are international criminal tribunals prosecuting individuals) is to settle international disputes in one way or another. By giving the international community a broad range of dispute-resolution options, especially for peaceful resolution according to rules of international law, the international community benefits.

I am therefore of the view that this growth in international dispute settlement forums strengthens international law by promoting it and the rule of law generally. So, the more the merrier.

**Remarks by Richard B. Bilder**

I agree with Professor Charney that the increasing number of international courts and tribunals really is not a significant problem. This issue has been very extensively studied, most notably in his Hague lectures,¹ and it seems to me that there is a quite broad consensus on several points.

First, the increasing number of tribunals is a healthy development. It is the product of the desire of states to create special treaty regimes with their own dispute settlement arrangements and to have a variety of diverse and flexible options from which to choose.

Second, the increase in the number of tribunals has worked well. It has resulted in more adjudication and, in general, more effective settlement of international disputes. The fact that states have created these tribunals means that they are the kind of tribunals states are willing to use, that they consider well-suited to their purposes, and that involve less risk for them.

Third, as Professor Charney has shown in his lectures, this multiplication has not threatened the coherence, unity, or universality of international law. As we might have expected, the various tribunals have usually tended to apply the same legal principles; after all, the judges generally share the same legal culture and are participants in what Oscar Schachter has called “the invisible college.” They are all subject to the pressures that tend to lead judges to follow precedent—for example, a concern not to upset the expectations of litigants based on past decisions, judicial economy in not having to re-think problems, perhaps not wanting to get into a situation where somebody will criticize them for reaching a different result. All these pressures tend to bring about some degree of conformity—and, to the extent that there is some diversity, that may not be a bad thing.

Finally, these developments do not really threaten the primary role of the International Court of Justice (ICJ) as the leading and most authoritative interpreter of general international law. This result is also hardly surprising when you think of the ICJ’s traditional leading stature in our profession, its role as a “repeat player” in the field, and its well-earned prestige.

So all of these things make me simply echo Professor Charney’s conclusion that, while proliferation may not be a nonproblem, it is certainly not a big problem. Thomas Buergenthal in a recent lecture reached a similar conclusion—that, in general, the proliferation of international tribunals has been beneficial, has contributed to the development of international law and has increased the relevance of international law to contemporary international relations.²

¹ Foley & Lardner Emeritus Professor of Law, University of Wisconsin Law School.


However, to say that the increasing number of international tribunals does not pose a significant threat to either the universality of international law or the primacy of the ICJ does not mean that it raises no questions. Let me briefly mention a few.

First, let me address the meta-issue that this multiplication of tribunals raises—what this conference has referred to as the increasing legalization of international relations, or, more specifically, the "judicialization" of international dispute settlement. Is judicial settlement really a good way of dealing with international, or indeed other kinds of, disputes?

As a profession, we as lawyers generally prefer judicial settlement and have tended to assume that it is the best way of resolving disputes. But a number of people, myself included, have pointed out that this is not necessarily true. Certainly, more courts mean more work for us as lawyers. They mean we have more "hard law" in the sense of more judicial decisions. But obviously judicial dispute settlement is not the only way to settle disputes; indeed, it is often not the best or even a very good way of doing so. Negotiation, mediation, and other techniques that rely on negotiation and compromise—"political" means—are often a better way to resolve problems. There are thus some potential disadvantages of judicial settlement: it can be inflexible; it can be biased, complex, and costly; it can result in superficial or illusory settlement; and in some cases it can make matters worse.

The debate over the use of "judicialized" rather than other approaches to dispute resolution has occurred in a variety of contexts—for example, in international trade relations in relation to the move to the new World Trade Organization (WTO) dispute settlement understandings. Right now, as we talk here, a panel next door is discussing the topic of "Overlegalizing Human Rights." Debate also continues in international criminal law as to whether prosecutions using international criminal courts are the best, or even a good, way of handling the kinds of problems we have tried to address in that area.

So much for the meta-questions. Let me briefly mention other issues. First, is it possible that the multiplication of international courts and tribunals tends to produce more disputes, in that it at least makes it easier and thus more likely that states will pursue alleged grievances that otherwise might have been dropped or more quietly resolved? We all know that suing someone and bringing them to court can be used simply as a negotiating technique. Perhaps this can help to resolve disputes, but it can also exacerbate them. I have read that an ancient Chinese emperor, who believed that the empire was plagued by too many lawsuits, decided to deal with the problem by appointing really terrible judges; as a result, everybody became so frightened of going to court that they just settled their disputes themselves—which the emperor considered a "good thing"!

It is also interesting to ask whether, to some extent, we as international lawyers may have tended to push for more courts and tribunals simply because that is the kind of international process we are particularly comfortable with, and that tends to provide us with satisfying work. I recall one situation where I think that one of the things that led us to request arbitration rather than continue with very difficult negotiations was that we were really curious as to how an international arbitration was conducted. I was told of another situation, perhaps apocryphal, where a foreign country's interest in creating a new international tribunal was at least partly because a member of their delegation hoped to be put on it.

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Finally, do we really need complete unity and universality in our international law? For example, if the ICJ and the International Criminal Tribunal for the Former Yugoslavia (ICTY) reach somewhat different conclusions, who is to say which court is "more right" or "better"? Indeed, to the extent that different tribunals have different views, that may be a good thing in providing more scope for testing alternative ideas or approaches. And perhaps there are some situations where different people or institutions may appropriately need or want to deal with each other on the basis of their own special legal norms. For example, the most recent issue of the *Leiden Journal of International Law* has an interesting note by a student on a proposed International Court of Islamic Law that would apply Islamic law to relations between Islamic states. Why not?

In sum, it is not clear that our international judicial system needs fixing. Clearly, we as international lawyers should not push for more courts simply so that we have more work to do. But otherwise, I do not think that the increasing number of international tribunals is something we need really worry about.

**REMARKS BY BERNARD H. OXMAN***

Let me first add my voice to what has already been said about Professor Charney's study. I recently told a student that there was no point in discussing the issue until the student read that study. When the student had done so, I remarked, only half in jest, that there was nothing more to discuss. Now I know how the student felt.

Neither logic nor law nor state practice suggests that the only available options for settlement of disputes arising under international law are either the International Court of Justice (ICJ) or ad hoc arbitration. Article 95 of the UN Charter (Charter) expressly preserves the right of states to establish other tribunals. Article 95 may be viewed as a specific application of the right of states under Article 33 of the Charter to settle disputes by peaceful means of their own choice, and more broadly of their right to establish other political institutions as well, be they global or regional. Those institutions may or may not be affiliated with the UN system and (apart from binding measures adopted by the UN Security Council under Chapter 7 of the Charter) generally are not subject to UN control.

The question is: Under what circumstances is it wise to establish a new standing tribunal? The creation of the International Tribunal for the Law of the Sea (ITLOS) affords a good case study, not least because the idea seems to have perturbed some ICJ judges concerned about the role of that court as the principal judicial organ of the United Nations.

Draft articles providing for a new tribunal were introduced by the United States in 1973 before the Third UN Conference on the Law of the Sea was convened. The proposal was formulated under the leadership of the late John R. Stevenson, who as Legal Adviser of the Department of State and in other capacities was widely regarded as a friend of the ICJ who was interested in increasing the number of disputes referred to it and in ensuring respect for its decisions. Why then did he propose a new tribunal?

The idea was introduced to the broader community of international lawyers in an article Ambassador Stevenson and I published in the *AJIL* in 1974. We explained:

The developing factual . . . situation in the oceans is one in which every country increasingly believes that it has, in effect, the option of pronouncing and attempting

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