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CHANGES IN THE PUBLICATION OF I.C.J. REPORTS: EFFECTS OF THESE SUGGESTIONS ON TEACHING INTERNATIONAL LAW

*Ignaz Seidl-Hohenveldern**

In August, 1986, the Joint Inspection Unit ("J.I.U.") transmitted to the Secretary General of the United Nations a report on the Publications of the International Court of Justice.¹ The report stressed the desirability of extending the U.N. language regime to the publications of the International Court of Justice. Hitherto, the Judgments and Advisory Opinions of the I.C.J. have been published in English and French only. The texts in these two languages are published in juxtaposition (*en regard*). The J.I.U. report proposes to publish in the future only a limited number of copies in this way "for the use of the Court and international lawyers." The bulk of the publications would appear in a single language version only.²

Although the point is left open in the J.I.U. report³, there exists a strong possibility that this plan would omit the publication of dissenting and separate opinions in these single language versions. Otherwise, the savings to be obtained by these and other measures would be too small to realize the aim of reform — to popularize knowledge of the work of the I.C.J. all the world over at no extra cost by translating these truncated versions into all the further official languages of the U.N. (i.e., into Chinese, Spanish, Russian, and Arabic). The cost of translating the dissenting and separate opinions as well would be prohibitive. They take up to four times as many pages as the judgments and advisory opinions themselves.

The laudable aim of the proposed reform is to render the work of the I.C.J. more accessible to students.⁴ However, as Rosenne has pointed out, there exist weighty arguments against these proposals. Rosenne believes them to be incompatible with the Statute of the

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1. *Publications of the International Court of Justice* (Report of the United Nations Joint Inspection Unit), 41 U.N. GAOR, JIU/REP/86/7, U.N. Doc. A/41/591 (Sept. 12, 1986).

2. Report of the U.N. Joint Inspection Unit, *supra* note 1, at para. 14.

3. *Id.* at para. 11.

4. *Id.*

I.C.J.,⁵ and as a practitioner, would prefer the status quo.⁶

I would like to add some further arguments in support of Rosenne's views. I advance them as a teacher of public international law without a special axe to grind, as German, my native language, does not figure among the official languages of the U.N.

At first glance, the J.I.U. proposal appears tempting. There is no doubt about the efficaciousness of teaching law according to the case method. During my first visit to the United States in 1958, I saw the case method practiced by Dean Potter of Berkeley on torts and by my regretted friend Bill Bishop on public international law. I was greatly impressed by casebooks and felt tantalized by the questions some authors⁷ added to the case reports. At times, I could not guess the answer which the teacher was going to give to these questions in class. I saw the wisdom of this practice when I wanted to improve on it in my *Lernprogramm*.⁸ In that book I set out the law of international organizations and of the European Communities in programmed form — i.e., the answer to one question leads on to the next. In order not to tantalize my readers, I gave in overleaf the answers I deemed to be correct, imploring my students not to consult them before having looked to find an answer of their own. The result was a complete failure. While writing this book I had tried these questions out on students without giving them the answers. It was a fascinating exercise. I was amazed at what could be read into my questions. The students thus helped me to clarify what I really meant. Even answers which to my mind were obviously mistaken gave rise to animated discussion. However, once the book had appeared in print, the students simply looked at the solutions proposed overleaf. The participants in my seminar could just as well have been well-trained parrots.

Let me, after this aside, insist once more on the value of the case method, in general, and of teaching international law based on the work of the I.C.J., in particular. It is very important that students gain first-hand knowledge of the activities of the main judicial organ of the U.N. They certainly will be more impressed by reading the real text of such a judgment or advisory opinion rather than a mere sum-

5. Rosenne, *Publications of the International Court of Justice*, 81 AM. J. INT'L L. 681 (1987).

6. *Id.*, at 694-95. A resolution adopted by the American Society of International Law at its Annual Meeting on April 9, 1987, reflects this preference for the status quo. *Quoted in id.* at 695 n.30.

7. E.g. D. HARRIS, *CASES AND MATERIALS ON INTERNATIONAL LAW* (2d ed. 1979); W. BISHOP, *INTERNATIONAL LAW, CASES AND MATERIALS* (3d ed. 1971). Bishop avoided the inconvenience signalled here by setting forth his view on the cases in his extensive notes.

8. I. SEIDL-HOHENVELDERN, *LERNPROGRAMM INTERNATIONALE ORGANISATIONEN UND EUROPÄISCHE GEMEINSCHAFTEN* (1971).

mary or, worse still, a mere reference in a footnote which hardly any student will take the trouble to look up. Yet, if we want to attract the attention of the students by confronting them with the authentic material, does not academic honesty require that we present them with the complete material, including the separate and dissenting opinions?

The ability to present these contrary views are valued so highly by the judges that without giving them this possibility it might be difficult to provide the Court with judges of the highest standing.⁹ Presenting to the students merely the text of the judgment or opinion accepted by the majority would give them no authentic insight into the present state of international law. Teaching on the basis of the truncated versions could even be said to be doctrinaire. Let us not forget that no court can satisfy both parties before it. The dissenting opinion, voiced most frequently by the judge *ad hoc* appointed by the losing party, is a very valuable consolation prize for the defeated country: it may render the judgment itself more acceptable to the losing country. It will at least somehow appease the anger of having lost the case prevailing among the opinion leaders of the country concerned. Students are opinion leaders in *statu nascendi*.

Moreover, new trends and unconventional ideas will find their first expression in separate opinions. Ideas once unacceptable to the majority of judges may, later on, win general acceptance. Thus, the views of the majority as well as of the minority of the judges in the P.C.I.J.'s Advisory Opinion of 5 September 1931 on the Customs Regime between Germany and Austria¹⁰ at present will be of interest mainly to historians, while Anzilotti's views on the point of no return in economic integration¹¹ continue to be in the core of the discussions of Austria's adherence to the E.E.C.¹²

Let us add, however, that it would be a mistake from a didactic point of view to teach public international law according to the case method by exclusive reference to the work of the I.C.J. Even if the work of other international adjudicatory organs were likewise included, the students still would miss the all-important fact that public international law may be of importance also in the sphere of domestic law. Public international law arguments may influence the outcome of disputes between private persons pending before domestic courts.

9. Rosenne, *supra* note 5, at 688.

10. Customs Régime (Germ. and Aust.), 1931 P.C.I.J., ser. A/B, No. 41 (Sept. 5).

11. *Id.* at 71.

12. Seidl-Hohenveldern, *La Neutralité Autrichienne et les Relations de L'Autriche avec les Communautés Européennes*, 1963 ANNUAIRE FRANÇAIS DE DROIT INTERNATIONAL (CENTRE NATIONAL DE LA RECHERCHE SCIENTIFIQUE) 826; I. SEIDL-HOHENVELDERN, INTERNATIONAL ECONOMIC LAW 172 (1989).

It is this fact which will act as an egotistic incentive for a young law student to acquaint himself with this branch of the legal science. Spreading the knowledge of international law is, no doubt, a world community interest. It is certainly not in vain that the International Committee of the Red Cross stresses so much the importance of disseminating knowledge of the contents of the Red Cross Conventions. The reasoning behind these efforts holds good for international law in general. The larger the number of persons acquainted with its rules, the larger will be the chances that these rules will be respected.

However, would a complete translation of all the work of the I.C.J. into all the six official U.N. languages really serve this purpose? If the U.N. would provide unlimited funds, then the answer certainly would be "yes." Yet, we should not be blind to a risk involved if all these versions would be official or, at least, would create the impression of being official. The J.I.U. report does not clarify this point. Some of the methods suggested there for translating the work of the I.C.J. would make it clear to everybody that these versions would not be authentic — e.g., translations made by academic institutions devoted to language training¹³ or by translators hired by private publishers.¹⁴ However, if the translations are made "in-house" by using U.N. translation services in slow periods¹⁵, such translations would appear to be authentic, especially in view of the language regime of the U.N., apart from the I.C.J.

We would then be confronted with attempts to play one version off against the other. The exercise is not wholly unfamiliar in U.N. practice. We recall the classic dispute having arisen out of the difference between the English and French text of Security Council Resolution 242 asking Israel to withdraw from the occupied territories.¹⁶ The risk that I.C.J. decisions may mean different things in different versions will increase considerably if there were six official versions instead of two. We have heard rumors of a new type of white collar

13. Report of the U.N. Joint Inspection Unit, *supra* note 1, at para. 25.

14. *Id.* at para. 26.

15. *Id.* at para. 24.

16. Rosenne draws attention to the fact that such a comparison of the various versions of other multilingual texts has only begun to be undertaken by international adjudicatory organs. Rosenne, *supra* note 5, at 694-95. Another example is Binding Opinion No. 37 of November 14, 1962, *Krankheitsversorgung der Bundesbahnbeamten in Frankfurt am Main v. Republik Österreich und Versicherungsanstalt der österreichischen Eisenbahnen*, by the Austrian-German Arbitral Tribunal (established by the Property Treaty of June 15, 1957). See Seidl-Hohenveldern, *Chronique de jurisprudence du tribunal arbitral établi par le traité austro-allemand sur les biens*, 105 JOURNAL DU DROIT INTERNATIONAL 915, 917 (1978). This opinion interprets the meaning of the word "charitable" in accordance with the four versions of the Austrian State Treaty of May 15, 1955. Cf. I. SEIDL-HOHENVELDERN, *THE AUSTRIAN-GERMAN ARBITRAL TRIBUNAL* 146-51 (1972).

crime in Brussels. Some slick operators are said to spot the differences, for example, between the Gaelic and the Greek versions of E.E.C. regulations and to place orders in apparent reliance on a faulty version published in the Official Journal before the latter can correct the mistake. The risk alluded to may not be so great as to justify abandoning the plan, especially because it can easily be avoided by not using in-house translations.

However, would the costs involved really justify such a venture in a period of financial constraints for the U.N.? Is the knowledge of the full version or even of the truncated version of all I.C.J. judgments and advisory opinions really required in order to ensure the popularization of the work of the I.C.J.? We wholeheartedly approve the idea of popularizing the work of the I.C.J. in wider circles. Our opposition to the envisaged enlarged dissemination, acquired at the price of disseminating merely such truncated versions, is based on our answer to a larger problem: Should international law be taught merely to those students who aim to be diplomats or officials in international organizations, or should all students be familiarized with its rules?

This problem has been discussed by such learned bodies as the Institut de Droit International¹⁷ and the German Society of International Law.¹⁸ A look at the curricula of universities examined by these bodies shows that in some countries examinations in public international law are obligatory for all law students, while in other countries only persons interested in a career in international law may opt for an examination in this topic.

To us the ideal solution is that followed, *inter alia*, by the Austrian universities. On the one hand, all law students will have to pass an examination in international law. This requirement ensures the widest possible dissemination of the basic notions of international law. These curricula thus appear to have realized already at the present moment the aim prompting the J.I.U. proposals. On the other hand, students intending to take up a career requiring a more intensive knowledge of international law will follow higher level courses on this subject preparing them to write their essay for the master's degree or their doctorate thesis on a topic of public international law.

For this latter type of student, a translation of the judgments and advisory opinions into their native languages, as an initial matter, appears redundant. Anybody desiring to take up a career confronting

17. 55 ANNUAIRE DE L'INSTITUT DE DROIT INTERNATIONAL 788-89 (1973); 58 ANNUAIRE DE L'INSTITUT DE DROIT INTERNATIONAL 158-64 (1979).

18. DAS INTERNATIONALE RECHT IN DER JURISTENAUSBILDUNG (21 Berichte der Deutschen Gesellschaft für Völkerrecht, R. Bérnhardt ed. 1981).

him permanently with international law problems must know English and French. If not, he should better look for another job. In addition, the needs of this type of student will not be met by a truncated version. They and their teachers are the clientele for publications of the I.C.J. in their present version.

If the J.I.U. report suggests reserving this version for "international lawyers," these students should be included in this category. The number of copies of these publications sold or distributed by the I.C.J. meets their requirements. I.C.J. publications generally will not be found in the private libraries of law professors or of practitioners. The customers for these publications will be university libraries. None of these libraries would be ready to abandon its subscription to the full version in favor of subscribing to the truncated version. All these libraries need the complete version to satisfy the needs of this type of student. We assume that the bulk of the present version of the publications of the I.C.J. does not remain unsold in the caves of the I.C.J. building. Thus, there is no chance to reduce the amount of copies of the complete version and use the money saved by this reduction to translate and distribute the bulk of the I.C.J. publications in the proposed truncated versions.

Let us now turn to the needs of the other type of law student — the one who wants to make his career in another branch of the law, but who, under the study program of his University, must acquire a basic knowledge of public international law. If the U.N. would dispense unlimited funds, it would be fine for the Arab family lawyer or the Chinese labor law expert to appreciate the work of the I.C.J. in his own language. Yet, they would hardly need such knowledge for the exercise of their profession. However, providing them with a full translation of the publications of the I.C.J. is impossible in view of the prohibitive costs. In the view of the J.I.U. report, this type of student would be the clientele for the popularized truncated versions of the publications of the I.C.J. I doubt, however, whether money for such translations would be well spent. In any event, for the reasons set out above, such money cannot be saved out of the present budget of the I.C.J.

I believe that the needs of this type of student are met at less expense by presenting them only with the full text of one or the other judgment or advisory opinion in their native language. Legal periodicals publish unofficial translations of the full text of judgments and advisory opinions of paramount interest to the state or to the region concerned, even in other than the official U.N. language. By reading and analyzing these translations, this type of student will acquire a

realistic impression of the working method of the Court. This is all they need to know in order to appreciate the remaining work of the I.C.J. If this part of the work of the I.C.J. is presented to this type of student in a summary in their native language, this is all they will need to know to pass an examination on the basic rules of public international law and to practice law in their chosen field.

We thus arrive at the conclusion that the proposals to change the publication practice of the I.C.J. on the lines sketched out above should be rejected. On the one hand, truncated versions of the judgments and advisory opinions do not meet the needs of international lawyers, whose number is so large as to permit no reduction of the number of issues in the present bilingual version. On the other hand, the desirable popularization of the work of the I.C.J. beyond the circle of international lawyers may be achieved at less expense by presenting to this other type of law student summaries of the judgments and advisory opinions in their native language supplemented by a paradigmatic study of the translation of the full text of one or two judgments.