Fifty Years of European Union Law: A Panel of Present and Former Judges, Moderated by Roger Goebel

Francis Jacobs* Richard Lauwaars†
John L. Murray‡ Lord Slynn of Hadley**
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Abstract

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PANEL DISCUSSION

FIFTY YEARS OF EUROPEAN UNION LAW:
A PANEL OF PRESENT AND FORMER JUDGES

MODERATOR

Roger Goebel
Fordham University

PANELISTS

Francis Jacobs
Kings College

Richard Lauwaars
Dutch Council of State

The Hon. Mr. Justice John L. Murray,
Chief Justice, Supreme Court of Ireland

Lord Slynn of Hadley
Law Lord, House of Lords

PROF. GOEBEL: Good afternoon. We are very pleased, very honored, to end this conference, this academic workshop, with a panel of present and former judges, who have kindly agreed to talk informally and frankly about some interesting issues that concern the European Court of Justice.

We have two judges who are current judges: John Murray, the Chief Justice of the Supreme Court of Ireland; and we have Richard Lauwaars, who is a member of the Dutch Council of State, the supreme administrative court. And then we have Francis Jacobs, who has recently retired as Advocate General at the Court of Justice after three terms in that function. Our last member of the panel is Lord Slynn, Gordon Slynn, who has successively served as Advocate General at the Court, Judge at the Court of Justice, and a Law Lord in the United Kingdom, the
equivalent of a United States ("U.S.") Supreme Court Justice. So this is a marvelous panoply here.

We have done a little advance work on possible questions. I am going to throw out an initial one or two and ask for a couple of comments, and then we will keep going from there.

Let's start with the topic of the relationship between national courts and the Court of Justice. We will focus in particular on the mode of asking questions or references to the Court of Justice through what is now numbered as Article 234 [of the Treaty establishing the European Community (the "Treaty")].

The question that I am going to put to Richard and to John is: Are national courts properly drawing the line in deciding when to raise a question to the Court of Justice; or, alternatively, decide the question on their own, by use of the acte clair doctrine? Related to that, is the average eighteen-month delay caused by a referral of a question inhibiting national courts from making those referrals?

MR. LAUWAARS: Thank you, Roger.

I would like to start with the second question, because that is what the Court often does too, to reverse the order of the questions and take the second question first.

The fact that it is so long, the length of the procedure is so long, is in fact an obstacle to referring a case to the Court of Justice. In any case, it is a specific problem which you have to take into account when you are discussing in a court whether you will go to Luxembourg or not, because you know that when you send a case to Luxembourg you have to suspend it for, as you say, an average of eighteen months—it could be longer; eighteen months is an average period—and you will not only have to suspend the case that you send to Luxembourg, but also similar cases. Cases are often presented in clusters. They arrive in clusters of cases. You have a new piece of legislation, and suddenly a month after that, a relatively short period of time, you will have a group of cases concerning that particular new statute.

Thus, this is another point in the decision-making of whether or not to go to the Court of Justice and could influence—and that is my answer to the first question—could influence the drawing of the line between where you have to [raise a question to the Court of Justice] and where you may do the interpretation yourself. It is not black and white. There is a gray
zone where you can say: now it is not completely clear what the interpretation is of a particular rule of [European] Community ("Community") law, but it is not so unclear that everybody will more or less shout against you, that there will be an action by the Commission against the state for infringement of the Treaty, and we make that interpretation ourselves.

PROF. GOEBEL: John?

CHIEF JUSTICE MURRAY: I would like to put Article 234 in perspective. Article 234 is not an end in itself. It is there to enable or to ensure that there is uniformity in the application of Community law.

There is no obligation, as you know, on lower courts to make a reference. They may decide and interpret Community law and apply it in the particular case. There may be no appeal from that because the professional lawyers judge there is no advantage in having an appeal; they wouldn't anticipate a different outcome to the interpretation and application of Community law by the Court of Final Instance on appeal or on a reference.

So you do have—and it is the function of—national courts interpreting Community law and applying it. That is part of their everyday task—or I should say their task from time to time—because also it must be borne in mind that, generally speaking, national courts are concerned with often very serious, complex cases, major constitutional issues, and in the small minority of cases it would involve questions of Community law, at least in those with a general jurisdiction and a constitutional jurisdiction. It may be different for some courts because of their particular focus on a particular kind of case, such as administrative courts, where the [Community law] issues may arise more frequently.

Now, to turn to the question of do national courts then, on the general level, fulfill their duty nonetheless, particularly courts of final instance, to make the reference when they are obliged to do so?

Well, certainly at the Court of Justice when I was there, there was never a sense that Community law was being distorted or there was lack of uniformity through any deficiency in the use of Article 234. This is an important consideration, before you even get to examine discrete instances, whether one jurisdiction or one court or another always fulfils its obligations to make a
reference, in spite of the fact that historically, and even up to relatively modern times, there were some national courts that didn't consider that they should make references. Nonetheless, it didn't, apart from perhaps one or two discrete cases, result in a lack of uniformity.

It is an interesting question, and it is a question that often arises in discussions among judges. I've had it at the Court of Justice and with colleagues in other jurisdictions, on this burden of having to make a reference when there is this delay of eighteen months. The average has been reduced from twenty-four to eighteen. But averages can be misleading. That means there are cases that take much longer.

Secondly, I am told that one of the reasons they have been able to reduce the average—and don't forget the average includes very straightforward cases for failure to implement directives, where there isn't really any defense offered by the Member State concerned except that they just didn't get it through parliament or something like that; simple cases that are dealt with very quickly, and that reduces the average—but one of the reasons the average has been brought down is that, with the enlargement of the Court to twenty-seven judges, the volume of work of the Court hasn't grown in proportion as yet to the increase in the number of judges. So there is less work for more judges. Why? Because they say that the new Member States haven't yet fully engaged with the Community system and they are not generating the volume of work for the Court by way of references, which is a natural lag between accession and eventual use, particularly by courts of final instance. So that is context.

In practical terms, does the delay affect the decision of courts in the gray area that my colleague just referred to? The answer I think is yes. Certainly, at meetings of presidents of councils of state and supreme administrative courts, this has been discussed in conjunction with members of the Court of Justice.

There is sometimes a very fine balance. If a court is confident it has got the right answer and that the answer is clear, it may deem it to be an acte clair or consider it genuinely to be an acte clair. Good faith is very important here. I think it is easier to make a reference. You can just wrap up the case and post it off to Luxembourg and get on with lots of other work. But there is
a question of doing justice to the case. The interest of the administration of justice sometimes does dictate that you very carefully examine whether a reference is really necessary, if there is a basis for doing that.

Those are my informal comments.

PROF. GOEBEL: Gordon, you've been on both sides of this, like John, both at the Court of Justice and at the House of Lords. What would you have to say?

LORD SLYNN: You ask if the judges do carry out their duty. I think there is a tendency for new Member States—there was I know in the case of Greece, there is in the case of some of the new twelve [Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, Slovenia, Romania, Bulgaria]—the tendency not to want to decide the case if it is a point of Community law because they think they will get it wrong. But that is balanced by a desire not to send a question to the European Court in case they send a silly question or a question which the judges say was not a Community law question. I know in a number of countries the Bar has said to me, “Can't you say to our judges, 'Get on and make references?'” They won't make them because they are afraid of being told they have done something silly.

With time, I think judges develop the confidence—not at the final level—to decide. I think they should be—as I certainly did, and as Francis has done even more forcefully—they should be encouraged to decide cases unless the point is very difficult or very, very important. Otherwise the block in Luxembourg is just too great and too long.

In the position of final courts, it is rather different. I have for a long time believed and lobbied for the fact that supreme courts, final courts, shouldn't have an obligation to do it. There are some final courts—in social security areas, for example, or Value Added Tax (“VAT”) cases—where the final tribunal in a Member State has a much greater knowledge of the problems and the law even than members of the Court of First Instance (“CFI”) and the European Court. I think there is a great deal to be said for relaxing that rule.

I put forward a suggestion, which was finally adopted by the EU Committee, which looked at ways of reducing delays in the Court, that we should look at the English method of dealing with
criminal cases. If a decision is taken or a ruling given on the law by a judge in a criminal trial and he gets it wrong, and the person is not convicted and the Crown can't appeal. There should be a way in which the [European] Commission ("Commission") should have the power itself to call in the question and send it to the Court as an academic, theoretical question. The question of law can be referred by the Attorney General to the Court for a ruling on the law. In issues of constitutional importance, in issues of general legal importance, it could be very valuable to have the ruling of the European Court of Justice. It wouldn't have any effect on the decision in the actual case, but it would give the Court the chance to stop the parties or states going down the wrong channels.

I think on the whole this procedure works well, but I would try to find ways of reducing the number of cases that go to Luxembourg.

PROF. GOEBEL: Francis, one of the reasons for that significant delay is the language problem. I think many people are under the misapprehension that, since the Court uses French, it must be very easy and simple to go through the procedural stages and come out with a judgment. What is the language problem?

PROF. JACOBS: Well, it is true internally, because the Court's working language is French, all the documents are translated into French, but only into French, and therefore, fortunately, not into all twenty-three, or whatever the number now is, languages of the Court. But, unfortunately, some documents do have to be translated into all languages.

Since we are talking about references from national courts, the first document, which is the reference itself that comes from the national court, does have to be translated into all the languages because it has to be sent out to each of the Member States in their own language. That was a requirement in the statute and one that the Member States have insisted upon.

But we were able to make a simple reform shortly before I left the Court, which was that where the reference was long and translation would therefore hold up the proceedings unnecessarily as it seemed, the Court's services should be able to produce a summary of the reference, and that summary would be translated into all the languages, but not the full text of the refer-
ence. That was likely to save some time, unfortunately not a very great amount of time.

It is true that overall the delays caused by translation are a very substantial proportion of the eighteen months which a reference takes on average to deal with. Certainly, at least one-third of that eighteen months will be caused by the need for translation—translation of the order for reference, translation of the observations of the parties and the Member States and the institutions into French, translation where necessary of the opinion of the Advocate General, and translation of the judgment before the judgment can be delivered. Unfortunately, there are language problems.

If time permits, I would just like to make one comment on the substantive issue that we’ve discussed, and that is the approach of national courts to the decision to refer.

Just confining myself to the position of the final courts, which are under an obligation to refer, I think we should recognize nowadays that that obligation is not respected in reality by the final courts of some of the Member States, and perhaps cannot be, simply because there are too many cases. If you look at the larger Member States, which have quite a number of cases on Community law coming before them all the time—one might take as the extreme case perhaps the German Supreme Court, the Bundesgerichtshof, which has a division which is probably dealing with a very large number of Community law cases on competition and on intellectual property all the time, couldn’t realistically refer all of those cases, as it might appear to be required to do under Article 234 of the Treaty. And even in the United Kingdom, which is the opposite extreme, because the House of Lords has the power to limit the number of cases it hears, and I think decides fewer than a hundred cases overall in the course of a year, so that really is a very small number, even there—

LORD SLYNN: Quite enough.

PROF. JACOBS: Even there, there are, every year, a significant number of cases on Community law which the House of Lords decides itself.

I think we should recognize that that is inevitable, and indeed it is even commendable, provided—and I think this is the important proviso—that the final courts refer the right questions
to the Court of Justice; in other words, those questions where uniformity is important, questions therefore of some general importance and some general interest.

Ideally, what we would have would be a rule which would take account of the importance of the question before the obligation to refer the question to the Court of Justice should arise. In that way, we could limit the load on the Court of Justice and enable the Court to deal with the essential task of trying to ensure the uniform application of European law.

PROF. GOEBEL: Well, actually, Francis, I was going to ask you to address a related issue. John mentioned a couple of minutes ago that some Member States send a large number of questions, some send a moderate number, and some send almost none. Then there was the comment that the new Member States, naturally, need time to adjust.

For a number of years, I have heard of techniques that the Court itself tries to use to get national courts, in particular high national courts, either supreme or appellate, to be more aware of Community law in their pending cases and to refer more questions. I am wondering whether, since you left at roughly the time that a large number of states came in, this was still true.

The technique was to spend, in effect, a substantial time of a Judge’s working schedule going to the judicial and legal conferences of the country from which the judge comes, addressing the judges, and trying to get them to come. I also know Gordon has made a practice of going to the courts of the new Member States to try to raise their consciousness level about Community law.

PROF. JACOBS: Yes, this was certainly something which it was important, I think, to do in preparing the new Member States for entry to what was an entirely alien system. It wasn’t something that the members of the Court were able to do in my time because we were too busy dealing with cases. But certainly, some of the law clerks, the référendaires, and some of the officials of the Court and officials from the other institutions did regularly visit the applicant states, as they then were, with a view to keeping them informed and advising them.

Of course, this training in Community law is valuable, not only to encourage them where appropriate to refer questions to
the Court of Justice, but also to give them some competence in appropriate cases to answer the questions themselves.

PROF. GOEBEL: I recall both Judge Sevón, when he was on the Court, and Judge Jann saying that they made a particular point every year of going back to Finland and Austria, respectively, to try and participate in conferences, judicial conferences and the like, and try to encourage a greater interest in Community law.

Perhaps we could shift to another question that is quite relevant, which relates to the panel that we were talking about this morning, the “Basic Rights and Respect for Law” panel. That is the current relationship between the Court of Justice and the Court of Human Rights; and then, after we talk about that a bit, the change in this relationship if the Treaty of Lisbon is carried out and the Union itself adheres to the Convention.

The first question is: after the Nice Charter of Rights is given legal effect through ratification of the Treaty of Lisbon, do you consider that the European Court of Justice (“ECJ”) is bound to or should follow any relevant European Court of Human Rights (“ECHR”) precedent, or can it continue to balance specific human rights against the Four Freedoms or other relevant principles of Community law?

I don’t know who would like to leap in on that.

LORD SLYNN: I’ll begin, if you like. When I was in the Court, it was the practice to follow as far as possible decisions of the Strasbourg Court [the ECHR] when the Court was looking to see if there were principles of Community law similar to those to be found in the Convention [the European Convention on Human Rights (the “Convention”)] which were not binding on the Community but which ought to be adopted in the Community. I think that that was very good policy.

I think, equally, it was perhaps an unspoken rule that if the question arose which really involved interpreting an article of the Convention, but Strasbourg had said nothing about it, had not given a definition, I think on the whole the Court tried to avoid saying anything about the meaning of the Convention, since there was no help from the Strasbourg Court.

I think in developing principles of Community law reflecting the ideas of the Convention, the Court of Justice behaved impeccably. I don’t think it sought to trespass on or to triumph
over the Strasbourg Court. On the contrary, it was very anxious to be helped by it.

J.P. Warner, who was my predecessor as Advocate General, proposed on one occasion that we should set up a reference procedure, rather like [Article] 177 [of the EC Treaty], between the Court of Strasbourg and the Court of Luxembourg. In other words, the Luxembourg Court could say, "We've got a question of human rights, fundamental rights, and we would like to ask you what you say the law is under your Convention on this particular question." Advocate General Warner thought that it could be very valuable to the Luxembourg Court to have the views of the Strasbourg Court.

Nothing came of the proposal, but it may become very relevant now that we are going to have, it seems, the Charter agreed at Nice. It will have to be decided which court is eventually going to take the final decision on the interpretation of the new Charter. They are many articles in the Charter which are not in the Convention, obviously, and therefore the Strasbourg Court might not have said anything about them up until now.

It has always seemed to me that it really would be the role of, as it were, the lead court on human rights to either decide the question finally, or at least to give very strong guidance to the Luxembourg Court on what the law ought to be.

There has been discussion over the years about the Community acceding to the European Convention. It technically could not. It is not a state, and there are other reasons why it could not be done.

The Commission went through three different phases. It said at first the Community should join. The United Kingdom Committee on European Law in the House of Lords said, after long consideration, it really thought it wasn't time to do it; in any case, there were more urgent questions to look at; and since the Community was applying the Convention in situations involving Community institutions, and since the Member States were all bound by the Strasbourg Convention, it wasn't really going to achieve very much. So the Committee in the House of Lords, which I chaired, came out firmly saying, "No, we don't think it should happen." The Commission dropped the idea.

Then it came back to it with great enthusiasm and said that
it should be done. This thing has now been in abeyance pending the decision about the Charter.

I am not at all sure it is necessary. But if the Charter is to become a part of Community law, as it will, and the European Court is going to apply it, there is a question whether it is necessary, whether it is worthwhile, also making the Community become a party to the Strasbourg Convention. There are arguments both ways.

PROF. GOEBEL: Richard, in our discussion a little earlier, you raised a very difficult and significant question that was confronting your Court in this regard.

MR. LAUWAARS: Yes. We have become involved in a legal—"legal dispute" goes too far—difference of opinion between the Luxembourg Court and the Strasbourg Court about the question of whether a party should have the possibility to react to the opinion of the Advocate General. There is caselaw of the Strasbourg Court that you could interpret to the extent that such a possibility should be given to a party, but there is caselaw of the Court of Justice that it is not going to give that possibility and that there is no need to do that.

You could say that's above your head, that's not for the Council of State, but the Council of State became involved when we got a preliminary ruling back from the Courts of Justice and one of the parties said that we were not allowed to apply that preliminary ruling because he had asked for the right to reply to the opinion of the Advocate General and the Court denied him that possibility, and in that way the preliminary ruling was a violation of Article 6 of the European Convention on Human Rights.

There is also a judgment of the Strasbourg Court saying that a court in one state is not allowed to apply a judgment of a court in another Member State of the European Convention which has violated an article of the Convention. The applicant during the second hearing, after we had received the preliminary ruling, argued that we should respect that judgment of the Strasbourg Court, that we cannot apply the preliminary ruling of the Court of Justice, and that we should send the case for a second preliminary ruling to the Court of Justice asking the Court whether it was of the view that refusal to give him the possibility to reply was in accordance with Article 6 of the European Con-
vention on Human Rights. That was rather a surprise, you could say, and not so easy to answer.

What we did, if my memory is still good, is we said whether a party should have a right to reply to the opinion of an Advocate General is a matter for the Court, and we as a national court have to follow the preliminary ruling as given by the Court, we are bound to abide by the preliminary ruling as given by the Court, and we cannot go into the internal rules of the Court of Justice itself about whether or not to give a party the right to reply.

It has resulted in a complaint in Strasbourg, the second time that I have been brought before the Strasbourg Court, for being a member of a chamber which has in the eyes of the applicant, the complainant, violated the European Convention of Human Rights. That case is still pending, as far as I know, before the Strasbourg Court.

PROF. GOEBEL: Which obviously makes for an extremely delicate situation if the Strasbourg Court were to say the complaints are right, that there is a right to contest, or at least to comment upon, an Advocate General’s opinion.

Francis—this is perhaps a little unfair—I wonder if you could articulate a bit the role of an Advocate General and the independence of an Advocate General in giving his or her opinion, which might justify the Court of Human Rights in saying, “No, a party opportunity to comment on an Advocate General’s opinion is not a necessary part of the procedure.”

PROF. JACOBS: Well, I think that follows on in a way from some remarks which I made yesterday morning—it seems a very long time ago, but I think it was yesterday morning—on the role of the Advocate General when I was seeking to explain that the Advocate General was a member of the Court, not a figure, as is found in some other systems, who may appear before the court as a representative of the public interest, but who is actually a member of the Court. That, indeed, was the basis which the Court of Justice itself adopted in the Emesa Sugar decision, when it said that it was not necessary to allow parties to comment on the opinion of the Advocate General.

Now, I think the difficulty is that the Strasbourg Court has

decided a number of cases in relation to figures similar to the Advocate General, including the Commissaire de Gouvernement of the French Conseil d'Etat, whom I mentioned yesterday also. Again, it could be said that the Commissaire de Gouvernement is also a judicial figure, and yet the Court of Human Rights seems to have taken the view that there should be a right to comment on the opinion of the Commissaire de Gouvernement.

I find that, I confess, a little difficult to understand. If you do take the view, reverting to the Advocate General, that the Advocate General is a member of the Court, I don't see why the opinion should be subject to a right of comment.

Let me take a farfetched example. Supposing that the juge rapporteur published his proposed judgment. Does that mean that the parties would have the right to comment on the proposed judgment before it is adopted by the other judges? I don't see how that would follow.

Or supposing that the Court were to deliberate in public, as apparently the Swiss Supreme Court does from time to time. It may be a surprising practice. Are the deliberations of the Swiss Supreme Court then subject to a right of comment by interested parties?

So I do find it difficult to take this view, that what is said by a member of the Court because it is made public should therefore be the subject of a right of comment. The fact that it is made public is of course a great advantage in terms of the transparency of the procedure in the Court of Justice. But it need not be made public, of course. It could be that the Advocate General should produce the opinion and that it should not be made public.

May I just make one further comment? Again, it seems to me that these rights should be understood in the context of the procedure as a whole. You can't look at these rights in the abstract. The way that the procedure operates in the Court of Justice where there was a reference from a national court is, again, that the procedure is open to not only the parties but to the Member States, all of whom may put in observations, and to the institutions of the Community. Now, the final ruling of the Court may be of great importance for the Member States and the institutions, as well as for the parties in the national court.

Should the Member States and the institutions therefore
also have the right to comment on the opinion of the Advocate General before the Court decides the case? That would make, I think, for a rather chaotic procedure, and in practical terms it would be very difficult to see how that could be done, especially since one would presumably want to give all the others the right to comment on anything new that has been put forward by way of comment on the opinion, without the possibility perhaps of then giving the Advocate General the opportunity of replying to those comments.

But it is something which cannot be, I think, contemplated as very likely in terms of the way the procedure functions in the Court of Justice. So it does seem to me, both in institutional terms, because the role of the Advocate General is that of a member of the Court giving a first opinion on the case, and in terms of the nature of the procedure before the Court really quite difficult to see that this right to comment on the opinion makes good sense. But then, perhaps I would say that, wouldn't I?

PROF. GOEBEL: John, did you want to comment?

CHIEF JUSTICE MURRAY: Yes. On the original question of which court will make the final decision on issues concerning fundamental rights—and, obviously, this enters in only to that area of rights governed by the European Convention—there has been what has been called a relationship of good neighborliness between the two courts. Both courts are conscious, and have been conscious, of the risk of a diversion between their caselaw.

But as Gordon Slynn has pointed out, in fact the Court of Justice has deferred—you could say has been too deferential—to the judgments of the court in Strasbourg. But that is the fact of the matter. Where it has diverged, it has usually been when the Court of Justice had the first bite of the apple, so to speak, as in the 1980 judgment in *Hoechst*, 2 where the Court of Justice held that business premises were not covered by Article 8 of the Convention guaranteeing the inviolability of the home. The Court of Justice subsequently reversed its decision thirteen years later in *Roquette Frères*, 3 due to an intervening decision of the Stras-

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bourg Court that held that Article 8 did in fact extend to business premises.

The recently retired President Wildhaber of the Strasbourg Court, speaking on the issue of rights under the Convention and its relationship to the European Community, stated at a meeting to consider the future of the Convention in that context that a major goal in devising a European human rights protection system of the twenty-first century should be to reinforce a harmonious and efficient interplay between the two systems; in other words, their complementarity.

And then, of course, we have also had the Bosphorus judgment—mentioned this morning I think, and I can't remember if I mentioned it yesterday—where the Strasbourg Court has recoiled from close scrutiny of rights within the field of Community law on the basis that there is a presumption of compliance with regard to its system of protections and remedies, et cetera, except where it is manifestly deficient, which has been criticized as being a rather low threshold and not the kind of threshold which is applied to Member States of which the same observations could be made.

But to come finally to the actual question posed by Roger, which will prevail? Given the history of the Court, it is likely that the Court of Justice will indeed seek to avoid a conflict of jurisprudence and defer to the Strasbourg Court, given the reciprocal deferral of the Strasbourg Court just referred to, that we won't examine you too closely unless you really get it badly wrong!

And finally, Article 52 of the Charter as envisaged by the Lisbon Treaty provides, "Insofar as this Charter contains [European Union] rights which correspond to rights guaranteed by the Convention for the protection," et cetera; i.e., the Strasbourg Convention, "The meaning and scope of those rights shall be the same as those laid down by the Convention." So it is difficult to see that the Court of Justice would, other than under those terms, defer to the Strasbourg Court since it has the sole Treaty function of interpreting those rights.

Furthermore, in Article 53 the Charter says—and this is addressed to national courts as well as the Court in Luxembourg—

“Nothing in this Charter shall be interpreted as restricting or adversely affecting human rights and the freedoms recognised, inter alia, by international agreements to which the Member States are party or the Union is party, including the European Convention on the Protection of Human Rights.”

And finally, if the Union does accede to the Convention, it is in effect submitting to the jurisdiction of the Strasbourg Court. So it would seem that this would be the architecture in that field, at least as far as minimum protection of rights are concerned, the Strasbourg jurisprudence will be held to prevail. Whether that will be a solution to avoid diversity remains to be seen, but that would seem to be the direction it is going.

PROF. GOEBEL: Let me push this to the end. Let’s assume that the Union does succeed in acceding to the Convention—and I don’t happen to like this provision in the Treaty of Lisbon, but I was reassured by somebody who is fairly expert in the matter, “Don’t worry, it will take years before they sort that out with all of the countries who are presently bound by the Convention.” But let’s assume that that is the case.

Then you take a case like Schmidberger or Laval, both of which have been mentioned in panels during the course of the day, where there has been a balancing by the Court of Justice of the Four Freedoms versus human rights. In Schmidberger, it was the right of association and the right of speech that prevailed over the free movement of goods, a demonstration by environmental activists blocking the trans-Alpine road in Austria in order to protest environmental pollution. In Laval, in contrast, the Court of Justice said that the right to perform services means that a social right of workers’ collective action in the circumstances in the case had to be subordinated to the freedom to provide services.

So the balancing presently is being done by the Court of Justice. But if the Union accedes to the Convention, would it not mean that the Court of Human Rights has primacy on a similar case?

LORD SLYNN: Yes.

PROF. JACOBS: In relation to Schmidberger, which is the case I know best, that case couldn’t have gone to Strasbourg, I think, because it was the Member State that was relying there on the freedom to associate, the freedom to demonstrate, as a means of defense to the action being brought against the Member State.

In other circumstances, yes, the Strasbourg Court, it seems to me, would have the last word. And indeed, that is the object of accession by the European Union to the European Convention on Human Rights. It doesn’t change the situation in any other respect, because as I see it the European Court of Justice already applies the Convention as if it were binding on the Union. It already follows very closely the caselaw of the Court of Human Rights, which it has cited systematically for more than ten years now.

So as far as the state of the law is concerned, we can treat the European Union as already bound by the Convention for the purposes of the caselaw of the Court of Justice. The effect of formal accession would be to subject the European Union to the jurisdiction of the Court of Human Rights so that in an appropriate case where an individual was discontented, dissatisfied with a judgment of the Luxembourg Court, he or she could go to the Strasbourg Court and seek to have the decision found contrary to the Convention.

PROF. GOEBEL: I find your answer very interesting for two reasons. First, because a panelist earlier today concluded just to the contrary, as to whether the Court of Justice was really following the Court of Human Rights or whether it was only formally doing so.

But the real reason is because I remember vividly a considerable debate upon this some years ago. The late great Professor Henry Schermers, former Editor-in-Chief of the Common Market Law Review for many years and a pioneer scholar in European Community law as well as in human rights, saying, “The Court of Justice has grown up. It can now take the burden or responsibility of accepting primacy by the Court of Human Rights.” I suspect that is now very much the view.

PROF. JACOBS: I think there has been a revolution in the approach of the European Court of Justice. Well, it certainly is a
revolution, of course, if you go back to the beginning, when it disregarded challenges based on human rights. But it has now gone perhaps diametrically to the opposite position.

In my view, if the Court of Justice could be criticized, it is because it sometimes actually goes a little bit too far in some of its caselaw on human rights. It seems sometimes to be looking for human rights issues where they either don’t exist or are simply unnecessary and can cause some confusion, in cases like Carpenter, for example.

I am not aware of cases where in recent years the Court could be criticized for not following the caselaw of the Strasbourg Court. There may be such cases. But, generally, it seems to me the attempt is being made, and very genuinely made, to ensure that the Union does comply, because of course if it did not, that would put the Member States in a very difficult position because they would be faced with a clash between two conflicting and irreconcilable obligations. So it is absolutely right that the Court of Justice and the Court of Human Rights should do what they can to avoid that result.

PROF. GOEBEL: Richard, did you want to say something?

MR. LAUWAARS: I had a feeling that there was a change in the Court’s caselaw, saying in the beginning that when it was going to apply rights which are protected by the European Convention we are applying a principle underlying the European Convention, not directly applying of the European Convention. The more recent caselaw, at least during the last decade, accepts direct application of the Convention. The Court had been more careful in the beginning, drawing up a kind of a veil between itself and the European Convention, by referring to principles, and now choosing for direct reference to the European Convention.

PROF. GOEBEL: Let's turn to another very interesting topic, and that is the topic of the role of precedent in the Court of Justice jurisprudence and how it is applied. Since the CILFIT case, national courts have been told that they must abide by the

precedents of the Court of Justice whenever a materially identical question is being posed to the national courts.

I think there are a couple of issues that arise from that. The first is: does the ECJ really feel bound by its own past precedents? Is it implicitly overruling precedents from time to time without saying so; and, if so, why?

Would anybody care to address that? Gordon?

LORD SLYNN: Of course in the common law we have the principle of the doctrine of precedent and stare decisis, and they are followed fairly strictly.

I understood in the early days that the European Court was not bound by the doctrine of precedent. Indeed, I remember when I first went to the Court saying to the President, “Everybody agrees this case went too far, that it was wrongly decided. Why on earth don’t you look for an opportunity to change it, reverse it?”

The President was very shocked and said, “But if we reverse or change our earlier decision, people will think we are a very weak court. Surely, Lord Denning would never have changed or reversed any of his previous decisions.”

To which I said, “If he thinks that justice needs it, he does it every day, and nobody thinks he is a weak judge.”

I think the adherence to earlier decisions, whether or not it was strictly a principle of Community law, was very rigidly followed. I think it has been relaxed to some extent. I think the major case, most important case, was the Café Hag case, in which the Court did go back on its earlier decision. It was persuaded in the first hearing in an article by then-Professor Francis Jacobs and it followed it. When the case came back, Professor Francis Jacobs was Advocate General Jacobs, and he changed his mind, and the Court once again followed him, thought it was the right thing to do. Everybody—I can say this without revealing the secrets of the délibéré—everybody was loyal to Francis Jacobs. The question was, to which Francis Jacobs should you be loyal? The Court decided that they would follow the Advocate General’s opinion. I happen to remain of the view that the Professor was right and that the Court, if it did what it did, would be wrong. But by both our views we pay compliments to Francis.

I think that it is important that courts should be prepared to diverge from previous decisions if they think they got it wrong. I think an Advocate General is perfectly entitled to say in his opinion: "Well, this what you said last time. This is the law. But, really, isn't it a good idea to have another look at it and to change it?"

If the Court does so, then I think the Court should say quite expressly, "We have changed our minds on this and the principle is now X, not Y." I don't think people should be left to argue whether the Court has overruled a precedent. The Court should certainly say so.

I think you mentioned the question of distinguishing previous judgments rather than following them as precedents. Well, I see absolutely nothing wrong with that. On the contrary, intellectually the most exciting part of a judge's life is distinguishing previous cases in order to do what he sees as justice in the current case. I personally thought that distinguishing was really the most enjoyable game that one played as a judge in any of the jurisdictions in which I have sat.

Very often the distinction is very soundly based and there is really no question of reversing or overruling the principle. But I think judges should be prepared to do it. And I think again it is an important function of the Advocate General, if he sees a distinction between Case X and Case Y, to say so. I think it is a very important tool for judges.

PROF. GOEBEL: Francis, earlier we were talking about this and I mentioned a marvelous article in the mid-1990s about the role of the Advocate General written by John Murray's colleague, the former Irish Advocate General Nial Fennelly, who emphasized that the Advocate General has total independence in formulating his opinion and should, if he or she feels that the court caselaw has gotten it wrong, argue to change that caselaw. You have successfully done this a couple of times. Would you care to elaborate a bit about that?

PROF. JACOBS: Well, let me just make a very brief comment first on the Hag saga, which Gordon has presented in a very complimentary way, although not 100 percent accurately I might say. Let me just make one point.
The important thing for me in *Hag II*, when I took the view that *Hag I* was wrongly decided, was not merely that the Court should go the other way, but that for the first time it should make it clear that it was going the other way; in other words, it should expressly overrule *Hag I*. That was essentially my view, simply because the *Hag II* case was the mirror image of *Hag I*, and if the Court had simply decided the other way in *Hag II* without saying anything else about *Hag I*, the law would have been in a state of total confusion. Fortunately, the Court did then explicitly overrule *Hag I*.

But it is right to say that the Court is very reluctant to overrule explicitly its earlier decisions, even when it is in fact departing from them. I think that can be traced to the origins of the Court as an essentially civilian court, which after all in the early years didn’t cite its early cases at all, because that might have given rise to the heretical idea that it was in some way treating earlier cases as a source of law.

It began to cite cases after the first enlargement, when the United Kingdom, Denmark, and Ireland came into the Community. It has in recent years I think developed this practice of referring to earlier caselaw and distinguishing where appropriate.

But it still remains very reluctant to say expressly that it is overruling previous cases. That was illustrated today. We had the discussion about the cases on the free movement of goods, Laurence Gormley, where the Court said in *Keck* only "contrary to what has previously been decided," without identifying those cases which it was overruling; and the *Bachmann* case, which was mentioned by John Usher, which appears to have become a dead letter, but the Court has never said that it is no longer good law.

That is, I think, a recipe for confusion. It would be preferable if the Court were to spell out reversals where they are taking place.

At the same time, I think in recent years the Court has become extremely reluctant to depart from earlier caselaw, and

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therefore perhaps this practice is less common than it was in the past. The Court seems nowadays to attach great importance to maintaining the consistency of the caselaw even where the Advocate General may have demonstrated that the caselaw is clearly unsatisfactory. So I think the Advocate General will still feel the duty from time to time to point out that the caselaw should be revisited. But I think the Court of Justice, as things at the moment stand, is increasingly reluctant to depart from its earlier caselaw.

One can understand some justification for that, of course, because it is important that the law should be certain as well as correct. But there are perhaps extreme cases where it will be preferable for the Court to have the courage to depart from its earlier caselaw.

PROF. GOEBEL: Before we move on, John, did you have anything to say?

CHIEF JUSTICE MURRAY: I agree with all that has been said.

Just one aspect of it—and I don’t think I’m disclosing any secrets of the delibéré—it was very much the question that the Court was conscious that it should maintain cohesion in its jurisprudence and caselaw with a view to giving that element of certainty and not creating uncertainty. One approach which arose from time to time, not very often, is that if there was a narrow majority in favor of taking a decision in a particular case that would involve in fact reversing previous caselaw, there was an unwritten rule that the Court wouldn’t do so on the basis of a narrow majority. I have known it to be said that, “While I am actually in favor of X argument, I am not going to go down that road because there is such a narrow majority it would be wrong to overturn our existing caselaw, or reverse it, or cast serious doubt on it, on the basis of a narrow majority.”

So there is a consciousness at the Court, rightly or wrongly—in my view rightly—to maintain cohesion and to very carefully choose the occasions when it does actually reverse its caselaw. I think that is common to most courts.

PROF. GOEBEL: Let’s switch—I’m sorry, Richard.

MR. LAUWAARS: There is one case which I would like to
mention, that is the *Emmott* case, where I would like to have an example of a change in the caselaw; where it would have been advisable to say so explicitly in the following judgment, because it is clear the *Emmott* case has to be very restrictively interpreted. That is what you can derive from later caselaw, but it has never been said explicitly. But that would have been advisable in my view.

CHIEF JUSTICE MURRAY: Are you talking about the *Emmott* case?

MR. LAUWAARS: Yes.

CHIEF JUSTICE MURRAY: Oh, absolutely, I think all the succeeding caselaw completely isolated *Emmott* to where *Emmott* is now just a speck of dust.

MR. LAUWAARS: But it has never been withdrawn.

CHIEF JUSTICE MURRAY: No, it hasn’t.

LORD SLYNN: I actually agree with Richard too, and I think it is a great pity that it wasn’t cleared up, because the confusion in subsequent cases was really considerable following the *Emmott* decision.

PROF. GOEBEL: As John Usher mentioned earlier, the *Bachmann* case does pose a problem. I dare say some of the subsequent references to the Court of Justice have been prompted only because the national court is not certain whether *Bachmann* has been overruled or not. You find in the tax literature a substantial division of opinion about whether *Bachmann* has been overruled or not. That is unfortunate. One could wish that this would be resolved. I think even the Commission Legal Service might be happier if it were resolved one way or another.

In any event, let’s move to another question that we were talking a bit about. Indeed, it may relate to your observation about the Court’s increasing reluctance to alter precedents. That is the growth in the size of the Court and the way in which it is presently structured.

Now, ten years ago we had with us Ole Due, the recently retired President of the Court of Justice, Ole served as the Chair of the committee that was giving reflections to the Intergovernmental Conference, which ultimately led to the really very beneficial provisions in the Treaty of Nice, which modified the struc-

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ture of the Court and enabled the creation of the Grand Chamber, and virtually eliminated plenaries.

Apparently, according to the Court's statistics, the Grand Chamber is used in about 15–16 percent of the cases currently. That may increase, but that is currently the situation. A slight majority of Court proceedings are five-judge chambers and about another third of the Court proceedings are three-judge chambers. That contrasts remarkably with the mid-1990s, when plenaries were still slightly the majority among all proceedings resulting in Court judgments.

Has this shift been detrimental? Is it occasioning any problems in, for example, achieving consistency between chambers? What do you think about that?

LORD SLYNN: There is a real danger, the more chambers you get, that there will be confusion because there will be conflicts, or even discrepancies, between them. But it is possible to monitor this. Just as in any national court system, and I think certainly in the French system too, as well as the common law, it is perfectly possible to keep an eye on what is going on and make sure that if a case raises a point in one court that the judges know that the case has come somewhere else. It is easier to do that, I think, in the European Court than it is in a national court system with a very large number of courts.

It does impose either on the judges or on the référendaire the task of communicating with each other when a point is raised which has already been looked at or is about to be looked at by another chamber of the Court.

At the end of the day, if there are conflicting decisions, then the matter has to go back on another case to the Grand Chamber and sorted out. But that's a long process and it's an expensive process. I think one just has to be aware of the problem.

But to get through the cases quickly, a number of chambers is obviously necessary.

PROF. GOEBEL: Francis, you've had the most recent experience at the Court. What would your reaction be?

PROF. JACOBS: I think, given that the Court does have to deal with all the cases referred to it, whether they merit its attention or not, it is very important that there should be a mechanism for examining the case at the appropriate level. Therefore, I am very much in favor of the use of chambers—perhaps not
chambers of three, but I think in practice the chamber of five has proved a very appropriate means of resolving the standard case. So I would be in favor of that.

There are a couple of institutional checks that I think are worth mentioning when we are looking at this problem.

First of all, after the Nice Treaty came in, the practice was developed—indeed, it was laid down by the statute of the Court—that the president of the chamber of five is elected for a period of three years. Previously, the presidents of the chambers were appointed by rotation for a period of only one year. So that clearly gives an element of continuity to the system.

As far as the Grand Chamber is concerned, although it consists only of thirteen judges out of the twenty-seven, and some of the members of the Grand Chamber will be nominated by a system of rotation, there is also a new development there, in that the Grand Chamber consists not only of the President of the Court but also of all the presidents of the chambers of five. So there is a consistent nucleus, if you like, in the Grand Chamber, which makes for a degree of consistency.

In addition to that, I think there are informal mechanisms by which judges who are not necessarily part of the Grand Chamber will be aware of what is going on in related cases, no doubt through some form of informal communication—for example, if two different chambers are seized with a similar issue at the same time.

So I think there are mechanisms available, and I think this is an essential part of handling the cases efficiently, that the chamber system should be well used.

PROF. GOEBEL: Richard, did you have something to say?
MR. LAUWAARS: Yes, Roger.

For us, as a national court, it makes no difference at all. A preliminary ruling of the Court is a preliminary ruling of the Court.

PROF. GOEBEL: Whether the Court acts through a three-judge panel or Grand Chamber, is irrelevant?

MR. LAUWAARS: If the reference for a preliminary ruling is assigned to the Grand Chamber, then we conclude that we have clearly important points raised before the Court, and it gives us a feeling of satisfaction.

PROF. JACOBS: When an English authority is cited in an
English case, the comment is sometimes made, "That was a strong court." But I don't think that comment has ever been made in relation to a decision of the Court of Justice.

PROF. GOEBEL: I might add that the Grand Chamber is composed of judges who automatically rotate among all the Court membership for each case brought to the Grand Chamber, apart from the President of the Court and the presidents of the chambers who always sit in a Grand Chamber proceeding.

CHIEF JUSTICE MURRAY: Without giving you statistics, there was a drift towards greater use of chambers in the 1990s, largely to cope with the volume of work. I remember that at the administrative meetings—and Francis may recall this—the practice was that the juge rapporteur, having liaised with the Advocate General, proposed the size of chamber to which a case should be sent. If there was a doubt as to which level or size it should go, it went to the smaller chamber. So if somebody was in doubt between—is this a case for five or a three-judge chamber?—petit plenum or five? It would be sent to the chamber of three—largely so as to more efficiently deal with those.

But one of the problems may be, with the large proportion of cases now going to chambers rather than a plenum of the court, is not the lack of cohesion or consistency (for the reasons explained by Francis and the monitoring that can be done) but that there are less opportunities for the Court to develop its jurisprudence in particular areas, because a chamber will usually feel constrained and be attracted to resolving the issue within the context of existing caselaw rather than breaking out and developing that caselaw.

Of course, a chamber has a right, if it emerges that there is a complex and important point of law, to refer it back to the Grand Chamber. But that's an onerous procedure to follow and rarely occurs.

So it may mean more conservative decisions, which some people would say that's what courts should do anyway.

PROF. GOEBEL: Well, just before we began, Eleanor raised a question: since the Court does function so much by chambers, would it not be feasible to try and achieve an expertise in a particular chamber or allocating cases only to a particular chamber? She was, of course, thinking principally of competition cases, trying to develop a certain level of expertise at the Court. In terms
of Advocates General, it has informally been the case that Advocates General might provide opinions in several cases in a row, or even several cases for several years, in specific fields, such as value added taxation or intellectual property rights.

What about doing that for chambers? Good or bad?

LORD SLYNN: I think it is a very good idea in competition cases or intellectual property cases for the Court of First Instance chambers to be specialized. Indeed, the plan was to have not chambers but panels or separate bodies that would deal with specialist things, like patent law or intellectual property law generally. I think that is a good idea.

I think for the Supreme Court, the Final Court, it is much better that everybody should have to dip his fangs into the water of whatever comes along. I think generalists should be the rule, as they are in supreme courts in very many countries. So I would be against the final court having specialized chambers.

PROF. GOEBEL: Anyone else?

CHIEF JUSTICE MURRAY: I agree with Gordon. I think it would be a very negative idea to have specialized chambers because I think every judge on the Court of Justice is the final arbiter on the application of Community law and nobody should be excluded from the possibility of participating.

What can be done, and what has been done in the past, informally, is that certain judges and cabinets are given certain classes of cases. I remember the milk quota cases, which were legion in number. Those as well as certain social security cases tended to be assigned to particular cabinets where the référendaire and the judge had a familiarity with the very complex regulations involved. But that didn’t mean there were specialized chambers. It just meant that instead of a référendaire of cabinet having to start afresh, there would be this experience backed up in particular judges’ chambers. That was used informally, and probably still is to some extent.

PROF. GOEBEL: We’re at 5:20. I think we have ten or fifteen minutes for questions. Of course, a number of you are extremely expert in your examination of the Court of Justice and its doctrines.

Does anybody have a question?

PARTICIPANT: I wanted to ask about a reliable rumor that I had heard. You invoked some reliable rumors earlier. The
one I heard is that there is actually developing at the European Court of Justice right now an additional informal language of operation, namely Russian, and that that turns out to be the common language of the newly acceded states. Unlike other perhaps informal common languages, this one also cuts across a division between old and new. So I was wondering whether anyone had any thoughts about that.

PROF. GOEBEL: I did not understand. Common language for what?

PARTICIPANT: For the judges and Advocates General from the newly acceded Member States, that they are communicating among one another in Russian because that is their common language, and that not only does that—

LORD SLYNN: The rumor I heard was slightly different, that Russian was now being used during the cocktail hour to drink vodka. But I have not heard it applied more generally.

PARTICIPANT: That actually feeds into it. In fact, it is precisely that, that it becomes a language that draws together a certain group of the Court and distinguishes them from another group of the Court and creates an informal community, which reinforces a partial community among certain members of the Court.

LORD SLYNN: As long as they don’t drag it into the délibéré, probably no harm is being done.

PROF. JACOBS: I don’t know whether there is any basis for that rumor. I’m afraid in my time at the Court I didn’t come across it.

But I can say that some of the judges from the new Member States did have difficulty with French, and some of them certainly had better English than French, which raises, of course, another rather fundamental problem as to the choice of the working language of the Court. But for complex institutional reasons which it would not be desirable to go into at this stage, I think it is extremely difficult to change the working language of the Court. So I think there is almost as little prospect of it becoming English as there is of it becoming Russian.

PROF. GOEBEL: I have had the pleasure of meeting with a fair number of judges from Central Europe, and I think it is true that they tend to speak in English. I have never heard of their speaking in Russian. And certainly the référendaires are singularly
unlikely to do it because they are young and they often have not learned Russian.

Another question? Yes, Esa Paasivirta?

PARTICIPANT [Esa Paasivirta]: A question. You have been mentioning the European Court of Human Rights. There is a whole host of other international tribunals. Is there some organized way that the Court is having some sort of dialogue with these other tribunals in the sense of reading each other's judgments?

CHIEF JUSTICE MURRAY: The Court of Justice and the Court of Human Rights have traditionally had informal meetings together over the years, sometimes in the successive years, sometimes with gaps of two or three years. And of course they meet at conferences. So there is a fair amount of dialogue between the members of the two courts.

LORD SLYNN: I don't know whether it still goes on, but when I was there we had occasionally a meeting with the judges of the International Court from The Hague, whether we went to The Hague or they came to Luxembourg. It didn't happen very often, though.

PROF. GOEBEL: Did you want to add something?

CHIEF JUSTICE MURRAY: Simply that there are formal efforts made to communicate and to discuss issues of common interest, like in a conference like this. It is only two-and-a-half hours down the road from Luxembourg, so it's not a big undertaking.

PROF. GOEBEL: Richard?

MR. LAUWAARS: I had the idea that the question was about the Community Court and international courts. If you are going to include national courts, yes, there are associations of national courts. We have an association of the Councils of State and the Supreme Administrative Courts of the Member States of the Union. That is where I have had the most pleasant times, almost as pleasant at this one, at those conferences. You have also a large worldwide conference of administrative courts covering the whole world, and that is an initiative of the French Council of State. It is more or less their hobbyhorse, so to say. I know that the supreme courts have also a large association of supreme courts of the whole world.

PROF. GOEBEL: John Temple Lang.
PARTICIPANT [John Temple Lang]: Reading in particular the judgments of the Court of First Instance, one gets the impression that a lot of time could be saved if the summaries of the parties' argument were not so long and detailed. I realize that the Court of First Instance needs to demonstrate that it has considered all the arguments in cases on appeal, but surely it should be possible to shorten the judgments of both of the Community courts substantially.

PROF. GOEBEL: Comments?

CHIEF JUSTICE MURRAY: Yes. I agree.

MR. LAUWAARS: We have in the Council of State adopted a set of house rules more or less asking the parties to realize that we have read the whole file of the case, and that they should not repeat what is in it, and that they should limit the pleadings to what is really important. That is a set of house rules which we send to every party in a case.

LORD SLYNN: I think your suggestion is not only applicable to the Court of Justice and the Court of First Instance, it is applicable to many appellate courts and supreme courts in many of our Member States and elsewhere across the world. I don't want to say anything about the United States.

PROF. GOEBEL: A final question? Hugh?

PARTICIPANT [Prof. Hugh Hansen]: Just in terms of the workload of the Court and how many cases they get, do you think it would help if one of two things happened: if you just changed the rules so it has to be a higher court that refers it, so the lower court takes a stab at it? Most supreme courts get cases that two courts below or one court below have thought through, which may or may not be helpful. So before the case comes to the Court of Justice—you might have this happen in a number of Member States—they have sort of a view of what a lot of different people think of the issue, whereas they pretty much don't get a view of what anyone thinks of the issue under the present system, except some courts—and this is the second part of the question.

In the United Kingdom, at least, they take a stab at it, say, "Okay, this is an issue; I think it should be this, but I'm referring it to the Court of Justice." Does the Court of Justice say, "Well, that's nice we got another view" or, "Mind your own business, it's our decision," or what?
I guess that's two questions: (1) should you wait for a higher court to do it; and (2) would you like them to give their own thoughts before they refer it to the Court of Justice?

CHIEF JUSTICE MURRAY: Well, President Skouris, who is the present president of the Court of Justice, has publicly stated on a number of occasions that the Court welcomes the national court expressing a view when it actually makes a reference. It doesn't comment on the view as far as I'm aware, and what it makes of it I don't know, but that is the position he has announced. I think maybe it gives them a greater insight into what the nature and ambit of the legal problem which is being referred to the ECJ.

PROF. GOEBEL: Richard.

MR. LAUWAARS: We do ask and usually we have a provisional answer to the question which we raise in a request for a preliminary ruling. Sometimes we offer two answers, and then the Court will take a third. But in any case, we hope to have made clear in that way what the line of thinking is in the court when we have prepared the request for a preliminary ruling. It is a very important point when drafting a request for a preliminary ruling that you make clear to all the different personalities, members of the Court, what the real problem is that is involved in the case and what the connection is between the different questions. I have prepared twenty-five requests for preliminary rulings, so now I have some experience with that.

The problem is always that the request has to be translated into French, and that is the moment that you can lose a part of the meaning of the text, not by purpose but just by the actual effect of translating the text. And then it will be translated into all the other languages. And then the addition of provisional answers may help to make clear the line of reasoning that you have followed.

PROF. GOEBEL: I think with that, since we are now at 5:30 and we like to be expeditious, we are going to give a resounding round of applause to this fabulous, sophisticated panel.

I have two personal expressions of thanks myself.

Alas, Helen Herman could not be here today, but as many of our speakers know, she has been invaluable for now twenty years at Fordham in running the administrative functions of the
conferences. She is really extraordinary. She has a very loyal staff but Helen really does so much.

Obviously, my other expression of thanks is to the *Fordham International Law Journal*, which has worked so hard, so zealously, and with such attention to detail, in arranging this conference. And of course, above all in that regard, to Mike Siudzinski, who is sitting in the first row and therefore can be easily recognized.