It is an honour to contribute to a book celebrating the career of Tom Mensah, a man with long experience of solving the myriad problems of international law which States and international organisations have constantly to grapple with.

In some quarters, it has been fashionable to say that the existence of today’s many permanent international courts and tribunals adversely affects the development of international law by encouraging its fragmentation. In short, their proliferation is detrimental to the integrity of international law. I do not agree. Our international legal system is quite unlike the supply of weapons. The weapons trade is totally different to that of dispensing international justice. Words should be used with more care.

But, first, we should assess whether since 1945 all the new permanent international courts and tribunals in fact meet a need. Before then, there was only one court which could truly be called international. After the First World War, a Protocol established the Permanent Court of International Justice (PCIJ). The PCIJ began work at The Hague in 1922 and existed until 1946. Although (or perhaps because) it was the first permanent international court open to all States, many treaties provided for the option of disputes under them being referred to the PCIJ. In its 24 years, it decided 29 contentious cases and gave 27 advisory opinions. They clarified important areas of international law, as well as contributing to its development.

The International Court of Justice (ICJ) replaced the PCIJ in 1946, though in many respects it built upon PCIJ procedures and jurisprudence. But, unlike its predecessor, which was not part of the League of Nations, the ICJ is the principal judicial organ of the United Nations. However, given its role, other UN organs

1 6 LNTS 380; UKTS (1923) 23.
2 See <www.icj-cij.org>.
3 See the UN Charter, Art. 7, and the Statute of the ICJ annexed to the Charter.
leave the ICJ to get on with the job. With its seat at The Hague, it is sometimes even thought not to be a UN body. Generally, the ICJ has worked well. So far, it has decided over 60 cases and given two dozen advisory opinions. This may not seem a lot for such an important court. Although in the 1960s and 1970s, the ICJ decided on average less than one case a year, with the end of the Cold War, the number of cases has increased markedly. This was helped by the ICJ modernising its procedure and practice, so making it more effective. There are presently about a dozen pending cases. Most come to the ICJ under compromissory clauses in treaties, optional protocols and, sometimes, matching declarations under Article 36 of its Statute. Most are between developing countries. The Court has dealt with some very important issues of international law. On the other hand, in recent years its advisory jurisdiction has been sought (and given) in some matters which were essentially political, such as the legality of the use of nuclear weapons and of the Wall being built by Israel. These were matters on which the ICJ should perhaps have declined to advise. The way in which it dealt in the Wall case with the vital issue of self-defence, shows how advisory opinions can be of dubious value, both legally and politically.

If we did not have an ICJ, we would be the poorer. Subject to its being given jurisdiction by the States in dispute, it has competence to decide any international legal dispute. Other permanent international courts have more limited jurisdiction, being restricted to particular areas of international law or having jurisdiction over a more limited number of States. In the late 1980s there was a Scandinavian proposal that there should be a permanent international tribunal to decide environmental disputes between States. Fortunately, it came to nothing. I say, fortunately, because there is nothing which can be truly called an environmental dispute. Such disputes inevitably raise many other issues of international law, not just those relating to environmental treaties. They involve also legal issues of economic or commercial importance. This is amply demonstrated by Gabčíkovo-Nagymaros where, in the context of a bilateral treaty,

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4 The parallel cases on Nuclear Tests, Fisheries Jurisdiction and the Legality of the Use of Force (begun in 1999) are, for present purposes, each treated as one case.
7 At the time, Austria suggested in all seriousness that there should be a UN environmental peacekeeping force. Immediately they were given the name “Green Helmets”, and, in English, “green” also has another meaning. At that time, many members of the Austrian Mission to the UN were called Helmut, and so the proposed force soon came to be known as the Green Helmuts. Returning to the UN after some years, I was pleased to hear from present members of that mission that the nickname was still remembered with much affection.