

Karel Wellens

Question Time at the ICJ in Contentious Cases

A Functional Analysis of the Practice



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Karel Wellens
Radboud University Nijmegen
Nijmegen, The Netherlands

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To the Memory of Professor Eric Suy

Preface

The idea for this book was born when I was reading the Court's Judgment of 1 December 2020 in the *Arbitral Award of 3 October 1899 case between Guyana and Venezuela*. The Court not only recalled and cited a question by Judge Bennouna and part of the reply given, but, in its reasoning, engaged with the issue raised. Judge Bennouna's engagement with the issue was decisive for his dissent.

Intrigued by the way the Court and the Judge operated, I embarked upon an empirical survey of the practice of questioning from the Bench and a qualitative analysis of judicial engagement as it appears in subsequent reasoning.

The functional interaction between questioning, replying and judicial reasoning turned out to be important, but has so far not been the subject of an in-depth, comprehensive monograph.

Scholars and practitioners studying and involved with the Court's daily functioning will find the book useful and interesting.

A special vote of thanks goes to Charo Huesa Vinaixa and Mariano Javier Aznar Gomez—both also visiting fellows at the Lauterpacht Centre for International Law, a quarter of a century ago—and of course to Pierre Michel Eisemann and Malcolm Shaw: their continuous friendship and support has been a source of inspiration throughout this journey.

My sincere thanks go also to the team of Asser Press: Frank Bakker, publisher, who in the spring of 2022 kindly accepted my book proposal, and to Ms. Kiki van Gulp, production coordinator. Their cooperation, support, professionalism and understanding has been tireless and invaluable.

Last but not least I would like to thank my wife Chris for her love, patience, and tolerance during these years: without her I would not have been able to write this book.

My 12-year-old grandson, Sam, intermittently, has been successful in making me leave my study.

Kalmthout, Belgium
28 January 2025

Karel Wellens

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Abbreviations

BIICL	British Institute of International and Comparative Law
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CERD	International Convention on the Elimination of All Forms of Racial Discrimination
CLCS	Commission on the Limits of the Continental Shelf
CR	Verbatim Records
DRC	Democratic Republic of the Congo
EEC	European Economic Community
EEZ	Exclusive Economic Zone
EIA	Environmental Impact Assessment
FCN	Friendship Commerce and Navigation
FRG	Federal Republic of Germany
FRY	Federal Republic of Yugoslavia
ICC	International Criminal Court
ICJ	International Court of Justice
ICRW	International Convention for the Regulation of Whaling
IGN	French Institut géographique national
ILA	International Law Association
IWC	International Whaling Commission
JARPA	Japanese Whale Research Program under Special Permit in the Antarctic
MFN	Most Favoured Nation
NCD	Nuclear Disarmament
NEDECO	Netherlands Engineering Consultants
NZ	New Zealand
PCIJ	Permanent Court of International Justice
POW	Prisoner of War
SA	South Africa
SC	Security Council
SWA	South West Africa

UAE	United Arab Emirates
UK	United Kingdom
UN	United Nations
UNCLOS	United Nations Convention on the Law of the Sea
UNGA	United Nations General Assembly
UNSG	United Nations Secretary-General
US	United States