

A black and white photograph of the International Court of Justice in session. The court is a large, ornate room with high ceilings and wood-paneled walls. A long, dark wooden bench runs along the front of the room, where several judges are seated. They are wearing traditional judicial robes. The room is filled with people, including staff and observers, seated in rows of benches facing the court. The overall atmosphere is formal and dignified.

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INTERNATIONAL COURTS AND TRIBUNALS SERIES

International Judicial Integration and Fragmentation

PHILIPPA WEBB

INTERNATIONAL COURTS
AND TRIBUNALS SERIES

General Editors: PHILIPPE SANDS, RUTH MACKENZIE,
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International Judicial
Integration and Fragmentation

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For Eric and Charles Henri

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Series Editors' Preface

The International Courts and Tribunals series welcomes this debut opus of Philippa Webb. Originally written as a doctoral dissertation for Yale Law School, Webb's work caps more than a decade of academic debate over whether the increased number and diversity in international adjudicative bodies, operating without formal rules governing the relationships between them and in the absence of an ultimate court of appeal to tie them all together, poses a threat to the postulated unity of international law.

The late Jonathan Charney tackled the question at the end of the 1990s, at the beginning of the multiplication of international courts and tribunals.¹ His answer was a resounding no, but what Charney lacked was enough empirical evidence to substantiate what was essentially a correct intuition. Since Charney, the role played by international courts in causing or countering the fragmentation of international law has become a classical theme of international adjudication scholarship.

Webb's work focuses on four international courts (ICJ, ICC, ICTY, and ICTR) to discuss how they have tackled, each from the perspective of its own cases and jurisdiction, three related issues: genocide, immunities, and use of force. Unsurprisingly, she finds a good degree of convergence between these four bodies on these topics, but her real contribution to the field is the identification of the factors that influence the degree of integration or fragmentation among adjudicative bodies.

Cesare PR Romano
January 2013, Santa Monica, California

¹ Jonathan I Charney, 'Is International Law Threatened by Multiple International Tribunals?' (1998) 271 *Recueil des Cours* 101, 117.

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Acknowledgements

This book is a revised and updated version of a JSD dissertation I submitted to Yale Law School in April 2011. I was awarded my JSD degree in September 2011, six weeks after the arrival of my son, Charles.

My dissertation was grounded on the wonderful year I spent as an LLM student at Yale Law School in 2003–2004. The classes I took with Professors Brilmayer, Reisman, and Damaška inspired my topic, as did the International Courts Seminar with Judge Wald and Dr Askin. The opportunities afforded to me by Yale, including a clerkship at the International Court of Justice in 2004–2005 and a high-level course in International Criminal Law at the European University Institute, have deepened my knowledge of the areas of law examined here. And the warm friendships that I formed during my LLM year sustained my motivation to complete the dissertation, as I lived and worked in The Hague and Paris.

I am deeply indebted to Professor Brilmayer for her supervision. Her comments were always insightful and she challenged me to improve and rethink my structure and arguments at critical moments in the drafting process. I am very grateful to Professor Reisman and Professor Damaška for their wise advice along the way, their friendly encouragement, and the time that they have taken to read my work. I also benefited from the warm friendship and sound advice of Maria Dino, Director of Graduate Programmes.

From 2004 until the present, I have had the honour of working for Judge Rosalyn Higgins in various capacities. Her impact on this book may be apparent from the footnotes; her influence on my thinking and my career goes much deeper.

Friends and colleagues in New Haven, The Hague, London, Paris, Dublin, New York, Sydney, and elsewhere have helped in important ways. Early advice from Oonagh Breen and Ben Berger has served me well. Amal Alamuddin, Ben Batros, and Rachel Davis have helped me grapple with ideas in a series of invaluable conversations and have commented on multiple drafts. I am also thankful for the comments on specific drafts that I received from Kirsten Roberts, Gleider Hernandez, Antonios Tzanakopoulos, Hiran Abtahi, and Dapo Akande, and for the meticulous editorial assistance of Anja Wiersing. I am grateful for the strong support and interest of Judge Kenneth Keith, Judge Erkki Kourula, Emma Lindsay, Shaun Gatter, Florence Zaoui, Analu Verbin, Horacio Etchichury, Ingrid Barnsley, and Ben Juratowitch. Throughout the writing process I have had in mind Mino Hokari, a dear friend who completed his own thesis and a book based upon it before his untimely death at 32 years old.

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Finally, I would like to thank my family. My parents and my sister Nicole have, as always, offered constant support. My husband Eric has encouraged me every step of the way, from New Haven to The Hague to Paris, from the first forays into research to the final footnote references. His contribution may be intangible, but it is immense.

Some parts of this book develop material I published elsewhere. A section of the chapter on genocide builds on ideas in Philippa Webb, 'Binocular Vision: State Responsibility and Individual Criminal Responsibility for Genocide' in Carsten Stahn and Larissa van den Herik (eds), *The Diversification and Fragmentation of International Criminal Law* 117 (Martinus Nijhoff 2012). The chapter on immunities contains information and ideas first presented in Philippa Webb, 'Human Rights and the Immunities of State Officials' in Erika de Wet and Jure Vidmar (eds), *Hierarchy in International Law: The Place of Human Rights* 114 (OUP 2012). My thinking on immunities has been greatly assisted by my work with Lady Hazel Fox QC on the third edition of *The Law of State Immunity* (forthcoming OUP 2013).

The views expressed in this book are my own and do not necessarily represent those of the International Court of Justice or the International Criminal Court. The relevant case law is up to date as of October 2012 unless otherwise indicated.

Dr Philippa Webb
London
31 October 2012

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List of Acronyms

ADF	Allied Democratic Forces
ASP	Assembly of States Parties
DRC	Democratic Republic of the Congo
ECCE	Extraordinary Chambers in the Courts of Cambodia
ECJ	European Court of Justice
ECtHR	European Court of Human Rights
EECC	Eritrea-Ethiopia Claims Commission
EU	European Union
FNI	Front Nationaliste et Intégrationniste
FPLC	Forces Armées pour la Libération du Congo
FRPI	Force de Resistance Patriotique en Ituri
FRY	Federal Republic of Yugoslavia
FSIA	Foreign Sovereign Immunities Act
GA	General Assembly
IACtHR	Inter-American Court of Human Rights
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICJ	International Court of Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the Former Yugoslavia
IFAD	International Fund for Agricultural Development
ILC	International Law Commission
ILOAT	Administrative Tribunal of the International Labour Organization
ITLOS	International Tribunal for the Law of the Sea
NGO	Non-governmental Organization
PCA	Permanent Court of Arbitration
PCIJ	Permanent Court of International Justice
PUSIC	Parti pour l'Unité et la Sauvegarde de l'Intégrité du Congo
SC	Security Council
SCSL	Special Court for Sierra Leone
STL	Special Tribunal for Lebanon
UN	United Nations
UNAT	United Nations Administrative Tribunal
UNCLOS	United Nations Convention on the Law of the Sea
UPC	Union des Patriots Congolais
VRs	Vojska Republike Srpske (army of the Republika Srpska)
WTO	World Trade Organization

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