



Interview

Margaretha Wewerinke-Singh

Online via Webex

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Anne Saab (AS):

Thank you very much Margaretha to agree to speak with us. We're really delighted to have the opportunity to do this little interview with you. Unfortunately, not in person but we'll look forward to meeting you in person at a later point.

Okay so I'm going to start with the first question which is a question that we've asked all of our interviewees so far which is: could you tell us about your current position and research interests?

Margaretha Wewerinke-Singh (MWS):

Thanks Anne, thanks so much for the invitation. It's a pleasure to participate in this wonderful interview series.

So as to my background, I wasn't originally trained as a lawyer. I studied first cultural anthropology and philosophy at undergraduate level and then it was through a summer school in international human rights law in Kosovo where I experienced the spark about the law and specifically human rights law being something special. So I was attracted to the law's unique normative quality and what we can do with law in practice. And so after I finished my undergraduate studies I pursued a masters in human rights, the **European Master's in Human Rights and Democratisation (EMA)** in Venice. After that I started to study law part-time in the UK while doing some work in Geneva with the European Commission and then some consultancies on the side, and after that I pursued my PhD in law at the **European University Institute** in Florence. It's still the combination of theory and practice, I think to put it simply, that I find so appealing about a career in international law that involves academia as well as some practice.

Having time for the deep learning and reflection and also being often in the company of people who are deep thinkers and like to argue, to reflect, to read, write. And then also getting our hands dirty sometimes and doing work that has an influence on the world and hopefully for the better.

AS:

Great, thank you so much. It's always really wonderful to hear about where people are coming from. So let me go into the second question.

Among the many things you do and have done, one of them was acting as co-lead of the legal team of the Republic of Vanuatu in the **climate advisory proceedings before the International Court of Justice (ICJ)**. Could you tell us a little bit more about this work and how you experienced it or maybe how you came to do that work in the first place?

MWS:

For me being entrusted with that role has been a big privilege and honor and it came about quite organically. I lived and worked in Vanuatu for about three and a half years and I arrived in 2015 to take up a lectureship at the University of the South Pacific where I was going to coordinate the environmental law program. Just after I arrived a devastating category five cyclone (**Cyclone Pam**) hit the country and that really was also a confrontation with Vanuatu's acute vulnerability to climate impacts, because Vanuatu is not low-lying like Tuvalu or Kiribati or Tokelau. It's volcanic, so it would seem to be at least less exposed to sea level rise than those states, but this disaster – unnatural disaster – showed that even at the roughly 0.85 degrees Celsius of warming the world had reached at the time, the exposure was already existential.

And that was of course also the year that the **Paris Agreement** was negotiated, so we went to Paris with a small delegation from the University of the South Pacific supporting Pacific governments and well we all know what came out of Paris, that there were some wins for the Pacific, the 1.5°C commitment, Article 8 on loss and damage, but it was not a treaty that was going to provide the protection and also redress that was really needed for states in these positions. So that started a conversation about what could be done through international law and, ultimately, I think the story is well known. It was **a group of students** who decided that the best idea was going to the ICJ, taking the world's biggest problem to the world's highest court, and so that campaign gradually crystallized and then it was around 2019 that the government of Vanuatu decided to take up the idea and that's how I kind of rolled into that work.

AS:

Great, thank you so much, and maybe could you say a little bit more about what that work entailed, sort of after you rolled into it, what actually did you do? I think for many of us, I mean I would say like even me as a lawyer or as a legal scholar, it's not always very clear, like what does that work actually entail when you're doing that?

MWS:

The work at the start was very strategic, so really developing a legal strategy and of course that was about what the question should look like and then how that question was going to be incorporated in a resolution adopted by the UN General Assembly (UNGA) with at least a simple majority of states voting in favor. Of course, it's a gray area, right, you don't know exactly what was required but were counting on as many as possible and at least a simple majority. And then quite soon, when we started that process, I started working with **Julian Aguon from Blue Ocean Law** and then we were asked to put together a legal team which we did. So we had Jorge Viñuales, Lavanya Rajamani, Jennifer Robinson and Pierre-Marie Dupuy joining us also as counsel. We put our heads together and kind of workshopped the legal question, just thinking through what elements should be there and what is going to give Vanuatu the advisory opinion that would be most helpful. We could do a very deep dive here into that thinking as well but, in essence, it was about ensuring that international law as a whole would be applied to the climate crisis.

So moving away from a perceived compartmentalization or kind of *lex specialis* approach where it would be all about the climate treaties, the duties would be mainly procedural and so it was important to ensure that there would be a better understanding of what amounts to breaches and breaches can be substantial and that indeed breaches have occurred, are occurring, even though it may not be, or we realize it would not be possible to get it really specifically articulated in an advisory proceeding. But that is where the direction, where the initiative should move, so thinking all of that through and then assisting in the diplomatic campaign. So first getting close allies on board, it was a kind of concentric circle strategy, so first working with the small island states and preparing briefings and memos and then a lot of close-door meetings, bilaterals with support and explain strategy, collect input, refine and ultimately when there was a good number of states – also a few important bigger blocks that supported broadly the initiative and the question – then Vanuatu formed a cross-regional core group at the UN. It's a little bit more official, so then in New York negotiations would happen on text within that core group and again there many very extensive discussions at a technical level with experts on the precise draft resolution text. At that point we had a draft resolution and then processing all of that input and weighing it, coming up with new formulations that could broaden the support base essentially without diluting the question too much and then working with Vanuatu towards the adoption of that resolution.

Ultimately that became, as you know, **Resolution 77-276**, and so when that was adopted in 2023, on the 29th of March, then the proceedings started and then of course we were tasked with preparing Vanuatu's own written statement and written comments. And with the representation before the Court, the advocacy, that was very visible. But most of the work was actually invisible, as you can imagine, so also working with other states, providing support where needed, again a lot of outreach and to

explain about the strategy and the arguments that we were hoping the Court would be receptive to and the evidence that was going to be presented. And so it was also in a way -- of course we were assisting Vanuatu, representing Vanuatu but we were also servicing a whole community of like-minded states that was participating. And I [have not] even [mentioned] encouraging participation in the first place because that was of course also important. So there was a lot of outreach around that also where we as a legal team are supporting, to explain to other colleagues working for states or international organizations what this was about and trying to understand also their interests and positions. There was a constant mapping also of the whole kind of ecosystem around the case that we were involved in.

AS:

Thank you so much for giving us that really interesting insight.

So as you know, this interview is part of a research project on emotions and international law and we're specifically also doing a couple of interviews including this one with you around emotions at the International Court of Justice. Could you share with us whether and in what way emotions played a role in your work specifically in these advisory proceedings, which emotions, how they come into the work both in the preparatory work for putting together this request for an advisory opinion and the proceedings before the court?

MWS:

Yeah, so in terms of emotions, there's a whole spectrum of emotions that drove the initiative and that also played a role as it unfolded. I think as is the case with many initiatives relating to climate change, I think there was a mixture of frustration, sometimes almost despair and hope and sometimes anger about how it has come so far. So the anger, that's about the losses that already really unnecessarily have been suffered or are being suffered, for all the devastation that is already happening in the Pacific and other places of course around the world. Ultimately if you think about it, it's the fossil fuel economy that drives this whole climate crisis, it's benefiting the big oil companies, who like to argue that it benefits everyone, energy security and so on, but ultimately, certainly at this point in time, it benefits a small minority of the world population and certainly it barely benefits those who suffer the worst consequences. And that's infuriating and I think that emotion is also experienced especially amongst those who are themselves on the receiving end of this crisis and also by those who empathize.

But then there is also hope and trust and faith that something can be done to turn the tide. So the system is very powerful and entrenched in many structures, like essentially the whole economic system, and even bureaucracies are finding it hard to act differently because of a whole lot of design features, certain interests, lobby, etc. There is hope that despite all of that, things can be turned around and especially if people,

peoples, around the world unite in a vision and a determination to change things and to do what is needed despite the costs that they may incur. And then very specifically also hope directed at the international legal system and the ICJ specifically.

So I think it's really significant that the initiative emerged in a classroom in the Pacific, a virtual classroom as well as in the physical structures there on campus, but then actually the class where the idea emerged was a virtual one. The students trusted that the highest court in the world, the principal judicial organ of the United Nations, would give the right answer to a very important question and that despite international law's colonial origins and the many times that international law has disappointed people, despite all that, at this point in time it would deliver. The judges would hear the evidence, consider the legal arguments and then come to a reasoned and wise decision. And so that emotion of hope I think reverberated really throughout the campaign at many different levels.

And then there was awe at times, particularly when it came to the evidence and then particularly the cultural evidence, the evidence of how societies are practicing ways of life that are actually regenerative, communal, in relationship with each other and with non-human kin. For me it was also special to work with Vanuatu and the **Melanesian Spearhead Group**, where that evidence featured very prominently and was presented to the Court. Many felt a sense of respect and even awe to see that this wisdom exists, and also what is significant I think from an international law point of view is that there may have been a realization that these ways of living, this wisdom is more than just evidence to which the law must be applied but it could also infuse the law to some extent. And so the Court's recognition of intergenerational equity, for example, as an applicable principle: the Court doesn't really dwell on this evidence but it has heard the presentation of the oral statement of Vanuatu and the Melanesian Spearhead Group from **Cynthia Houniuh**, President of Pacific Islands Students Fighting Climate Change (PISFCC) and one of the youth representatives, who was talking about intergenerational equity and what it meant for her community in the Solomon Islands. And it's quite distinct from the kind of traditional understanding of intergenerational equity in mainstream international law scholarship and practice, that's more about the public trust etc., and here it's really about relationships, again living in kinship with community and with nature, with natural surroundings. It goes back in time, it goes forward in time, and I think that emotion of awe is very important because it opens you up and it perhaps allows for an understanding that goes beyond just intellectual understanding. It opens up the intellect also to be able to absorb new ideas, which in this case is very important because we're dealing with a problem that is so deeply entrenched, again in a systemic way, in society but also in international law itself, that it requires transformation. And so it also requires at least some transformational thinking and not just a very mechanical application of the law to facts, so that was important.

And then, you know relatedly, empathy. Empathy was very important because the climate proceedings were of course very participatory – they attracted the widest participation ever in ICJ advisory proceedings – and so there was an enormous diversity of voices, experiences, languages and legal traditions, cultural traditions. And even though you can argue that the suffering already experienced by some people in the Pacific or the Caribbean or Africa or Latin America who may have lost so much already and whose future is highly uncertain because of emissions that have already been locked in, that it may never be possible to fully understand that for somebody who is much more privileged and who lives a more much more comfortable and protected life. But at the same time because of this quality of empathy that almost every one of us possesses, it still can become relatable enough, I think; relatable enough to be meaningful, to weigh meaningfully in decision-making and, when it comes to this particular case before the ICJ, to affect how the law is understood and being applied.

Then of course – and I'm sure this is something that you will be theorizing and talking about a lot – this tension between on the one hand recognizing the importance of emotions and on the other hand also a danger or a slippery slope in relation to what is thought of as sacred – the objectivity of the law and the idea that judges and even practitioners should all be impartial in how we handle the law. That can make some wary to even recognize that emotions play a role. I think that in any event we all know that it's a fiction to think that the law or anything can be applied or done objectively but then you can argue that we should at least pretend because this brings you closer to that notion of impartiality. But well, I think this case actually shows that, if anything, allowing empathy to play a role can lead to an outcome that is more objective, or where the law is applied in a more principled way with less bias than it would be otherwise without the empathy.

There's of course also a whole lot of scholarship that warns us about how the law can be differently applied – think of **Martti Koskenniemi's** work on power and international law – and those risks really exist. This is not something that I have empirically studied – it would be interesting to do that – but I could imagine – and to me this case seems to show that – empathy neutralizes these potential kinds of corrupting dynamics that could emerge. And that engaging empathy also ultimately results in a more communally understood, more widely shared understanding of what the law is and how it should be applied. Because of course the resolution was adopted by consensus and then the **Advisory Opinion** was unanimous which is really remarkable if you think about the judges and their backgrounds and their differences, but they were able to come to this very strong and considered unanimous opinion. I think it's not just the product of an intellectual process but that empathy played a very significant role in arriving at that outcome.

AS:

Thank you so much. That was fantastic and you really got at the heart of our project as well. I feel like you already responded in part to the last question that I'm going to ask but I'm going to ask it anyway just to get some of your final thoughts on that. So I wanted to ask as a final question where you see the potential of emotion or I guess more considered work on emotion for the ICJ. So what kind of value could thinking about emotion more explicitly bring to the work of the ICJ?

MWS:

I think more projects like yours, what you're doing here is exactly what is needed. So having a conversation about it, because I think that conversations like these and then also with judges and basically with scholars and with all different individuals involved in this ecosystem will probably bring to light that emotions are not actually a threat to the objectivity of international law or the impartiality of judges. It's far more nuanced – and then again maybe it's something to be explored further – the premise that it [engaging with emotions] could be positive in protecting the integrity of the law. Because these conversations will also break the taboo on speaking about emotions, and then to bring greater transparency and then hopefully also again greater empathy; I don't think that we can have too much of that. And also it's something that again would need to be explored if it's really the case. But I can imagine that more conversations about emotions will also lead to more self-awareness and reflection on how emotions are dealt with and again can then reinforce these things that we hold so dear that we may speculate could be undermined by emotions. And so also to understand the role of emotions in the reasoning of individual judges for example. Judges could speak about that sometimes, in interviews, but it's still very rare.

I think there's room even for sometimes touching on that in legal writings too. Again it would to some seem perhaps like a very wild thing to do, but we may need a little bit of rewilding also in international law. And again, I think that's much less scary than it may sound because again the effect may be, surprisingly, that it actually reinforces those things that we care about: the integrity and the impartiality [of international law] and all of it. And also normative depth. Because some of the norms that are most foundational to the international legal order and most important to addressing some of the very real problems that we face as humanity now and we'll probably continue to face, those norms also I think can be deepened. Or our understanding of these norms, what they really mean, can be deepened if we also allow emotions to play a role in grappling with the meaning of these norms. So that goes for some rights norms, or the harm prevention rule, and so forth – these are still quite abstract. And it can be a mistake to think that we need to understand these norms only in light of other norms and scientific evidence produced through certain methodologies. And again, of course, another wildcard is the fear that when we let emotions in, anything goes – also because emotions are so fluctuating. We can keep talking about this also from a feminist perspective, there's a lot to say about the role of emotions as well and fears

around that and so forth. But, well, my point now is just that, somewhat carefully but also courageously, exploring the role of emotions – first just through greater openness about the role that they already play – would be very positive, and it would be interesting to see what happens then. So I'll leave it there.

AS:

Well thank you so very much, Margaretha. It was such a pleasure to speak with you and to hear your thoughts to start this conversation because I really hope that we will be able to continue this conversation. I think there are so many really valuable insights that you bring with your experience, working with the ICJ and working on questions around climate change. So thank you very much for taking the time to speak with us today.

MWS:

My pleasure, thanks for doing this.

