

REMEMBERING THOMAS FRANCK

THOMAS BUERGENTHAL*

Thomas Franck's distinguished scholarly career and professional achievements are well known: more than two dozen books and a large number of articles on a variety of different international law subjects, reflecting his highly creative mind, his strong belief in the importance of an effective international legal system, and his elegant literary style. Among the generation of American international lawyers who studied under Louis Sohn at Harvard in the 1950s and 1960s, many of whom became distinguished international legal scholars and lawyers, he rose to become the most eminent. He was a sought-after international counselor, litigator, and arbitrator. He held many important professional positions, including editor-in-chief of the *American Journal of International Law* and president of the American Society of International Law (ASIL). To show its great admiration and profound affection for him, the ASIL elected him its honorary president shortly before his death. It was a most fitting tribute to a man who believed in and fought for an effective and humane international legal system.

These and Tom Franck's many other professional accomplishments and honors are well known and will no doubt be described in detail by others. But, to those of us who knew him well and regarded it a privilege to be his friends, Tom was above all a very special human being. He was kind, generous, and lacked the arrogance that at times afflicts some members of our profession. He loved life and those large and small things that make it intellectually exciting, emotionally satisfying, spiritually uplifting, and, in general, worth living.

Tom had a special affinity for music, the arts, and literature, and when discussing the latest concert he had heard, an exhibit he had recently visited, or the play he had seen, he radiated an enchanting enthusiasm and profound understanding of culture that made one wish the conversation would never end. Yet he did not try to impress with his knowledge or monopolize the conversation. He was a wonderful storyteller and an excellent listener—a rare combination—and he had a great sense of humor. It was always a special treat to hear him speak about some way stations in his life, be it his and his family's

* Copyright © 2009 by Thomas Buergenthal, Judge, International Court of Justice. B.A. Bethany College (W. Va.); J.D., New York University School of Law; LL.M. and S.J.D., Harvard Law School.

escape from Nazi Germany, his military service in Canada, or his travels in Africa. Despite the fact that he had spent almost seven decades of his life in North America and despite the fact that he considered himself to be very much an American, in his style and demeanor Tom remained very much the product of the Central Europe of the pre-Hitler era, a cultural past that is no more, but which lived in him in its erstwhile intellectual splendor and cosmopolitan weltanschauung.

Tom was very proud of his appearances before the International Court of Justice (ICJ). In addition to acting as ad hoc judge for Indonesia in its dispute with Malaysia,¹ Tom served as counsel in two ICJ cases, representing Chad in its dispute with Libya,² and Bosnia and Herzegovina in its action against Serbia.³ He played a major role in the Bosnian case, which began in the 1990s and meandered through multiple litigation stages until it was finally resolved in the Court's landmark *Genocide* judgment of 2007.⁴

Tom's eloquence and sense of history resonate through the different stages of his oral pleadings in the *Genocide* case. Here is the introduction to his plea to the Court in 1996 not to reject the case for lack of jurisdiction:

I come before you respectfully aware of this moment in both history and jurisprudence. And aware also of the delicate balance between peace and war in the former Yugoslavia; and of the need to do or say nothing that may upset the chances of peace. . . . The decision of this Court will have incalculable resonance for the Republic of Bosnia and Herzegovina which . . . against all odds, is trying to save a multiethnic, multicultural heritage. It will resonate throughout Europe, Africa, Asia and the Americas, where ancient tribal, linguistic, religious and national hostilities—once thought to have been banked—are again catching fire. Were absolution granted for the widely experienced and observed acts of genocide in the former Yugoslavia, that could not fail to tempt irresponsible, unscrupulous political leaders elsewhere to play the group-hatred card, the card that too often trumps reason and humanism, to play that card for the purpose of promoting their personal fortunes by resorting to

¹ *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indon. v. Malay.)*, 2001 I.C.J. 575, 576 (Oct. 23).

² *Territorial Dispute (Libya v. Chad)*, 1994 I.C.J. 6, 8 (Feb. 3).

³ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. & Mont.)* (Judgment of Feb. 26, 2007) [hereinafter 2007 *Genocide Judgment*], available at <http://www.icj-cij.org/docket/files/91/13685.pdf> (last visited Sept. 25, 2009); *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Yugo.)*, 1996 I.C.J. 595, 596 (July 11).

⁴ 2007 *Genocide Judgment*, *supra* note 3.

policies that either intentionally, or at least predictably, lead to the slaughter of innocents.⁵

In *Indonesia v. Malaysia*, Tom and I made judicial history: It was the first time that two U.S. nationals sat together on the Court in the same case, he as ad hoc judge and I as its permanent judge.⁶ Prior thereto no American had ever been named by another country to act as ad hoc judge in an ICJ case. Tom regarded it as a special honor to be so designated and I a privilege to sit with him. It saddens me profoundly that I will never again have that opportunity.

With Tom Franck's death, the international legal community has lost an inspired voice for peace and a forceful advocate for a better world. I have lost a friend.

⁵ Transcript of Record at 42–43, 1996 I.C.J. 595 (No. CR 96/9).

⁶ The second-ever such situation occurred only very recently when Professor Bernard Oxman was named ad hoc judge for the Ukraine in *Romania v. Ukraine*. Maritime Delimitation in the Black Sea (Rom. v. Ukr.) (Judgment of Feb. 3, 2009), available at <http://www.icj-cij.org/docket/files/132/14987.pdf> (last visited October 28, 2009).