However, before going into the details, I have to qualify my position. To use a Japanese expression, I have been “wearing two different pairs of shoes at the same time” throughout my life. While I have been working in the government, I have been working in

academia. At critical moments of my life, I often wondered whether I essentially belonged to academia or to the government; while I chose to work mainly in the government, I continued to teach at the University of Tokyo for 25 years. I have been teaching at Harvard Law School, NYU Law School, etc. With this complex personal background, I think about the problem you have posed mainly from the viewpoint of an academic, not that of a practitioner who is always involved in the practice of international affairs where I am bound to be involved in a day-to-day struggle among nations representing the national interest of a particular country. So, what I am saying is in that former capacity rather than in the latter capacity.

Now, on that basis, my feeling is that if you compare the present-day world with the world at the end of the 19th century at the time of the first Hague conference, it is clear that there has been a change, and the change has been in the direction of tremendous improvement. In that sense, I simply do not agree with people like Robert Kagan, who says that Europe and the United States have traded places. According to his thesis, simply because Europe has fallen from the position of power into a weaker power they are now saying that international law is important, whereas the United States, which used to be in the 18th and 19th century a comparatively weak nation and preached the importance of international law, is now saying that power is the decisive factor. I do not think that is true—historically that is inaccurate, because there has been a gradual but very steady change in the consciousness of the people, and that has affected the situation.

Of course, there are ups and downs in this trend, but I think there has been a very strong trend towards the creation of a rule-based society, and, though in an embryonic way, towards the creation of some kind of a rudimentary international public order, as domestic society has been growing in the same direction.

The second critique I have about Robert Kagan is that he ignores the fact that power no longer is something which you can define in terms of military power. Power is an important factor in modern international relations in the sense that it affects the behavior of states or members of that community. But that power is no longer definable in terms of the military power alone, although military power is a very important factor. In addition, those different aspects of power—economic power, cultural power, the power of political opinion—what I describe as soft power—are interlinked with each other. So I think that my answer to your question is yes.

Professor Weiler:

I do not want to poeticize with Robert Kagan, but if we focus for a minute on the United States, there are those that will claim that a shift has occurred in that whereas at the beginning of your career in international law, the United States was an active member, instigator, and inspirer of the major institutions of the international legal world, we now see the United States very often outside those main institutions. She is not a member of the International Criminal Court, she is not a member of the Kyoto Protocol and in that respect, and so there is a negative development in that respect, maybe on the paradigm of multilateralism-unilateralism. Maybe the more pointed critique would be in that direction: in that respect we are in a regressive situation.

Judge Owada:

I think so. I said there have been ups and downs, and I clearly had what you say in mind when I said that. I think that the present situation is lamentable. I hope that this is temporary for various reasons.

One factor which has affected decisively the national psyche of this country must have been the 9/11 event, which really traumatized the people; they have become so obsessed with the crisis which could happen upon the people in this country that there is an excessive amount of guarded national security complex.

Of course, the ICC, the International Criminal Court, came about before that; I was the head of the Japanese delegation to the Rome conference, and I worked very hard to make it happen. I worked very closely with the present president of the International Criminal Court.

I felt very strongly that it was very important to involve and to include countries like the United States and the other countries which were still hesitant: Russia, France, China and India. Russia and France fortunately came along, partly because of some of the improvements that we, including Japan, succeeded in adding to the Statute of the Court. Now with that kind of efforts, a further progress might have made it possible for the United States to come to terms with the Statute; I do not know, but I think it could have been possible.

It is a great pity that the U.S. is not participating; on the other hand, one can understand to a certain extent the concern of the U.S. military about the possible implications of the ICC in the worst-case scenario, which I think is exaggerated.

Nevertheless, this is a concern which does not exist in a country like Japan, which certainly is not called upon to play a major role in military operations to maintain public order in the world. So I hope that this is a temporary phenomenon which will be rectified in the future in this country. The national psyche of the United States has to be looked after in the context of the kind of fear which one might think about as legitimate to a certain extent, and to try to see how that can be taken care of. That was, in fact, what I tried to do at the time of the Rome Conference, without much success as far as the United States was concerned.

I think the same can be said about the Kyoto Protocol. The Kyoto Protocol was concluded in Kyoto, Japan, and the Japanese government did its utmost to make it happen. Now having said that I must say, in my personal capacity, that the Kyoto Protocol is a fairly defective system. It is better than nothing, and one has to appreciate its symbolic significance, but as a workable system, it is very defective.

First of all, it is defective in the sense that developing countries have no prescribed responsibility. That principle had already been decided in Rio de Janeiro in 1992, so that there was not very much that one could do about it in Kyoto, but the fact remains that as a result if you have countries like India and China, together with the United States outside the regime, the Kyoto Protocol simply cannot be effective. Also, it has a very strict temporal limitation; it is a temporary arrangement. I therefore think that it is important for us to think ahead and to try to work out a much more effective system, either to supplement or to replace the Kyoto Protocol. That is my personal view.

Professor Weiler:

Judge Owada, you went to the International Court of Justice in the Hague in 2003. This was the first judicial office that you held—the first time that you were a judge. Were you fearful?

Judge Owada:

I was very fearful. I still am. “Fearful” may not be the right word, but I feel myself very humble in the sense that being a judge is something which I have never experienced, and I always face a case which comes before the Court with a very strong sense of awe and humility.

Professor Weiler:

And do you feel disadvantaged vis-à-vis some of the other more experienced member of the court?

Judge Owada:

Not necessarily. If you look at the present composition of the court, there are very few people who have had judicial experience in their domestic context as professional judges. There was a time, for instance, in the case of Japan, we had Judge Tanaka, who was—as some of you know—a person that wrote a very famous dissenting opinion in the Southwest Africa case, where he defended human rights as the essential value that international law and the international community should protect and promote. He had been the Chief Justice of the Supreme Court of Japan.

But at present, there are very few who have had the experience of serving as a judge in the Supreme Court of their national court. In that sense, I do not really feel that I am disadvantaged; my own feeling is that the court would be a good place to have a right mix of judicial experience, academic experience, and practical experience in the field of international law.

Professor Weiler:

It is a paradox and everybody I think in the room understands that when we have a Distinguished Global Fellow who is actually a sitting judge, one is fairly restricted in what we might ask about your actual functioning as a judge.

We cannot ask you about specific cases; we cannot ask you about issues that might come up as a specific case. It would be useless to ask you what you think about the court—“Is it a good court?” You are not going to sit here and say, “Well, actually I think it is a mediocre court,” and everybody understands.

That is why in these sessions, most of our discussion focuses on the life leading up to the actual judicial appointment and sitting on the court. But I want to see if I can squeeze a few things from your present circumstance. So, for example, would it be possible for you to think and tell us what

has been the most difficult moment for you in your first three years on the court? The one that you say “oh, that was tough?”

Judge Owada:

It is a difficult question to answer. It seems to me—other judges may have different views, but my personal impression is that every case is difficult. I am not really saying this for rhetorical purposes. It is really amazing that when you go to the court and face a concrete case, there is no easy case.

It is understandable, because if you have a one-sided case where the applicant is sure to win and the respondent is sure to lose, they would not go to the court. So each case is very different, and very difficult, and what is more, apart from this equilibrium between the two parties, there is one thing which I found for the first time that I had never experienced in my academic career or in my practical career: it is that when you face a concrete case as a judge, you make new discoveries.

What you have always thought to be an obvious point, suddenly turns out to be, when you really think about it in a complex situation, a point of which you are not so sure, and you want to get deeper into its theoretical background. A deeper analysis into precedents, academic articles on that question, and a lot of thinking become necessary, before you come to a conclusion. It is really amazing.

For example, in a case like diplomatic protection, everyone thinks it is something which is clearly stated in the textbook and what is required is to apply to a concrete situation before you what is written in the textbook. When you face a concrete problem, however, even the application of such a simple question as diplomatic protection is not an easy problem to apply because of the ramifications and because of the concrete context in which the question arises.

Now that is an interesting and attractive point of working as a judge in the International Court of Justice. For example, I am sure you know the famous case called the *Nottebohm* case, which I can refer to since I have had nothing to do with it, because this was decided by the court a long time ago; I hope I’ll be excused in referring to that case. The genuine-link theory had never been mentioned in the textbooks before that case was decided. Now, it is accepted that genuine-link has to exist in order to exercise the right of diplomatic protection. But that was, in a sense, judicial legislation, if you like to call it.

While judges never say that we are legislating through judicial judgment, this is one example of this kind. Another example, some safe example that I can quote, is the *Norwegian Fisheries* case with its endorsement of the straight baseline system. Again, if you had checked the textbooks before the judgment in 1952, there would have been no mention of the straight baseline system as the standard method to be employed for measuring the territorial waters.

You might say that this is a legislative innovation. You might also say that this has always been implicit in the theory already. Whichever view you take, these are the kind of examples that you constantly face. Whether the case facing you is as big as the examples that I have given or much smaller in importance is a matter for appreciation, but nevertheless you are constantly faced with that kind of a problem. In a nutshell, each case is difficult.

Having said that, to answer your specific question, Professor Weiler, I will talk about the most difficult case that I have ever faced as a judge. As I said, every case is difficult, but the case which has left the strongest impression on me is the very first case that I dealt with when I came to the court, i.e., the *Oil Platforms* case.

This is only natural; because it was the first case to me, I approached the case with the greatest attention and a sense of awe and so forth. That is one reason why it impressed me most, but another reason is that it was a difficult case. It was difficult in the sense that it had very interesting but intricate technical questions, like “what is the legal basis for the jurisdiction of the Court,” or “what should be the basis of the judgment of the court?”

It had the preliminary phase where jurisdiction was contested. The court decided that the court had jurisdiction on the basis of the Treaty of Commerce and Navigation between Iran and the United States, concluded in 1955, which had the compromissory clause, Article 21. This article said that any dispute concerning interpretation and application of the provisions of the treaty shall be referred to the International Court of Justice.

The question at issue was, “What article falls under that category?” Iran quoted Article 10, which said that “between the territories of the two contracting parties there shall be freedom of commerce and navigation”. I am not quoting here the exact language but that is the sense of the article.

The question was whether the bombardment by the United States of the oil platforms in the Persian Gulf belonging to Iran amounted to a violation of that article. The court came to the conclusion that it did not, and I thought that was enough, so I wrote my separate opinion on that basis. That is why I can talk about this case now, explaining my position, since I expressed my separate opinion on that point.

The judgment on the other hand went on, or rather started by, saying that the bombardment itself was a violation of Article 2, paragraph 4 of the Charter of the United Nations, and rejected the argument put forth by the United States that the U.S. was exonerated because of Article 20 of the Treaty, which safeguarded the essential security interests of the contracting parties, as not a valid ground for legalizing the action taken by the United States.

Then the judgment said that nevertheless, the action did not amount to a violation of Article 10 of the Treaty, as I quoted, and that the claim of Iran could not therefore be upheld. Now, this is an interesting case, relating as it was to the issue of to what extent the court can get into these substantive issues concerning the use of force under such conditions. I took the position that since Article 10 was the basis of jurisdiction, and since Article 10 was not applicable, or the case did not fall under Article 10, that should be the end of the judgment.

The majority of the court came to the conclusion—and of course I was one of the majority on the conclusion—that the claim by Iran was to be rejected. I had no objection to that conclusion. But the *dispositif* of the judgment went further than Article 10 and referred to Article 20 and the issue of legality of the use of force.

Now, it is a separate question whether the action by the United States was legal or not. The question is whether that question falls within the jurisdiction of the court. This is an interesting case but also a difficult case, because it really involved assessment of the issue of the peculiarity of the International Court of Justice which bases its jurisdiction on the consent of the parties.

Questions such as: to what extent one should regard this as the essential scope of jurisdiction; to what extent one could argue that now that the Court acquired jurisdiction under Article 21 of the Treaty, one could go beyond Article 10 issue which was the basis for the exercise of jurisdiction; and to what extent one was justified to talk about general international law in the context of Article 20 of the Treaty—these were the issues that we had to consider. I am not really going to elaborate my point on that question here, but I took my position on that issue which I expressed in my separate opinion. These are the kind of complications which are fascinating to deal with as a judge but which at the same time are difficult for a judge to decide upon.

Professor Weiler:

I am just going to ask you a quick follow-up. You realize we have been talking for a long time and I warned you that the clock will go quite quick.

To what extent, especially regarding the divergence between you and the majority on the basis, was the decision the result of the following? On the one hand, we all know there can be disagreement on an assessment of the facts, or there can be disagreement on what exactly is the contour of the rule, or there can be disagreement on how the rule applies to the facts, and we see that every day of our life in any five-to-four judgment.

But there can also be disagreements that derive from a deeper self-understanding of what the role of the judge is in a certain dispute. To what extent in your experience of the court, and you do not have to give us complete example, but do you feel that there is a commonality in understanding the role of the judge and role of the court in interpreting and applying international law, or given the fact that the judges come from so many different countries with so many different backgrounds, there are even divisions on the court on that very concept of what is our actual role?

Judge Owada:

I think you have put your finger on the very problem that is really essential in understanding and assessing the role of the court. I'm sure you all know a very famous book, almost a classic, written by a former judge of the Court, Sir Hersch Lauterpacht, on the development of international law through the International Court. He talks about various cases that came before the International Court from different aspects of the role of the court and discusses the issue of

the balance between judicial caution and effectiveness in judicial legislation. All these issues are there in different judgments of the court.

The question which really makes me think very seriously in dealing with concrete cases is, “What is the role of the judge in a particular concrete case?” If you take the doctrinal position of some of the judges in earlier times who took a very clear-cut teleological view on the role of the Court, the judge may have certain ideas to promote, and therefore on that basis should try to interpret everything in that direction.

I do not subscribe to that view. I try to be a judge—and this relates to what I said about the function of a judge—who pursues the truth in the case and applies the law as it is. I am a judge for the first time, and that is why I am always struggling with this problem. A judge is supposed to be applying the law; there are two functions, one is the question of applying the law. But what is application? How do you apply the law to a concrete case? I talked about some examples in this direction. The second is the question of determining what the law is in the concrete contest of the case. And you have to struggle with these two issues.

What is the process of application in a concrete case? What is the content of the law that you are applying? In each case, it is not simply the process of looking into the dictionary to find a definition. It is the question of what kind of attitude you take in a concrete situation. Are you trying to promote certain ideals of your own, or are you trying to be conservative and to try to restrict your function to interpretation *stricto sensu* and to say as little as possible? Depending upon where you stand, the result can be different. Not vastly different, may be, since white does not become black, but nevertheless, the tone of judgment can be different.

And sometimes even the context of the *dispositif* can be different, and that is a fascinating part of the function of the International Court of Justice. At the same time, it is a very difficult problem to solve and, in a sense, the principle of the majority rule prevailing in the court offers the solution to it.

As you know, the court consists of fifteen judges, and all fifteen judges participate in dealing with a case. There is good reason for that, because we represent different principal legal systems of the world and different major civilizations of the world. We come from all over the world with different legal training. So by having the fifteen judges discussing the same issues, with different socio-cultural background but nevertheless with common basic legal understanding, we try to reach consensus if possible, and if not, a majority view. I think that is the essence of the source of credibility and legitimacy of the judgment of the court. It may not be a perfect system, but I think it is close to perfect under the realistic conditions which prevail in the world.

Professor Weiler:

Judge Owada, we are all very proud when we go on the website of the court and look you up, and see the second line of your bio which states your present position as a professor at New York University Global Law School. Time has flown by. We will finish in a minute and I want to remind everybody that you are all invited to a reception which will take place just outside this room, and that might also give you a possibility to speak directly with Judge Owada. We have a

little tradition of finishing here, which is to ask you the following few questions: Do you have a favorite author?

Judge Owada:

Are you talking about contemporary authors?

Professor Weiler:

It is your favorite author; if you had one book that you would take with you to a desert island, or an author...

Judge Owada:

Well, the work that I like most is Anna Karenina by Tolstoy. I think that is really the classic that I like. Whether I am going to take that book to a desert island may be a different matter because you can read it in fascination, but once you read it again, you want to have something else to read in a desert island.

Professor Weiler:

At least it is big. Do you have a favorite piece of music, or composer? It has to be rock music. No, I am just teasing.

Judge Owada:

I am afraid I have never found a very strong interest in rock music, although I like classical jazz. But my preference would be more in the classics—older classical pieces. The Baroque period.

Professor Weiler:

So if you have to take one disc to the desert island, it would be baroque?

Judge Owada:

Yes, some piece of Bach.

Professor Weiler:

And is there a place in the world which is your favorite holiday spot?

Judge Owada:

Well, there are too many places—I have seen too many places in my time.

Professor Weiler:

Still, this is your last holiday on this earth. Where would it be?

Judge Owada:

I can assure you that it is not going to be the NYU Law School office that I am occupying now.

Professor Weiler:

And are you willing to share with us what you will have as your last supper?

Judge Owada:

Well, being someone who comes from Japan, I would like to have my last supper in Japan at the best restaurant in Japan.

Professor Weiler:

Which is what?

Judge Owada:

It is got to be a really good, very expensive restaurant, but you know, as a judge, I have to be very careful in particular in being specific on this question.

Professor Weiler:

Judge Owada, it is been a great pleasure having you with us. I want to offer three thanks: I want to offer thanks to those in the staff of the Global Law School Program that organized this event; I want to thank you very much and offer you this little present on behalf of the Global Law School Program, and my last thanks goes to all of you who graced us with your presence.

Judge Owada:

Thank you so much for listening to me with great attention, while suppressing your temptation to intervene with questions; I am sure you would have so many questions.

Professor Weiler:

I suppressed the temptation.

Judge Owada:

Then I should thank you, Professor Weiler, but you are all welcome to ask questions when the reception starts, because it is even more off the record and private than this meeting has been.

Professor Weiler:

Thank you very much.