The International Court of Justice
Main Characteristics and Its Contribution to the Development of the Modern Law of Nations*

By Hon. Justice Jens Evensen

I. Early Forebears

1. The historic Dumbarton Oaks Conference convened in Washington D.C. in the period 21 August-7 October 1944. One basic cornerstone in its proposed system for the preservation of international peace and security in the post-war era was the establishment of the International Court of Justice. This was by no means a novel idea. Its forebears may be traced back to antiquity where the institution of mediation and arbitration had been known in India, in the Islamic world, in ancient Greece, in China and in the practices of the Holy See.

The so-called Jay Treaty of 1794 on Amity, Commerce and Navigation between the United States of America and the United Kingdom has usually been referred to as the point of departure for the modern history of judicial settlement of disputes. The three mixed commissions composed of American and British nationals "were not strictly speaking organs of third party adjudication". But, "they were intended to function to some extent as tribunals".

The Alabama Claims Arbitration of 1872 between the United Kingdom and the United States - based on the Treaty of Washington of 1871 - was also a significant step in the development towards establishing judicial institutions for the settlement of international disputes by peaceful means.

The two countries agreed to submit to arbitration the claims of the USA against the UK for its alleged breaches of neutrality during the American civil war. The award of the tribunal held that the UK should pay compensation for breaches of neutrality rules; the award was duly complied with.

The Hague Peace Conferences of 1899 and 1907

2. A significant step in the development of a permanent international court of justice was initiated by the Hague Peace Conference of 1899, which concluded the famous Convention on the Pacific Settlement of International Disputes. This Convention dealt with various methods for pacific settlement procedures, such as good offices, mediation and conciliation. In regard to arbitration, the 1899 Convention contained provisions for the creation of a permanent machinery for the establishment of arbitral tribunals. But these tribunals were not "permanent" in the sense of the present International Court of Justice or its predecessor, the Permanent Court of International Justice. Actually, the institution known as the Permanent Court of Arbitration consists "in essence of a panel of jurists designated by each country acceding to the Convention". Where need be, arbitral tribunals may be composed of members selected from this panel. In addition, the 1899 Convention established a permanent bureau in The Hague, which functions as a "Court Registry or Secretariat". This special form of a permanent arbitration organization was established in 1900 and began functioning in 1902.

Based on lectures given by the writer.
3. The second Hague Peace Conference convened in 1907. During this second Conference, the United States Secretary of State, Elihu Root, instructed the United States delegation to work:

"towards the creation of a permanent tribunal composed of judges who were judicial officers and nothing else, who had no other occupation, and who would devote their entire time to the trial and decision of international cases by judicial methods".

These thoughts of Secretary of State, Elihu Root, became main characteristics of the Permanent Court of International Justice established in the aftermath of the First World War. Another main pillar of the Court to be, was Secretary Root's proposal that the judges:

"should be so selected from the different countries that the different systems of law and procedure and the principal languages shall be fairly represented".

These ideas were also incorporated in the Statute of the Permanent Court of International Justice. They are likewise included in Article 9 of the Statute of the present Court, to the effect that at the election of Judges to the Court it must be borne in mind:

"not only that the persons to be elected should individually possess the qualifications required, but also that in the body as a whole the representation of the main forms of civilization and of the principal legal systems of the world should be assured" (Art. 9 of the Statute of the I.C.J.).

4. The active role the Nordic countries played in the establishment of the Permanent Court of International Justice is interesting. A committee set up by the Danish, Swedish and Norwegian Governments prepared a joint proposal embodied in the so-called "Avant projet de Convention (sur une Organisation Juridique Internationale)" published in January 1919. It represented more or less a first draft Statute of the Court. In addition, these three governments presented separate drafts by their respective national expert committees. In 1919 the Government of the Netherlands took the important initiative to invite the Scandinavian and Swiss Governments to a conference with a view to preparing a joint proposal on procedural provisions. This meeting was held in the Hague from 16-27 February 1920 and resulted in a draft (projet) of 55 Articles.

Soon thereafter, the Council of the League of Nations took steps to establish a "Committee of Jurists" charged with the task of preparing a draft Statute for the Court based, *inter alia*, on this "projet de règlement". A number of international reknown jurists were members of the committee, such as: Professor Altamira (Spain), Baron Descamps (Belgium), former Prime Minister Hagerup (Norway), Professor Lapradelle (France), Judge Loder (The Netherlands), Lord Phillimore (Great Britain) and Secretary of State Elihu Root (USA).

By resolution of 13 December 1920 the Assembly of the League of Nations approved the Statute of the Court, thus prepared.

The San Francisco Conference

5. During the drafting of the Charter of the United Nations at the San Francisco Conference, which met in the period 25 April to 26 June 1945, a number