Great Expectations: Where Does the Proliferation of International Dispute Resolution Tribunals Leave International Law?*

Lecture Commentary

We have just been treated to a very fine presentation by our distinguished lecturer, Lucy Reed, with whom I have had the privilege of working in different contexts in the past few years – in Zurich at the Claims Resolution Tribunal for Dormant Accounts in Switzerland and in the Hague with the Steering Committee of the Permanent Court of Arbitration for Mass Claims Processes – and, of course, we are both currently based in New York.

In discussing “Great Expectations: Where does the Proliferation of International Dispute Resolution Tribunals leave International Law?” not surprisingly, she has done a masterful job. My assignment is to comment on this lecture, taking into account I presume also the overall theme of the ASIL’s Annual Meeting this year, which of course is “The Legalization of International Relations/The Internationalization of Legal Relations.”

This year’s theme is well founded and can be substantiated in a number of ways. Much has been said and written in recent years on globalization in different contexts. Some years ago, I had the occasion in Asilah, Morocco, at a conference on globalization, to express my views on “international law and globalization,” an easy subject considering that by definition international law – public international law, at any rate – is global. On globalization, I agree in general with James Wolfensohn, president of the World Bank, who stressed that “our challenge is to make globalization an instrument of opportunity

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1 All these references to “relations” reminds me of the contrast, until recently, in the United States Congress of the House Foreign Affairs Committee and the Senate Foreign Relations Committee. The reason for the distinction, it was said, was that Senators were too old to have affairs, they only had relations! This, as we well know, in reality has not always been the case.
and inclusion – not of fear and insecurity.”2 This is valid in the context not only of international trade and economics but also of international law.

It is generally true that where you stand depends on where you sit: Besides being a diplomat in the service of my country, Cyprus, for over thirty-six years, I have been, at Cambridge University, Harvard Law School, and the Inns of Court, a student of public international law, an interest which I later pursued in the Sixth (Legal) Committee of the UN General Assembly and related bodies, in major multilateral lawmaking conferences such as on the Law of Treaties (1968–1969) and on the Law of the Sea (1973–1982), and as a three-term elected member of the UN International Law Commission (1981–1996). You might say that I am a public international law person. After leaving the Foreign Service (most recently, as ambassador to the United States), and while continuing with the Sixth Committee, I found myself engaged in a variety of other tasks – perhaps fitting Ruth Wedgwood’s description, adopted by Lucy Reed, as “double jointed” – straddling public and private international law and indeed transnational law as an arbitrator (at the International Centre for Settlement of Investment Disputes (ICSID), Claims Resolution Tribunal for Dormant Swiss Bank Accounts in Switzerland I (CRT-I) and the American Arbitration Association), a commissioner (of the UN Compensation Commission), and a senior judge (at CRT-II) while continuing to pursue my long-standing interest in the law of the sea and in international criminal jurisdiction, peremptory norms of international law, and international terrorism.

Perhaps a brief word updating each of these topics would be of general interest: On the law of the sea, December 10, 2002, is the twentieth anniversary of the signing in Montego Bay of that “veritable constitution of the seas and oceans,” the Law of the Sea Convention (LOS Convention).3 Certain activities are being planned in New York and probably in Jamaica not only to celebrate this major achievement in international lawmaking but also to take stock and consolidate its universal acceptance. It is hoped, on the basis of its public positions in the General Assembly (Assembly) last November and other indications, that it will not be long before the United States will accede to the 1982 LOS Convention (as amended in 1995), thus taking a major step forward in completing the goal of universality.

On international criminal jurisdiction, there is good reason to expect that, with so far fifty-five ratifications (one of them Cyprus) and more expected soon, the goal of sixty ratifications will soon be reached. Possibly this year,

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2 James Wolfensohn, Building an Equitable World, at the Annual Meeting of the Board of Governors of the International Monetary Fund and the World Bank (Sept. 26, 2000).