THE QUALITY OF INTERNATIONAL LAW

Sir Robert Jennings, past President of the Court said:

"The Judges of the Court, are from many different parts of the world, from different forms of civilization, from different cultures, and, not least, from very different legal systems.

The layman' s question about the Court is always the same: how do you manage to have a coherent and sensible and useful deliberation in those circumstances? Indeed, how do you manage to decide anything?

The answer is that, in practice, this problem hardly arises. There is disagreement and argument, of course, as indeed there should be. But it is disagreement with a common understanding of the material and the authorities to be used. This is because juridically we all speak one common language called public international law. It is indeed a common legal language and a universal system. Our experience in the World Court, and that of generations of our predecessors, proves that point.

Apart from the quality of humanity itself, which we all share, international law is a language which in our experience transcends different tongues, cultures, races and religions.

I wanted to mention this peculiar quality of international law as a common and universal system because it is one of those tremendously significant and important facts which are commonly not even noticed in the world generally.

Let us therefore tell more people about its great quality of being a common legal language for all of us, and the common property of us all."

GOING TO COURT

NOT WAR

An Introduction
to the
International Court of Justice

50p

Jan. 1995

Dear Reader,

We are two ordinary citizens, not lawyers, who want to tell you something that we think is important and good news.

It won' t take long because all of our message is in the first 7 pages.

The rest of the booklet is supporting material from very distinguished people, and the Court' s own official description of its composition and work.

So please read these first pages and do what you can to spread the good news.

Yours sincerely,

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This publication has been supported by many friends and organisations, including two academic international lawyers who have approved our text. There is no copyright on any part of the booklet.
Copies available from the addresses above.

GOING TO COURT - NOT WAR

An Introduction to the International Court of Justice

Introduction

In our private lives, we recognise immediately the value of law in the settlement of disputes between people. It may not be infallible, but the principle of deciding a dispute by having laws and courts to apply them is universally accepted.

Is there an equivalent process available at international level which could adjudicate disputes between nations and replace the awful alternative of war or sanctions?

Yes, there is. It is the judicial body of the United Nations and is called the International Court of Justice (ICJ) or the World Court.

If the legal system were operating in the way intended, many international disputes could already be resolved by the process of law, not war. But there is almost total ignorance, even among politicians and the judiciary, of the possibilities and implications of the Court' s existence. Its judgments are sparsely reported in the media. Far too little attention is given to it in schools and universities, and hardly any outside law faculties. There is no simple literature on the Court and its work.

Two recent Presidents of the Court have appealed for help in publicising its work and potential. This booklet is a response to that appeal.

> *"The Court' s jurisdiction is in no way limited as to subject-matter. The environment, conservation, human rights, the law of the sea and the rest are without exception within the ambit of the Court' s jurisdiction".*
>
> Sir Robert Jennings, then President of the Court, speaking in 1991.

He then called for the popularisation of international justice, which is the object of this booklet.

Knowledge of the Court' s composition, its record, integrity and potential are all necessary before States will make the decision of entrusting these matters to the Court, but this is essential if the affairs of States are to be based on law. At the present time only 58 of the 186 states of the UN accept the compulsory jurisdiction of the Court. The U.K. is the only permanent member of the Security Council that has done so.

Are Court Judgments Effective?

According to Sir Robert Jennings, who has been a World Court judge for 12 years and was President of the Court from 1991 to 1994, the judgments of the Court have "enormous political clout" and are almost always effective sooner or later.

One recent example is a frontier dispute between Libya and Chad, which had led to war in the past, that was brought to the Court. A peaceful settlement has been made and fully implemented (producing almost no media coverage!).

Another example in 1992, was the war that had started between Honduras and El Salvador but ceased when they decided to refer the dispute to the Court and abide by the judgment.

As the ICJ handbook (1986) comments (p 64), "The mere fact of bringing a dispute to the Court already constitutes a step towards pacification" and a Court judgment is always an "honourable conclusion" to a dispute, even if the result is unwelcome.

As more people learn of the proper role of the Court, the use and effectiveness of the Court must increase even further.

Making More Use of the Court

So far, insufficient use has been made of the Court. There is an urgent need to change this state of affairs. When the dangers involved in armed conflict are so terrible, governments have a duty to their citizens and to the world to do everything in their power to make sure all disputes are settled peacefully.

Not enough people know of the Court' s work and potential. Even politicians, judges and academics are frequently not well informed about it. So its caseload is growing only slowly while the need for it is growing fast.

Judge Singh in 1986 even made a personal gift of a huge brass plaque in the form of the Court' s emblem to the United Nations building in New York. His purpose was to remind the UN General Assembly itself of the paramount importance of their own judicial body, thousands of miles away in The Hague!

He described the functioning of the whole UN machinery as a three-wheeled mechanism of legislature (General Assembly), executive (Security Council) and judiciary (World Court). As in the governance of nations, unless the legislative and executive wheels accept the authority, and ensure the independence of the judiciary, their actions may not be based on law and there can be no confidence that justice is being done.

At the same time, he made a special appeal to universities "to awaken and raise popular consciousness regarding the role of law". He believed "such an awakening would solve all the world' s problems". What a challenge!

If this sounds too idealistic, please read more of his speech in a later section.

This appeal was reinforced in February 1994 by the most recent former President of the Court, Sir Robert Jennings, speaking in the University of Edinburgh. He asked his audience to do everything they could to promote the Court and its work.

Meeting the Challenge

> "Those who wield power naturally oppose international law because such law would impose limits on the use of power and require peaceful resolution of disputes. Power prefers to have its way".....
>
> Ex-US Attorney-General

To meet this challenge, it is urgently necessary to encourage interest in learning about the Court in schools, universities, courts and homes, so that people can become part of that growth of understanding. Some have already begun to do this through the World Court Project. This international citizens' initiative has helped to bring the issue of the disputed legal status of nuclear weapons before the Court through the World Health Organisation' s request for an advisory opinion - see more about this and other cases in a description of the Court and its work at page 13 of this booklet.

People can help to promote this vision of "peace through law" by awakening their local politicians, universities and judiciary. Through this, governments will come to see that it is not only right and lawful, but their duty under the UN Charter to solve their disputes by recourse to law, not war. **As in our private lives and disputes, nations do not have a choice of law or force.**

Further Information

Further details of the work of the Court, including the full text of Judge Singh' s inspiring speeches can be found in the ICJ Handbook entitled "The International Court of Justice" (1986), which is available free of charge from:

The Registrar
The International Court of Justice
Peace Palace
2517 KJ The Hague
The Netherlands.

The Court also publishes regular bulletins on cases submitted and judgments delivered, which are available to anyone wishing to further the Court' s work.

STOP PRESS

OCTOBER 1994

The present President of the Court, Judge Mohammed Bedjaoui, speaking to the General Assembly appealed to the Member States to give the court more opportunities to fulfil its function:

"The Court' s credibility as a principal organ and as a pre-eminent means of achieving the peaceful settlement of disputes is thus largely in the hands of States. I am deeply convinced that only when the members of the international community have discarded their long-standing prejudices and are, I would venture to say, psychologically ready to have recourse to the Court as naturally as to the political organs, will the Court be able fully to perform its function".

DECEMBER 1994

The General Assembly of the United Nations requests an advisory opinion on the legality of the threat or use of nuclear weapons

On 15 December 1994, the General Assembly of the United Nations adopted resolution 49/75 K, entitled "Request for an Advisory Opinion from the International Court of Justice on the Legality of the Threat or Use of Nuclear Weapons".

In this resolution, the General Assembly decided, pursuant to Article 96, paragraph 1, of the Charter of the United Nations, to request the Court

"urgently to render its advisory opinion on the following question: ' Is the threat or use of nuclear weapons in any circumstance permitted under international law?' ."

The request was transmitted to the Court by the Secretary-General of the United Nations in a letter dated 19 December 1994.

STATEMENTS CALLING FOR INCREASED USE OF THE COURT

1. EXTRACTS FROM A UN PRESS RELEASE 25 Jan 1994

SECRETARY GENERAL SAYS INTERNATIONAL COURT OF JUSTICE IS A BEACON THAT MUST CARRY THE LIGHT OF INTERNATIONAL LAW

Urges Member States to Accept Court' s
General Jurisdiction without Reservation by Year 2000

The International Court of Justice is not only, as the Charter says, "the principal judicial organ of the United Nations", but also one of the essential participants in the actions which we are all conducting, each in our own field, for international peace. In fact, the International Court of Justice has, above all, the mission to serve as the beacon that must carry to the furthermost reaches of the world the light of international law.

In the context of the United Nations, it (The Court) contributes fully to the grand objectives of peace assigned to us by the Charter.

In this field, the Court has been able to demonstrate that it has a particularly exacting conception of its role. The legal disputes that are submitted to it are often no more than the normative translation of deeper political conflicts. Everyone is well aware of this. And the resolution of these legal disputes by the Court can play a decisive role in the political settlement of the underlying conflict. The Court has had occasion to affirm this itself and to underline it emphatically. It was with this in mind that I myself placed emphasis, in the "Agenda for Peace", on the eminent role of the International Court of Justice in this area.

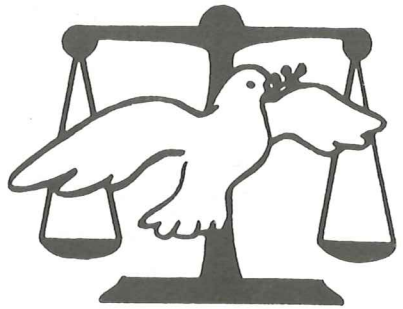
I urge once more that all Member States should accept the general jurisdiction of the International Court under Article 36 of its Statute, without any reservation, before the end of the United Nations Decade of International Law in the year 2000.

Everyone is now well aware that differences and conflicts between States must be settled by recourse to law. It must, however, be acknowledged that international justice has not yet - far from it - become part, if I may venture to say, of the customs of States.

It is, therefore, necessary to "popularize", in the best sense of the term, international justice. States must understand that resort to the world Court is an additional pillar in the structure of inter-State life. The regular functioning of justice contributes fully to the well-being of society. Hence, we must never forget the pedagogical work in this area which we are all called upon to perform vis-a-vis the Member States.

In conclusion, I should like to say a few words about your role in the advisory field. I note that, in recent times, relatively few requests have been made to the Court for advisory opinions. And yet every State needs to be convinced of the essential contribution which the opinions of the Court can make to international action for peace.

Advisory opinions are one of the surest means of contributing to the regulation of this institutional system of ours (i.e. the UN Organisation).



2. Mr Boutros Boutros-Ghali, UN Secretary-General, in "An Agenda for Peace":-

' The docket of the International Court of Justice has grown fuller but it remains an under-used resource for the peaceful adjudication of disputes. Greater reliance on the Court would be an important contribution to United Nations peacemaking. In this connection, I call attention to the power of the Security Council under Articles 36 and 37 of the Charter to recommend to Member States the submission of a dispute to the International Court of Justice, arbitration or other dispute-settlement mechanisms. I recommend that the Secretary-General be authorized, pursuant to article 96, paragraph 2, of the Charter, to take advantage of the advisory competence of the Court and that other United Nations organs that already enjoy such authorization turn to the Court more frequently for advisory opinions.'

3. President of the Court, Judge Nagendra Singh in 1986, speaking to the General Assembly of the United Nations:

' To achieve peace and progress, in other words, States have to rise above their immediate ambitions and, it may be, sacrifice not their sovereignty - not that at all - but some transient self-interest in order to promote the common interest of all. Where they fail in this, they must also fail to create the law on which harmony must rest. But I may be told that it is not for the International Court of Justice to tell States how to set about their legislative business: that the Court need only wait for disputes to be referred to it, and then must make use of the legal tools at its disposal, whatever their provenance or mode of manufacture: that with a string of good judgments success will breed success, and to turn to the Court will then become a matter of course.'

' However that may be, the trade-off or the package deal is more than ever the favoured method of resolving disagreements. And who is to complain if all parties are satisfied? Yet, evidently, in such bargaining, and even in the bargaining of a legislative conference, the legal merits of issues may go by the board. If, therefore, the parties to the Statute of the Court wish to enhance the usefulness of that institution, I would urge them to isolate the

legal issues to the Court instead of waitlng for the opportune moment which they imagine will help them to impose their view - for that propitious moment may never come, or it may come first for their opponent. Of course, going to Court always implies a risk of losing, but also a chance of winning. Moreover, even the losing will be mitigated, since both sides will be the gainers by having one dispute the less and by having strengthened the machinery of international adjudication. A gain to justice is indeed a gain to all.'

Judge Nagendra Singh appeals to universities

' There must be some awakening or raising of popular consciousness regarding the role of law. The best way to achieve this aim would be to activate the universities of the world. An ancient saying of my country is that when humanity is in distress, it should go to the centres of learning. The universities, which serve to shape the future generations of mankind, are responsible centres of learning which determine the shape of things to come. They must be activated to work for peace. Professors of international law could really be re-designated professors of peace so that, with such a professor on the staff at each university, students would be taught about the principles of peace as enshrined in the United Nations Charter. The Charter is a foundation, a constituent instrument of the highest order, apart from being a general treaty - and this is its great distinguishing characteristic. It is a higher law, a fundamental law of the whole earth and, as such, now stands supported by an institutional structure. The Charter should be made known to the common man by the universities and there should be an awakening of the popular consciousness.'

' I would hope that, throughout the world, there might be an awakening of the people, that men might know the principles of law and become aware of the existence of international law, conscious of the fact that respect for the judicial process is a cardinal virtue of mankind. Such an awakening would solve all the world' s problems.'

He concludes his speech thus:

' The International Court of Justice has proved to be one of the successful organs of the United Nations. Yet for certain periods of its history it has been regrettably under used. This has been formally recognized by this Assembly, and here I need only cite Resolution 3232 (XXIX), adopted in 1974, and the Manila Declaration, approved in 1982, both of which devote lengthy paragraphs to exhorting States to take a positive and active attitude to the role of the Court in the peaceful settlement of disputes. The same concern is evident in the recent valuable study on the role of the Court produced by the Asian-African Legal Consultative Committee, which has been circulated to the Assembly. What all these exhortations call for, in fact, is that States make the possibility of judicial settlement a constant of their diplomacy.'

' But why not go to the root of the matter and recall what Chapter VI of the Charter, which deals with the pacific settlement of disputes, lays to the charge of States in regard to the Court? Article 36 presents it as an axiom that legal disputes should as a general rule be referred by the parties to the International Court of Justice. And do not all States in contention claim to have law on their side? Why then should they not test that claim before the Court and why do they not "as a general rule", refer legal issues to the Court?'

' Of course, I shall not over-simplify matters, but the principles of international law and of international adjudication are consecrated by the Charter. Therefore, while I salute the first 40 years of the United Nations - allow me to express the profound hope that well before another 40 years have passed, these admonitions of the Charter will be consistently honoured in the observance. The Court will then feel happily privileged to be playing its full part by serving the community of nations through the judicial settlement of legal disputes.'

INFORMATION PROVIDED BY THE WORLD COURT

11th July 1994

The International Court of Justice

The International Court of Justice is the principal judicial organ of the United Nations. Its seat is at the Peace Palace in The Hague (Netherlands).

It began work in 1946, when it replaced the Permanent Court of International Justice which had functioned in the Peace Palace since 1922. It operates under a Statute, largely similar to that of its predecessor, which is an integral part of the Charter of the United Nations.

Functions of the Court

The Court has a dual role: to settle in accordance with international law the legal disputes submitted to it by States, and to give advisory opinions on legal questions referred to it by duly authorized international organs and agencies.

Composition

The Court is composed of 15 judges elected to nine-year terms of office by the United Nations General Assembly and Security Council sitting independently of each other. It may not include more than one judge of any nationality. Elections are held every three years for one-third of the seats, and retiring judges may be re-elected. The Members of the Court do not represent their governments but are independent magistrates.

The judges must possess the qualifications required in their respective countries for appointment to the highest judicial offices, or be jurists of recognized competence in international law. The composition of the Court has also to reflect the main forms of civilization and the principal legal systems of the world.

When the Court does not include a judge possessing the nationality of a State party to a case, that State may appoint a person to sit as a judge ad hoc for the purpose of the case.

The present composition of the Court is as follows:

President Mohammed Bedjaoui (Algeria); Vice-President Stephen M. Schwebel (United States of America); Judges Shigeru Oda (Japan); Roberto Ago (Italy), Sir Robert Yewdall Jennings (United Kingdom), Gilbert Guillaume (France), Mohamed Shahabuddeen (Guyana), Andres Aguilar Mawdsley (Venezuela), Christopher G. Weeramantry (Sri Lanka), Raymond Rnajeva (Madagascar), Geza Herczegh (Hungary), Shi Jiuyong (China), Carl-August Fleischhauer (Germany), Abdul G. Koroma (Sierra Leone).

The Registrar of the Court is Mr. Eduardo Valencia-Ospina (Colombia) and the Deputy-Registrar Mr. Jean-Jacques Arnaldez (France).

The Parties

Only States may apply to and appear before the Court. The States members of the United Nations (at present numbering 184), and two States not members (Nauru and Switzerland) which have become parties to the Court' s Statute, are so entitled.

Jurisdiction

The Court is competent to entertain a dispute only if the States concerned have accepted its jurisdiction in one or more of the following ways:

(1) by the conclusion between them of a special agreement to submit the dispute to the Court;

(2) by virtue of a jurisdictional clause, i.e., typically when they are parties to a treaty containing a provision whereby, in the event of a disagreement over its interpretation or application, one of them may refer the dispute to the Court. Several hundred treaties or conventions contain a clause to such effect.

(3) through the reciprocal effect of declarations made by them under the Statute whereby each has accepted the jurisdiction of the Court as compulsory in the event of a dispute with another State having made a similar declaration. The declarations of fifty-nine States are at present in force, a number of them having been made subject to the exclusion of certain categories of dispute

In cases of doubt as to whether the Court has jurisdiction, it is the Court itself which decides.

Procedure

The procedure followed by the Court in contentious cases is defined in its Statute, and in Rules of Court adopted by it under the Statute. The Rules now in force were adopted on 14 April 1978. The proceedings include a written phase, in which the parties file and exchange pleadings, and an oral phase consisting of public hearings at which counsel address the Court. As the Court has two official languages (English and French) everything written or said in one is translated into the other.

After the oral proceedings, the Court deliberates in camera and then delivers its judgement at a public sitting. The judgment is final and without appeal. Should one of the States involved fail to comply with it, the other party may have recourse to the Security Council of the United Nations.

The Court discharges its duties as a full Court but, at the request of the parties, it may also establish a special chamber. The Court constituted such a chamber in 1982 for the first time, formed a second one in 1985 and constituted two more in 1987. A Chamber of Summary Procedure is elected every year by the Court in accordance with its Statute. In July 1993 the Court has also established a seven-member Chamber to deal with any environmental cases falling within its jurisdiction.

Since 1946 the Court has delivered 57 Judgments on disputes concerning inter alia land frontiers and maritime boundaries, territorial sovereignty, the non-use of force, non-interference in the internal affairs of States, diplomatic relations, hostage-taking, the right of asylum, nationality, guardianship, rights of passage and economic rights.

Pending Cases

Ten contentious cases are at present pending:

1. Aerial Incident of 3 July 1988 (Islamic Republic of Iran v. United States of America)
2. East Timor (Portugal v. Australia)
3. Maritime Delimitation between Guinea-Bissau and Senegal (Guinea-Bissau v. Senegal)
4. Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)
5. Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom)
6. Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United States of America)
7. Oil platforms (Islamic Republic of Iran v. United States of America)
8. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro))
9. Gabcikovo-Nagymaros Project (Hungary/Slovakia)
10. Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria)

Sources of Applicable Law

The Court decides in accordance with international treaties and conventions in force, international custom, the general principles of law and, as subsidiary means, judicial decisions and the teachings of the most highly qualified publicists.

Advisory Opinions

The advisory procedure of the Court is open solely to international organizations. The only bodies at present authorized to request advisory opinions of the Court are six organs of the United Nations and 16 specialized agencies of the United Nations family.

On receiving a request, the Court decides which States and organizations might provide useful information and gives them an opportunity of presenting written or oral statements. The Court' s advisory procedure is otherwise modelled on that for contentious proceedings, and the sources of applicable law are the same.

In principle the Court' s advisory opinions are consultative in character and are therefore not binding as such on the requesting bodies. Certain instruments or regulations can, however, provide in advance that the advisory opinion shall be binding.

Since 1946 the Court has given 21 advisory opinions, concerning inter alia admission to UN membership, reparation for injuries suffered in the service of the United Nations, territorial status of South-West Africa (Namibia) and Western Sahara, judgements rendered by international administrative tribunals, expenses of certain UN operations, and applicability of the UN Headquarters Agreement.

One request for an advisory opinion, made by the World Health Organization (WHO), is at present pending: Legality of the Use by a State of Nuclear Weapons in Armed Conflict.

The Nuremberg Principles of International Law

Principle I

Any person who commits an act which constitutes a crime under international law is responsible therefore and liable to punishment.

Principle II

The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law.

Principle III

The fact that a person who committed an act which constitutes a crime under international law acted as Head of State or responsible government official does not relieve him from responsibility under international law.

Principle IV

The fact that a person acted pursuant to order of his government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible for him.

Principle V

Any person charged with a crime under international law has the right to a fair trial on the facts and law.

Principle VI

The crimes hereinafter set out are punishable as crimes under international law:

a. Crimes against peace:

i. Planning, preparation, initiation or waging of a war of aggression or a war in violation of international treaties, agreements or assurances;

ii. Participation in a common plan or conspiracy for the accomplishment of any of the acts mentioned under (i).

b. War Crimes:

Violations of the laws or customs of war which include, but are not limited to, murder, ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity.

c. Crimes against humanity:

Murder, extermination, enslavement, deportation and other inhuman acts done against any civilian population, or persecutions on political, racial or religious grounds, when such acts are done or such persecutions are carried out in execution of or in connection with any crime against peace or any war crime.

Principle VII

Complicity in the commission of a crime against peace, a war crime, or a crime against humanity as set forth in Principle VI is a crime under international law.

> ".....nation shall not lift up sword against nation, neither shall they learn war any more"
>
> Isaiah 2.4

CHARTER OF THE UNITED NATIONS

Preamble

We the people of the United Nations determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women, and of nations large and small, and to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained, and to promote social progress and better standards of life in larger freedom.....

Article 2

The Organisation and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles:

1. The Organisation is based on the principle of the sovereign equality of all its members.....

3. All Members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered.

4. All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

Article 33

1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

2. The Security Council shall, when it deems necessary, call upon the parties to settle their disputes by such means.

CAN YOU HELP SPREAD THE GOOD NEWS?