

ICJ chief faces fiery baptism

Genocide case to be first test for the court's new president.

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By Helen Warrell and Janet Anderson

The forthcoming hearing of Bosnia's genocide case against Serbia and Montenegro will prove a baptism by fire for British QC Rosalyn Higgins, who was elected president of the International Court of Justice this week.

Bosnia's case, due to begin later this month, is the first-ever state versus state genocide charge, and has been on the court's list for 13 years. Disagreements between the parties and other more urgent demands for the court's deliberation have contributed to a wait which, Higgins admits, has been "uncomfortably long".

But now, Higgins says, "The time has come." As president, she will guide the 15-strong bench of ICJ judges through a hearing which is expected to take two months - and many more to come to a judgement - and will undoubtedly set a precedent for future accusations of state-sponsored genocide.

Higgins, who has been at the court for over ten years as a judge, and also represented the UK before the court, brings what Britain's foreign secretary Jack Straw described as "a considerable wealth of experience" to the job.

She is not only the court's first woman president, but still its only female judge. However, as she told IWPR, the fact of being the first woman, "matters more to others than it does to [her]", and she is certainly used to working in an all-male environment.

Educated at Cambridge University, Higgins went on to study at Yale and the London School of Economics. Since then, she has specialised in United Nations law, legal implications of the use of force, and human rights law.

At the ICJ, Higgins has been involved with key cases such as the dispute over Israel's West Bank barrier, in 2004. Later that year - when the court unanimously agreed that Serbia and Montenegro had no grounds to bring a case before the ICJ against eight NATO states accused of implementing a bombing campaign in the former Yugoslavia in 1999 - she was one of a large minority of judges that objected to majority's reasoning.

According to the judges' objection, the court's line showed a lack of consistency with former ICJ case law and had potential "implications" for other pending cases, in particular the upcoming Bosnia case.

If Serbia is outside the ICJ's jurisdiction to the extent that it could not bring a case of its own, then Serbian lawyers could also argue that it is not liable to be sued by Bosnia either.

Higgins told IWPR that the court strives to keep its prior decision-making in mind, and "certainly [tries] to be consistent".

The ICJ is going through a period of renewal, say some analysts. Ten years ago, the average age of those on the bench was around eighty or so. But that's changed with an infusion of new judges.

That Higgins, who senior observers of the international law scene have described to IWPR as a "moderate progressive" and a "moderniser", has now been elected president, suggests some consensus with her ideas of ensuring that the court moves with the times.

The court is being used again, says Higgins, not just in "boundary and territorial issues", for which it has won a slow, painstaking reputation, but also in "a lot of very contemporary issues".

Many of the court's judgements make political waves. Higgins is aware of the dangers of judges living in too rarefied a legal atmosphere. "On the one hand it has to be an impartial court of law. On the other, we live not only in an ivory tower, but in the real world," she said.

"I think an understanding of the implications of what we are doing is part of our strength. And it's an extremely fine

line to walk.”

The ICJ is in a unique position, she says, as the “primary judicial organ of the UN”, and because its pronouncements of international law or interpretation of treaties is “authoritative”.

Higgins is keen to maintain the way the court contributes to “the understanding and development of international law [through] high quality judgments” - and she stresses, the judges write “every word” themselves.

Over the last few months the court has made a number of rulings that have huge reverberations for international diplomacy concerning reparations for invading another country, supporting armed groups, and how the principles of the Genocide Convention are binding on all states, even when a state has not signed the convention.

Such far-reaching decisions may well have implications for the forthcoming Bosnia versus Serbia case.

Olivier Ribbelink, head of research at the Hague-based Asser Institute, says Higgins is known for being able to achieve a balance between the legal and the political.

He told IWPR, “She has a good eye for the international political aspects of a case, and the legal theory, and how the two interact.”

Cambridge international law expert, Roger O’Keefe, agrees. “She has an outstanding reputation, and can balance a rigorous approach to the law with a healthy sense of pragmatism,” he told IWPR.

“She’s a good peace-maker and a good diplomat and will bring people together at a difficult time in the law.”

Higgins is also a strikingly humane person, who is warm and well liked. These are vital attributes for a court president, who must help her fellow judges build a consensus through hours’ worth of deliberations leading up to the judgment.

She told IWPR, “People are always surprised that fifteen judges from around the world can reach decisions amicably together...It’s not always easy. But I am determined to maintain this sense of mutual respect - good hard-hitting debate but mutual respect and friendly personal relations.”

IWPR. Helen Warrell is an IWPR reporter and Janet Anderson is IWPR project manager in The Hague.