On grave crimes and the fragmentation of human rights law

By Daniella Phair

Dame Rosalyn during her talk

The term "genocide" is widely misused, according to former President of the International Court of Justice Dame Rosalyn Higgins DBE QC. In delivering a Castan Centre public lecture in December, the only female judge to have been elected to the ICJ welcomed the idea that many politicians now speak out strongly against genocide, but warned against the term being misused in public discourse.

Dame Rosalyn, the President of the ICJ from 2006 until her retirement in 2009, noted that politicians, the press and even victims confidently classify events as "genocide" without knowing what the term means in international law. *The Convention on the Prevention and Punishment of the Crime of Genocide* – generally referred to as the Genocide Convention – does not simply classify any large scale slaughter of civilians as genocide. Dame Rosalyn noted that there must be an intent to destroy a national, religious or ethnic grouping. She went on to discuss the development of international law and human rights, commenting that at the time of the Nuremburg Trials held in Germany following World War II, no crime of genocide existed. Dame Rosalyn made the point that the development of genocide laws in the intervening years should not diminish the seriousness of other crimes against humanity and war crimes that occur more often.

Another key focus of the lecture was the different interpretations of human rights by the myriad international courts, tribunals and other bodies. Previously a member of the Human Rights Committee, the body that oversees the International Covenant on Civil and Political Rights, Dame Rosalyn acknowledged the broadening of human rights entitlements, awareness and jurisprudence, but challenged the notion that the expansion has made human rights law more fragmented and incoherent.

Dame Rosalyn suggested that although international human rights law is interpreted and applied by many different bodies around the world – without a hierarchical structure or formal avenues of appeal – judges and representatives on human rights bodies follow each other's work with interest, and demonstrate coherence. Dame Rosalyn said that all levels of institutions respect each other's jurisprudence and refer to each other's case law, giving the example of the ICJ's advisory opinion on the construction of the wall in Palestine, which referred with approval to work done by the Human Rights Committee.

Dame Rosalyn also used the example of state reservations to international agreements (a state may make a reservation to an aspect of an international agreement as long it is compatible with the agreement's purpose and objectives) to illustrate how the system can work. In 1951, the ICJ held that only a state can decide whether a reservation is compatible with the purpose and objectives of an agreement. In contrast, the UN Human Rights Committee has since said that the Committee, and not states, should analyse whether reservations are compatible with the ICCPR. In parallel with this development, the ICJ's 2006 decision in *Congo v Rwanda* reviewed the merits of Rwanda's reservation, thereby departing from its 1951 opinion. By an organic process, the two bodies had come together on the issue of reservations.

Despite the emergence of so many different human rights bodies, Dame Rosalyn remained confident that the International Court of Justice would continue to play a significant role in the development of international human rights law, and that human rights had been firmly entrenched as part of the world's agenda.

Dame Rosalyn visited Australia as part of the Castan Centre's Holding Redlich Distinguished Visiting Fellow Program.