CHAPTER 11

The International Court of Justice: Bestriding Past and Present

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Taking one’s seat on the bench in the newly renovated Great Hall of Justice at the Peace Palace, one cannot avoid the sense of a dialogue between two worlds—that of yesterday and that of today—with which this place is permeated, just as it permeates the institution which it houses, the International Court of Justice.

You feel immediately how difficult it has been for the designer to bestow a varnish of modernity on a space which overwhelms us by its size, just as it intimidates us with its stained glass, its frescoes and its sculptures, replete with allegories that carry us back, ineluctably, to a long-gone past.

When I pass through the Palace gates, I have to make a conscious effort not to cut myself off mentally from today’s vibrant world. All around me, calm and serenity reign, an invitation to meditation. When I see a heron rising skyward, I am tempted to quote the poet Bernard Noël: “et pour la première fois nous entendons le froissement de l’air sous l’aile de l’oiseau…” (“and for the first time we hear the airy rustle ‘neath the avian wing…”).1 As we search for signs of peace regained, Erasmus’s pointing finger directs us to the neo-Gothic Palace. But already, our approach to the judges’ building, and still more so to the Academy of International Law, marks a return to modernity, while the span of the Palace library, taut as a bowstring, symbolises the tension and continuity between eras.

Two eras, punctuated by two world wars, each marked by the euphoria of the return of peace (the ‘Roaring Twenties’, and the ‘thirty glorious years’ after 1945) and the reshaping of the global scene: from the Depression of the 1930s to the Cold War of the 1950s.

Two eras whose starkly contrasting natures would be reflected in the statutes and modus operandi of their respective international courts, albeit that commitments to the jurisdiction of one, the Permanent Court of International

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Justice, remain valid commitments to the other, the ICJ, thanks to Article 37 of the ICJ Statute.

Thus, while the ICJ is bound up with the creation of the United Nations in terms of its very ideology (peace through law), and formally designated by the Charter as the Organization’s principal judicial organ, the PCIJ came into being independently of the League of Nations, although the two institutions maintained numerous links. Moreover, the work of the League and of the PCIJ would remain marked by the Eurocentric character of their members and of the issues addressed by them, whereas we are seeing a progressive universalisation in the activities of the United Nations and the ICJ, in terms of both the countries and the areas of law involved.²

Can it, however, be said that the present Court is secure from the influence of yesterday’s world? Can it resist the temptation to fall back on established traditions?

International law emerged, and has perpetuated itself, within a decentralised community of sovereign States, with roots in practice and jurisprudence that reach back over several centuries.

Concepts developed over the years have retained the same denomination despite having undergone far-reaching changes in their meaning and scope. A prime example is the notion of sovereignty or sovereign equality (Article 2, paragraph 1, of the Charter), which no longer has the same sense that it once did. It is clear that the sovereign State is no longer an opaque entity that international law has access to only through the medium of national authorities or domestic law. International law has effectively adapted itself so that it not only addresses the essential aspects of relations between States, but also deals with people’s daily lives and their fundamental rights, in particular those relating to their physical integrity and their dignity.

There is now continuity between international law and national law, which can no longer be distinguished from one another either by the issues which they address or even by their subjects, since many norms of international law are now directly applicable within States. It may be, moreover, that international custom could now take over from international conventions, which are dependent on the will of States parties, since custom may be invoked by every individual, wherever located, and, if the norm concerned has the character of a peremptory norm (jus cogens) of general international law, no derogation is permitted from it.