

FOREWORD

By Stephen M. Schwebel, Judge of the International Court of Justice (1981-2000); Vice President (1994-1997); President (1997-2000).

Writing at the end of the first year of the Twenty-First Century, and looking back on the history of the Twentieth Century to appraise sweepingly the place of international adjudication, the retrospective is mixed. It began auspiciously, with The Hague Peace Conferences of 1899 and 1907 and the establishment of the Permanent Court of Arbitration. It is a measure of how recent an innovation in the history of mankind is international organization and adjudication to recall that The Hague Peace Conference of 1907 was the first diplomatic conference to which all States then in existence were invited (and the first at which consideration was given to the establishment of a world court). At the outset of the Twentieth Century, the “peace movement” of that era focused its hopes on international arbitration and adjudication as the principal means for the peaceful settlement of international disputes and the prevention of international warfare.

The Twentieth Century too soon however was marked and marred by World War I, and the rise thereafter of the totalitarian States. Twenty years after the end of World War I, they plunged the world into World War II, and engaged in mass murder and other atrocities in the course of it on a scale unknown to previous centuries. International tensions provoked by the expansionist aims of the totalitarian States in the interwar years, and by the policies of the surviving totalitarian Power after World War II, hardly conduced to international adjudication.

The Permanent Court of International Justice (PCIJ), which functioned in the years 1922-1940, was not, and was not seen to be, a factor in the prevention of war. The hopes that international adjudication would be the antidote to war proved misplaced. The PCIJ nevertheless was a significant and successful institution. It adjudicated a substantial number of international disputes and rendered a stream of advisory opinions, and in the process demonstrated that a world court could work. It demonstrated as well that a world court could not only resolve international disputes but contribute to the development of international law. Thus when at the end of World War II it was accepted that the League of Nations would be replaced by another international organization, it was no less accepted that the World Court would be maintained. It essentially was maintained, the Statute of the International Court of Justice being expressly based on that of the Permanent Court.

The International Court of Justice has a record, in the large, more significant and successful still than that of the PCIJ. It has functioned for fifty-five years. The flow of cases submitted to it has waxed and waned but, since 1984, has mounted remarkably, despite the fact that its compulsory jurisdiction has not.

The increase in the caseload of the Court is especially notable in the years 1997-2001, those that are addressed in this study by Dr. Pieter Bekker. Attention of international lawyers has moved from concern over how to increase recourse to the Court to how the Court may more expeditiously and effectively handle its burgeoning caseload.

The explanation of why the Court has in recent years been so busy, while earlier it was so sparsely used, is uncertain. In my view, the likeliest reasons are two. The first is that the end of the Cold War has reduced international tensions; as the interwar years tend to suggest, States are more prone to have recourse to international adjudication in times of détente (as in the 1920's) than high international tension (as in the 1930's). The second reason is that the States that became independent the last forty years, after some years of suspicion of an international law that they did not fashion, have become increasingly confident in that law as they have contributed to its refashioning and in the place of the Court as its most authoritative interpreter.

Whatever the reasons for the impressive number, consequence and worldwide provenance of the cases before the Court, there is ground for hoping that the Court will continue to maintain a high level of activity. As States increasingly send cases to the Court, their example should generate more such recourse. The Court itself has revised its Rules to expedite its procedures. And the amelioration of the fiscal drought that has crippled the United Nations for years promises a continuing increase in the modest financial resources of the Court that began with the election of Kofi Annan as Secretary-General of the United Nations in 1997.

Pieter Bekker in this study of the work of the Court in the years 1997-2001 analyzes its activity in depth and breadth. His introduction provides a useful survey and commentary; his annual analyses of the Court's judgments, advisory opinions and orders are comprehensive and perceptive. He has included a discussion of a panel of the Annual Meeting of the American Society of International Law that he chaired, in which a number of worthwhile observations are made about the product and prospects of the Court.

Dr. Bekker, who served as a valued member of the staff of the Registry of the Court in his capacity of special assistant to the then Registrar, in the years since has established himself as an industrious and lucid expositor of the work of the Court. He has done so despite the demands of an international

legal practice. It is to be expected that this latest contribution of Dr. Bekker to a wider understanding of the work of the Court will not be his last.

Stephen M. Schwebel

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