THE INTERNATIONAL COURT OF JUSTICE IN A NEW CENTURY

STEINKRAUS-COHEN LECTURE (SOAS)

16TH MAY 2005

I am very pleased to be invited to give this year's Steinkraus-Cohen Lecture. I had the privilege of meeting her about 10 years ago and know of the enormous support she gave to all causes associated with the UN, and with the UNA. I am also always pleased to support the UNA.

I am also delighted to be doing this at the invitation of Professor Slinn. When I was Professor at LSE, Peter Slinn was one of my very favourite colleagues – open-minded, fair, very conscientious and utterly, utterly reliable. What he promised to be done, would be done. As well as being a fine lawyer, he was an outstanding administrator. When matters relating to the LL.M were in his hands (whether exam results, inter-college meetings), the whole university fell secure.

The International Court of Justice is the primary judicial organ of the United Nations and what it deals with is international law. There seem to be a general feeling abroad that, while the United Nations has in the last fifteen years come back "centre-stage", it is in some considerable difficulties. At the same time, international lawyers in the United Kingdom — and I think probably elsewhere, too — feel some satisfaction in the fact that international law has never been more "high profile" than today and that its importance is at last becoming understood. But how satisfied should we be?

There is, certainly, today an interest in international law being shown by Bar and Bench, which was not there a mere twenty years ago. That such a change was underway was already apparent to an interested observer a decade ago. In my book Problems and Process, I elaborated on the changes of attitude that were leading to an informed interest in international law by the judiciary, which was replacing the previous perception of international law as an issue to be avoided, being (as I was once told by a judge in the High Court) " law we do not administer in the English Courts". That change has been brought about by a series of factors that have occurred over these last twenty years. High among

them I would put the lead given by Lord Bingham, whose international outlook was exemplified by his FA Mann lecture in the early 90's, "There is a World Elsewhere". There have been other leading figures in the judiciary who have shown, both in their judgments and in the support they have given in their spare time to such bodies as the British Institute of International and Comparative Law, that they regard international law as of importance. Large numbers at the Bar, and a very considerable number of judges in a variety of Courts, were involved in the extended International Tin Council litigation in the late 1980s. This provided an enormous exposure to international law — and to treaty law and the law of international organisation in particular.

The cases have followed thick and fast: some have concerned United Nations law/: KACv.IAC; some have concerned international human rights and treaty law: Pinochet; some have concerned vexed questions of immunities: Pinochet again, Al Adsani. This trend to treat international law, at last, as the "law of the land", either because it is general international law or because it is treaty law that has been incorporated, was of course accelerated by the passing of the Human Rights Act of 1998. The recent Belmarsh Judgment is but the latest example of a trend that has been discernable for at least fifteen years.

Today the Judicial Studies Board arranges occasional days on international law for the judiciary; the UK Courts are now making a considerable contribution to those "decisions of Courts" which are mentioned in the Statute of the International Court as one of the sources of international law. I also have the impression that, at the Bar, international law is no longer the sole preserve of international law "academic practitioners", brought in specially on particular cases. Full-time practitioners today regard it as both usual and necessary themselves to deal with a range of international law issues that come up frequently in the High Court — immunities, act of State, non-justiciability and treaty incorporation being high among them.

The interest of the public at large in international law is largely a product of media interest in international law. And, outside of Bench and Bar, the interest currently being shown by the media continues to be patchy and distinctly selective. The media have obviously been very interested in certain international law issues as they have affected decision-making over Iraq. They have also given good coverage to international criminal

trials and have shown a considerable interest in events relating to the Sierra Leone Tribunal, the Tribunal for the former Yugoslavia, and the new International Criminal Court. In the past, intermittent interest has been shown in some human rights questions. There are occasional, short-term bursts of interest in the International Court of Justice when it is dealing with what is perceived as a ”hot topic”. Lockerbie (in which the issues before the International Court were widely misrepresented in the press) and the Nuclear Weapons Advisory Opinions were in this category. The Advisory Opinion on the Palestine Wall, of course, did attract wide media attention.

But, who knows, or cares, that the International Court is at the present time dealing with some issues of critical legal importance in the Congo v. Uganda case: issues relating to the presence in neighbouring lands of perpetrators of heinous crimes, issues relating to our very understanding of the law on intervention in all its contemporary complexities?

We regard it as important to see coverage of what is happening in politics, and in international relations, day in and day out. In that way we can widen our understanding and be better informed about issues affecting us. We thus expect to read and hear more than crises and rows and major diplomatic incidents. But this is not happening with international law more generally, and we should not delude ourselves into thinking that all the recent interest in the legal advice of the Attorney General on Iraq, and before that in the Milosovic trial in The Hague, suggests otherwise. The diet is simply the rows and crises. The Times used to carry reports of International Court of Justice judgments. For the last decade and more they have declined to do so — not even cases which might have a special interest for the United Kingdom. The Press frequently terms the International Criminal Court the “International Court of Justice”. The Foreign Affairs Select Committee puts out some marvellous reports on current issues of international law. But our Parliamentarians are not always very certain as to what international courts and tribunals there are, and where, and what each does.

There have been prior, and not so distant, unilateral military actions taken by the UK in the absence of specific UN authorisation but these have entailed no comparable reaction by politicians, public and the media. These were different times; there was a different US President. It is the congruence of some difficult legal issues with a domestic and

international political agenda (the Attorney General, the Prime Minister, who said what and when) that has occasioned the current "interest" in international law.

This dual concentration on Iraq and on international criminal trials, to the exclusion of almost everything else, risks having its effect on students of international law — those we will rely on to be the next generation of Foreign Office legal advisers, lawyers serving international organizations, academics and practitioners. Their interests seem to be becoming narrower and narrower, reflecting almost exclusively these twin current preoccupations. Of course, in each generation particular topics have always caught the imagination of the young, who rightly and understandably are idealists. In the eighties and early nineties they were fired up both by human rights law and by environmental law. Good university teachers always made sure that these laudable interests were rooted in, and not at the expense of, a sound understanding of the system and subject matter of international law as a whole. When I see applications for jobs today — and I still write some references for former students, and I also see applications for internships at the International Court — it is increasingly hard to find students with a good grasp of international law as a whole.

It is important that the preoccupation with legal authority for the military action in Iraq, and with war criminals, does not lead to neglect of other vitally important topics. Some are receiving good attention in our universities, and institutes – for example, the work on BITS, energy and environmental law issues, the balance between jurisdiction and immunities. Others could profit from more attention. For example, the new mixed-control forms of UN peacekeeping, or delegated forms of military intervention, raise a great range of legal issues. And the struggle to prevent the disintegration of the nuclear non-proliferation system – an truly front-line topic – requires our urgent attention. The tasks are legal as well as diplomatic and political and they are pressing in the extreme.

We need to think about not only whether a State may use force against another State if that force is neither self defence nor the implementation of a binding Security Council resolution. We need also to be concerned about the manifest failure of the collective security system intended under the Charter — the system that was meant to guarantee the sufficiency of unilateral force being limited to self defence. How does the law stand on

sanctions and on humanitarian intervention? Kofi Annan has asked that we think about a more active role for the UN in protecting gross human rights violations. Do creative ideas to achieve reference of named persons in Darfour to the International Criminal court really suffice as a response to Kofi Annan's plea that the terrible lessons of Rwanda be learned? I hope universities, and the UNA, will give a lead on these matters.

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As we look at the work of the International Court in the 21st Century, an obvious question is as to what may be envisaged by, and flow from, the reform process initiated by Kofi Annan. The answers are far from apparent. Save for a passing mention in the Introduction, the High-Level Panel had not one single word to say on the International Court. In its two sections on collective security it believed it sufficient to offer some broad remarks on the various international criminal tribunals. It is striking that the Panel appeared to think that the sole role of law in a better United Nations is effectively to prosecute individual war criminals. There has been a total silence on the rule of law in the settlement of disputes between States (and a consequential total silence on one of the UN's major organs). This, too, fits with the current preoccupation with international criminal justice, not as an important addition to our panoply of rule-of-law mechanisms, (which it <u>is</u>), but as if it is the answer to <u>everything</u> (which it isn't). It is not a substitute for the duty of the United Nations to address appalling breaches of human rights in tangible and effective ways; and it is <u>not</u> a substitute for the contribution that resolution of legal issues can make to the settlement of inter-State disputes.

The latter reality is reflected by the fact that the striking growth in the International Court's docket has come exactly in these recent years when so many other new international criminal courts and tribunals have been established. I shall have more to say on this a little later, but for the moment it suffices for me to say that there is clear evidence that a better world will be achieved by settling disputes by law, <u>as well as</u> by the accountability of individuals for international crimes.

Kofi Annan, in his Report on the High-Level Panel Report , <u>has</u> referred to the Court, emphasizing the importance of settlement of disputes by judicial means, calling for a

greater use of the so-called Optional Clause under the Statute, pointing to the importance of the Advisory Opinion procedure, — and also urging the Court to accelerate its procedures. I shall have something to say on each of these matters a little later this evening.

But you can see that for the moment the impact of the reform process for the Court is wholly unclear. Further, it is a delicate matter, because although the Court is a major organ of the United Nations, it has always been the convention that its judicial independence requires it (and not the General Assembly or Security Council) to be in charge of how it runs its house. There is a range of matters, which do not directly affect judicial independence, to which the Court is subject to decision-making in the UN — finances, employment conditions for staff are among them. But in a variety of other matters — for example, what work we do, how we do it, our Rules of Procedure — judicial independence requires that the Court alone makes decisions for itself. It will take a deft touch for the reform process to help with a better use of the Court — and perhaps a wider access to the Court under the Statute — while maintaining the separation of powers clearly envisaged in the structure of the United Nations.

There is a broader brush issue that lurks in the background. If the United Nations should adopt one of the two models for expansion of the Security Council spelled out by the High-Level Panel — or indeed, some further variation — would there be structural consequences for the International Court? In other words, would it be expected that the number of judges on the bench of the International Court would also expand? The Report of the High-Level Panel makes no such suggestion — but then, as I have explained, the fifth major organ of the United Nations passed them by entirely. But the reality is that, for over twenty years or more, discussions in the UN of Security Council expansion has occasionally been accompanied by suggestions that the Court, too, should "expand" to be "more representative".

It is not clear to me why the Court should be "more representative" of the Security Council. To be sure, it must be representative of the United Nations as a whole. One merely has to look at our present membership (China, Madagascar, Sierra Leone, Russian Federation, United Kingdom, Venezuela, Netherlands, Brazil, Jordan, USA, Egypt, Japan,

German, Slovakia, France) to see that this is already well accomplished. That the Court does not reflect the interests of any particular regional or political grouping is also well evidenced by the Judgments it hands down. It is the Court of the United Nations, reflecting only the objectives of the UN Charter and the harnessing of international law to their achievement. Further, there are limits beyond which the concept of "representation" should not go. The Bench must represent, as it is put in article 9 of the Statute, the main forms of civilization and the "principal legal systems" of the world. But the Judges are not "representatives" of States. The idea that the interests of State X are represented by the presence on the bench of a Judge from State X, is simply misconceived and not to be encouraged.

I should at this juncture make clear that my views on the question of Court expansion are simply my own. This is not a topic on which, as yet, there is a "Court view". That being said, I think that anyone who has judicial experience will know that, beyond a Bench of certain size, it is very hard for a Court to function efficiently. To find consensus among fifteen diverse individuals is already not so easy a task. Any enlarged Court would risk either a watering down of the legal basis of judgments to reflect a "lowest common denominator", or the visible manifestation of a divided Court, or a Court which could no longer operate as a unitary bench.

I personally think none of these outcomes is in the interest of the United Nations as a whole nor of the States Parties to the Charter and Statute.

As to this last point, I think that the unitary nature of the 15 person Bench is part of the reason that the judgments of the Court have been regarded as coherent in space and time. Chambers of smaller numbers certainly have their place. These are occasionally established upon the request of the Parties. Even now, a Chamber of 3 Judges, and two ad hoc judges, is sitting in the Benin/Niger case. The Judgment (as the Judgments in the Burkina Faso/Mali and El Salvador/Honduras) will be treated as judgments of the Court. But a Court that had to be composed of Chambers (because the numbers of judges were simply too many to sit in Plenary) would have serious disadvantages. Judicial coherence would be put at risk. There would be endless problems of selection for particular chambers for particular cases. And, quite simply, we do not have the resources to run such a system. A Court or Tribunal composed of different "parallel" Chambers requires a very substantial

registry to service these different bodies. More translation, more legal input, more administration. We have seen those realities in the ICTY and in the expanded European Court of Human Rights, where the inability to work in a unitary plenary body has necessitated Chambers, which in turn requires enormous financial inputs. The International Court of Justice is by far the most inexpensive (and probably also the most cost-efficient) of the international courts. I see no sign that the United Nations wishes to triple or quadruple our budget: we have to fight for very last dollar for our modest resources.

Further, having several Chambers (a probable consequence of any enlargement) itself runs the risk of a jurisprudence that is not always consistent inter se . And that in turn suggests that, as in other tribunals operating Chambers, an appellate level is needed. The Chambers thus lose authority and the whole exercise becomes unwieldy and costly.

Expansion of the Court is of itself, in my personal view, undesirable. And, an undesirable objective on the basis of totally inadequate funding would be quite disastrous.

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The talk of "UN reform" leads to a related question: quite apart from any issues of "expansion", can the Statute of the Court be said to be a satisfactory instrument for the Court in the 21st Century? The Statute is annexed to the UN Charter and all members of the United Nations are ipso facto parties to the Statute. The Statute is virtually the same as the Statute of the Permanent Court of International Justice, with small changes such as the provisions on the formation of chambers, and the ability of public international organizations to provide information.

The short answer is that, by and large, the Statute remains a surprisingly satisfactory instrument for a 21st Century Court. In this, it can be said to be comparable to the Charter itself. By this I mean that, were it to be drafted today, no doubt some portions would be different — but not necessarily better. We should remember that the Charter and Statute were forged in the terrible history of World War II and the idealistic hopes that followed it. Little of that unifying idealism remains.

The main problems of the United Nations lie in the absence of political will and the unwillingness to put community interests ahead of national interests. This is not to deny that a strain is necessarily put upon an instrument designed for inter-State relations, and the control of inter-State war, when in the event the patterns — and to an extent the causes — of war have become so closely associated with non-State actors of various types. The Charter has for this and other reasons (including the failure of its members to put in place the intended collective security system), clearly needed an interpretation that is other than strict constructionist. We have seen creative possibilities not envisaged in the Charter. For example, UN peacekeeping (whose problematic legal origins we have long forgotten), coalitions of the willing, the defining of some human rights violations as threats to international peace (to allow UN intervention in circumstances not envisaged in the Charter).

By what criteria do we distinguish these "legal actions although beyond the terms of the Charter" from what is "illegal"? I hope it is not suggested that the answer lies simply in whether a Security Council resolution authorises such an activity — that is altogether too simplistic. Because I think the legal issues that so excite us today find their origins not just in the contemporary distribution of world power but are rather the most recent eruption along the fault line of Charter implementation that visibly runs from 1950 to the present, I could wish for a different type of analysis that is more broadly focussed.

So far the Statute is concerned, the strains have been fewer and far less dramatic. It, too, is an instrument based on the view of sovereign States as the sole actors in the international legal system. Article 34 of the Statute provides that only States may participate in contentious jurisdiction before the Court. But today we no longer think of States alone as having rights and obligations under international law. Individuals and not just States bear duties when they conduct hostilities. They have entitlements, recognised by international law, so far as their human rights are concerned. International organizations have become major actors in international relations. Trans-national corporations do not regard themselves as exempt from the reach of international norms. And NGOs are today not only providers of information and witnesses to events, but are also increasingly direct actors across boundaries, whether in environmental matters or in war ridden and disintegrating societies.

Any vacuum arising from the constraints of article 34 of the Court's Statute have been picked up by other, newer bodies — the Statutes of the International Tribunal for the Law of the Sea in Hamburg and the International Criminal Tribunal for the Former Yugoslavia, for example, are not restricted to States. This being so, I do not really think so much is lost by the restriction of article 34 of the Statute — and it serves, in a curious way, to underline that the International Court is there to assist in the peaceful resolution of disputes between States by peaceful means.

The advisory jurisdiction of the Court could, however, be broadened. By this I do not mean either that the Secretary General should be added to the list of UN organs who can request such an Opinion, or that the General Assembly and Security Council should have more frequent recourse to advisory opinions. What I have in mind when I refer to the broadening of the advisory jurisdiction is to make it available to international organisations outside of the UN family, should they wish to avail themselves of it. Why should the League of Arab States not be able to get legal advice from the ICJ, or the Inter American Development Bank, or the African Union? This would, of course, require an amendment of the Statute and more besides.

The Court has also been aware of the desire of NGOs to participate in certain advisory opinions. They do not suggest they have the answer as to whether the Bakassi Peninsula belongs to Cameroon or to Nigeria, but they do feel they have information relevant to our advisory opinion on nuclear weapons and to the situation on the ground in the Palestine Occupied territories. The Court has recently devised procedures, posted in Practice Direction XII on our website, to allow such communications from NGOs to be consulted by those entitled to appear in Advisory Opinion cases (certain UN organs and agencies and member States) and, if they choose, to be referred to by them in the pleadings.

Clearly, there are certain provisions in the Statute that do now seem problematic for the way we like to work today. The Court would like itself to have full control over late documents — that is, documents put in after the conclusion of the written pleadings. The

Statute — written for a more leisurely era where little litigation might be expected and the wishes of sovereign States were paramount – leaves the matter in the final analysis to the agreement of the States' Parties. That (article 56) is one example. Another is found in Articles 63 and 34. International organizations are to be notified when upcoming litigation involves a treaty which is their constituent instrument or which has been concluded under that instrument. But it was never supposed that international organizations would themselves becomes parties to other categories of treaties, nor was I envisaged that these would be an international organization (the EU) which sometimes was a treaty party alongside its members. There is no notification procedure for these circumstances.

Nevertheless, the Statute has stood the test of time well and presents few problems. Moreover, the Court has always had the ability to develop what is in the Statute through its Rules of Procedure. These are in the hands of the Court, and they and the Statute are to be read as a whole. Naturally, the Rules cannot permit anything that is specifically forbidden in the Statute. But they can fill gaps. There have been periodic revisions of the Rules — they were last looked at in their totality in 1972 and 1978. In the mid-1990s the decision was taken that the Court — which by then had become busy, with a heavy docket — would move instead to periodically revising such specific articles in the Rules as experience had shown required some adjustment. The task is in the first place given to the Rules Committee. Amendments to Article 79 on jurisdiction and article 80 on counter-claims have followed. And just a couple of weeks ago a technical amendment to Article 52 was coupled with an adjustment to the Preamble to the Rules. These all appear on the Court's website when promulgated. It should not be supposed that these are all the articles that have been subjected to review — sometimes review by the Rules Committee will reveal the fact that the alteration desired is not feasible, because of the Statute itself.

There is a further layer of support for modernization, and that is to be found in the concept of Practice Directions, introduced a few years ago. Practice Directions inform litigating parties of how we wish certain things to be done. They are tools in the hands of a President, directed to efficacious litigation. Thus far, we have been cautiously gratified by the way they are working.

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Although every member of the United Nations is thereby a party to both the UN Charter and the Statute of the Court, this latter fact constitutes an entitlement to make use of the Court, but not an obligation. As with its predecessor, the Permanent Court of International Justice, the jurisdiction of the International Court is essentially based upon the consent of states. That this state of affairs was a concomitant of international law as a horizontal legal system — that is, a system of sovereign and equal states — is undeniable. Whether it has the same connection with reality as it had when the Statute of the International Court was drawn up is more debatable.

But let us take this step by step. The first step is to observe that the constraint on the Court represented by the requirement of state consent to jurisdiction, is mitigated by the realities of the way this works. There are four main ways in which states may consent to appear before the Court. The first is when one state agrees, ad hoc, with another state, that a dispute between them should be referred to the Court for settlement. This method is often resorted to after extended negotiations have failed to produce an outcome acceptable to both parties. In such a case they will together draw up a "Special Agreement" which will elaborate to the Court what the dispute is about and put to the Court whatever legal questions the parties feel are necessary to have answered if the dispute is to be resolved.

In recent years an expanding percentage of the Court's business arrives on its docket this way. It is also the case that Special Agreement cases have been coming in from every corner of the world — El Salvador/Honduras; Benin/Niger; Botswana/Namibia; Slovakia/Hungary; Romania/Ukraine; Indonesia/Malaysia; Malaysia/Singapore. This would seem to show both an increased readiness on the part of states everywhere to have recourse to a judicial resolution of their disputes, and a continuing global confidence in the International Court of Justice. The second way — much written about but only once, and

very recently, applied, is through what is termed forum prorogatum. Here one country brings a case, simply inviting the intended respondent to accept the Court's jurisdiction for purpose of the case. France has accepted that invitation in a case brought by the Congo.

The third way in which consent to the jurisdiction of the Court may be expressed is through states becoming parties to treaties (usually multilateral) which provide that, should there in the future be a dispute over the application or interpretation of the treaty concerned, the matter will be settled by the International Court of Justice. During the Cold War the socialist countries would either make reservations as to such provisos, or, if the treaty did not permit this, refuse to become a party to the treaty concerned. This belief that there could be no "impartial answers" is happily now a thing of the past and there is no obstacle of principle to including such a clause in a multilateral treaty. The Court also gets many of its cases based on such jurisdictional provisions in treaties. The recent series of cases in which the United States has been a respondent came to the Court under the Optional Protocol to the Vienna Convention on Diplomatic Relations, and under the Iran-US Treaty of Amity. Other such cases include those brought by Bosnia and Herzegovina and Croatia against Serbia and Montenegro under Article IX of the Genocide Convention. The Court may have first, as a preliminary mater, to determine a claim made by a reluctant respondent that the matter in hand does not really "fall under" the treaty concerned. But most usually, as in a Special Agreement case, it can pass straight to the substance and assist in determining the merits.

The fourth way in which a state can give its consent to jurisdiction is by depositing with the Secretary General a declaration saying that it accepts the "Optional Clause" — that is to say, the jurisdiction of the Court in respect of a dispute brought by a state which has also made a comparable declaration. Under this a state expresses "advance consent", not only in respect of yet unknown subject matter but in respect of an unknown opponent. Some 65 states, out of the 191 members of the UN, have accepted the jurisdiction of the Court on this basis. This method of accepting jurisdiction has over the last 20 years remained numerically rather constant in the face of an expanding UN membership – thus representing a decline in real terms. The United Kingdom is today the only Permanent Member of the Security Council which has accepted the Optional Clause.

In so far as the Optional Clause is the nearest thing to compulsory jurisdiction, a wide uptake would obviously be desirable to a greater role of judicial settlement of disputes. At the same time, it must be appreciated that reservations are permitted to declarations of acceptance under the Optional Clause, and because acceptance of jurisdiction is in respect of other states making comparable acceptances, these operate reciprocally. Put differently, a reservation — for example, as to subject matter that is agreed to be exposed to litigation — may be relied on and not only by the state making it but also by the other state in the action before the International Court.

The net result is that cases brought under the Optional Clause invariably face challenges to the Court's jurisdiction by the respondent state. These challenges are usually so substantial that separate preliminary cases are required to deal with the jurisdictional challenge. Cases that come in this fashion use up a disturbingly large part of the Court's time on challenges to its own jurisdiction. Any increase in the uptake of the Optional Clause needs to be accompanied by extreme discipline in the matter of reservations if it is not to operate counter productively.

Clearly, this is all far from satisfactory as the Court nears arrival at its sixtieth birthday and reviews the prospects for the new century. The Court of the European Communities faces no such comparable jurisdictional battles before it can perform its tasks, though the EU, too, is composed of sovereign states. The European Court of Human rights operates a system in which today it is obligatory for members states of the Council of Europe to accept its jurisdiction under the European Convention on Human Rights. This, too, is a system of sovereign states. It is one in which acceptance of the Court's jurisdictional was optional — but no longer.

So far as the International Court is concerned, however, the old conventional wisdom of "sovereign states, and therefore only jurisdiction by consent" still prevails, with no idea of change on the horizon. In all the talk about UN reform, the idea of UN membership bringing with it compulsory jurisdiction of the settlement legal disputes is not even on the agenda. This is a primitive state of affairs which should attract far more attention than it does.

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If the International Court of Justice is the ultimate guardian of international law, does this at least mean there should be a referral from other to it on matters of general international law, or perhaps some form of supervisory jurisdiction? Gilbert Guillaume, the past president of the International Court — a man whom I greatly admire — thought so. But it is not my view. Although the Court must always strive for efficiency and for any increased throughput that is consistent with the highest quality judgments, the collegiate way that it works means that I will always work at a measured pace. Every judge is involved throughout the life of a case. Matters are not delegated to "Juges-rapporteurs" — we believe that to be incompatible with retention of the confidence of the UN community. The International Court of Justice is simply not suited to handling large annual numbers of referrals on points of international law, whether from the International Tribunal for the Law of the Sea, the WTO Appeals Panel, the European Court of Human Rights — or the various criminal Tribunals and Courts.

No more necessary, in my opinion, is any form of ex post facto supervisory jurisdiction to affirm that a legal judgment by another Court or Tribunal is properly international law compliant. These other courts and tribunals operate not only by reference to specific systems of applicable law, but they all acknowledge but these are not closed and are themselves located within international law as a whole. This pleasing fact — which has been readily accepted in most courts and tribunals and has been the subject of some debate in others — could open the door to interpretations of international law that are inconsistent inter se and perhaps even inconsistent with findings made already by the International Court. Thus far — and in spite of alarming scenarios periodically trailed before us — the problem has been very small. Many "examples" offered are not, upon closer examination, examples at all. The deviation of the International Criminal Tribunal in the Tadic Case from certain earlier findings on attributability that had been made by the International Court in the Nicaragua-USA case was real enough, and certainly deliberate. Its significance should not be exaggerated.

It is all the contrary evidence never cited by those who prophesy judicial incoherence that is so striking. Most courts and tribunals consciously seek to locate themselves within the law as it has been pronounced by International Court, and both internet searches and more traditional forms of research show how frequently, and how routinely, other courts and tribunals cite and rely upon, cases of the International Court of Justice. In short, there is an acknowledgement, certainly implicit and often explicit, that the International Court of Justice continues to be the essential point of reference so far as international law generally is concerned.

But each of these other judicial bodies, whether they are temporary (as with the Yugoslav and Rwanda tribunals) or intended to be permanent (as with the new International Criminal Court) has its own important job of work to do. That inevitably and necessarily entails pronouncing upon points of international law which the International Court of Justice had <u>not</u> yet had occasion to pronounce upon. And why should they not do so? Not only would a "referral" system not work for the practical reasons I have given above, but it would also purport to split the "specific" areas of international law in which these tribunals <u>must</u> work (humanitarian law, human rights law, trade law) from international law more generally which would be referred to the International Court. Such "splitting" would be very undesirable. It is for each and every international court and tribunal to make sure that its pronouncements are compatible with what has already been determined by the International Court, and that findings in yet uncharted areas are well reasoned and soundly grounded in international law by reference to its acknowledged sources.

There is, in my view, a continuing leadership role for the International Court, but it is not one achieved by "referrals" or "supervision". It is rather achieved by doing our own job very, very well. This means a continuous search for efficacious work methods, no turning aside from difficult issues of law, and clarity and persuasiveness of reasoning in our Judgments. The Court should also be a facilitator in periodic exchanges between the Tribunals and in the provision of IT which ensures that we all are familiar with each others judgments. If the Court does these things, it will continue to be the lighthouse beacon in our ever expanding system of international law. This is the challenge for the new century.