

# WORLD LAW

## SOCIALIST JUDGES IN THE INTERNATIONAL COURT OF JUSTICE

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IN GENERAL TERMS there is little doubt that the present International Court of Justice represents a direct continuation of the Permanent Court of International Justice. An important feature which gives a distinct character to the new Court, however, is the diverse backgrounds of the judges. Since its inception, at least two judges from socialist countries have sat continuously on the new Court, and at times their number has risen to three or four.<sup>1</sup> The socialist judges are set apart as a group from their colleagues on the Court by a variety of factors. They come from countries in close alliance with the Soviet Union and follow a policy of economic and social reconstruction allegedly in accordance with a pattern determined by the October revolution. Although reared in a legal tradition which, like the legal systems of Western Europe, has roots in romanistic jurisprudence, their countries have developed a new legal technique and approach to problems of social order. Thus, when key legal issues come before the Court, the socialist judges are inclined to present a common view which differs sharply from the opinion of the non-socialist majority. This characteristic of their participation in the work of the International Court of Justice provides a comprehensive socialist doctrine on some of the basic issues of the rule of law in the international community of sovereign nations.

The socialist judges share common views on the position of the sovereign state in international law, on the role of international organizations, and on collective action. They also share a common

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<sup>1</sup> Judge Winiarski of Poland has served since 1946 and has been President of the Court since 1961. Judges Krylov, Golunsky and Kojevnikov of the Soviet Union served during the years 1946-1952, 1952-1953, and 1953-1961, respectively. Judge Zoričić of Yugoslavia served during the period 1946-1957. Judge Koretzky of the Ukrainian S.S.R. has been on the bench since 1961.

Two judges *ad hoc* were chosen by Albania in the Corfu Channel Case, [1949] I.C.J. Rep. 4: M. Doxner who sat on the bench when the preliminary objection was heard, and M. Ečer of Czechoslovakia, who sat when the case was heard on the merits.

understanding of the judicial function and of its limitations in settling disputes between independent nations. Together their views on these topics represent an outlook in deep contrast to the main thrust of juristic thinking of the Court.

## I

One basic principle upon which the socialist judges have continually insisted is that national sovereignty, as both a legal and a political principle, continues to be the keystone of relationships between independent states within the international community. It is essential to understand, according to their view, that the creation of the United Nations has produced no basic change in the legal position of the member states. The new international organization merely represents a new framework for old values, and consequently the techniques of international relations remain centered around the sovereign state. Legally, the sovereign state controls and limits collective action, whether conceived within or without international organizations. As Judge Zoričić, of Yugoslavia, stated in his dissenting opinion in the *Admission of a State Case*:

The permanent member [of the Security Council] in question, rightly or wrongly, maintained its interpretation of the Declaration of Potsdam and of the peace treaties. For that member, these instruments involved an obligation on signatory States to support applications for admission. . . . It goes without saying that the co-signatories of these instruments were free to accept this interpretation or not. What is decisive, for the question before the Court, is not the correctness of the interpretation made by that State, but the right of that State to rely on it. . . . This right is guaranteed by the principle of the sovereign equality of States which underlies the organization of the United Nations. . . . It follows that the member in question was juridically entitled to maintain its interpretation and there for to call for the simultaneous admission of the ex-enemy States.<sup>2</sup>

The significance of this statement lies in Judge Zoričić's assertion that the Court lacks power to correct an error in the interpretation of an international obligation by a sovereign state, even though that state is a member of an international organization, in this case the United Nations Security Council, and participates in the decisions of its organs. This view was developed to its logical conclusion by Judge Krylov, of the Soviet Union, who insisted that the Court had

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<sup>2</sup> Admission of a State to the United Nations, [1948] I.C.J. Rep. 57, 106 (advisory opinion).

no right to give an opinion on the question whether a state's understanding of a treaty provision was right or wrong, as that would amount to a censure of the reasons given by the state for its position in the deliberations of the Security Council. However, the state's interpretation of the treaty provision would have no bearing on the state's duty to conform to the Court's legal opinion.<sup>3</sup>

The basic proposition that membership in the United Nations organization has not vitally affected the sovereign rights of member nations, even within the context of the organization, was restated by Judge Winiarski, of Poland, in the *Expenses Case*.<sup>4</sup> The judge distinguished between a formal and a substantive validity of the decisions of the United Nations' organs, a distinction which he considered particularly applicable to the decisions of the General Assembly: "[T]he Assembly . . . interprets the Charter by applying it and its interpretation is final. This is true to a certain extent and particularly where its interpretation has been generally accepted by Member States."<sup>5</sup> Judge Winiarski indicated, furthermore, that the collective aspect of the participation of individual nations in the United Nations is resolved into a number of separate relationships which depend upon each member's acceptance of the collective decision of the United Nations' bodies. Membership in the United Nations, therefore, does not involve a duty to support its policy. To gain this support, the United Nations policy must become the national policy. Sometimes it may become necessary to make a choice between upholding the aims of the United Nations and the principle of national sovereignty of member states. It seems to be Judge Winiarski's view that, in both legal and political terms, in the case of such a conflict, national sovereignty is a more important feature of the present international system than the aims of the United Nations. He argues that each member state has a right to reject the decision of the United Nations' organs, even when that decision was adopted by a proper majority and was authorized by the Charter:

It is sometimes difficult to attribute any precise legal significance to the conduct of the contracting parties, because it is not always possible to know with certainty whether they have acted in a certain manner because they consider that the law so requires or allows, or for reasons of expediency. However, in the case referred to the Court, it is estab-

<sup>3</sup> *Id.* at 107.

<sup>4</sup> Certain Expenses of the United Nations, [1962] I.C.J. Rep. 151 (advisory opinion).

<sup>5</sup> *Id.* at 229.

lished that some at least of the Member States refuse to comply with the decisions of the General Assembly because they dispute the conformity of those decisions with the Charter. Apparently they are of opinion that the resolutions cannot be relied upon as against them although they may be valid and binding in respect of other States. What is therefore involved is the validity of the Assembly's resolutions in respect of those States, or the right to rely upon them as against those States.

It has been said that the nullity of a legal instrument can be relied upon only when there has been a finding of nullity by a competent tribunal. . . . In the international legal system, however, there is, in the absence of agreement to the contrary, no tribunal competent to make a finding of nullity. It is the State which regards itself as the injured party which itself rejects a legal instrument vitiated, in its opinion, by such defects as to render it a nullity. Such a decision is obviously a grave one and one to which resort can be had only in exceptional cases, but one which is nevertheless sometimes inevitable and which is recognized as such by general international law.<sup>6</sup>

This right to reject a United Nations decision extends also to the right of each nation, at its discretion, to recognize or reject an arbitral award or a judicial decision. The adjudication may be rejected if the member state deems it to be contrary to the rules of international law, as Judge Winiarski stated in his dissent to the advisory opinion in the *Effect of Awards Case*:<sup>7</sup>

An arbitral award, which is always final and without appeal, may be vitiated by defects which make it void; in this event, a party to the arbitration will be justified in refusing to give effect to it. This is not by virtue of any rule peculiar to ordinary arbitration between States; it is a natural and inevitable application of a general principle existing in all law: not only a judgment, but any act is incapable of producing legal effects if it is legally null and void.<sup>8</sup>

In effect, the principles which bind members of the United Nations are identical with those which bind members of the international community at large. The object of these principles of international law, and of the United Nations Charter, is to protect the independent and sovereign status of each state. The continued existence of international organizations depends, therefore, upon the support of each member, and though the rule of unanimity may be abrogated and replaced by a simple majority vote, still the unanimity rule is

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<sup>6</sup> *Id.* at 230.

<sup>7</sup> *Effects of Awards of Compensation made by the U.S. Administrative Tribunal*, [1954] I.C.J. Rep. 47 (advisory opinion).

<sup>8</sup> *Id.* at 65.

supported by the doctrine of formal and substantive validity. Consequently, it is not surprising that socialist judges favor treaties or international conventions as instruments creating mutual rights and obligations between members of the international community and as sources of legal rules.<sup>9</sup> And for the same kind of reason, Judge Krylov refused to employ analogy so as to apply a general principle of international law to a new but similar fact situation.<sup>10</sup>

Since the socialist system, in its legal arrangements and institutions, favors the sovereign nation over the decisions of collective bodies, it seems natural that it would restrict the use of arbitration or judicial process strictly to situations where the adjudicative power is exercised with the full consent of the parties. International order and peace cannot be achieved through law enforcement. The proper means for resolving conflicting interests is through negotiation, bargaining, mutual accommodation, and in the final analysis through the use of power. Thus where doubt arises as to whether a state has consented to a judicial settlement of its rights, the doubt should be resolved by presuming that the state has not accepted the principle of judicial accountability.<sup>11</sup>

The ultimate in the state-centered approach to the role of international bodies was reached in Judge Winiarski's separate opinion in the *Interpretation of Peace Treaties Case*.<sup>12</sup> Bulgaria, Hungary and Romania refused to cooperate with the other two signatories to the Peace Treaties, the United Kingdom and the United States, in establishing an arbitral commission to resolve disputes concerning the interpretation of the Peace Treaties. The question was submitted to the United Nations General Assembly, which requested the International Court of Justice to give an Advisory Opinion in order to clarify a certain legal point before the Assembly made its recommendations. Bulgaria, Hungary and Romania again refused to cooperate, this time failing to participate in the proceedings be-

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<sup>9</sup> Corfu Channel Case, [1949] I.C.J. Rep. 4. "Contrary to the opinion of the majority of the judges, I consider that there is no such thing as a *common* regulation of the legal régime of straits. Every strait is regulated individually. That applies to the Bosphorus and the Dardanelles, to the Sound and the Belts, to the Strait of Magellan, etc. The legal régime of all these straits is defined by the respective international conventions. . . . If the régime of the strait is not defined by a multilateral convention, it appertains to the coastal State or States to regulate it." *Id.* at 74.

<sup>10</sup> Reparation for Injuries Suffered in the Service of the United Nations, [1949] I.C.J. Rep. 174, 217 (advisory opinion).

<sup>11</sup> South West Africa Cases, [1962] I.C.J. Rep. 319, 453 (preliminary objections).

<sup>12</sup> Interpretation of Peace Treaties, [1950] I.C.J. Rep. 65, 89 (advisory opinion).

fore the Court. Judge Winiarski stated in his separate opinion that the Court would violate basic rules of international law if it complied with the General Assembly's request, since an advisory opinion in this case would be "a judgment delivered without the consent of the interested parties" and, furthermore:

[T]he Court is pronouncing on the interpretation and application of the jurisdictional clauses of the Peace Treaties, and this in the first place is the prerogative of the high contracting parties themselves; the Court could not do so without their consent or, at least as a general rule, without their participation. The Court heard the interpretation and the conclusions of the United States and the United Kingdom; it did not hear statements by the three States.<sup>13</sup>

In the same vein, Judge Winiarski continued by suggesting that protection of the sovereign rights of independent states constitutes the supreme value of the law of nations.<sup>14</sup>

The dominant role of national sovereignty in international relations, of course, limits the interference of international organizations in the internal affairs of the socialist world. The socialist view also extends domestic concepts of jurisdiction and of national sovereignty to include even the situations covered by international agreements, and decisions of judicial bodies or arbitral tribunals. In the final analysis it is the state's specific acceptance which gives validity to the decisions of international bodies, whether political or judicial.

## II

In the gradual shift of authority within the United Nations from the Security Council to the General Assembly, the socialist judges, together with the other members of the Court, faced one of the most crucial issues affecting the United Nations. The Court's role in this process of change has been indirect, coming through requests for advisory opinions. The *Expenses Case*, typical of this type, arose in part out of a peace-keeping operation which was initiated and conducted under the authority of the General Assembly, rather than the Security Council. The Soviet Union, unable to prevent the initiative of the General Assembly declared that:

[I]t regards the proposal for the establishment by the General Assembly of an international force to be stationed on Egyptian territory, a proposal which bypasses the Security Council, as contrary to the United

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<sup>13</sup> *Id.* at 94.

<sup>14</sup> *Id.* at 96.

Nations Charter. However, in view of the fact that in this instance the victim of aggression has been compelled to agree to the introduction of the international force, in the hope that this may prevent any further extension of the aggression, the Soviet delegation did not vote against the draft resolution, but abstained.<sup>15</sup>

The socialist members of the Court have unanimously opposed the shift in authority from the Council to the Assembly. Judge Winiarski, in the *Expenses Case*, emphasized that it had not been the intention of the drafters of the Charter that the United Nations organization should be able to act under all and any circumstances.<sup>16</sup> Judge Koretsky, of the Soviet Union, dissenting in the same case, stated that the majority opinion, which affirmed the legal validity of the apportionment of the peace-keeping expenses under article 17 (2) of the Charter, misconceived the principles of the Charter. When there has been no Security Council decision on peace-keeping, he wrote, the General Assembly action is fundamentally illegal, since such action is primarily within the Council's jurisdiction. In contrast to the General Assembly, which has power only to make recommendations possessing no binding force, the Security Council has the authority to make concrete arrangements.<sup>17</sup>

Judge Winiarski, in his dissenting opinion, devoted his attention to the study of the budgetary techniques of the United Nations organization and, within this context, developed the theory that the powers of the General Assembly are highly circumscribed. He was ready to admit that the General Assembly has exclusive jurisdiction in budgetary matters and that its decisions in this respect are binding upon all members of the United Nations. However, he asserted, budgetary decisions made under article 17 (1) of the Charter are binding only upon those members who accept the decision when it is made in connection with recommendations issued by the General Assembly concerning peace-keeping operations. Judge Winiarski wrote:

[I]f it be recognized that the expenditures enumerated in the request constitute expenses of the Organization, inevitably the question arises whether participation in these expenses is obligatory for all Member States, as appears to be suggested by the question in the request and as is accepted in the Opinion. And yet it is apparent that the resolutions

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<sup>15</sup> Certain Expenses of the United Nations, [1962] I.C.J. Rep. 151, 260 (advisory opinion).

<sup>16</sup> *Id.* at 230.

<sup>17</sup> *Id.* at 287.

approving and apportioning these expenses are valid and binding only in respect of the Member States which have accepted the recommendations.<sup>18</sup>

This reasoning was unavoidable, in Judge Winiarski's view, because of the action of the General Assembly in upsetting the internal balance of the United Nations organization. A cautious approach is required in the interpretation of the Charter provisions since it is "a multilateral treaty . . . the result of prolonged and laborious negotiations, [which] carefully created organs and determined their competence and means of action."<sup>19</sup>

The United Nations Secretary-General was also criticized because, in Judge Koretsky's opinion, he had assumed functions beyond the role assigned to him by the Charter. Specifically, the Secretary-General had actively contributed to the execution of the General Assembly's recommendations and directly influenced United Nations policy, a function not in accord with his duties as chief administrative officer of the organization.<sup>20</sup>

### III

Two aspects of the judicial power of the International Court of Justice were differently conceived from those of the Permanent Court. Under article 36 of the United Nations Charter, the Security

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<sup>18</sup> *Id.* at 233. For an expose of the Soviet position in the controversy concerning the interpretation of article 4 of the Charter in connection with the General Assembly's request for an Advisory Opinion concerning "Conditions of Admission of a State to the Membership of the United Nations," see VISHINSKII, VOPROSY MEZHDUNARODNOGO PRAVA I MEZHDUNARODNOI POLITIKI, 280-93, 358-65 (1951).

According to Professor Krylov, the sovereign equality of UN members finds expression in the fact that each country has only one vote. The fact that some decisions of the United Nations' organs are made by the majority vote does not affect this sovereignty. As the General Assembly makes only recommendations, such recommendations do not establish binding obligations on those nations which do not accept them. Furthermore, those decisions which were imposed by the mechanical majority of vote upon the dissenting minority, if its interests are in accordance with the aims and principles of the Charter of the United Nations, must be regarded as deprived of legal force. The minority have the right to reject those decisions, a proper recourse in defense of their interests. KRYLOV, ISTORIA SOZDANIA ORGANIZATSII OBJEDINONNIKIH NATSII, 162 (1962).

<sup>19</sup> Certain Expenses of the United Nations, [1962] I.C.J. Rep. 151, 230.

<sup>20</sup> *Id.* at 254-55. It is the considered opinion of Soviet scholars that within the United Nations organization, the Security Council is in charge of most important functions, such as preservation of peace and the formulation of UN policy. The General Assembly is reduced to a secondary role and in some circumstances must act only upon recommendation from the Security Council. See the highly authoritative 1957 edition of the MEZHDUNARODNOE PRAVO 321, 325 (Akademia Nayuk USSR; Institut Prava, Moskva 1957).



Council is entitled to recommend that the parties refer their dispute to the International Court in accordance with its Statute. Also, under article 96 of the Charter and article 65 of the Statute, the Court is charged with advisory functions, in response to requests from the main bodies of the United Nations.<sup>21</sup> Advisory opinions have no binding force, except when given in connection with the decisions of the administrative tribunals of the UN and the International Labor Organization.<sup>22</sup>

On only one occasion has the Security Council implemented its powers under article 36 of the Charter. On April 9, 1947, the Council recommended that Albania and Great Britain submit their dispute concerning certain events in the Corfu Channel to the International Court of Justice. The British government initiated the case with a unilateral application, claiming that the Security Council recommendation under article 36 had established the competence of the Court to decide the case. The Albanian government challenged this view on the grounds that neither the provisions of the Charter, nor the Statute of the Court, nor recognized principles of international law warranted such a claim. Albania further contended that the British government was not entitled to bring the case without first concluding a special agreement with Albania. However, after stating its objections in principle, the Albanian government accepted the Court's jurisdiction.<sup>23</sup>

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<sup>21</sup> In addition to the Security Council, General Assembly, Social and Economic Council and Trusteeship Council, various other international bodies such as UNESCO, the World Health Organization, the International Labor Organization, etc., were given the right to seek the Court's assistance in the solution of their legal problems.

<sup>22</sup> See ROSENNE, *THE INTERNATIONAL COURT OF JUSTICE* 37-39, 43-50, 487-92 (1957). Cf. U.N. CHARTER arts. 92-93. One of the Soviet scholars stated that the Soviet Union is, as matter of principle, opposed to the idea of compulsory jurisdiction for the International Court of Justice under article 36, para. 2 of the Court's Statute: "This is explained by the fact that jurisdiction of this type, which is a priori established with regard to all possible disputes, may lead to the violation of sovereign rights of the states, as not every dispute concerning the interpretation of an international treaty between the states concerned may be resolved usefully by the International Court, without jeopardizing their interests. And therefore, the Soviet Union insists that only concrete disputes may be submitted to court's jurisdiction on the basis of mutual agreement of the contracting parties, in accordance with Article 36 para. 1 of the Statute. And whenever during international conferences the point of including in a convention an article which would provide for the compulsory jurisdiction of the International Court was raised, the Soviet Union was always opposed to it, and in case of necessity made reservations stating its rejection of the compulsory jurisdiction of the International Court." SHURSHALOV, *OSNOVNYE VOPROSY TEORII MEZHDUNARODNOGO DOGOVORA* 452 (1959).

<sup>23</sup> Corfu Channel Case, [1947] I.C.J. Rep. 4, 5.

The majority of the judges considered that there was no preliminary objection to the Court's jurisdiction. The minority, which included three socialist judges, concurred with the majority in the view that the Court had jurisdiction, but considered that, because of its importance, the question of the nature of the recommendation under article 36 of the Charter should be clarified. The minority noted that the question of compulsory jurisdiction under article 36 had been discussed and that the British government, in particular, had insisted upon its right to bring the case by means of a unilateral application. The minority considered that the Court should declare itself in favor of the traditional viewpoint, that despite the recommendation under article 36, the Court's jurisdiction depended exclusively upon the agreement between the parties.<sup>24</sup> In addition, Judge Duxner held the opinion that Albanian acceptance of the Court's jurisdiction did not establish the Court's competence to decide the case on the merits, since without the formal special agreement, there was no case.<sup>25</sup> As the question of jurisdiction was not an issue in the dispute, any judicial pronouncement interpreting article 36 of the Charter would have been mere theoretical speculation under any theory of judicial precedent.

The question of the new scope of the advisory function, in view of article 96 of the Charter and of article 65 of the Statute, has received considerable attention from the socialist judges on the Court. Indeed, it is on this fundamental issue that the views of the majority have been severely criticized by the socialists. The discussion has revolved mainly around the extent to which the present Court is bound by the precedent established by the Permanent

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<sup>24</sup> Corfu Channel Case, [1948] I.C.J. Rep. 15, 31. Judges Basdevant, Alvarez, Winiarski, Zoričić, de Visscher, Badawi Pasha and Krylov joined in a separate opinion, stating that "[W]e were faced here with a procedure which, regarded as a whole, is the outcome of an innovation in the Charter of the United Nations. Under the regime of the Charter, the rule holds good that the jurisdiction of the International Court of Justice, as of the Permanent Court of International Justice before it, depends on the consent of the States Parties to a dispute. But Article 36 of the Charter has made it possible for the Security Council to recommend the Parties to refer their dispute to the International Court of Justice in accordance with the provisions of the Court's Statute. The Security Council, for the first time, availed itself of this power on April 9th, 1947. The contentious procedure, recourse to which the Security Council thus recommended, involves, in order that the Court may be seized of the case, certain action by the parties or, possibly, by one of them. Faced with this new solution, the Governments concerned had different views as to the effect of the recommendation and, consequently, as to the method to be adopted in bringing the case before the Court."

<sup>25</sup> *Id.* at 42.

Court. In his dissenting opinion in the *Interpretation of Peace Treaties Case*,<sup>26</sup> Judge Winiarski insisted that the International Court is bound by the basic rules which governed the advisory procedure under the Permanent Court, which were that "in regard to advisory opinions, the Court should proceed in all respects in the same way as in contentious cases."<sup>27</sup> Also, Judge Winiarski stated, "above all the principles of judicial procedure, is the principle of international law according to which 'no State can, without its consent, be compelled to submit its disputes with other States either to mediation or arbitration.'"<sup>28</sup> The danger of an advisory opinion is that it may be used to assist in the settlement of a dispute between States, a purpose for which it was not designed:

[A]n advisory opinion which is concerned with a dispute between States from a legal point of view amounts to a definitive decision upon the existence or non-existence of the legal relations, which is the subject of the dispute. It follows that the opinion cannot fail to exercise very great influence on the respective legal positions of the States, all the more so because the opinion may be used as a means of psychological pressure upon the governments of the States concerned.<sup>29</sup>

The socialist judges have also differed with their colleagues as to what legal questions are suitable for advisory opinions. The majority has asserted the Court's right and duty to render an advisory opinion without specific reference to the conditions under which a dispute between states could be entertained. Thus, in acceding to the General Assembly's request to clarify a legal point in the *Interpretation of Peace Treaties Case*, the Court rejected the argument that its advisory opinion would interfere with a sovereign state's domestic affairs in contravention of article 2 (7) of the United Nations Charter, since the matter concerned a question of international law.<sup>30</sup> Judge Koretsky, in his dissent in the *Expenses Case*, enjoined the majority from adopting such an approach:

The Court must not shut its eyes to reality. The image of Themis with her eyes blindfolded is only an image from a fairy-tale and from

<sup>26</sup> [1950] I.C.J. Rep. 65.

<sup>27</sup> *Id.* at 90.

<sup>28</sup> *Ibid.* Cf. ROSENNE, *op. cit. supra* note 22, at 40.

<sup>29</sup> *Interpretation of Peace Treaties Case*, [1950] I.C.J. Rep. 65, 101-02 (advisory opinion) (Zoričić, J., dissenting); Cf. *id.* at 111 (Krylov, J., dissenting). Judgments of the Administrative Tribunal of the I.L.O. upon complaints made against the UNESCO, [1956] I.C.J. Rep. 77, 105-06 (dissenting opinion).

<sup>30</sup> *Interpretation of Peace Treaties Case*, *supra* note 29, at 70-71.

mythology. The Court, taking reality into consideration, should at the same time have in mind the strict observation of the Charter.<sup>31</sup>

Judge Zoričić made a similar appeal in the *Conditions of Admission Case*, expressing the wish that his colleagues be mindful of the political implications of an advisory opinion.<sup>32</sup> Judge Krylov, in his dissenting opinion in the same case, also emphasized that political questions, even if couched in legal terms, were outside the competence of the Court. He cited the Permanent Court's practice of considering only concrete disputes and the fact that "during the eighteen years of its activity . . . [the Permanent Court] was never asked to give an advisory opinion regarding any article of the Covenant of the League of Nations *in abstracto*," the reasons for which, Judge Krylov concluded, were that "it was not desired to involve the Permanent Court in political disputes."<sup>33</sup> He also raised the objection that an opinion rendered in reply to a political question expressed in abstract form, will have a "quasi-legislative effect, and this . . . is in no way desirable."<sup>34</sup>

The majority's reply to these criticisms is well expressed in the *Conditions of Admission Case*:

It has . . . been contended that the question put must be regarded as a political one and that, for this reason, it falls outside the jurisdiction of the Court. The Court cannot attribute a political character to a request which, framed in abstract terms, invites it to undertake an essentially judicial task, the interpretation of a treaty provision. . . .

It has also been contended that the Court should not deal with a question couched in abstract terms. That is a mere affirmation devoid of any justification. According to Article 96 of the Charter and Article 65 of the Statute, the Court may give an advisory opinion on any legal question, abstract or otherwise.<sup>35</sup>

The minority and majority used the same terms, but spoke a different language. The majority was concerned with its competence as a body of jurists to consider a legal question. The socialist minority spoke of the political effect of a juristic treatment of a juristic problem: That the law is on anybody's side is a powerful argument, and in that sense any decision of the Court is political, as is the judgment of any municipal court which deals with the legal limitations of the

<sup>31</sup> Certain Expenses of the United Nations, [1962] I.C.J. Rep. 151, 268.

<sup>32</sup> Admission of a State to the United Nations, [1948] I.C.J. Rep. 57, 106.

<sup>33</sup> *Id.* at 108.

<sup>34</sup> *Id.* at 107-08.

<sup>35</sup> *Id.* at 61.

exercise of power. The socialist judges realize the potential of advisory opinions, and by insisting that the exercise of this function conform strictly to the conditions under which a contentious proceeding may be brought before the Court, they have sought to prevent the possibility of a judicial pronouncement upon matters of vital concern for the socialist members of the international community.

#### IV

The socialist judges, despite their differences with the majority, have been prepared to make accommodations with the sensibilities of their colleagues. Such concessions were necessary in order for there to be any useful participation by the socialist judges in the Court's work. By way of such concession, the socialist judges have failed to advance the theory of Soviet scholars that the United Nations Charter belongs to that category of legal instruments which do not lend themselves to judicial interpretation. The Charter, according to Soviet theory, states the conditions of the participation of the socialist states in world affairs in an organized system, is a key document for East-West relations, and, therefore, falls into this separate category.<sup>36</sup> Such a doctrine, the socialist judges realized, would

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<sup>36</sup> During the discussion of the draft of the Australian resolution providing for the compulsory jurisdiction of the International Court of Justice in all matters concerning interpretation of the Charter, the Soviet delegation asserted that this right may be exclusively exercised by the organs of the United Nations, which have the obligation to enforce the provisions of the Charter and therefore, have the exclusive right of its authentic interpretation. Soviet scholars maintain that interpretations of the Charter by the International Court are not authentic, as they are not compulsory. Cf. SHURSHALOV, *op. cit. supra* note 23, at 453; DELEGATSIH SSSR, USSR I BSSR NA VTOROI SESSII GENERALNOI ASSEMBLEI ORGANIZATSII OBJEDINONNIKH NATSIH 548-49 (1948).

While Soviet legal scholars admit to the possibility that a legal question including the interpretation of the UN Charter may be submitted to the Court, they are of the opinion that the International Court of Justice should not interpret the Charter without such a request. Shurshalov has stated that "it is impermissible that the International Court should interpret the Charter without the request of the competent organs of UNO or against their will. In such a case it would be put above the General Assembly or the Security Council, which would result in discrediting of those important organs, as in the question of the interpretation and application of the Charter of the United Nations Organization the General Assembly and the Security Council would seem to be less competent and qualified than the International Court." SHURSHALOV, *op. cit. supra* note 23, at 453-54. Another Soviet scholar was convinced that "in this connection it is necessary to touch upon the problem what organs have the right to interpret the Charter of the United Nations. This right belongs in the first place to the Security Council and also to the General Assembly, as they are those main organs of UNO, which in the first place are called upon to enforce the Charter which is impossible without its correct understanding

hamper their cooperation within the framework established by the Statute of the Court.

However, in their attempt to limit the influence and political function of the rule of law in international relations, their doctrines seem highly unrealistic. The socialist judges seem to overlook the fact that in international relations, just as at all other levels of social relationships, the rule of law has a dual function. It is designed to protect individual existence, such as the institution of national sovereignty and the rights of states, and to shape social cooperation. To be effective in the first dimension, law must be effective in the second. The United Nations functions in a world of flux, in which the changes in the relative strengths of the great powers and of political and military blocs present new barriers to, as well as new opportunities for, international cooperation. The needs of the present have partially disrupted the carefully prepared and skillfully negotiated plans of East-West relations, as well as the distribution of responsibilities within the United Nations. The world, as the socialist judges see it, is the world of the initial years of the United Nations, when it had just emerged after the horrors of the Second World War. But it is not the same world, and the Court, the United Nations and the law of the world community must develop and progress if they are to overcome the challenges with which they are faced.

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and interpretation. To the Security Council in this connection belongs undisputed priority, as the unanimity principle of the permanent members of the Council has the role of safeguarding and guaranteeing the coordination of contrasting viewpoints of states of differing social orders. This principle should also be followed in cases involving the interpretation of the Charter by the General Assembly. It is illegal to impose upon one group of states an interpretation established by a mechanical majority, just as imposing such decisions which are convenient to one group of nations only." MOROZOV, ORGANIZATSIJA OBJEDINONNIKH NATSII 206 (1962).