THE FUNCTION OF THE INTERNATIONAL COURT OF JUSTICE IN THE WORLD COMMUNITY

Sir Francis Vallat

Let me say at the outset that I am going to be a "cold" lawyer on this subject, that is to say I am going to try to put before you very briefly the main points of departure, the essential facts as I see them in relation to the Court. This will then give more opportunity for Mr. Fawcett and Mr. Gross to follow with comments of assessment or criticism.

I would like to say immediately that I do not regard the Court as a panacea. Every time a United Kingdom speaker opens his mouth to mention the settlement of international disputes, it always seems to be assumed that one is going "for the Court, the whole Court and nothing but the Court." This is certainly not the view I take. There are many other instruments for the promotion of international relations and for the settlement of international disputes. I need only refer in that context to what is said in article 33 of the Charter itself.

In spite of the shortness of time, let me just put the present Court a little into its historical context. The history of the development of the International Court really began with the Hague Conferences of 1899 and 1907, when it was felt that the world had had too much of the assertion of policies by the use of force and that states should seek the settlement of their disputes by means of arbitration, which would have a largely judicial character. It was recognized that arbitration could be a procedure which was more or less *ex aequo et bono* or could be carried out judicially. I think it is fair to say that some of the creators of the Permanent Court were over-optimistic about the possibility of solving questions of war and peace in that way, and this is a lesson that we should have learned by now.

Nevertheless, since the establishment of the Permanent Court of Arbitration down to the present time, there has been a more or less steady flow of litigation, first before tribunals established under the Permanent Court of Arbitration, then before the Permanent Court of International Justice, and since the establishment of the United Nations, before the International Court of Justice. The cases have had both legal and political significance, and I make no apology for mentioning "political" and "legal" aspects. I worked for nearly a quarter of a century in the For-

eign and Commonwealth Office as an independent, professional lawyer—with I hope no damage to my moral fiber!—and during that time I had to exercise a discipline which was a recognition of the distinction between what were regarded as political factors for my Ministers and legal factors which were primarily for the legal advisers. To the best of my ability, I advised on what I regarded as the legal factors. So I make no apologies for saying that the cases had both legal and political aspects—some had more legal than political significance, and others more political than legal significance.

Let me recall just a few of the cases that came before the Tribunals which I have mentioned. They are familiar to all of you, I know, but I have taken five at random to illustrate the point I am making.

These are my examples:

(1) The *Island of Palmas Case*[1] decided by the award of Max Huber acting within the context of the Permanent Court of Arbitration. There is not one among you, I venture to suggest, who has not at some time had to weigh the legal significance of the award of Max Huber in the *Island of Palmas Case.*

(2) From the Permanent Court of International Justice, the *S.S. Wimbledon Case*:[2] a case of great legal and political significance at the time that it was decided.

(3) In the early 1930's, the Advisory Opinion of the Permanent Court on the *Austro/German Customs Union*,[3] a question of immense political importance at that time.

(4) In the days of the International Court of Justice, in 1950, the *South-West Africa* Advisory Opinion[4] which has been the mainspring for all the activities of the United Nations with regard to South-West Africa since that time.

(5) In the field of disputes, the *Anglo-Norwegian Fisheries Case*,[5] decided by the International Court of Justice, which again was not only of great political significance at the time, but has also had very great legal effect on the development of the law of the sea since that time.

I have chosen at random only five of the cases, and I stand before you

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[1]Island of Palmas Case (United States v. The Netherlands), Hague Court Reports 2d (Scott) 83 (Perm. Ct. Arb. 1928).

[2]Case of the S.S. Wimbledon, [1923] P.C.I.J., ser. A, No. 9.

[3]Advisory Opinion on the Custom Régime between Austria and Germany, [1931] P.C.I.J., ser. A/B, No. 41.

[4]Advisory Opinion on the International Status of South-West Africa, [1950] I.C.J. 128.

[5]Fisheries Case, [1951] I.C.J. 116.

today and I say that these cases were of vital importance to international relations and indirectly made a real contribution to world peace.

I must say, at this point, that I would like to associate myself with Madam Chairman in referring to the title. I also was a little puzzled by the addition of the last four words: "The Function of the International Court of Justice *in the World Community*." I did not know whether this was really meant to be a reference to the relevance of the Court to perhaps the People's Republic of China, North Korea, East Germany, and the few states who remain outside the family of the United Nations. I find it very difficult to discuss the role of the International Court in relation to those entities. What I do find easy is to discuss the role of the Court in relation to the United Nations; and I am going to take the United Nations as the world community for this purpose. Again, I do so with no apology, because this morning we were exhorted as lawyers to uphold the Charter; and this is absolutely right, of course. We should look to the Charter as the mainspring of our study and examination of the function of the International Court in the world community today. So what I am going to do in the few minutes remaining is to refer very briefly (just to remind us and have it before us) first to the context of the Court in the Charter, and secondly to its functions under the Charter.

One starts with the third paragraph of the Preamble: The United Nations has as one of its main objectives "to establish conditions under which justice and respect for obligations arising from treaties and other sources of international law can be maintained . . . ." So in the forefront of the Charter we have justice and international law.

Then if we pass on to the Purposes and Principles of the Charter in chapter 1, the last part of article 1(1) includes among the Purposes doing certain things "in conformity with the principles of justice and international law . . . ."

Then I would recall that it is the duty of Members of the United Nations to "settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered." That is, of course, article 2(3) of the Charter.

When we come to look at the specific means for the settlement of disputes, as I have already pointed out, we have a large range mentioned in article 33 of the Charter. I would recall also that under article 36(3), it is part of the duty of the Security Council to take into consideration that legal disputes should as a general rule be referred by the parties to

the International Court of Justice in accordance with the provisions of the Statute of the Court.

So that is the context of the Court within the framework of the Charter.

In addition, let us recall that the Court itself is established as a principal organ of the United Nations, and not only that, but under article 92, as "the principal judicial organ of the United Nations." That is really the main point, I think, in relation to the Court that one finds in the Charter: It is the principal judicial organ of the United Nations.

Passing very briefly to the functions, I would mention first of all the advisory functions as set out in article 96 of the Charter and would recall that the Court is not called upon to advise on political matters; it is called upon to answer legal questions in response to requests from the General Assembly or the Security Council, and in the case of requests from other organs and authorized specialized agencies, legal questions arising within the scope of their activities. So on the advisory opinions the Charter has no doubt as to the character of the questions that are to be put to the Court: They are legal questions, not political questions.

When one turns to contentious jurisdiction, one finds first of all, of course, that states, and states only, can be parties to the cases before the Court, and that lifts the matter immediately to the international plane; secondly, one finds by article 38(1) of the Statute of the Court in the much forgotten (if I may say so) introductory words that the Court is to decide disputes on the basis of international law. If I may quote what article 38 says: "The Court [and this is where the function is defined], whose function is to decide in accordance with international law such disputes as are submitted to it, [etc.] . . . ."

So there one finds in the Charter, very briefly and very succinctly stated, the place in the Organization and the function of the Court; and I would like to start from this basic proposition that the function of the Court has three main features: first, international; secondly, legal; and thirdly, judicial.

I hope these remarks will be a useful starting-point for our discussion.