

BOOK REVIEW

The World Court in Action: Judging Among the Nations. By Howard N. Meyer, 2002. Lanham, Maryland: Rowman & Littlefield Publishers, 2002, Pp. 309. Softcover. \$26.95.

Reviewed by Jennifer R. Johnson & Ami Mudd***

I. INTRODUCTION

In 1905, Massachusetts led the United States in instituting an order for all schools to celebrate May 18, the anniversary of the first Hague Conference,¹ an international conference set up to discuss establishing the “American idea” of substituting law for war.² By contrast, international law is not even part of the standard curriculum in American law schools today; rather it is a “subject for specialists.”³

* Editor-in-Chief, Santa Clara Law Review, Volume 43; J.D. Candidate, Santa Clara University School of Law; B.A., University of California, Santa Barbara.

** Book Review Editor, Santa Clara Law Review, Volume 43; J.D. Candidate, Santa Clara University School of Law; B.A., University of California, Los Angeles.

1. See HOWARD N. MEYER, *THE WORLD COURT IN ACTION: JUDGING AMONG THE NATIONS* 26 (2002). May 18, 1899, was the first day of the Hague conference, set up to discuss the ongoing arms race, the rules of warfare, and methods of avoiding war through alternative dispute resolution. See *id.* at 17. Hague, the capital of the Netherlands, was the first to be asked and offered to house the conference. See *id.* at 14.

2. See *id.* at 13. The concept was often deemed an “American idea” or “plan” because the idea was the result of a peaceful arbitration between the U.S. and the English over the attacks by the English ship called *The Alabama*. See *id.* at 5; see also *infra* Part II. In addition, many of the ideas for the structure and function of the World Court were based upon the U.S. Supreme Court, which had successfully, save the Civil War, settled the differences of the thirteen original, independent colonies. See *id.* at 14. The World Court [hereinafter the Court] is the unofficial shorthand for the International Court of Justice, the mission of which is to judge and decide disputes that nations are unable to decide among themselves.

3. See *id.* at 5. These sentiments were expressed by Midwest philosopher Haskell Fain in 1987. See *id.* The law of Nations (international law) has slowly developed since 1648, the end of the Thirty Years’ War in Europe. The law came from no sovereign decree, rather it evolved much like common law, and early on it was called “Customary Law.” See *id.* at 5.

For those who want to learn about the history of the “World Court”⁴ and the United States’ role in its formation, evolution, and effectiveness,⁵ Howard N. Meyer’s book, *The World Court in Action: Judging Among the Nations*,⁶ is a good primer on the topic. Meyer is a lawyer and well-regarded social historian,⁷ and his familiarity and comfort with the subject matter shines through as he details the creation and key decisions of the Court.

Through illustrations of the purpose and practice of the Court, Meyer shows how American refusal to submit disputes with other nations to the Court seems, in the words of the U.S. State Department’s Earnest A. Gross,⁸ “out of keeping with the traditional American respect for the judicial process as prime guarantor of the rule of law.”⁹ In his book, Meyer follows two themes: (1) Americans have helped, and ultimately succeeded in creating a World Court; and (2) the World Court now exists as an able institution reflecting American effort that should bring pride to the United States.¹⁰

Meyer makes a strong and persuasive argument for why the United States should become a true participant in what could then legitimately be called *the* World Court, a court formed as a result of a successful U.S. arbitration experience and based upon the U.S.

4. One enduring result of the conference was the creation of what was to become today’s International Court of Justice (ICJ), or “World Court.” *See id.* at 18. At the end of the conference, the Permanent Court of Arbitration was established – a precursor to today’s World Court. *See id.*

5. The goal of such a tribunal was to create a neutral third party arbiter to settle disputes between nations instead of turning to war. *See id.* at xi. Although the 1899 Conference partially succeeded in that goal, the Court at that time was not a “true” court. *See id.* at 18. It was an international dispute resolution body, but it left arbitration by the Court a voluntary matter, left the U.S. Senate free to veto U.S. participation in individual cases, and failed to include the permanent career judges as the original visionaries had intended. *See id.* at 18-19. One aspect of the former Court exists today, U.S. refusal to agree to mandatory jurisdiction by the Court. *See id.* at xi. However, until 1985, the United States subscribed to “elective compulsory jurisdiction” (although with specific limiting reservations), wherein members of the United Nations (under the procedures of the Court at that time) through their voluntary membership agreed to arbitrate international disputes at the court. *See id.* at 95-98.

6. *See* MEYER, *supra* note 1.

7. Meyer focuses on the history of major epochs and emblematic political actors. His other books include *THE MAGNIFICENT ACTIVIST: THE WRITINGS OF THOMAS WENTWORTH HIGGINSON* (2000) and *THE AMENDMENT THAT REFUSED TO DIE: EQUALITY & JUSTICE DEFERRED THE HISTORY OF THE FOURTEENTH AMENDMENT* (2000), the later of which was nominated for a Pulitzer Prize. *See id.* at 311.

8. *See id.* at 98. Mr. Gross was U.S. ambassador to the United Nations in the early 1950s. *See id.*

9. *See id.*

10. *See id.* at 235.

Supreme Court.¹¹ The resulting book is an articulate, authoritative, well-written analysis of the history of the Court; U.S. support of, and later resistance to, participation in the Court; and the almost entirely successful record of the ICJ. However, the title of the book is a bit deceiving. At first glance, one is lead to believe that the book is a summary of World Court decisions. While the book does lay out the Court's decisions, it also achieves Meyer's silent goal of persuading the reader that the World Court is "an untapped resource for peace"¹² in which the United States has shunned full participation. Therefore, a more telling title for his book might be "The World Court in Action and Judging *Our Nation*."

This book review summarizes the major sections of Meyer's book, which include: (1) the idea and formation of the first World Court (prologue-chapter 6); (2) the transition to, and decisions of, the second (present) World Court (chapters 7-15, 17-18); and (3) a discussion of whether the World Court was a success or a failure (chapter 16 and throughout).

II. THE IDEA AND FORMATION OF THE FIRST WORLD COURT

Although this section of Meyer's book is very fact-intensive, the historical background he presents is helpful to the average reader and likely expands the book's audience, as Meyer makes the Court's detailed history easy for the layman to understand.

As detailed in the book, in 1862 the English ship *The Alabama*, later joined by other ships, conducted a series of attacks on a total of eighty U.S. merchant ships. The U.S. public was enraged when the USS *Kearsage* sank the *Alabama*, finding this act no less treasonous than the attacks retaliated against.¹³ Then President Andrew Grant avoided further confrontation by negotiating a treaty to submit the *Alabama* claims to neutral, third party arbitration.¹⁴ The U.S. damage award was \$15.5 million (roughly the value of the destroyed ships), but the greater victory was held to be "for peace and arbitration."¹⁵ This success was seen as definitive evidence of the feasibility of substituting

11. See *infra* notes 13-23 and accompanying text.

12. See Howard N. Meyer, *The World Court: An Untapped Resource for Peace*, SOKA GAKKAI INT'L Q., No. 17 (July 1999), available at <http://www.sgi.org/english/archives/quarterly/9907/perspective.html> [hereinafter SGI website].

13. See MEYER, *supra* note 1, at 1-2.

14. See *id.* at 2.

15. See *id.* These are the words of admiral and historian Samuel Eliot Morrison. See *id.*

arbitration for war,¹⁶ and fueled discussion by European peacemakers for a permanent arbitration tribunal, which they called the “American plan.”¹⁷

The culmination of U.S. and foreign energies¹⁸ resulted in the Hague Conference of 1899.¹⁹ Although the concept of an international court of arbitration was only one of the goals of the conference, it became the central aspect of it.²⁰ What emerged was the so-called Permanent Court of Arbitration, which contained the essential features of the American plan, but contained no commitment to arbitrate, a feature that would cripple the Court’s virility for decades to come.²¹

The international response to the results of the conference was the negotiation of more than 150 treaties within a few years.²² However, many believed the aims of the Court were not yet satisfied. Ideas emerged for converting the Court to an entity with a true panel of permanently sitting judges and for a second Hague Conference.²³ One ironic flaw the first conference suffered was the exclusion of the Central and South American countries—ironic because arbitration had flourished among these nations in the nineteenth century.²⁴

When the Court had sat for a few years with no case yet decided, President Theodore Roosevelt²⁵ became interested in

16. *See id.* at 4.

17. *See id.* at 5; *see also supra* note 3. American peace groups, including The American Peace Society, the Universal Peace Union, and the Women’s Christian Temperance Union joined in galvanizing U.S. participation in a plan for peace through arbitration. *See MEYER, supra* note 1, at 13-14. An early leader of the U.S. effort was Edward Everett Hale, who predicted in 1879 that the United States would lead an effort to form an international tribunal by the turn of the century. *See id.* at 12-14. Hale was joined by Edwin D. Mead, also a leader in reform activities. *See id.*

18. Invitations to the initial Hague meeting were sent only to nations with diplomatic ties to Czar Nicholas II of Russia, so the Latin American countries, save Mexico, were excluded. *Id.* at 22.

19. *See MEYER, supra* note 1, at 18.

20. *See id.* at 19.

21. *See id.* at 18-19, xi. The conference ended in July, 1899. *See id.*

22. *See id.* at 21.

23. *See id.*

24. *See id.* at 22. During the nineteenth century, the theory and practice of arbitration flourished, illustrated by the sculpture known as “The Christ of the Andes” towering over the Argentina-Chile border. The statue symbolized the peaceful end of conflict over Patagonia to the south of the two countries, the arbitration over which Edward VII of Britain had been arbitrator. *See id.*

25. Roosevelt was the successor to McKinley upon his assassination on September 6, 1901. *See MEYER, supra* note 1, at 22.

supporting the Court. When Roosevelt asked Baron d'Estournelles, a French Parliament member who had been to Hague in 1899, what he could do to help, the baron suggested Roosevelt could give life to the Court, which he did.²⁶

The first case the Court decided was a dispute between the United States and Mexico over the "Pious Fund," which was a 200 year old Jesuit investment supporting priestly work in California when the state was a remote province of Mexico; the countries were in conflict, each believing it was the proper owner of the fund.²⁷ A formal hearing was held at the Hague for ten days, and the five-judge panel held that the bishops' rights survived the separation of California and Mexico.²⁸ Shortly thereafter, Andrew Carnegie, a multi-millionaire and industrialist, offered the funds to build a "courthouse" to hold the Court, which came to be called the "Peace Palace."²⁹

In 1904, war erupted between Japan and Russia, although both countries had signed the treaty.³⁰ Despite the war, the Hague II Conference was imminent by 1907; during the conference a plan of organization for the World Court was created by the forty-six nations in attendance, and then was shelved for several years.³¹ After the war, which was soon followed by World War I, some believed the Court was a failure.³² However, Jane Addams, who had won worldwide fame as a social worker,³³ said that the Court could no more be seen as a failure because of World War I than the U.S. federal government could be seen as a failure because of the American Civil War.³⁴

26. *See id.* at 24. President Roosevelt first agreed to show support for the idea of an international court in an effort to win support of as many as possible in the growing peace movement. Later, Roosevelt would be seen as a peacemaker in the war between Japan and Russia that began in 1904, for which he would receive the Nobel Peace Prize in 1908. *See id.* at 24-25.

27. *See id.* at 24. The first case was heard in 1902. Although it would never have led to war, it was still seen as a great success. *See id.*

28. *See id.* at 24.

29. *See id.* The Peace Palace, funded by a donation of \$15 million by Carnegie, was built at the site of the first Hague Conference in the Netherlands. *See id.*

30. *See id.* at 25. Both Japan and Russia had signed the 1899 Covenant of the Hague. *See id.*

31. *See MEYER, supra* note 1, at 29.

32. *See id.* at 37.

33. Addams was a pioneer in Chicago's Hull House, a place of relief for the poor and victims of unregulated business exploitation. *See id.* at 38.

34. *See id.* at 37.

Following World War I, the League of Nations, headed by the efforts of Elihu Root,³⁵ formed a plan for the Court to be affiliated with the League in just six weeks.³⁶ However, the founders of the Court faced the problem of who the “permanent” judges would be when there were forty-six (now 150) countries to select from.³⁷ The idea was again American in origin—mirroring the selection of Senators and Representatives from the several United States.³⁸

What the new plan hoped for was “compulsory” jurisdiction for states with unresolved disputes; what it got was “optional” jurisdiction, wherein each nation had the option of subscribing to the “club” and subscription imputed agreement to arbitrate any disputes arising between members of the “club.”³⁹ The other novel feature was the ability for the Court to give advisory opinions, novel in the sense that the United States believed the adversary process to be the best method for resolving disputes.⁴⁰ The provision that made this system possible was that any nation state that believed it had an interest in the outcome of the advisory case could be heard.⁴¹ However, this aspect of the Court also came to be what opposers, including the United States through the leadership of Charles Evan Hughes⁴² and William Edgar Borah,⁴³ focused on as a reason to abstain from membership in the Court.⁴⁴

Despite United States’ opposition, the Permanent Court of

35. Seventy-five years old at the time, Root, a former secretary of state and a U.S. senator, had spent fifteen years of his life contributing to the idea of the World Court. *See id.* at 41.

36. *See id.* at 41.

37. *See id.* The number of judges desired was based upon the number of total number of existing nation states at that time. *See id.*

38. *See MEYER, supra* note 1, at 41-42. Root suggested the “example which naturally arises in the mind of an American” for how to make a representative system work with such diverse participants, telling the group about the two-chamber U.S. Congress, with equal representation in the Senate and proportional representation in the house. *See id.* at 41.

39. *See id.* at 43.

40. *See id.* at 43-44. Although unknown at the time, advisory opinions would come to make up a large number of the Court’s opinions over the years. *See id.*

41. *See id.* at 44.

42. Hughes was President Harding’s Secretary of State, a lawyer, former leader for reform and liberal causes, former Supreme Court Justice (1910-1916), and former unsuccessful presidential candidate. *See id.* at 46.

43. Borah was also lawyer, a senior Senator from Idaho, and an advocate of liberal ideas. *See id.*

44. *See MEYER, supra* note 1, at 44-47.

International Justice's regular sessions opened for business on June 15, 1922 at the Peace Palace.⁴⁵ As Hale had forecast some years before, the Court's cases increased in importance over time.⁴⁶ Over the course of eighty years, the two Courts had rendered over 200 decisions, only two of which were not followed.⁴⁷ Meyer makes note of the fact that though the Court resulted from strong public interest, there was (and still is) ignorance as to what goes on inside the doors of the "Peace Palace."⁴⁸ Meyer sees the words of Sir Alfred Zimmern in the 1920s as relevant still today: "[T]he relationship between the new Court set up at the Hague and the peoples whose law, or laws, it interprets is still extremely tenuous."⁴⁹

Although public exposure to the Court was minimal, what Meyer sees as the final blows to a true World Court were abstention by the Soviet Union and the action of the U.S. Senate in 1935, which Meyer describes as the United States' "final refusal" to join the international community.⁵⁰ In September of 1940, the Court shut down as the second World War expanded.⁵¹

As mentioned earlier, this section is very fact-intensive and therefore a bit more difficult to digest than the rest of the text. In addition, this section is emblematic of the clearly American slant of Meyer's writing.

III. THE SECOND (AND PRESENT) WORLD COURT

The next section of the book traces the creation of a "new" world court in the aftermath of World War II.⁵² Meyer skillfully guides the reader from the prior section's discussion of the first Court into a discussion of how the modern Court was formed. In particular Meyer does a good job of highlighting the changes made to the structure of the modern Court and why these changes are important to how the Court functions.

As the Second World War came to an end, members of the

45. *See id.* at 57.

46. *See id.*

47. *See id.* at 57. *See also supra* note 5.

48. *See id.* at 78.

49. *See id.* Zimmern, a diplomat and historian, observed this with regret in his League of Nations history. *See generally* SIR ALFRED ZIMMERN, THE AMERICAN ROAD TO WORLD PEACE (). *See id.* at 78.

50. *See MEYER, supra* note 1, at 85.

51. *See id.* at 86.

52. *See id.* at 87-99.

international community met to discuss plans for a new organization of nations.⁵³ In 1945, the founding conference of the United Nations (UN) was held in San Francisco, at which delegates discussed, among other things, what form the new World Court should take.⁵⁴ There was a general consensus among the international community that the PCIJ had been a success.⁵⁵ The UN delegates therefore sought to make the “new” Court largely similar in function and structure to the PCIJ. The new Court—called the “International Court of Justice” (ICJ)⁵⁶—met for the first time on April 18, 1946, at the Peace Palace.⁵⁷

Meyer outlines some noteworthy changes between the PCIJ and the new ICJ. One change was the decision that the new Court would function as a “principal organ” of the United Nations.⁵⁸ This was a fundamental change from the role of the PCIJ, which was a parallel organization to the League of Nations.⁵⁹ The new Court’s statute was to be adopted simultaneously with the UN Charter and members of the UN were to be automatically subject to the statute’s obligations and privileges.⁶⁰ Another difference from the PCIJ was the decision to stagger the election of judges.⁶¹ Borrowing from the process for electing U.S. senators, one-third of the Court’s judges were to stand for election every three years⁶²—a major step toward ensuring the continuity and efficiency of the Court. An additional change to the function of the Court was a broadening of the availability of “advisory opinions.” Although the United States originally resisted the power of the court to issue “advisory” opinions,⁶³ by 1945 the United States delegates recognized the guidance provided by such opinions and supported a broadening of their availability.⁶⁴ Meyer notes that this change allowed more than a dozen UN-related groups to petition the Court directly.⁶⁵

While designing the new Court, the subject again arose about the

53. *See id.* at 87.

54. *See id.* at 88.

55. *See id.*

56. *See MEYER, supra* note 1, at 88.

57. *See id.* at 94; *see also supra* note 29 and accompanying text.

58. This would mean that the court would have equal standing to both the General Assembly and Security Council. *See MEYER, supra* note 1, at 88.

59. *See id.*

60. *See id.*

61. *See id.* at 89.

62. Each judge serves a term of nine years, the same term length under the PCIJ. *See id.*

63. *See id.* at 89-90.

64. *See MEYER, supra* note 1, at 89-90.

65. *See id.*

type of jurisdiction the Court would have over UN members. As Meyer discussed in the first section of the book, most members of the international community favored “universal”⁶⁶ jurisdiction, meaning presumption of consent upon joining the UN.⁶⁷ However, both the United States and the Soviet Union opposed it.⁶⁸ President Truman at first lent his support to such jurisdiction, stating, “If we are going to have a court it ought to be a court that would work, with compulsory jurisdiction.”⁶⁹ He later backed away from this sentiment when he learned that the U.S. Senate was not in favor of the idea that U.S. foreign policy would be at the mercy of decisions made by a court it could not control.⁷⁰ The other UN members were hopeful that in the future the Court could achieve a somewhat universal impact with more and more nations adhering to the optional clause.⁷¹

Throughout the book Meyer frequently mentions the reluctance of the United States to submit to the Court’s jurisdiction. This can be confusing to the reader because Meyer attempts to explain that the United States was against submission to the Court’s jurisdiction but often fails to explain *why* the United States behaves as it does. In this section, for example, Meyer fails to explain specifically why the U.S. Senate would be so concerned with controlling the Court. This absence of explanation leaves the reader wishing that Meyer had provided a bit more information on how many Senators actually were against such jurisdiction, whether such sentiments were drawn across party lines, and whether the American public shared the opinion of the U.S. Senate.

IV. THE DECISIONS OF THE ICJ

Meyer spends the remainder of the book outlining some of the ICJ’s most important decisions on international law in both adversarial

66. This type of jurisdiction is also referred to as “compulsory” jurisdiction. *See id.* at 90.

67. *See id.*

68. *See id.*

69. *See id.* at 90.

70. *See* MEYER, *supra* note 1, at 90. Meyer provides a brief description of how and why the United States was unwilling, or unable, to submit to the Court’s jurisdiction. *See id.* at 95-98.

71. *See id.* at 90; *see also id.* at 37-50. In 1945 Senator Wayne Morse of Oregon introduced a resolution pushing for President Truman to accept the “optional clause,” thereby submitting the United States voluntarily to the jurisdiction of the Court. *See id.* at 95. The clause was eventually accepted, but Senator Tom Connally added that consent to be sued could be withdrawn in cases of domestic jurisdiction “as determined by the United States.” *See id.* at 130.

and advisory situations. He examines the role of the Court in interpreting the UN charter itself, highlights some of the Court's decisions on transnational force and global law, and discusses the ICJ's role in African de-colonization. Meyer also discusses the issue of ownership on land and at sea. Finally, he discusses the cases involving East Timor and Kosovo and concludes with a discussion of the Court's role in the effort to ban nuclear weapons.

In general, this section of the book is by far the most interesting. Meyer provides a well-organized look at the major decisions of the ICJ without bogging the reader down with too many details about the cases. While some of the major cases—U.S. hostages in Iran and U.N. sanctions against Libya, for example—made newspaper headlines, many other cases were not covered by the mainstream media. Meyer explains why some of the lesser known cases were important to the development of international law⁷² and how others reflected developments around the world.⁷³ In addition, he does an excellent job at describing the better known cases from the perspective of ICJ and allows the readers to better understand how nations, acting as litigants, bring a case before the ICJ, and attempt to have a dispute settled.

A. *Interpreting the U.N. Charter*

Soon after the ICJ opened its doors, it reviewed a case whose principle issue was whether the UN had standing to sue a state for reparations.⁷⁴ Meyer describes how this case was important to establishing the rights of the newly formed United Nations and setting a precedent for how the Court was going to function in settling disputes involving the U.N. Charter. In 1948 the U.N. sought reparations from Israel for the murder of one of its agents.⁷⁵ Meyer notes that while the rules of international law recognized one state's right to take legal

72. For example, Meyer discusses the Court's interpretation of the U.N. charter. *See id.* at p. 103.

73. For example, Meyer discusses the cases involving African de-colonization and the use of transnational force. *See id.*

74. *See MEYER, supra* note 1, at 103.

75. In 1948, the Security Council sent the president of the Swedish Red Cross, Count Folke Bernadotte, to Palestine in the hopes that he could successfully broker an end to the conflict that began when the British Mandate ended. *See id.* at 103. Bernadotte's plan was rejected by both sides and three months later, while still trying to mediate between the parties, Bernadotte was murdered by "Jewish assailants." *See id.* UN Secretary-General Trygve Lie believed that the UN had a right to demand reparations "for injuries to its agents." *See id.*

action in relation to another state, the question remained whether the UN had a right to take such action on behalf of itself. The General Assembly submitted the matter to the ICJ and requested an advisory opinion.⁷⁶ The Court held that the UN could assert a claim, basing its rationale on an approach used by U.S. Chief Justice John Marshall,⁷⁷ who gave great respect to the *intent* of the Framers of the U.S. Constitution.⁷⁸ When applying this approach to the Bernadotte issue, the opinion of the ICJ stated, “To answer this question, which is not settled by the actual terms of the Charter, we must consider what characteristics it was intended to give to the organization.”⁷⁹ It further opined that the UN was an independent being, which Meyer likens to a corporation, in so much as it is an entity independent of its individual shareholders.⁸⁰ After the Court issued the opinion, the UN presented Israel with a claim for damages, which Israel promptly paid in full.⁸¹

Here, Meyer does a good job of using a case to show how the Court has played an important role in lending legitimacy to the UN, as both an independent body with its own rights and as a representative of its member nations. In addition, Meyer again shows how the ICJ holds the U.S. Supreme Court and its Justices in high regard as a model for interpreting a Constitution—or, in this case, the Charter.

B. *Global Law*

The Court’s decisions on the subject of transnational force and global law highlight the troubled relationship between the United States and the ICJ.⁸² Among these decisions are the cases involving Iran and Nicaragua.⁸³ In 1979, the U.S. Embassy in Tehran, Iran was taken over by demonstrators, and Embassy personnel were taken hostage.⁸⁴ Within days, the United States filed suit with the ICJ demanding that the hostages be freed.⁸⁵ The Court issued a preliminary injunction ordering the Americans to be released.⁸⁶ The Iranians

76. *See id.* at 103-04.

77. *See id.* at 104.

78. *See id.* In one famous opinion Marshall said, “[w]e must never forget that it is a *Constitution* we are expounding.” *See id.* at 104.

79. *See id.*

80. *See MEYER, supra* note 1, at 104.

81. *See id.* at 105.

82. *See id.* at 127.

83. *See id.*

84. *See id.*

85. *See id.*

86. *See MEYER, supra* note 1, at 127.

refused to comply and while the case was pending, the United States launched a botched rescue attempt.⁸⁷ Meyer argues that this move by the United States underscored the basic lack of respect for the Court.⁸⁸ Although the Court decided to award the United States reparations and ordered the release of the hostages, the Court issued a statement that “The Court . . . feels bound to observe that an operation undertaken in those circumstances, from whatever motive, is of a kind calculated to undermine respect for the judicial process in international relations.”⁸⁹

Meyer chronicles how the United States continued to show its disrespect for the Court during the Nicaragua case. In March 1981, President Reagan authorized the CIA to undertake covert operations against Nicaragua.⁹⁰ Nicaragua filed a complaint with the ICJ alleging that the United States’ actions of supplying support for the insurgent force (contras) violated international law.⁹¹ Meyer then details the various attempts that the United States made during this time to challenge the jurisdiction of the Court.⁹² When the Court ultimately ruled that the United States had consented to jurisdiction, America walked out of the proceedings and refused to participate.⁹³ Meyer gives the reader an accurate depiction of the reaction of the international community to the U.S. actions. However, the weakness in these chapters is that Meyer does not present a very in-depth discussion of why the United States behaved as it did. Thus, the reader is left only with a sense of how the rest of world thought America should have behaved.

Next, Meyer discusses the involvement of the ICJ in African decolonization.⁹⁴ Meyer notes the important role played by the Court in deciding the fate of Namibia⁹⁵ and Morocco.⁹⁶ In each of these cases, the ICJ was asked to determine ownership of an area of land that had previously been a colony of a western European nation.⁹⁷ In addition, Meyer highlights important decisions by the Court regarding an

87. *See id.* at 129.

88. *See id.*

89. *See id.*

90. *See id.* at 130.

91. *See id.* at 130-31.

92. *See MEYER, supra* note 1, at 131-34.

93. *See id.* at 135-36.

94. *See id.* at 139-54.

95. *See id.* at 139-50.

96. *See id.* at 150-54.

97. *See id.* at 139-54.

ownership dispute involving the English Channel islets of Minquiers and Ecrehos,⁹⁸ a dispute between Thailand and Cambodia over a historic temple,⁹⁹ and a border dispute between Nicaragua and Honduras.¹⁰⁰ The decisions issued by the ICJ in each of these cases resulted in an end to that dispute. Meyer concludes this section with a discussion of how the Court has helped settle issues of continental shelf ownership,¹⁰¹ coastal baselines¹⁰² and fishing rights.¹⁰³ Again, Meyer highlights how the Court has successfully adjudicated the disputes in these cases.

To improve this section of the book, Meyer could have included a discussion of how the Court's involvement was viewed by other countries. Such insight would have juxtaposed the way foreign politicians and the public viewed the role of the ICJ with how the United States viewed the Court. This might help the reader to better understand why the United States, even today, is opposed to the Court's authority, especially considering all the cases in which disputes have been successfully resolved.

C. *The Early 90s: Court Jurisdiction is Ignored and Trumped*

Meyer next addresses the issue of what to do when a decision of the Court is ignored.¹⁰⁴ For the most part, decisions by the ICJ are accepted and the parties involved comply with the decision.¹⁰⁵ When the United States failed to recognize the Court's decision on Nicaragua, the Security Council attempted to decide upon measures to give effect to the judgment; the United States vetoed the Council's decision.¹⁰⁶ The result was that the United Nations could not enforce the decision.¹⁰⁷ Meyer argues, however, that the decision of the Court *did* have an impact on U.S. involvement in the region and ultimately

98. See MEYER, *supra* note 1, at 155-56.

99. See *id.* at 157-58.

100. See *id.* at 156-57.

101. See *id.* at 164-65.

102. See *id.* at 162-64.

103. See *id.* at 166-69.

104. See MEYER, *supra* note 1, at 171-81.

105. See *id.* at 171.

106. See *id.* at 174-75. Meyer points out that the UN Charter provided that a party to a dispute should not participate in voting on a matter to which it is a party. See *id.* at 174. Meyer further notes that though the U.S. veto could be ignored in this instance, no member of the Council raised the issue. See *id.* at 175.

107. See *id.* at 174-75.

played a large part in bringing an end to hostilities,¹⁰⁸ arguing that this can be seen in the relationship between the United States, Nicaragua, and the ICJ on the issue of reparations.¹⁰⁹ Although the United States again failed to recognize the jurisdiction of the Court, Meyer intimates that the involvement of the Court put pressure on the U.S. to settle the matter privately with Nicaragua rather than face reparations.¹¹⁰

Next Meyer describes the effort by Libya against the United States and the United Kingdom to enforce the Montreal Convention Treaty. In 1991, a District of Columbia grand jury indicted two Libyan nationals for the 1988 terrorist destruction of Pan Am Flight 103 over Lockerbie, Scotland.¹¹¹ The United States and the United Kingdom demanded from Libya that it turn over the two suspects, to which Libya responded that it would investigate the matter. The countries reiterated their demand, and Libya responded that it would submit the matter to the ICJ.¹¹² Under the Montreal Convention, to which the United States, the United Kingdom, and Libya are all signatories, any matter upon which the parties cannot agree to submit to arbitration may be taken to the World Court.¹¹³ The UN imposed drastic sanctions against Libya for its failure to turn over the accused.¹¹⁴ However, Libya argued that the United States and United Kingdom were bound to seek resolution of the matter before issuing sanctions.¹¹⁵ In such cases, where there is conflict as to whether to apply the UN Charter or a treaty between states, the UN Charter trumps.¹¹⁶ Libya ultimately declined to surrender, and the UN promptly imposed sanctions.¹¹⁷

In the book's final chapters, Meyers looks at the issues most currently facing the Court. As Court President Sir Robert Jennings reported, "after decades of underuse the Court now has a full docket of

108. *See id.* at 175.

109. *See id.* at 185-86.

110. *See MEYER, supra* note 1, at 185-86.

111. *See id.* at 195.

112. *See id.* at 195-96. Though the ICJ cannot hear matters of an individual's criminal guilt or innocence, Libya sought to have the ICJ look at the enforceability of the Montreal Convention. *See id.* at 196.

113. *See id.*

114. *See id.* at 200.

115. *See id.* at 198.

116. *See MEYER, supra* note 1, at 200.

117. *See id.* at 198.

important cases.”¹¹⁸ Included in these cases are issues of “humanitarian intervention” in Kosovo¹¹⁹ and ownership of East Timor.¹²⁰ Finally, Meyer looks at the possibility of Court intervention in the issue of nuclear arms testing and proliferation.¹²¹

By including such timely issues in the book, Meyer connects the past decisions of the ICJ to the issues of today. This connection aids the reader in understanding how the history of the Court is relevant to issues that international law presently faces.

V. WAS THE COURT A SUCCESS OR A FAILURE?

Bernard Loder, a Dutch representative, stated at the establishment of the World Court in 1920, that “administer[ing] justice between two contesting parties only after having obtained their mutual consent[,] . . . agreement on the wording of the complaint[,] and [] choice of judges” would be “not worth the trouble.”¹²² Meyer suggests that if viewed through the eyes of Andrew Carnegie or other peace enthusiasts of the early twentieth century, the answer to whether it was “worth the trouble” may well be “no.”¹²³ The Court did not abolish or prevent war, nor has the Court become a court of “compulsory jurisdiction.”¹²⁴ Meyer clearly sees this absent aspect as the failing point of the Court, if it has failed at all.¹²⁵

Meyer documents the early support of the United States—in the form of Presidents, congressmen, Supreme Court Justices, and law school deans and professors—to settle disputes through persuasive means.¹²⁶ In so doing, Meyer suggests that what continues to make the question itself, “Was it worth the trouble?” even a consideration hinges on the United States maintaining its stance of immunity from the

118. *See id.* at 217.

119. *See id.* at 223-26.

120. *See id.* at 221-24.

121. *See id.* at 227-34.

122. *See MEYER, supra* note 1, at 205.

123. *See id.* at 206.

124. *See id.* at 206-07.

125. However, other disagree with the idea of the Court as a failure. For example, Jane Addams said:

[T]his great war cannot stamp International Arbitration as a failure When the thirteen original states united and each agreed . . . to submit all differences to a Supreme Court . . . [the founders] had every right to look forward to centuries of unbroken peace, although in less than seventy-five years these States were engaged in a prolonged civil war. Yet no one would call our Federal Government a failure nor the establishment of the Supreme Court a mistake.

Id. at 37.

126. *See id.* at 209.

Court's judgment.¹²⁷

Meyer says that it is easy to question the effectiveness of a World Court, yet no court has power of its own—it must be given its power from the community it serves.¹²⁸ He believes the fact that most of the Court's decisions have been followed demonstrates that the Court has been given this power.¹²⁹ However, Meyer makes no mention made of exactly why the United States refrains from compulsory jurisdiction. One possibility is that the United States trusts the judicial process, but not when it comes to war—a principle that has been articulated in several U.S. Supreme Court decisions.¹³⁰ This principle was best articulated by Justice Frankfurter in his concurrence in *Dennis v. United States*:¹³¹

History teaches that the independence of the judiciary is jeopardized when courts become embroiled in the passions of the day and assume primary responsibility in choosing between competing political, economic and social pressures. Primary responsibility for adjusting the interests which compete in the situation before us of necessity belongs to the Congress.¹³²

VI. CONCLUSION

Meyer's book is a rare gem from a knowledgeable author willing to help readers understand the history of the World Court and the United States' contribution to it. He succeeds in this ambitious task, and the result is both readable and engaging. The book provides a plethora of information as to specific court decisions and makes a valiant effort at organizing the decisions into coherent groupings. Despite the massive number of international law decisions handed down by the Court, Meyer deftly guides the reader through the cases without getting bogged down in the minutiae of each decision. Further, beginning with a time when the Court was just an idea of a few visionaries gives true context to the story, as does Meyer's prophesizing about the future of the Court.

127. *See id.* at 216.

128. *See* SGI website, *supra* note 12.

129. *See* SGI website, *supra* note 12.

130. *See, e.g.,* *Schneck v. United States*, 249 U.S. 47, 52 (1919) ("When a nation is at war many things that might be said in time of peace are such a hindrance to its effort that their utterance will not be endured so long as men fight and that no Court could regard them as protected by any constitutional right."); *see also* *Dennis v. United States*, 341 U.S. 494 (1951).

131. 341 U.S. 494 (1951).

132. *See id.* at 525.

The World Court in Action: Judging Among Nations comes at a time when international relations have been highlighted through recent events both domestically and abroad. For example, the United States has come under intense scrutiny by international human rights agencies in the past year as a result of detaining many immigrants and foreign nationals after the terrorist attacks of September 11, 2001.¹³³ The United States has held foreign national detainees without access to their respective consulates, in violation of the Vienna Convention on Consular Relations.¹³⁴ Such behavior seems hypocritical in light of the aforementioned United States protest when Americans were held hostage in Iran.¹³⁵ As many Americans believe that now is the time for the U.S. to reconsider its international position, Meyer's book comes at the perfect time for readers to revisit the idea of an international court of justice.

Yet, Meyer's advocacy of the utility of the World Court may be the source of the one shortcoming of the book – that it is a bit of a one-sided story. One can chalk this up to the habit of the lawyer of being a “zealous advocate” for his cause, or perhaps to Meyer's persistent belief in the power of a “true” Court to substitute law for war. Fortunately, Meyer's apparent bias does not detract much from the quality of the story as a whole.¹³⁶ Nevertheless, the reader is left feeling much as Meyer sees the World Court of today: without full access to the dispute, and thus unable to see the facts and form conclusions as a truly neutral third-party.

133. See Richard A. Serrano, *Response to Terror: The Detainees Isolation, Secrecy Veil Most Jailed in Roundup Investigation*, L.A. TIMES, Nov. 4, 2001, at A1.

134. See William J. Aceres, *International Civil Liberties Report 2000* at 5, available at http://archive.aclu.org/library/iclr/2000/iclr2000_5.pdf (last visited August 23, 2002) (citing Vienna Convention on Consular Relations, April 24, 1963, 21 UST 77, TIAS No. 6820). Article 36 of the Vienna Convention provides that foreign nationals must be made aware of their right to communicate with consulate officials, and if requested, to notify the consulate that the foreign national requests assistance. Despite U.S. ratification in 1963, U.S. compliance has been questionable. See *id.*

135. See *supra* note 85 and accompanying text.

136. Other than brief mentions, Meyer leaves out the arguments of the United States (and others) for refusing to succumb to compulsory jurisdiction. This weakens the argument to some extent because the reader is left wondering why the material is omitted. Is it to more zealously argue his case? Is it because the facts are damaging? Alternatively, would the arguments on the other side be so minimal as to actually strengthen Meyer's points if added?