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## Address on the 50th Anniversary of the International Judicial System

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## Address on the 50th Anniversary of the International Judicial System<sup>†</sup>

The International Court of Justice meets today in special session to commemorate the 50th Anniversary of the establishment of the international judicial system. Just over fifty years ago, on 15 February 1922, the Permanent Court of International Justice held its inaugural sitting here in the Great Hall of Justice at the Peace Palace, under the presidency of the eminent Dutch jurist. B. C. J. Loder, and in the presence of Her Majesty The Queen of the Netherlands, Her Majesty The Queen Mother, and His Royal Highness The Prince of the Netherlands, and of the Diplomatic Corps, representatives of the League of Nations and members of the Dutch Government.

On the present occasion, I have great pleasure in welcoming on behalf of the Court, all those who have come here today in response to our invitation to be with us as we celebrate this anniversary: members of the Diplomatic Corps, representatives of the host Government, and many other persons who have attained eminence in other fields of public life, in the Netherlands, in international bodies, and elsewhere. We are also most happy to greet those who are linked to the two International Courts by personal experience, or by family connections, particularly the members of the families of former Members of the Court who were present at that Inaugural Sitting in 1922. That event not merely marked the establishment of a particular judicial body, the Permanent Court of International Justice, which after a fruitful career was dissolved some 24 years later; it was a turning point in international relations, and in the development of international law. It was the culmination of a movement towards greater justice and order in international relations, and toward the more effective settlement of international disputes, which, while it had its roots in the distant past, had been particularly observable from the late nineteenth

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†Address delivered on April 27, 1972, at a Special Sitting of the International Court of Justice to commemorate the 50th Anniversary of the instituting of the international judicial system. The ceremony took place at the Great Hall of Justice of the Peace Palace, The Hague, Netherlands.

century onwards. It was also an event whose significance and subsequent effects were by no means confined to the career and ultimate fate of the Permanent Court itself.

The principal and vital function of the Permanent Court of International Justice was, as it continues to be of the present Court, the settlement of disputes between States. Such disputes have arisen ever since States have existed and entered into relationships with each other, and from the beginnings of recorded history methods have been sought by which war and naked force might yield to a process of adjusting differences more attuned to the concepts of justice and of human dignity shared by the whole of mankind. To appreciate the importance of the achievement of 1922, and the true significance of the establishment of the Permanent Court, I would beg leave to survey briefly the historical background, and the successive stages of the movement towards an international judicial system.

What do we mean when we talk of the settlement of international disputes, the role enjoined on this Court by its Statute, and by the Charter of the United Nations, which requires the Members of the Organization to settle their international disputes by peaceful means in such a manner that international peace and security and justice are not endangered? A dispute is, as observed by the Permanent Court, "a disagreement on a point of law or fact, a conflict of legal views or interests." Whatever form a dispute between States takes, whether it be a dubious frontier, an allegation of breach of international obligation, or a claim for reparation for such a breach, it cannot be regarded as settled until the conflict has been definitely resolved, and the disagreement put out of the way.

Viewed in this light, a dispute, whether it be an international dispute or one between private individuals, is in fact only susceptible of being settled by one of two means: either a solution must be found to which the disputing parties are able to agree; or a solution must in some way be imposed. There are many methods by which a solution by agreement may be attained, that is to say, a solution which, while it may not fully satisfy the pretensions of either side, is acceptable as a fair compromise. This may be achieved through mediation of a third party, conciliation, good offices of an appropriate person or State, or negotiation between the parties concerned. The means used are the tools employed to reach a solution which may be submitted to the parties for them to adopt by agreement; it is the adoption of the solution by the parties which effects settlement of the dispute rather than the means adopted to find the solution.

But a solution acceptable to both sides may not be attainable. It may emerge, after the processes of diplomatic negotiation and other methods of

peaceful settlement have been exhausted, that the pursuit of a formula to which both sides could agree is the pursuit of a chimera. In such case the dispute must either remain unsettled, or a solution must be imposed. The natural and inevitable outcome in the past was for the party which, either by itself or by virtue of its alliances, was the stronger, to impose its view of the matter by force. The use of force, ranging from what might simply be called pressure to outright war, was in fact a means of settlement of disputes, even if it was one which is now regarded as unacceptable to the international community, and this was the only alternative to settlement by agreement if the dispute were to be settled at all.

Even in days when the methods of warfare adopted were less indiscriminate and less horrific than those with which we have been obliged to learn to live today, settlement of a dispute by force could not be regarded as corresponding to the ideals of justice which are innate in the mind of man. From remote antiquity onwards, traces are discoverable of efforts and achievements in the field of peaceful settlement of disputes between city States and between nations, and other disputes of a more than national concern. Thus arbitration procedures are recorded among the city States of Ancient Greece, in Ancient China, among the tribes of Arabia, and in the early Islamic world; and the concept of mediation, also developed by the Muslim civilisation, is traceable in Ancient India. In more recent times, successive Pontiffs made a number of important arbitral awards.

However, the historical landmark from which the trend which was to lead to the establishment of a true international judicial system is usually dated was the Jay Treaty of 1794 between Great Britain and the United States, whereby the two parties referred a number of outstanding questions between them, that had not been resolved by negotiation, to mixed commissions composed of British and United States nationals in equal numbers. The successful work of these mixed commissions led to increased adoption of arbitration in one form or another as a means of disposing of questions in disputes between States; and in 1872 the same two States which had been parties to the Jay Treaty took a step which marked a further advance. Under the Treaty of Washington of 1871, Great Britain and the United States agreed to submit to arbitration claims by the United States for alleged breaches of neutrality by Great Britain during the American Civil War. Such claims were in fact heard and disposed of by an arbitral tribunal established under the Treaty in what has become known as the *Alabama Claims Arbitration*.

The outstanding characteristics of this arbitration, and of arbitration

process at this stage in history, which gave rise to justified optimism in the future of the international judicial process, were first the submission of disputes between sovereign States to a tribunal empowered to give a binding decision; and second, the employment of third parties to constitute the tribunal. As already observed, the only true alternative to an agreed settlement of a dispute is one which is imposed. In the absence of any preconstituted tribunal which may impose a solution, the creation by agreement of a body invested with power to impose a solution upon the States which have begotten it clearly represents an appreciable advance over the imposition of a solution by the will of the stronger party. Arbitration in this form, while it springs from the agreement of the parties, is not a tool to reach an agreed solution, but a true method of settlement, a procedure to which recourse may be had where no agreement is possible, and of which the expected outcome is a definite and final solution.

The other significant aspect of the Alabama Claims Arbitration Tribunal was that it was composed of five members appointed by the Heads of State respectively of Great Britain, the United States, Brazil, Italy and Switzerland. Thus not only was the tribunal composed of members appointed by the parties and others appointed by third parties, but the members appointed by the parties were in a minority. No clearer demonstration could have been given of the faith of the two powers which set up the tribunal in the settlement of their disputes according to judicial principles by independent arbitrators, over whom the parties could not have any control.

During the final years of the 19th century and the first years of the 20th, the practice of providing in advance for settlement of disputes arising out of treaties, by including in such treaties provisions for recourse to arbitration, became more and more widespread; and general arbitration treaties for the settlement of predefined classes of disputes between the States parties to the treaties also became a common phenomenon. The idea of arbitration as an alternative, if not the only alternative, to war as a means of settling disputes not susceptible of resolution by negotiation had taken hold of the consciousness of the international community. Thus the First Hague Peace Conference of 1899, called primarily to deal with the subject of peace and disarmament, led to the creation of the Permanent Court of Arbitration, still an honoured joint occupier of this building with the International Court of Justice, and to the adoption of a convention on the pacific settlement of international disputes. More and more questions at issue between States were settled by arbitration on the lines laid down by the convention, and frequently under the auspices of the Permanent Court of Arbitration. So in 1907 the time seemed ripe for the next major step forward.

It was apparent that the technique of compromissory clauses and general arbitration treaties was necessarily limited in its scope and effect, and could not ensure the regular and speedy settlement of disputes which, then as now, was taken for granted on the level of municipal courts. At the Second Hague Peace Conference in 1907, attempts were made to create a permanent tribunal, to be composed of judges who would be judicial officers and nothing else, who would have no other occupation and would devote their entire time to the trial and decision of international cases by judicial methods, under a sense of judicial responsibility. A draft proposal to this effect was placed before the Conference by the British, German and United States delegations. The Conference, however, was unable to agree to the constitution of such a tribunal and was only able to recommend the adoption of a draft convention for the creation of a permanent court of arbitral justice. While the concept of a judicial authority operating on the international level had gained general acceptance, the absence of any general constitution or organization of the international community meant that there was no means ready to hand whereby a judicial organ which could claim to speak in the name of the international community could in fact be created.

In one part of the world where there existed a strong sense of local community and local organization, it did prove possible to create a permanent international tribunal of limited jurisdiction, namely the Central American Court of Justice which functioned from 1908 to 1918. In this limited sphere, it was possible for each party to appoint a judge to the court—a solution which on the general international level could not be adopted without creating a court of unwieldy size, and a solution which, as the experience of the Central American court was to show, was not without its disadvantages.

The great surge of feeling in favour of the banishment of war, and the adoption to this end of a more organized structure for the international community, which followed the cataclysm of the First World War, furnished greater momentum to the move towards judicial settlement, and through the creation of the League of Nations, provided the eagerly awaited machinery for the constitution of a permanent tribunal of a truly international character. By Article 14 of the Covenant of the League, the Council of the League was given the responsibility of formulating plans for setting up such a court. In 1920, at the Second Session of the Council, an advisory committee of jurists was appointed to submit a report; and its report, prepared at a series of meetings held here in the Peace Palace, with a draft Statute for the court, was submitted to the Council and subsequently to the Assembly of the League in the same year. The text of the

Statute of the Permanent Court of International Justice was unanimously adopted by the League Assembly in December 1920, and on the 16th of that month a Protocol was opened for signature, enabling States to declare that they accepted the jurisdiction of the Court in accordance with the terms and subject to the conditions of the Statute. Within less than a year, a majority of Members of the League had signed and ratified the Protocol, and the Statute came into force.

The first election of judges of the Permanent Court of International Justice was held on 14 September 1921; the machinery devised to overcome the long-standing difficulty of selecting persons who would enjoy the confidence of States who were to appear before the Court was put to the test and emerged triumphant. The voting, which had been expected to be long drawn out and difficult, was all concluded within the space of two days, and at the beginning of 1922, the first Judges of the Permanent Court of International Justice assembled at The Hague.

Thus the event which we are today commemorating, viewed against that which had gone before, represented a very considerable advance; a stage in the progress towards an organized international community based on peace and justice different from those which had preceded it, not merely in degree but also in kind. A means whereby international disputes were to be settled, as opposed to a means of facilitating settlement by agreement, had to be such that a solution emanating from it would be imposed on both parties, thus achieving a resolution of the conflict not dependent upon the parties' acceptance of it. This requirement was met by the system of reference to binding arbitration; but there remained the need to constitute the arbitral tribunal for each dispute as it arose, and the more basic problem of the need for the agreement of the parties for the matter to be referred to arbitration at all. The creation of a permanent tribunal, bound by its constituent instrument to apply international law without fear or favour, made possible judicial settlement at the international level, in that States could expressly declare their acceptance of and submission to the rule of law, by conferring upon the tribunal power to resolve all such disputes to which they might be parties, which were not capable of being settled by negotiation.

The machinery provided for this purpose was of course the well-known optional clause in the Statute of the Permanent Court, namely Article 36 of the Statute, whereby States were enabled to file declarations declaring their acceptance of the compulsory jurisdiction of the Court vis-à-vis other States accepting the same in respect of all disputes or particular classes of disputes to arise in the future. The effect of this Article and of the various

declarations by States which were filed in conformity with its terms, was to create a sort of "inner group" among the States to which the Court was open: each of the States of this group was in principle entitled to claim, and bound to admit, the immediate jurisdiction of the Court over disputes with any other State or States members of the group. Thus the States in this group were in a position more closely analogous to that of citizens in an ordinary society than were the generality of States, in that they could "take each other to Court" to settle their differences without any need for specific agreement to that effect in respect of each individual difference. This clause achieved a reconciliation between the desires of those who sought to achieve a full system of compulsory jurisdiction at the international level, and the scruples and hesitations of those who were afraid that compulsory submission to the tribunal might involve infringement of sovereignty or injury to the vital interests of a State.

I have great pleasure here in paying tribute to the State which has been the host of the two International Courts, the fatherland of Grotius and other eminent international jurists. Even prior to the inauguration of the Permanent Court in February 1922, the Netherlands had declared its acceptance of the compulsory jurisdiction of the Court. Throughout the whole lifetime of the two Courts, the Government of the Netherlands, by its unreserved acceptance of judicial settlement, has set an example to be applauded, and let us hope, to be more widely imitated in the future.

The Permanent Court of International Justice was the creation of the League of Nations; but the decline and dissolution of that organization were in no sense indications of failure of the international judicial system which it had inaugurated. The work of the Permanent Court from 1922 to 1939, both in respect of settlement of disputes between States, and in the exercise of its novel jurisdiction to render advisory opinions to the organs of the League of Nations, gave general satisfaction, and constituted a solid structure reared on the foundations of international arbitration from the *Alabama* case onwards. Furthermore, through its judgments and opinions, and its rules of procedure and their application to the cases brought before it, the Permanent Court built up a corpus of procedural law appropriate to a permanent international tribunal, which has proved of great value and assistance to the present Court. While the advent of the Second War, and other less widespread conflicts which preceded it, frustrated the high hopes placed in the League, the international judicial system proved itself worthy of confidence and continuance.

Even during the course of the Second World War, while the Permanent Court was in existence though its operation was suspended the United



Kingdom invited a number of experts to meet in an informal inter-allied committee to examine the question of an international court to be constituted after the war. This committee, in its report published on 10 February 1944, recommended in principle that the model of the Permanent Court of International Justice, which had proved satisfactory, should be followed, subject to such modifications as might be deemed necessary or appropriate in view of the shape that the international organization might assume after the war. On 9 October of the same year, the Dumbarton Oaks proposals provided for the establishment of an international court of justice, which would be the principal judicial organ of the proposed future international organization, operating under a statute which might either be the Statute of the Permanent Court with modifications, or a new statute based on the Statute of the Permanent Court.

Thus the Permanent Court could have been maintained in being, just as the International Labour Organisation, which celebrated its own fiftieth anniversary a few years ago, was maintained when the League itself was dissolved; but the other possible course provided for at Dumbarton Oaks was in fact adopted. The final outcome of the meetings of the Washington Committee of Jurists and the San Francisco Conference, was the creation of the present Court as the principal judicial organ of the United Nations, and the adoption of its Statute which, while modelled very closely on the Statute of the Permanent Court of International Justice, forms an integral part of the United Nations Charter.

Thus despite the dissolution of the Permanent Court 24 years after the inaugural sitting which we are commemorating today, and despite the disaster of the Second World War, it is not merely the ideals and objectives in view in 1922 which have survived and grown, but also the methods which were adopted for the achievement of those objectives. The closer integration of the present Court with its parent organization, and the emphasis laid in the Charter on the peaceful settlement of international disputes, mean that the existence and utilisation of the International Court of Justice are now part of the very fabric of the international life of today. From the very beginning, the International Court of Justice was envisaged, not merely as a world court—an international tribunal of universal jurisdiction—but also as an integral part of the United Nations Organization. The United Nations itself is a more unified and organic structure than the League of Nations, and relies heavily on the integration of its component parts. The International Court of Justice is a principal organ, *i.e.*, one of the most essential of the component parts of the United Nations. The Organization was devised as a whole, to operate as a whole; if the In-

ternational Court were neglected or allowed to atrophy, the whole Organization would inevitably suffer, to the detriment of the objectives for the achievement of which it was set up. The rule of law cannot be separated from the ideals of peace, social justice and progress.

Apart from considerations of the effective working of the United Nations as an organization, the conditions of international life today render indispensable the existence and operation of an international tribunal or tribunals for the maintenance of peace. The truth must be firmly grasped that settlement by international judicial decision of disputes which cannot be adjusted by negotiation is the only true alternative to settlement by force of arms. The idea that aggression is inexcusable is perhaps more strongly held today than the view that international disagreements should be brought before a judicial tribunal. If that is so it merely means that the only remaining course is to let such disagreements continue to fester. If unresolved disputes pile up, they constitute a growing irritation, and the cumulative effect thereof is only too likely to emerge as a threat to the peace. The world today is much smaller than the world known to those who lived in previous centuries; modern communications have so constricted it that we live on our neighbours' doorsteps. This fact, in combination with the general division of the world into groups or blocs of particular political schools of thought, whether or not their members are linked by treaties of alliance or mutual assistance, means that even a small frontier issue in a remote part of the world could at any time set in motion a chain reaction, the effects of which would be such as, though never yet experienced, can be visualised only too clearly. In such a world, the thesis that judicial settlement of disputes is indispensable as a support for the maintenance of international peace should need no emphasizing.

What is the situation today? To what extent has the work of the pioneers of 1920 to 1922 been carried forward and extended? It must be confessed that if a member of the 1920 committee of jurists who drafted the Statute of the Permanent Court of International Justice were to appraise the situation of today, he would be justly disappointed.

There is an observable decline in the number of cases submitted not merely to this Court, but to international arbitration in any form, so far as such arbitrations are a matter of public knowledge. By far the largest number of cases brought before this Court have been submitted by one or more members of a comparatively small group of States who were equally zealous in the cause of judicial settlement during the lifetime of the Permanent Court. Recourse to the optional clause system for the acceptance of the compulsory jurisdiction of the Court, which was one of the most

promising innovations of 1920, and which was then contemplated as a possible half-way house on the road to a complete system of international compulsory jurisdiction, has gained very little ground in the quarter century since this Court took the place of the Permanent Court.

Decline in the number of cases brought before the International Court of Justice is not in itself too disquieting. If the various cases heard by the Permanent Court of International Justice which arose out of the Treaty of Versailles and the settlement following the First World War are left out of account, and the one or two cases before the present Court which can be regarded as arising out of the Second World War are also excluded, there is not such a great difference between the amount of work entrusted to the two Courts. Furthermore, the mere fact that at any time the Court is not occupied with the transaction of judicial business does not by any means imply that it is not serving the ends for which it was designed. The task of the Court is to settle such disputes as cannot be settled by agreement. The fact that the Court exists, and that such cases can be brought before it, operates as a considerable stimulus to the effort to reach agreement, particularly where one party has serious, though unvoiced, doubts as to the strength of its case.

But the existence of the Court operates in this way only where a dispute which cannot be settled by negotiation can be taken before the Court by the unilateral action of one of the States parties to it. So long as there is no link of compulsory jurisdiction between the States concerned, a State which is a reluctant party can, if it chooses, let the dispute continue unresolved—with all that that implies for the future relationship between the States concerned—rather than let the Court decide. Where the States concerned have accepted the compulsory jurisdiction of the Court by filing declarations under the optional clause, or for that matter under a general or particular treaty, the Court will be able to settle all disputes arising between the States within the framework of the declarations or the treaty, by positive judgment if such disputes are brought before it, or by its very existence to contribute towards resolving them through its influence on the conduct of the negotiations leading to ultimate settlement by agreement.

Thus the most accurate barometer for an indication of the climate of international opinion with regard to judicial settlement of disputes, which we have seen to be vital to the preservation of international peace, is the degree to which the jurisdiction of the Court has been recognized as compulsory by the members of the international community. In 1922, and throughout most of the lifetime of the Permanent Court, the hand of this barometer indicated "Set Fair": the proportion of the States entitled to

appear before the Permanent Court which had accepted its compulsory jurisdiction was encouraging. After the war the hand began to move from "Set Fair" to "Changeable"; and if the glass continues to fall, we may look for storms ahead. Through the multiplication of the membership of the United Nations since its foundation, the number of States entitled to appear before this Court has increased greatly. But a comparison of the list of States which have accepted jurisdiction under the optional clause with the list of States which had made such acceptance in 1946 and in 1922 shows that progress in this direction has been very slight.

There has been little advance in the extent of devotion to international judicial settlement, since it is linked to the general concept of the role of law in international relationships; it is, in fact, still the same States which litigate. Nor has there been any indication of continuing progress in the conclusion of treaties of arbitration and judicial settlement conferring jurisdiction on the Court, despite the recent encouraging example of the Treaty between Argentina and Chile of 5 April 1972.

It is not for the Court to say to sovereign States that they must accept its jurisdiction; the authority of the Court to address States in the imperative mood is strictly confined to the relationship of the Court as a court to States as litigants in a case in progress, and is in fact based upon and derived from the initial consent of States to submit to the jurisdiction of the Court. But I conceive it is legitimate to draw attention to the world's need of a tribunal possessing the widest possible range of compulsory jurisdiction if peace is to be preserved.

The expression "compulsory jurisdiction," though convenient, is perhaps an unhappy one, in that it carries a suggestion of subjection to the overriding power of a tribunal, which is repugnant to many governments, as inconsistent with State sovereignty. It may be useful to try to clear up any misapprehensions on that score. In the first place, the Court never has jurisdiction to deal with a matter unless at least one of the parties chooses of its own free will to submit the matter to the Court. Compulsory jurisdiction does not mean jurisdiction which the Court can of its own motion exercise over States; such a system was tried in the case of the Central American Court of Justice, but the results were not encouraging and no such authority has been vested in the International Court of Justice. Secondly, even where a case is brought before the Court on the basis of an acceptance of compulsory jurisdiction, there is no obligation on the parties to let the case go through to judgment if in fact they are able to resolve their differences by agreement. There is no bar to continuing negotiations after the Court has been seised of a case. The Court has in the past been

sympathetic to applications for suspension of proceedings where negotiations appeared to be on the point of producing settlement. The only concern of the Court is that disputes brought before it shall be settled in accordance with law and with expedition, and as amicably as possible. If, in the course of proceedings, negotiations bring the dispute to an end, the Court will have played its part, and on being so notified will remove the case from its list. Any feeling that by submitting a dispute to the Court the parties are losing control of the matter, or forfeiting their freedom of choice to accept or refuse solutions offered by the other side, is unwarranted.

Furthermore, as a recent case before this Court has demonstrated, proceedings brought before the Court may be so framed that the decision of the Court may leave the parties some scope for choice as to its implementation. The Court may not give advisory opinions to States, as it may to the organs and specialized agencies of the United Nations, nor would it be fitting that, being a judicial body, it should give a judgment which would be dependent for its validity on the subsequent approval of the parties, but it is nonetheless open to the parties so to cast the application or special agreement by which a case is brought before the Court as to confine the case to the narrow point on which the Court's decision is required for the dispute to be capable of being settled, while reserving the application thereof to the facts of the problem to themselves. In the *North Sea Continental Shelf* cases, the Parties asked the Court to indicate the principles and rules of international law applicable to the delimitation of their continental shelves, but did not ask the Court actually to effect the delimitation, which they carried out by negotiation on the basis of the indications given by the Court.

A further doubt which has sometimes been expressed, particularly by those responsible for the affairs of the younger States of the world, is to the effect that the International Court of Justice is dominated by ideas of international law derived from those States which were most powerful during its formative period—by a system of international law in the elaboration of which the new States took no part; and that it cannot therefore be relied on to do justice to the legitimate claims and aspirations of the newer States. The Court is, by its Statute, limited to applying existing international law, and not law as any particular State or group of States would wish it to be. The Court is universal: it is not dominated by any legal philosophy bounded by limitations of a historical, geographical or ideological nature. The Court applies international law as it is; and if international law grows and develops under the influence of the legal systems and legal ideas of any State or group of States, new or old, then in-

ternational law as a whole will be the richer, and the Court will apply the new law as faithfully as it has applied the old. The Court must apply the law and cannot change it; but in applying the law the Court must interpret it and also take note of changes and developments in the law. This process is a powerful factor of progress. The Court represents the principal legal systems of the world through its Members, all of whom contribute to the formation of the Court's decisions and rulings.

In marked contrast to the decline in the amount of business entrusted to the Court in recent years, a considerable amount of academic and political interest has lately been exhibited in the Court, and in many quarters the question has been canvassed: "What is wrong with the Court?" The Court welcomes both interest and criticism. Criticism of the Court should, however, be directed to matters which are under the Court's control. The Court is a legal entity of rather unusual nature, in that it is established for one purpose only—the settlement of disputes and the giving of advisory opinions—and is provided only with such means and powers as are thought appropriate by its creators for it to carry out its duties. It lacks the power of self-transformation with a view to development or improvement. Whereas, for example, the Members of the United Nations could by common agreement amend the Charter so as to make whatever transformations in the Organization they might agree to be necessary for its continuing development, the Members of the Court have no power to make changes in the constitution of the Court. The Court's initiative is limited to making proposals to the General Assembly of the United Nations for amendment of its Statute.

If, therefore, it is thought that there are substantial defects in the structure or organization of the Court, it would be for the political organs of the United Nations to take note of them, and to make appropriate amendments to the constituent instrument of the Court. Until this is done, the Court is bound to carry out its duties in accordance with the existing Statute to the best of its ability, and thus to make the maximum contribution in its power to the maintenance of international peace.

It is well known that all the potentialities of the Court under its existing Statute have in fact never been explored, and that parties to cases do not take advantage of all the possibilities afforded them by the Statute and rules of procedure. For example, the provisions of the Statute for cases to be heard by Chambers of three or more Members of the Court, if the parties should so request, have never been brought into play since the Court was constituted.

The Court is given power by the Statute to form Chambers for dealing

with particular categories of cases; thus, at the present time, it might be conceivable that there should be a Chamber entrusted with such categories of cases as those raising questions, for example, of the law of the sea, or of the human environment. But such a Chamber could only hear cases if the parties agreed to this. Again, the Court may, if so requested, form a Chamber for dealing with a particular case. Those who consider the Court unwieldy by reason of its size might be expected to take advantage of this device but no request for the formation of such a Chamber has ever been made. Furthermore, as required by the Statute, the Court forms every year a Chamber of Summary Procedure "with a view," says the Statute "to the speedy despatch of business," but no State has ever asked for a case to be dealt with by summary procedure. One might be tempted to think that States were not interested in the speedy despatch of business—were it not for the criticism of delay sometimes directed at the Court as a whole.

I need say little as to such criticism, except to observe that a close study of the timetable of any lengthy case will show that most of the time involved is employed by the parties in preparing and presenting their cases and little or no time is spent waiting for the Court to move. Similarly, when criticism is made of the length of time which proceedings before the Court may take, it is overlooked that, apart from the power of the parties to ask for short time-limits for the various steps in the proceedings, there is nothing sacred about those steps themselves, and it is always open to the parties to agree to reduce the length of proceedings by the omission of one or other of those steps.

The Court is at present engaged in the revision of its Rules of Procedure, its object being to provide flexibility, to avoid delays and to simplify procedures in both contentious and advisory proceedings. Opportunities for parties to simplify and speed up the process of litigation already exist, but with the revision of the Rules, it is hoped that such opportunities may become more apparent and may be availed of more frequently. I must not, however, be understood as implying that the existence of a simple, rapid and flexible procedure would deprive States of all excuse for choosing to stand aloof from it; it must be realized that greater use of the Court can only result from a basic shift in the attitudes of sovereign States in favour of more general resort to judicial settlement. For example, as recommended in a resolution of the Institute of International Law some years ago, it should become accepted that to bring another State before the Court in a bona fide dispute, and on a proper jurisdictional basis, should not be regarded as an unfriendly act.

I would like at the same time to make it clear that there is nothing

sacrosanct about the International Court of Justice in its present form and structure. I have striven to emphasize that an international judicial system is one of the most vital needs of an international community, particularly of one at our present stage of development, with the appalling weapons of destruction now in our hands. The full potentialities of the present Court have perhaps not been explored, but if nonetheless it were felt that developments since 1922 require a different type of court, than it is up to the United Nations Organization to take the necessary steps to bring it into being.

The lesson to be drawn from 50 years' experience of the international judicial system is that at the present stage of development of the international community, recourse to a tribunal for the settlement of international disputes is essential; in no other way can the irritation of accumulated disputes, and the threat of resort to force, be excluded. The International Court of Justice lays no claim to a monopoly of international judicial settlement; Article 95 of the United Nations Charter expressly preserves the right of Members of the United Nations to entrust a solution of their differences to other tribunals. Nevertheless, it is not merely the actual settlement of existing disputes, but the general acceptance of judicial settlement as part of the fabric of international life that has become an urgent necessity, and at this moment only the International Court of Justice possesses the necessary machinery to permit of this need being filled. The other methods of settlement of disputes set out in Article 33 of the Charter, though of great value in leading to ultimate resolution of disputes, are no more than techniques for reaching agreement and not true methods of settlement. The inescapable fact is that disputes cannot be wholly exorcised except by agreement, by judicial settlement, or by the use of armed force, this last method happily now condemned by universal disapprobation, though unfortunately not yet totally abandoned in practice. For this reason the decline in judicial settlement clauses in treaties, and the preference given in a recent major convention to reference to conciliation machinery, are not very encouraging indications of the trend of present international thinking.

The International Court of Justice, like its predecessor the Permanent Court of International Justice, was devised as an instrument of peace; but it is only an instrument. It is a tool created by States, for States, for the maintenance of peace and good relations between States, a tool which lies ready to hand at all times. All States have the sovereign power of choice to use or to bypass the Court as a means of resolving differences. But if international disputes grow and fester; if international tension gets out of



hand, and if peace is threatened in consequence, the responsibility will lie not on the tools which had been designed to preserve peace, but on the hands that shaped them, only to lay them aside.

There is reluctance in some quarters to accept the jurisdiction of the Court in respect of the activities of sovereign States, because they are sovereign States. I do not criticise that point of view. The Court is the judge for and over sovereign States only insofar as they choose; but States which choose not to submit to its jurisdiction must face the judgment none of us can avoid: the judgment of history.