MARK A. DRUMBL. Fragmentation and judging in international law: genocide as before different courts

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OVERVIEW

Overview: I am a law professor at Washington and Lee University, U.S., and I am delighted to be participating in this crucial event discussing key aspects of accountability, law, and justice for Lithuania.

I know I am the last speaker of the conference. I think as the last speaker what I would like to do is not only look back at some of the themes that have been covered so far but also look ahead. I think a lot of our time here in this conference has been focused on historicity, legal aspects, and also the political aspects of the European Court's judgement recognising genocide in Lithuania, and I think what I would like to do in my remarks is focus on the broader effects of the case on public international law more generally. I hope to face outwards to unwind the effects of this judgement on the international legal landscape, as opposed to only the Lithuanian legal aspect. So, to perhaps end on a slightly different note.

The title of my remarks is Fragmentation and Judging in International Law: Genocide as Before Different Courts. Here, what I would like to do in this frame is to place the ruling of the European court in a broader tapestry of public international law, and also to ask a question or two on the role of the judge interpreting international law. Let me make four points.

First, the European Court of Human Rights now joins an array of other international courts in defining the historical tragedy of genocide. The International Criminal Tribunal for Rwanda, the Yugoslav Tribunal, the tribunal in Cambodia, The International Court of Justice, and a variety of other international institutions took the legal concept of genocide and applied it in different contexts. Either way, whether that path is criminal or civil, in terms of remedy, we have seen slightly different definitions emerge in slightly different places by slightly different courts ruling on different facts, and this could be constructed as illustrating how a legal concept becomes improved or shifts into a variety of particular contexts.

My second point relates to the reality that even in the *Drėlingas* case itself judges approached things differently: minority and majority. Courts do not speak with just one voice. Conversations about "yes genocide" or "no genocide" happen through people. We have individuality and the idiosyncratic reality that judges may see different terms and facts differently.

Thirdly, we have a different point of fragmentation and that is within the Europe-

an court itself, where now we have a case from Lithuania that achieves a different result than a case from not so far before – also about genocide, but where genocide was not found. So, we have a sense of fragmentation within the courts in which different realities lead to different outcomes on the same fundamental question.

My fourth point is my final one, and that is the big, normative take away. Lawyers are generally prone to seeing themselves as logical, organised, and predictable – dare I say almost scientific? However, fragmentation is messy and confusing, unpredictable and unsettling, and yet the arc of justice finds itself in fragmentation and diversity. To me, it raises a final question that I would like to ask while I wrap up, and that is: should law always be logical, or should law be lived in life? Lived in a reality of a certain level of unpredictability, of change, movement, dynamism? At the end of the day, I think that this is a very interesting question for public international law that is reflected in and by the reality that many different courts, in many different places, when faced with the putatively universal crime of genocide approach it differently. Perhaps, at the end of the day, that fragmentation is to be welcomed and not necessarily feared. Thank you very much and have a wonderful remainder of your day.