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Carnegieplein 2, 10:00 AM

'*La Cour!*'

Despite an optimistic weather forecast, it is a cold and gloomy morning in The Hague. A faint sunlight filters through the stained glass windows of the Great Hall of Justice and reflects off the brass chandeliers hanging from the vault. Resplendent at the centre of a large oil painting, the Goddess of Peace gazes upon the room packed with people. The attendees are all in business attire, except a handful of attorneys wearing the formal garments of their national bars. The tension is palpable, the atmosphere almost rarefied. Someone in the front row lets out a raucous cough; someone in the back is nervously clicking a pen.

In a few moments, the Goddess' wishes will be granted. The International Court of Justice (ICJ) is about to render its judgment in a complex territorial dispute between the Philippines and Malaysia. After decades of heated controversy, bitter confrontation, and even deadly skirmishes, this matter will be settled once and for all. The Law will be said, as per the ancient meaning of 'jurisdiction'. Or, if you prefer, the Law itself will make its eternal voice heard through the temporal mouth of the Court's President, Judge José Ignacio Rosas.

Upon hearing the bailiff's stentorian announcement – '*La Cour!*' – the whole crowd stands up. Fourteen men and three women, all in black robes and white jabots, slowly emerge from a small side door. One by one, they take their assigned seats at the podium. After a moment of silence, President Rosas clears his throat:

> *Bonjour, veuillez vous asseoir. La séance est ouverte. La Cour se réunit aujourd'hui, conformément à l'Article 58 de son Statut, pour rendre son arrêt dans l'affaire relative à la souveraineté sur le Territoire de Sabah, Bornéo du Nord (Philippines contre Malaisie)* ….
>
> Good morning, please take your seats. The sitting is open. The Court meets today, pursuant to Article 58 of its Statute, to render its judgment in the case concerning the sovereignty over the Territory of Sabah, North Borneo (Philippines/Malaysia) ….

The rite is beginning. It will go on for about two hours, during which the President will read out the Court's lengthy decision almost verbatim, before turning the floor to the Registrar for the statement of the *dispositif* (the operative provisions of the judgment). Everyone is ready to join in this communion, this celebration of the triumph of Reason and Fairness over the irrationality and cynicism of Politics. The Great Hall of Justice is transfiguring, once again, into the inner sanctum of international law, under the Goddess' benevolent watch.

Amid the solemnity of the ceremony, no one notices a young lady sitting in the overhead balcony, next to the press. Fiddling with her red curls, Sophie contemplates the scene from above, her pale green eyes searching for familiar faces in the crowd. She immediately recognizes her boss, Judge Jürgen Lehmann, sitting to the right of President Rosas. Sophie has not spoken to her mentor for days, precisely since the text of the judgment went out for the final editing. She realizes, with some surprise, that this is the longest silence between them since the dispute kicked off, over three years ago. If one were to count, Sophie has since spent more time with Judge Lehmann than with anyone else, her girlfriend Norma included. The old 'German Lion' – a nickname Jürgen Lehmann pretends to dislike – looks proud and relaxed today. Who wouldn't be, after emerging victorious from a fight over the outcomes of a case? Sophie is equally satisfied, but her satisfaction is tinged with pensiveness. All the battles they fought together, their shared struggles to cement the majority opinion, and the evenings spent trying to overcome unexpected stumbling blocks, will be forgotten as soon as the ritual ends.

As she is about to get lost in her thoughts, Sophie spots her friend Filibert N'Diaye, a senior associate with Burnham & Hutz LLP, sitting next to the Philippines' lead counsel (what's his name? Liam? Leonard? Sophie can't remember). Filibert looks exhausted. He must be relieved that this whole business is finally coming to an end. No matter the final result – and Sophie already knows the result will *not* be in his client's favour – Filibert's late shifts in the office are over. Soon, he will be free to take holidays, spend some long overdue time with his family, and eventually turn to a new dossier, already waiting on his desk. Sophie remembers the conversations they had in their law school days, sipping coffee at a Starbucks near Astor Place. The future was uncertain back then, as New York University (NYU) tuition fees had left them both in need of decently paying jobs. Still, Sophie and Filibert were confident that, one day, they would join the 'invisible

college of international lawyers'[1] – the exclusive club of women and men who sit at the centre of the international legal order. Little did they know that their journey would be that quick and that, only a few years later, they would find themselves together in *that* room.

Sophie's mind keeps wandering. Some of her former teachers and fellow PhDs are probably watching the live webcast. As soon as the judgment becomes public, legions of scholars will start appraising its merits, dissecting its every technical detail, and filling in the blanks in the Court's reasoning with deep theoretical understanding. The more traditional pundits will no doubt lament a certain lack of clarity in the Court's analysis. In particular, they may argue that the Court's reading of a crucial legal source – an ancient deed signed by His Majesty the Sultan of Sulu – lacks the rigour required under the Vienna Convention on the Law of Treaties (VCLT).[2] Other commentators will take a less technical and more normative stance. They may praise the Court's willingness to move past the colonial history of South-East Asia, or trace the evolution of the Court's views on statehood from 1947 to date. Yet other observers will focus on the discursive elements of the opinion. They may, for example, count the number of times the Court has referred to the decisions of other international tribunals, in order to test whether, in recent years, the ICJ has been striving to reunify a fragmented legal system.[3] Whatever the angle, today's decision will dominate international law blogs for quite some time: 'the Court meant this'; 'the Court meant that'; 'long live the Court'.

Sophie bets that the inevitable plethora of articles and case notes will all share one essential feature: they will take today's judgment as the *starting point* of the analysis – the irreducible building block upon which to develop their hypotheses. Only a few will dare to peek behind the curtain and investigate the processes that led to the formation of the judgment. And even those who seek to discern the true '*intention … du juge*' (usually to prove either its '*liberté … radicale*' or, conversely, its being '*logiquement … déterminée*'[4]) will concentrate their efforts on the text that President Rosas is now reading before his distinguished audience.

[1] O. Schachter, 'The Invisible College of International Lawyers' (1977) 72(2) NWULR 217.
[2] United Nations, *Vienna Convention on the Law of Treaties* (23 May 1969), UNTS 1155, 331.
[3] See e.g. M. Andenas, 'Reassertion and Transformation: From Fragmentation to Convergence in International Law' (2015) 46(3) GeoJIntlL 685.
[4] E. Jouannet, 'La Motivation ou le Mystère de la Boîte Noire', in H. Ruiz Fabri and J.-M. Sorel (eds.), *La Motivation des Décisions des Juridictions Internationales* (Pedone, 2008) 251, 271.

Who could blame them? After all, that text constitutes the sole tangible result of international adjudication. That orderly series of words, sentences, and paragraphs is the artefact that embodies the ethos and aspirations of our discipline. If you deconstruct the artefact, its magic vanishes. A believer cannot question the manner in which the scriptures came about, lest they lose faith in the voice of God. A respectable international lawyer cannot unravel the hidden ways the Court's 'holy writs'[5] were cobbled together, lest they destroy the very foundation of their inquiry and undermine the possibility to say anything meaningful. In law, as in religion, you are supposed to play with what you are given. Right?

Well, not quite. At least for Sophie, today's judgment is not the starting point, but *the end* of a strenuous journey that began over three years ago, when the Philippines decided to turn its political grievances against Malaysia into a set of legal claims. Considering what has happened since, that seems like a lifetime ago. As she silently watches the ceremony unfold, Sophie cannot but grin and ponder:

> If only they knew what a ride it was to get here …. If they knew how many people worked behind the scenes to shape the content of this decision, they would think twice before praising or faulting those seventeen folks at the podium. If they had any idea of the conversations, confrontations, and doubts that punctuated the process, maybe they would pause before calling the ruling a mere elucidation of the law. If they could get a glimpse of the endless series of choices through which certain elements of the case made it to the final text, while others ended up in the dustbin of discarded possibilities, they would probably share the slight vertigo I am experiencing now.

For a split second, Sophie's eyes cross those of the Goddess of Peace. Perhaps due to the emotion of the moment, or perhaps because of the fatigue accumulated, Sophie could swear that the Goddess is winking at her.

What a three years it has been.

*

The story you are about to read is the story of those three years. Or, more accurately, it is the story of the practices, the interactions, and the confrontations that occur every day within the international judicial community. Throughout the long and winding path that leads to an international judgment, countless people work incessantly to promote their competing

[5] R. Jennings, 'The Role of the International Court of Justice' (1998) 68(1) BYBIL 1, 41.

views about the persuasiveness of legal argument,[6] assert their authority over the issues at stake,[7] and maximize their capital within their professional field.[8] These endogenous dynamics, so often overlooked in scholarly accounts, are not a corollary to the judicial process – they *are* the process. We can hardly understand the results of an international case without inquiring into the discrete operations that marked its every step. Likewise, we cannot explain the behaviour of international courts and tribunals by focusing on the judges alone, in isolation from the professional milieu that surrounds them. Agents, counsel, advisers, scientific experts, clerks, registries, secretariats, and academics – they all partake in the development of legal discourse and the definition of judicial outcomes.

The idea behind this book, simply put, is that the ways in which these inner circles of legal professionals interact, cooperate, and clash in their everyday routines have a crucial impact on international judgments: *more so*, dare we say, than the substantive norms that adjudicators are called upon to interpret and apply; and *more so* than the external political pressure exerted on international courts and tribunals.

Some of you may dismiss this idea as obscene. We would agree. The word 'obscene' comes from the Latin *ob scaena*, meaning 'off stage'. Indeed, this story seeks to mark a symbolic movement away from the ceremonial courtroom setting where the decision is read – where international law is *said* – towards the muted ambience of deliberation rooms, the buzz of printers in the backroom offices, the friendly chatter of cafeterias – where international law is *constructed*.

The plot will take us to the seats of five international adjudicative bodies: the ICJ, the European Court of Human Rights (ECtHR), the Inter-American Court of Human Rights (IACtHR), the World Trade Organization (WTO) dispute settlement system, and an ideal-typical

[6] See e.g. A. Bianchi, 'Textual Interpretation and (International) Law Reading: The Myth of (In)Determinacy and the Genealogy of Meaning', in P. Bekker, R. Dolzer, and M. Waibel (eds.), *Making Transnational Law Work in the Global Economy: Essays in Honour of Detlev Vagts* (Cambridge University Press, 2010) 34, 49; I. Venzke, *How Interpretation Makes International Law: On Semantic Change and Normative Twists* (Oxford University Press, 2012), 5; J. d'Aspremont, 'The Multidimensional Process of Interpretation: Content-Determination and Law-Ascertainment Distinguished', in A. Bianchi, D. Peat, and M. Windsor (eds.), *Interpretation in International Law* (Oxford University Press, 2015) 111, 114.

[7] See e.g. K. T. Gaubatz and M. MacArthur, 'How International Is "International" Law?' (2001) 22(2) MichJIntlL 239, 246; G. Shaffer and J. P. Trachtman, 'Interpretation and Institutional Choice at the WTO' (2011) 52(1) VaJIntlL 103, 122.

[8] P. Bourdieu, 'The Force of Law: Toward a Sociology of the Juridical Field' (1987) 38(5) HastingsLJ 805, 817.

investment arbitral tribunal. There, we will trace the unfolding of judicial proceedings from the preparatory stages, when the complaining party starts to put together its case, to the closing moment, when the final judgment is issued to the public. At every turn, we will reveal the myriad ways in which Sophie, Filibert, Judge Lehmann, and various other members of the international judicial community contribute to the process. We will see, among other things, how counsel help their clients transform amorphous masses of facts and grievances into structured sets of claims and arguments; how institutional bureaucracies shape the adjudicators' decisions by conducting legal research, preparing memoranda, and drafting the rulings; and how specialized scholars systematize case law and develop a common grammar for a shared understanding of the discipline.

Be warned: in the pages that follow, you will not find an exhaustive review of the official powers vested in those actors, nor a treatise on the formal rules that govern their procedures. What you *will* find is a detailed account of the social structures, the professional relationships, the shared assumptions, the tacit understandings, and the sites of struggle that make up the international judicial field. By the end of the book, most of you will have discovered a wealth of 'otherwise hidden activities that illuminate international tribunals' inner workings'.[9] Some of you may have come to appreciate the 'vascularization' and the numerous connections that allow judicial institutions to breathe.[10] All of you will have been reminded, time and again, that '[i]nternational law is a group of *people* pursuing projects in a common professional language.'[11]

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If you are still debating whether to continue reading, let us say that we are neither the first nor the last storyteller to attempt such a feat. In recent years, numerous voices have emerged that stress the need to open the 'black box' of international courts and tribunals and shed light on their inner workings.[12] This call to arms does not arise in a vacuum but marks the next step in the evolution of scholarly sensibilities, eager to investigate the role of international adjudication in contemporary world affairs.

[9] J. L. Dunoff and M. A. Pollack, 'International Judicial Practices: Opening the "Black Box" of International Courts' (2018) 40(1) MichJIntlL 47, 49.
[10] B. Latour, *The Making of Law: An Ethnography of the Conseil d'État*, trans. M. Brilman and A. Pottage (Polity Press, 2010), 5.
[11] D. W. Kennedy, 'One, Two, Three, Many Legal Orders: Legal Pluralism and the Cosmopolitan Dream' (2007) 31(3) NYURevL&SocChange 641, 650 (original emphasis).
[12] See e.g. Dunoff and Pollack, 'International Judicial Practices'.

The literature on the topic has come a long way and nowadays offers a rich menu of approaches drawing from international law, international relations, organization theory, and social studies. Yet, we would argue, most observers still conceive of international courts as 'reified collectives forming separate and self-standing units of analysis',[13] thereby remaining oblivious to the socio-professional communities in which adjudicators are immersed. A brief overview of the main narratives may help elucidate this argument and better explain why we see merit in telling this story.

Traditional scholars moved from the 'uncontroversial' (!) premise that the international legal system was nothing but 'the aggregate of the legal norms governing international relations'.[14] That system was populated by abstract entities, such as sovereign states and the other formal 'subjects' of international law,[15] seeking protection of their rights before 'apersonal' adjudicative bodies.[16] International judges were seen – and, perhaps, still see themselves – as the impartial 'guardians of the law'.[17] Herculean individuals of 'superhuman intellectual power and patience',[18] they were tasked with *ascertaining* the preordained meaning of the relevant norms,[19] *clarifying* their ambiguities,[20] and mechanically *applying* them to

[13] A. Vauchez, 'Communities of International Litigators', in C. P. R. Romano, K. J. Alter, and Y. Shany (eds.), *The Oxford Handbook of International Adjudication* (Oxford University Press, 2014) 655–6.

[14] P. Weil, 'Towards Relative Normativity in International Law?' (1983) 77(3) AJIL 413.

[15] A. Bianchi, 'The Game of Interpretation in International Law: The Players, the Cards, and Why the Game Is Worth the Candle', in A. Bianchi, D. Peat, and M. Windsor (eds.), *Interpretation in International Law* (Oxford University Press, 2015) 34, 39.

[16] G. Messenger, 'The Practice of Litigation at the ICJ: The Role of Counsel in the Development of International Law', in M. Hirsch and A. Lang (eds.), *Research Handbook on the Sociology of International Law* (Edward Elgar, 2018) 208, 210.

[17] Terris, Romano, and Swigart, *The International Judge*, xix. See also e.g. E. U. Petersmann, 'Multilevel Judicial Governance as Guardian of the Constitutional Unity of International Economic Law' (2008) 30(3) LoyLAIntl&CompLRev 367, 378; A. Føllesdal, 'To Guide and Guard International Judges' (2014) 46(3) NYUJILP 793–5.

[18] R. Dworkin, *The Law's Empire* (Harvard University Press, 1986), 239.

[19] J. Klabbers, 'Virtuous Interpretation', in M. Fitzmaurice, O. Elias, and P. Merkouris (eds.), *Treaty Interpretation and the Vienna Convention on the Law of Treaties: 30 Years On* (Martinus Nijhoff, 2010) 17, 23. See also I. Johnstone, *The Power of Deliberation: International Law, Politics and Organizations* (Oxford University Press, 2011), 35; I. Venzke, 'The Role of International Courts as Interpreters and Developers of the Law: Working Out the Jurisgenerative Practice of Interpretation' (2011) 34(1) LoyLAIntl&CompLRev 99–100; Latour, *The Making of Law*, 142.

[20] H. Lauterpacht, *The Development of International Law by the International Court* (Steven and Sons, 1958), 66.

the disputed facts.[21] To better carry out these duties, judges could resort to a host of codified doctrines, such as the methods of treaty interpretation set out in Articles 31 and 32 of the VCLT, which offered objective and neutral guidance on how to read legal sources. Rigorous and uniform adherence to those doctrines would enable the interpreter to '*deduce* the meaning exactly of what ha[d] been consented to' and reach logical and unassailable conclusions.[22]

This formalist conception, rooted in 'classical legal thought',[23] knew its peak in the aftermath of the Cold War. That is the moment when international law entered its 'post–ontological era',[24] that is when its effectiveness and 'lawness' ceased to be questioned. Indeed, the fall of the Berlin Wall was accompanied by the explosive expansion of international adjudication. Within the span of a decade, dozens of new judicial mechanisms were established, including the WTO dispute settlement system, its homologue under the North-American Free Trade Association (NAFTA), the International Tribunal for the Law of the Sea (ITLOS), the International Criminal Tribunals for Former Yugoslavia (ICTY) and Rwanda, the International Criminal Court, and the mixed tribunals for Lebanon and Sierra-Leone. Investor–state dispute settlement (ISDS), which had remained dormant throughout the 1980s, suddenly rose to prominence as a central governance node.[25] Preexisting mechanisms, like the ECtHR, were overhauled to facilitate the filing of complaints and broaden the pool of potential applicants. As a result, the current landscape of international adjudication sees the simultaneous operation of roughly thirty standing

[21] C. Wells, 'Situated Decisionmaking' (1990) 63 SCalLRev 1727, 1732–3.

[22] A. Orakhelashvili, *The Interpretation of Acts and Rules in Public International Law* (Oxford University Press, 2008), 286 (emphasis added). See also Venzke, *How Interpretation Makes International Law*, 50; J.-M. Sorel and V. Boré-Eveno, 'Article 31', in O. Corten and P. Klein (eds.), *The Vienna Conventions on the Law of Treaties: A Commentary* (Oxford University Press, 2011) 804, 806.

[23] D. Kennedy, 'Towards a Historical Understanding of Legal Consciousness: The Case of Classical Legal Thought in America, 1850–1940' (1980) 3 ResL&Soc 3.

[24] T. M. Franck, *Fairness in International Law and Institutions* (Clarendon Press, 1995), 6. See also J. d'Aspremont, 'The Professionalisation of International Law', in J. d'Aspremont et al. (eds.), *International Law as a Profession* (Cambridge University Press, 2017) 19, 23.

[25] According to the statistics of the United Nations Conference on Trade and Development (UNCTAD), by the end of 2011, states had signed 3,164 international investment agreements – comprising 2,833 bilateral investment treaties (BITs) and 331 other investment agreements. UNCTAD, World Investment Report 2012, UN Doc. No. UNCTAD/WIR/2012, 84 (2012). See also B. E. Allen and T. Soave, 'Jurisdictional Overlap in WTO Dispute Settlement and Investment Arbitration' (2014) 30(1) ArbIntl 1, 4.

courts and hundreds of ad hoc tribunals.[26] Together, these bodies have rendered almost 40,000 rulings on a wide array of contentious political, economic, and security issues.[27]

As the dockets filled up, international lawyers rejoiced. At last, international law had teeth.[28] At last, they could focus on 'real law' – real cases decided by real judges – on par with domestic law specialists.[29] The 'new terrain'[30] of international adjudication led to the proliferation of treatises systematizing the case law of the various courts, evaluating the quality and rigour of their reasoning, and exploring a variety of jurisdictional and procedural matters.[31] Long relegated to the margins of scholarly analysis, judicial interpretation suddenly became the obsession of international lawyers, playing out as 'the functional equivalent of truth' in international legal discourse.[32]

To be sure, some feared that the proliferation of adjudicatory bodies, each with its own focus on a sectoral subject matter (human rights, trade, investment, law of the sea, etc.), might give rise to conflicting rulings and threaten the coherence of 'general' international law.[33] Yet, these were but 'anxieties'[34] that could be easily assuaged by resort to

[26] For a more comprehensive account, see C. P. R. Romano, K. J. Alter, and Y. Shany (eds.), *The Oxford Handbook of International Adjudication* (Oxford University Press, 2014), annexed taxonomic timeline. See also J. I. Charney, 'Third Party Dispute Settlement and International Law' (1998) 36(1&2) ColumJTransnatlL 65, 69–70; T. Buergenthal, 'Proliferation of International Courts and Tribunals: Is It Good or Bad?' (2001) 14(2) LJIL 267, 271–2.

[27] See K. J. Alter, *The New Terrain of International Law: Courts, Politics, Rights* (Princeton University Press, 2014), 4; Dunoff and Pollack, 'International Judicial Practices', 47.

[28] See generally J. I. Charney, 'The Impact on the International Legal System of the Growth of International Courts and Tribunals' (1999) 31(4) NYUJILP 697; G. Hafner, 'Pros and Cons Ensuing from Fragmentation of International Law' (2004) 25(4) MichJIntlL 859; G. Abi-Saab, 'Fragmentation or Unification: Some Concluding Remarks' (1999) 31(4) NYUJILP 919.

[29] J. E. Alvarez, 'The New Dispute Settlers: (Half) Truths and Consequences' (2003) 38(3) TexIntlLJ 405, 406.

[30] Alter, *The New Terrain*.

[31] Dunoff and Pollack, 'International Judicial Practices', 48.

[32] Klabbers, 'Virtuous Interpretation', 18 (quoting D. W. Kennedy, 'The Turn to Interpretation' (1985) 58 SCalLRev 251, 265).

[33] See e.g. Buergenthal, 'Proliferation of International Courts', 272; J. Calamita, 'Countermeasures and Jurisdiction: Between Effectiveness and Fragmentation' (2010) 42(2) GeoJIntlL 1.

[34] M. Koskenniemi and P. Leino, 'Fragmentation of International Law? Postmodern Anxieties', 15(3) LJIL 553 (2002).

conflict-management techniques like 'systemic integration',[35] *lex posterior*, *lex specialis*,[36] *res judicata*, *lis pendens*, judicial comity,[37] and the like.[38] A careful use of these tools would enable courts to 'interpret away' most potential frictions.[39] At any rate, the international community had little time to waste with these qualms: it was too busy celebrating the judicialization of international relations,[40] the victory of the international rule of law over the cynicism of state politics,[41] and the new normalcy where 'the rules of civilised behaviour would come to govern international life'.[42]

Along this triumphal march, some prophesied that international judges would coalesce into an 'integrated and interconnected system'[43] forged more by their 'common function' than by the differences in the sectoral rules they applied and the parties appearing before them.[44] The emergence of this 'global community of courts' would ultimately lead to a 'global jurisprudence' based on common values like due process and universal human rights.[45] Amid the general enthusiasm, those who dared questioning the objectivity of law or alluded its underlying ideologies

[35] See e.g. M. McLachlan, 'The Principle of Systemic Integration and Article 31(3)(c) of the Vienna Convention', 54(2) ICLQ 279 (2005).

[36] See e.g. M. Akehurst, 'The Hierarchy of the Sources of International Law' (1975) 47(1) BYBIL 273; M. E. Villiger, *Customary International Law and Treaties* (Martinus Nijhoff, 1985), 36; J. Pauwelyn, *Conflict of Norms in Public International Law: How WTO Law Relates to Other Rules of International Law* (Cambridge University Press, 2003), 327–436; H. Thirlway, 'The Sources of International Law', in M. Evans (ed.), *International Law* (2nd edn., Oxford University Press, 2006) 132.

[37] See e.g. Allen and Soave, 'Jurisdictional Overlap', 20–5, 43–7.

[38] The most exhaustive exploration of these conflict-management techniques is contained in the International Law Commission's 2006 report titled *Fragmentation of International Law: Difficulties Arising from the Diversification and Expansion of International Law*, A/CN.4/L.682 (13 April 2006) ('ILC Fragmentation Report').

[39] J. Pauwelyn, 'The Role of Public International Law in the WTO: How Far Can We Go?' (2001) 95(3) AJIL 535, 550.

[40] See e.g. A. Stone Sweet, 'Judicialization and the Construction of Governance' (1999) 32(2) CompPolStud 147, 163–4.

[41] See e.g. J. Hillman, 'An Emerging International Rule of Law? The WTO Dispute Settlement System's Role in Its Evolution' (2011) 42(2) OttawaLRev 269.

[42] M. Koskenniemi, '"The Lady Doth Protest Too Much": Kosovo, and the Turn to Ethics in International Law' (2002) 65(2) MLR 159, 160.

[43] W. W. Burke-White, 'International Legal Pluralism' (2004) 25(4) MichJIntlL 963, 971.

[44] A.-M. Slaughter, 'A Global Community of Courts' (2003) 44(1) HarvIntlLJ 191, 192.

[45] Ibid., 202, 217. See also A.-M. Slaughter, 'A Typology of Transjudicial Communication' (1994) 29(1) URichLRev 99, 134.