CHAPTER 1

Reflections on a Century of International Justice and Prospects for the Future

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Introduction: The Emergence of International Tribunals

On the occasion of the celebration (on 23 September 2013), by the International Court of Justice, of the centenary of the Peace Palace, I propose, in dwelling upon the topic ‘A Century of International Justice and Prospects for the Future’, to present a vue d’ensemble of a century of international justice, the lessons learned, and the perspectives for the future. May I begin by recalling that, six years ago, we had the thoughtful celebration, of which I guard the best memories, of another centenary, that of the Second Hague Peace Conference (of 1907), held in the premises of the Hague Academy of International Law. That workshop marked the centenary of the birth of international tribunals, of the judicial settlement of international disputes.

As I had the occasion to ponder in that centennial celebration,1 by then there were already calls for the creation of permanent courts or tribunals, as illustrated by two initiatives: first, to render permanent a Court of Arbitral Justice,2 as from the model of the Permanent Court of Arbitration envisaged in the First Hague Peace Conference (of 1899), and secondly, to establish an International Prize Court, with access to it granted to individuals. The proposal

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for a permanent Court of Arbitral Justice as a whole was to project itself on the advent of judicial solution proper, at international level, as it became one of the sources of inspiration for the drafting of the Statute of the PCIJ in 1920.³

And although the projected International Prize Court, set forth in the XII Hague Convention of 1907, never saw the light of day, as the Convention did not enter into force, it presented issues of relevance for the evolution of international law, namely: first, it foresaw the establishment of a jurisdiction above national jurisdictions to decide on last appeal on maritime prizes; secondly, it provided, for example, in such circumstances, for the access of individuals directly to the international jurisdiction;⁴ thirdly, it envisaged a type of international compulsory jurisdiction; and fourthly, it admitted the proposed Court’s free authority to decide (the compétence de la compétence).⁵

The 1907 debates of the Second Hague Peace Conference led to the prevailing view of granting individuals direct appeal before the projected International Prize Court. Yet, it was elsewhere, in Latin America, still in the year of 1907, that the first modern international tribunal—the Central American Court of Justice—came to operate. It did so for ten years, granting access not only to States but also to individuals;⁶ in its decade of operation, the Court was seized

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4 It was then admitted that the individual is “not without standing in modern international law”: James Brown Scott, “The Work of the Second Hague Peace Conference,” American Journal of International Law 2 (1908): 22. The view prevailed that it would be in the interest of States—particularly the small or weaker ones—to avoid giving to this kind of cases the character of inter-State disputes: “les litiges nés des prises garderaient [….] le caractère qu’ils avaient en première instance [….], affaires regardant d’un côté l’État capteur et de l’autre les particuliers”; Stelio Séfériadès, “Le problème de l’accès des particuliers à des juridictions internationales,” Recueil des Cours de l’Académie de Droit International de La Haye 51 (1935): 38–40.
