C.G. Weeramantry at the International Court of Justice

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Keywords: International Court of Justice; Judge Weeramantry.

Abstract. This article discusses the judicial vision articulated by Judge Christopher Weeramantry in his time as a member of the International Court of Justice. It seeks to trace the development of his vision by examining his earlier writings, and the factors which shaped his approach to international law. It discusses some of the key elements of his vision: his sensitivity to Third World concerns, his attempts to create a universal international law which represents all the world's cultures, and his views of the judicial function and the international rule of law.

1. INTRODUCTION

Christopher Gregory Weeramantry was elected to the International Court of Justice ('ICJ' or 'the Court') in November 1990; he left that office, after serving for one term, on 1 February 2000. Judge Weeramantry was fortunate to have been a member of the Court at a time when it heard cases which raised issues of the first importance to international law – as exemplified by the *Lockerbie* litigation, the *Nuclear Weapons* Advisory Opinions, and, most recently, the *Yugoslavia* cases.[1] The Dissenting and Separate Opinions that Judge Weeramantry produced in these and other cases, such as the *East Timor* case, the *Gabčikovo* case and the second *Nuclear Tests* case have received wide-spread scholarly attention and comment. Furthermore, elected Vice-President by his colleagues in 1996, Judge Weeramantry served as Acting President to the Court in several immensely important decisions, including the *Lockerbie* case,[2] and the

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The author was a student of Judge Weeramantry and was his Research Assistant when Judge Weeramantry chaired the Nauru Commission of Inquiry. My thanks to the Leiden Journal of International Law for inviting me to write this article, to Prof. Karen Engle, Dr Peter Bekker and Mr Anuruddha Perera for their very valuable comments and suggestions, and to the Summer Stipend Program of the College of Law, University of Utah.

1. The Court was especially active around this period, and dealt with questions of major importance to international law. *See* A. Chayes, *Foreword*, *in* P. Bekker, Commentaries on World Court Decisions vii (1987–1996) and P. Bekker, *Introduction*, *in id.*, at 3.
2. Judgment on Preliminary Objections (Libya *v.* U.S.), 27 February 1998, 1998 ICJ Rep. 115; Judgment on Preliminary Objections (Libya *v.* U.K.), 27 February 1998, 1998 ICJ Rep. 9. *See* P. Bekker, *International Decisions*, 92 AJIL 503–508 (1998).

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NATO cases.[3] It is clear that although he served for only one term, Judge Weeramantry had a profound impact on the jurisprudence of the Court.

The purpose of this short article is not so much to outline the contributions that Judge Weeramantry has made to international law in the many fields on which he has written – a large task better left to scholars who have specialized expertise in the relevant areas, such as maritime boundary delimitations or international environmental law – but to try to identify and discuss in a preliminary sort of way, some of the overarching themes and concerns of Judge Weeramantry's work. My basic approach is to place Judge Weeramantry's work in the International Court of Justice within the broader context of his legal, judicial, and scholarly career which has now spanned more than fifty years. In so doing, my attempt is to trace the evolution of a judicial vision which found its most elaborate expression in his work on the Court, but which developed over many decades in areas far removed from international law. The significance and appeal of Judge Weeramantry's career on the bench lies in something more intangible than the immense learning and erudition he brought to bear on the issues he had to decide, as in the case of his analysis, for example, of the 'necessary parties' principle in the *East Timor* case,[4] or his discussion of the character of a 'counter claim.'[5] Rather, it is his deeply humanist vision of international law and justice and his fearless use of his position on the bench to articulate and realize it, that makes his work so compelling and his tenure on the Court so distinctive, and my attempt here is to sketch some of the main elements of that vision.

2. A Judge in the Making

When he was first appointed to the International Court of Justice in 1990, seasoned Court watchers had reason to be sceptical about the contribution that Judge Weeramantry could make to the jurisprudence of the Court. Simply put, Judge Weeramantry lacked many of the most important prerequisites which serious candidates for the position were supposed to possess: First, he had come to international law relatively late in his life; it was not until his early fifties that Judge Weeramantry began to write on topics of international law. Secondly, Judge Weeramantry was something

3. Legality of Use of Force (Yugoslavia *v.* Belgium), (Yugoslavia *v.* Canada), (Yugoslavia *v.* France), (Yugoslavia *v.* Germany), (Yugoslavia *v.* Italy), (Yugoslavia *v.* Netherlands), (Yugoslavia *v.* Portugal), (Yugoslavia *v.* Spain), (Yugoslavia *v.* UK), (Yugoslavia *v.* USA), Provisional Measures, Order of 2 June 1999, available at http://www.icj-cij.org/icjwww/iybeorders/iybe_iorder_19990602_opinions/iybe_iorder_19990602_htm.
4. Case Concerning East Timor (Portugal *v.* Australia), Judgment, 30 June 1995, 1995 ICJ Rep. 90.
5. Case Concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina *v.* Yugoslavia), Counter Claims, Order of 17 December 1997, 1997 ICJ Rep. 243, at 287.

of an outsider in the fairly closed world of international law – the academic, diplomatic, and UN circles from which candidates were supposed to emerge; he had not acted as legal adviser to his government, and he had never even been nominated for the International Law Commission, a customary and significant stepping stone for any potential candidate for the Court.[6]

Judge Weeramantry's interest in international law evolved over a long period of time. He had been admitted to the Bar in Sri Lanka at the age of twenty-one and had practiced as a lawyer for seventeen years. While practicing as an advocate, he also taught contracts law at the Law College of Sri Lanka – an experience which led him to write a treatise on the law of contracts which is still regarded as a classic in the field, and which helped establish his reputation as a world authority on the Roman-Dutch law of contracts.[7] After a brilliant career at the bar, Judge Weeramantry was appointed to the Supreme Court of Sri Lanka, the youngest judge in the history of that Court. He served on the bench for five years and wrote several notable judgments on issues such as unjust enrichment and Muslim family law. Following this, Judge Weeramantry accepted a position as Professor of Law at Monash University in Melbourne, Australia. The next book he wrote, *The Law in Crisis: Bridges of Understanding* was, as the title suggested, a broad examination of the very character of law: it is in this context, interestingly, that he discusses Grotius – not as an international lawyer, but as a jurist.[8] This book was followed by a number of others which dealt with a very wide variety of subjects: *Equality and Freedom: Some Third World Perspectives* in 1976; *Human Rights in Japan* in 1979; *Apartheid: the Closing Phases?*[9] in 1980; and *An Invitation to the Law* in 1980. In 1983 he published *The Slumbering Sentinels: Law and Human Rights in the Wake of Technology*, which is among the first books to examine the relationship between scientific progress and human rights.

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6. The processes by which a candidate wins the vital nomination of his government are both protracted and extremely political. Very eminent jurists have failed to win a seat on the Court because they lacked the support of their own government. Sri Lanka had put forward two candidates for the ICJ without success in the 1980s before it nominated Judge Weeramantry for the ICJ elections of 1990. It meant a great deal to Judge Weeramantry that he was elected to a position once held by his friend, Judge Nagendra Singh of India.
7. The work is C.G. Weeramantry, *The Law of Contracts* (1965) (2 volumes). His eminence in the field was such that he was invited to be Visiting Professor by the University of Stellenbosch in South Africa, the major Afrikaans University, at the height of apartheid; he was offered 'honorary white' status for the period of his visit. Judge Weeramantry refused this status, and accepted the invitation on condition that he be allowed absolute freedom in his teaching.
8. Indeed, the frontispiece of *The Law in Crisis* comprises a picture of Grotius accompanied by the words "Amidst the crises of his age he salvaged much of mankind's finest thought on law and government and built bridges of legal understanding across the barriers of race and time." *The Law in Crisis: Bridges of Understanding* (Cape Moss, 1975) frontispiece.
9. This work emerged from Judge Weeramantry's time as a Visiting Professor at Stellenbosch; it was banned in South Africa.

An examination of these works suggests some of the major themes that were beginning to preoccupy Judge Weeramantry at the time.

First, he was deeply concerned about what he recognized as a crisis undermining the law, arising from its failure to further the cause of justice and its unresponsiveness to the problems of ordinary people, which in turn led such people to disregard and fear the law.

Second, his shift to academia enabled him to examine many of the issues he had focused on as a lawyer and a judge in Sri Lanka from a broader perspective. The political, social, and economic problems afflicting Sri Lanka could be seen in the larger context of the problems confronting Third World countries undermined by political corruption, ethnic divisions, and power struggles within, even while attempting to detach themselves from the heritage of colonialism and to establish their economic and political independence in a somewhat hostile international system.

Third, his research led him to believe that the great problems of our time – of war, poverty, the violation of human dignity and environmental degradation – could only be resolved at the international rather than purely local level. International human rights law was the subject which attracted his most immediate attention, and this became the basis of his growing interest in the potential of international law.

Fourth, at a more technical level, his work as a scholar in contract law, and the parallels between treaties and contracts, furthered his interest in international law, given that treaties were the clearest manifestation of international law; *pacta sunt servanda*. Indeed, it could be argued that international law depended more on contract than did domestic law.[10]

Finally, Judge Weeramantry's career as a lawyer and as a Judge had familiarized him with the issue of administering and developing a legal system that would operate effectively in a pluralistic society. Sri Lanka's legal system involved a complex combination of English common law, the Roman-Dutch law, the Thesawalamai code applicable to Jaffna, the Muslim code, Kandyan law, and the law of the low country Sinhalese – to name some of the complex local laws that members of the Sri Lankan judiciary had to recognize and apply. Judge Weeramantry studied these systems in detail and wrote lengthy judgments on, for example, Muslim family law. The practice of law in Sri Lanka, and the work on the bench effectively *required* him to become a comparative lawyer. Indeed, his book on contracts was subtitled "Being a Treatise on the Law of Contracts as Prevailing in Ceylon: And Involving a Comparative Study of the Roman-Dutch, English and Customary Laws Relating to Contracts". Two themes of enduring significance seem to have emerged from these experiences: First, Judge Weeramantry developed a particular interest in the parallels and

10. Whereas in the domestic sphere, a number of other areas of law such as criminal law and the law of torts establish the basic structures within which contract law could operate, in the international sphere, the law of treaties plays an important role in creating international tort and criminal law.

differences between different legal systems, and in the question of how a community could be created, sustained and developed amidst these pluralities. Second, given that these systems were based quite often on a complex combination of religion, custom, and law, Judge Weeramantry became conscious of the ways in which law 'properly so called' was only one aspect of a much broader system of norms which regulated human action and had meaning and legitimacy for the people to whom they were applied.

Further, in his work as a lawyer and judge in Sri Lanka, Judge Weeramantry in effect became acquainted with the ways in which four religions – Hinduism, Islam, Buddhism, and Christianity – shaped the laws he was called upon to administer.

3. The Expansion and Nature of International Law

The manner in which these concerns shaped Judge Weeramantry's jurisprudence on the ICJ might be studied through an examination of, for example, the *Gabčikovo* case.[11] The case involved a dispute between Hungary and Slovakia over the environmental effects in Hungary of the construction by Slovakia of a dam across the Danube river. Judge Weeramantry's Separate Opinion is notable for its elaboration of the concept of sustainable development. In asserting that the principle of sustainable development "is an integral part of modern international law,"[12] Judge Weeramantry embarks on the familiar process of identifying the articulation of the principle in various international treaties and declarations. In addition, however, he conducts a lengthy examination of irrigation and water management systems found in various cultures, ranging from the ancient Iranian to the ancient Chinese to the Inca and the Aborigines of Australia, all on the basis that the Court is charged with a duty to "draw upon the wisdom of the world's several civilizations." It is notable that in making this argument, Judge Weeramantry does not rely only on the traditional sources articulated in Article 38(c) of the ICJ Statute, which could offer some support for his approach by providing that "the general principles of law recognized by civilized nations" are also a source of law administered by the Court. Instead, Judge Weeramantry relies also on Article 9 which deals with the election of judges to the Court and which requires "the representation of the main forms of civilization and of the principal legal systems of the world."

We see here Judge Weeramantry's preoccupation to ensure the construction of an international law that reflects and incorporates the richness of the world's civilizations rather than continuing its established tradition

11. Case Concerning the Gabčikovo-Nagymaros Project (Hungary *v.* Slovakia), Order, 5 February 1997, 1997 ICJ Rep. 3. *See* Bekker, *supra* note 2, at 273.
12. Gabčikovo case, *id.*, Separate Opinion Judge Weeramantry, at 95.

of reflecting Western values.[13] But in addition, a subtle and telling change is effected by his emphasis on 'civilization' rather than "principles of law recognized by civilized nations." While the focus on civilization enables his discussion of the cultural practices of many different peoples, his focus is not strictly on 'legal principles.' Rather, it is a much wider type of inquiry, which is extraordinarily broad ranging in its geographical and historical sweep. To Judge Weeramantry, it is unrealistic to adopt narrow, positivist ideas of 'law properly so called' as "[t]he ingrained values of any civilization are the source from which its legal concepts derive, and the ultimate yardstick and touchstone of their validity. This is so in international and domestic systems alike, save that international law would require a worldwide recognition of those values."[14] In this respect, international law is not distinctive. Rather, it is part of a continuum of expressions of the values which enable societies to survive and flourish. Important principles of human conduct developed in the domestic sphere can be transferred to the international realm. Equally significant is his focus, not on what might be termed 'custom' as established through practice, the inter-action of nation-states, but the customs developed by communities *within states*, which are not necessarily reduced to writing.[15] In this way, Judge Weeramantry proposes very firmly the idea that the fundamental principles of justice are created, not so much by the abstraction of the state, but through the practices and beliefs of people developed in the course of their everyday lives.

The implications of Judge Weeramantry's approach are radical: international law, far from being the expression of an abstract state will and consent, is the expression of fundamental moral and social values which may be identified through a study of the practices of communities based on the normative principles they developed over centuries and which have enabled them to survive and prosper. Judge Weeramantry develops what Richard Falk in his striking phrase has called a vision of an 'embedded Utopia,'[16] "that is, its contours are already present and discernible within existing worldviews and belief systems, and those with authority to interpret the law have an opportunity and responsibility to bring this utopic possibility a step closer to social and political reality." Judge Weeramantry's focus on 'civilizations' rather than on "principles of law recognized by civilized nations" is crucial to his approach which encompasses not only law in its strict sense, but customs and beliefs which antedated the nation-state by hundreds of years. The result is a jurisprudence which

13. *See* discussion below at Section 5.
14. Gabčikovo case, *supra* note 11, at 245.
15. Given that Judge Weeramantry's survey encompasses the practices of civilizations which existed well before the emergence of the contemporary nation-state, the term 'state' as I use it here is only partially accurate.
16. R. Falk, *The Coming Global Civilization: Neo-Liberal or Humanist?*, *in* A. Anghie & G. Sturgess (Eds.), Legal Visions of the 21st Century: Essays in Honour of Judge Christopher Weeramantry 17 (1998).

gives important recognition to actors other than states, by drawing into international law the wisdom of communities which have been disregarded, if not marginalized, such as the Aboriginal people of Australia. This approach connects international law with a rich source of ideas and materials that has been largely absent in the jurisprudence of the Court.

Judge Weeramantry's approach in *Gabčikovo* suggests two of his other major preoccupations: the importance of furthering the legitimacy of international law, and the role of international law in advancing goals which are vital to the international community. A powerful theme of Judge Weeramantry's work prior to his election to the Court was the importance of making the law accessible to people and ensuring that it served society instead of being mired in abstractions and doctrine. This theme is evident in the opening pages of his book, *The Law in Crisis*, where he points to an increasing disillusionment with the law,[17] and the need for the layman to actively participate in the process of law-making.[18] Judge Weeramantry's *Gabčikovo* judgment, then, may be read as articulating an international law which is created by people,[19] established through their cultural practices and religious beliefs. For him, it is by establishing and preserving the link between law and the society it is supposed to govern, rather, than by satisfying the criteria of sources doctrine as strictly prescribed by positivism, that international law derives its legitimacy.[20]

International law must serve a social purpose and advance the important goals of peace, equality, freedom; it is not simply a set of principles directed towards ensuring the minimal order necessary for the co-existence of states. The function of the judge is not simply to identify the law, but to ensure that the law serves and furthers these important social goals. In adopting this approach, Judge Weeramantry was a strong admirer of American realist jurisprudence; he had a special regard for Roscoe Pound, Benjamin Cardozo, Karl Lewellyn, and Jerome Frank, all of whom featured prominently in the jurisprudence classes he taught at Monash.

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17. "The layman sees his expectations of justice belied in many an instance and with each shortfall between the practical decision and the ideal result, there follows a diminution of respect, lowering the prestige of law and lawyer alike." *Law in Crisis*, *supra* note 8, at 3.
18. *Id.*, at 4.
19. In this respect, *see also* his discussion of the importance of World Public Opinion in the Nuclear Weapons case. Having pointed out that the Court had received millions of signatures which the Court itself could not physically store, Judge Weeramantry asserted that

    > Though these organizations and individuals have not made formal submissions to the Court, they evidence a groundswell of global public opinion which is not without legal relevance, as indicated later in this opinion.

    Dissenting Opinion, Judge Weeramantry, *in* Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 8 July 1996, 1996 ICJ Rep. 226, at 438.
20. The occasions in which he draws on religious or philosophical principles and actively employs them in his decision-making are numerous, *see*, *e.g.*, "I note in particular that in the philosophies of the East, as in the Buddhistic tradition, the peaceful resolution of disputes lies at the heart of the judicial function as understood in those cultures." Legality of Use of Force, *supra* note 3, Judge Weeramantry's Dissenting Opinion, at 12.

These two aspects of law, the sources of law and the ends of law, are closely linked in Judge Weeramantry's jurisprudence. Principles of culture and civilization in the domestic sphere are far more likely to have a 'socialized character' because they emanate from widespread social practice and order and have supported the existence of rich civilizations. This contrasts with the comparatively thin body of substantive law which emerges from the practice of states.

There is, of course, the further point that international law is increasingly regulating issues that were seen under classical international law as falling exclusively within the domestic sphere – issues relating, most prominently, to human rights and environmental law. International law is far more likely to be seen as legitimate and desirable if it corresponds in some way with principles and practices that are already in place in the domestic sphere and that have been expressed by widespread religious and cultural norms. Moreover, it is precisely because the principles that derive from these practices have proven themselves historically by sustaining these communities over many centuries that they can appropriately be extended to the international realm – as in the case of environmental protection. In adopting this approach, Judge Weeramantry has much in common with the powerful vision articulated by Philip Allott:

> International law is the law of international society, the true law of a true society. It is made, like all other law, through the total social process of international society, in which we all participate […].[21]

In all these respects, Judge Weeramantry clearly belongs to the naturalist tradition of international law. For him, the fundamental principles of international law could be finally anchored back in the human being: his book, *The Law in Crisis*, begins, "High among men's finer traits is their love of justice."[22] However, as the discussion of his *Gabčikovo* decision suggests, his jurisprudence does not rely on an abstract model of the human being which acts as the basis of his legal system. Rather, he seeks to identify the norms which inhere in the ways societies have conducted themselves and are manifested by the civilizations they developed. Nevertheless, of course, it is hardly possible to proclaim these principles as binding principles of international law based on the notion of naturalism in and of itself. Judge Weeramantry's problem then, was to present this vision as law – especially in a Court which was emphatically conservative by its very nature because it is not supposed to make law. Judge Weeramantry was always insistent, even at his most visionary, that he

21. P. Allott, International Law and International Revolution: Reconceiving the World, the Onoh Memorial Lecture (1989).
22. *Law in Crisis*, *supra* note 8, at 1.

was *articulating* the law.[23] Rather than disregard the positivist approach – which would only undermine his credibility as a judge – he addressed it through a detailed examination of legal analysis and judicial reasoning itself. Judge Weeramantry's thinking on this issue too was shaped by realists such as Pound and Cardozo on whom he drew explicitly in his decisions – not only in stressing the point that the law had to adapt to change, but in demonstrating that the application of the law often did not lead to fixed and clear outcomes. Different interpretations of the language under scrutiny were possible; the 'facts' of a case could be given more or less weight, regarded as more or less relevant; logic alone rarely offered a decisive solution.

In focusing on the very character of judicial reasoning, Judge Weeramantry was particularly influenced by Prof. Julius Stone and his works such as *Legal System and Lawyers' Reasonings*.[24] The bond between the two jurists was especially strong as they co-taught courses at Monash. In the *Nuclear Tests 2* case, the Court basically decided the matter by interpreting its 1974 Judgment as encompassing only atmospheric tests; consequently, the Judgment did not encompass the underground nuclear testing undertaken by France and opposed by New Zealand in its 1994 proceedings. In dissenting from this approach, Judge Weeramantry argued that

> This is a strict construction which is clearly not the only reasonable construction justifiable in logic. On the basis of this strict and inflexible construction, matters of critical importance to the global environment are passed by without the benefit of a preliminary examination.[25]

Given that a positivist technique rarely yields decisive answers (as "forms of logical reasoning do not inevitably lead to a one and only conclusion"[26]), judges often confront 'leeways of choice.' In these circumstances, broader considerations, such as the importance of the matter for

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23. In his Nuclear Weapons decision, he emphasizes that

> In this opinion I have set down my conclusions as to the law. While conscious of the magnitude of the issues, I have focused my attention on the law as it *is*, on the numerous principles worked out by customary international law, and humanitarian law in particular, which cover the particular instances of the damages caused by nuclear weapons.

Nuclear Weapons, *supra* note 19, at 553 (emphasis in original).

24. J. Stone, Legal System and Lawyers' Reasonings (Maitland Publications, 1964). Stone, of course, was himself a very eminent international lawyer who had ambitions of being appointed to the ICJ; Australia instead chose to nominate Sir Percy Spender. It is interesting to note that Stone studied for his doctoral degree at Harvard and was a protégé of Roscoe Pound.
25. Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the Nuclear Tests case (New Zealand *v.* France), Order, 22 September 1996, Dissenting Opinion of Judge Weeramantry, 1995 ICJ Rep. 288, at 361.
26. Nuclear Tests case, *id.*, at 360.

the international community, and the well-being of that community, may be given expression.

Thus, in Judge Weeramantry's opinion, the Court should have entertained New Zealand's claim and heard full arguments regarding New Zealand's environmental concerns about French testing as the Court is otherwise "giving a definitive determination prematurely on a matter of the utmost importance, not merely to the Applicant who comes before it but to the entire international community."[27] This approach is typical of Judge Weeramantry's concern to elaborate the law relating to vital international issues.

Judge Weeramantry's approach raises a number of questions. He has consistently sought to ensure that the law is responsive to the massive changes brought about by, for example, technological advances.[28] Yet, in articulating the principles which enable us to respond to these changes, he continuously harkens back to custom; to the practices of very old civilizations. Judge Weeramantry argues that this is the method of Grotius himself: "Rather than laying down a set of principles *a priori* for the new discipline of international law, he sought them also *a posteriori* from the experience of the past, searching through the whole range of cultures available to him for this purpose."[29] This seems problematic and even paradoxical; but for Judge Weeramantry there is no contradiction: he sees the function of the law as being to preserve and enhance human dignity and development. These are the fundamental values which endure over time, and for this reason the past proves a valuable guide. Whatever the historically specific ways in which dignity is threatened, the assertion of the fundamental importance of dignity is the founding principle for addressing the problem. In this way too, his naturalist premises are revealed; all human beings are entitled to dignity, and this has been the justification for the construction of all religious and moral systems.

As this brief discussion suggests, Judge Weeramantry enormously expands the range of international law and the sources from which it may draw. He extends international law geographically, by his insistence on studying the civilizations of Africa, Asia, and the Pacific as sources of law; and he extends it temporally by connecting international law with the religious and customary norms adopted by societies which existed centuries ago. In all these different ways, he has sought to enrich the comprehensiveness, coherence, and legitimacy of international law.

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27. *Id.*, at 362.
28. *See*, for example, his book, The Slumbering Sentinels: Law and Human Rights in the Wake of Technology (1983); he also edited a volume, Human Rights and Scientific and Technological Development (1990). His most recent work on these issues is Justice Without Frontiers: Protecting Human Rights in the Age of Technology (1998).
29. Gabčikovo case, *supra* note 11, at 96.

4. The Rule of Law and the Judicial Function

Judge Weeramantry has continuously emphasized the fact that the International Court of Justice is the principal judicial organ of the United Nations and, as such, it should play an active role in the governance of international relations. For Judge Weeramantry, the Court can best serve this function, not only by settling disputes brought before it, but by developing international law in the course of doing so. His exalted view of the Court is expressed in many of his decisions. For example, in his penultimate opinion, as Acting President of the Court, he asserted:

> Fashioned as an embodiment of the rule of law which was to replace force as the arbiter of international disputes, the Court is charged with the highest responsibilities in upholding the peaceful resolution of disputes, and the judicial implementation of the principles of the Charter.[30]

Judge Weeramantry is acutely aware of the history of the Court, and his opinions are heavily influenced by the ideals which led to its creation and which he has resolutely sought to uphold.[31] One of the principal reasons why the Court is different from domestic Courts stems from the fact that its jurisdiction is based on the consent of sovereign states. As a consequence, the Court has often been extremely cautious in exercising its functions in situations where states have disputed the jurisdiction of the Court.[32] In practice, these doctrines have inhibited the Court's activities, which has often tended to adopt an extremely deferential approach towards state sovereignty in meticulous judgments that are politic and cautious.[33] A number of other doctrines, such as the characterization of disputes as having 'political' dimensions not to be interfered with by the Court (which should instead focus only on the 'legal' aspects of the dispute) have been developed by the Court in order to ascertain when it should properly exercise its functions.[34] The division of disputes into these categories provides one doctrinal justification for a set of considerations

30. Legality of Use of Force, *supra* note 3, Judge Weeramantry, Dissenting Opinion, at 7.
31. *See*, for example, his Dissenting Opinion in Fisheries Jurisdiction (Spain *v.* Canada), Jurisdiction of the Court, Judgement, 4 December 1998, 1998 ICJ Rep. 432, at paras. 56–58.
32. The Spain *v.* Canada case, *id.*, is one of the more recent instances where the Court had to confront these issues in a sustained way. For an illuminating and expert discussion of some of these broader issues, *see* P.H.F. Bekker, *et al.*, *International Law in Ferment and the World Court: A Discussion on the Role and Record of the International Court of Justice*, 94 Proceedings of the Annual Meeting of the American Society of International Law 172 (2000).
33. This has occurred even when the state is not party to the proceedings. *See*, *e.g.*, East Timor case, where the Court judged that the ruling sought by Portugal against Australia would affect the rights of Indonesia, which was not party to the proceedings and had not consented to the Court's jurisdiction. *See* Judgement, East Timor case, *supra* note 4, at paras. 34 and 35.
34. The Lockerbie case was an important instance where the Court, despite being presented with some of these arguments, decided it could exercise jurisdiction. *See* Lockerbie case, *supra* note 2.

which is ever present in the thinking of the Court although rarely presented in any explicit form in its judgments: what will be the effects of this judgment, how will it be received, will it be complied with? The Court's lack of any enforcement powers is a factor which may inhibit its operations, as it risks the embarrassment of making a ruling which is then contemptuously disregarded by the relevant parties. Underlying the legal doctrine one senses a broader concern to exercise the jurisdiction of the Court in a cautious manner in order to win greater support for its activities. The idea appears to be to win states over to the Court's activities by assuring them that it will be sensitive to the concerns of a state if it does submit to the Court's jurisdiction.

Judge Weeramantry refused to engage in this type of a bargaining enterprise. The Court has both the authority and the duty to lay down the law when it is properly vested with jurisdiction[35] – and Judge Weeramantry clearly adopted a liberal approach to the question of whether the Court is so vested with jurisdiction – as demonstrated by his detailed analysis of the optional clause in the context of the operations of the Court, in the *Fisheries Jurisdiction* case.[36] There, Judge Weeramantry stated:

> Much was made in argument of the negative effects that would ensue to the optional jurisdictional system if the Court were to hold that the reservations clause does not exclude the matter in question from the jurisdiction of the Court. It seems to me, however, that apart from the non-judicial nature of this argument, it is the Court's mission to uphold the integrity of its jurisdiction so far as has been entrusted to it by the optional clause system […] it is important that the rule of law should prevail, irrespective of such considerations as the favourable or unfavourable reception of the Court's determinations in relation to its jurisdiction.[37]

Similarly, he responded to the argument made by some of the NATO powers, that Yugoslavia's application should be dismissed on the basis that it had a political character, and that the Court was being 'politicized' by Yugoslavia. In response Judge Weeramantry asserted that "If parties cannot bring such a dispute before the Court merely because a political element is involved they would be deprived of an essential right and relief which they enjoy under the United Nations system."[38] The division of disputes

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35. C.G. Weeramantry, *The Function of the International Court of Justice in the Development of International Law*, 10 LJIL 309 (1997).
36. Judge Weeramantry stated his approach:

    > Another view is that the jurisdiction granted by the Court [through the optional clause] must be exercised in the context of the broader responsibility of developing that jurisdiction in the light of the right of both States to seek from the one international court that is in existence a resolution of their dispute in accordance with the overall scheme of international justice – based always, of course, on the presence of consent.

    Judge Weeramantry, Dissenting Opinion, Spain *v.* Canada, *supra* note 31, at para. 64.
37. Judge Weeramantry, Dissenting Opinion, *id.*, at para. 53.
38. Legality of Use of Force, *supra* note 3, at 9, importantly, the Court itself adopted this approach in the Lockerbie (Jurisdiction) case, *supra* note 2.

into 'legal disputes' which could properly be brought before the Court, and 'political disputes' which the Court should not interfere with, was a division which he opposed; and in this regard, he found support from Sir Hersch Lauterpacht, that "the doctrine is untenable in theory and harmful in practice."[39]

For Judge Weeramantry, the system of international law is a complete and effective system and, most significantly, it is NOT distinct from a domestic system of law in its essential purposes:

> In domestic law a court seeing violence between two litigating parties relating to the subject-matter of a pending action would, however righteous be the motive of one or other of the parties, have no hesitation in issuing an enjoining order restraining such violence […]. The nature of the judicial function is no different when it is transposed to the international plane, especially when the Court concerned is the principal judicial organ of the United Nations, functioning under a Charter which ranks the peaceful resolution of disputes among its prime Purposes and Principles.[40]

It is clear in passages like this that Judge Weeramantry's background as a domestic judge has encouraged him to adopt a robust view of the judicial function. The function of the Court is to lay down the law, and "[i]t is no argument to the contrary that the Court lacks the means to enforce its measures."[41] It is well understood, of course, that the Court and its decisions have a political effect. However, for Judge Weeramantry, this in itself should not deter the Court from performing its function. Rather, the Court retains its integrity and purpose by laying down the applicable law – however futile such an exercise may seem, given geo-political realities such as the ongoing NATO actions in Yugoslavia, or the insistence by the nuclear powers that they have a right to use nuclear weaponry. This does not, of course, imply that international law is rigid and inflexible – since it is one of the proper functions of the Court to facilitate negotiations by providing the guiding principles within which it can take place.[42] This is a means by which diplomacy and the political may take place, not in a manner separate and opposed to law, but facilitated by it.

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39. Legality of Use of Force, *id.*, at 9, citing H. Lauterpacht, The Function of Law in the International Community, at 435 (1929).
40. Legality of Use of Force, *id.*, at 1.
41. *Id. See also*, Dissenting Opinion in the East Timor case,

> The very fact that a justiciable dispute has been duly determined judicially can itself have a practical value which cannot be anticipated, and the consequences of which may well reach into the area of practicalities. Those are matters beyond the purview of the Court, which must discharge its proper judicial function irrespective of questions of enforceability and execution, which are not its province.

East Timor case, *supra* note 4, at 219.

42. The Court has adopted this approach in a number of cases, including the Gabčikovo case (*supra* note 11) and Great Belt cases (Passage through the Great Belt (Finland *v.* Denmark)). Judge Weeramantry advocates this approach in the NATO cases (Legality of Use of Force, *supra* note 3), and Botswana *v.* Namibia (Kasiliki *v.* Sedudu Island (Botswana *v.* Namibia)).

Apart from the large and ambitious vision he presents as to the function of the Court, what is equally significant about several of Judge Weeramantry's judgments is his attention to detail and his concern to approach disputes, not simply in terms of the immediate issues they raise, but the implications they have for the question of the international rule of law as a whole. Thus his powerful dissent in *East Timor* is based on his view that the Court had adopted an unduly wide interpretation of the Monetary Gold Principle, and this would severely constrain the Court from addressing many disputes which might be brought before it.[43] Moreover, in reaching this decision in relation to the Timorese rights to self-determination, Judge Weeramantry argued, the Court was undermining the significance of a recognized right *erga omnes* – a category of rights to which Judge Weeramantry attributes a special significance in terms of its importance for the development of international law.[44] Similarly, in the *Cumaraswamy* case,[45] it was Judge Weeramantry who developed the implications of the judgment for the broader purpose of furthering world order. In focusing on these larger themes, Judge Weeramantry once more drew on the work of Judge Lauterpacht, and also of Judge Fitzmaurice, whom he often quoted in this context.[46]

This approach, of course, raises the immediate objection that it is not the function of judges to make international law. However, Judge Weeramantry firmly holds the view that this argument is mistaken; relying once more on the work of American realist jurisprudence and Julius Stone, he asserts that "in any system – examine whatever system you will – the judges *do* in fact make law."[47] Since this is the case, it is preferable for judges to accept this reality and creatively exercise this function to advance the broad goals of international law. This view of the judicial function is founded on a further set of propositions which powerfully shape Judge

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43. East Timor case, *supra* note 4, Dissenting Opinion, at 169. The Monetary Gold principle basically holds that the court should not decide a case where the legal interests on an absent party would form the very subject matter of that decision.
44. *Id.*, at 172, 214.
45. Difference Relating to Immunity from Legal Process of a Special Rapporteur of the Commission on Human Rights, ICJ Advisory Opinion of 29 April 1999, 1999 ICJ Rep. 62. Thus, it was Judge Weeramantry, rather than judges more experienced in the practical operations of the UN who identified and addressed the crucial issue of the difference between immunities extended to representatives of sovereign states and immunities extended to representatives of international organizations such as the UN. *See* P. Bekker, *International Decisions*, 93 AJIL 913, at 922 (1999).
46. Sir Gerald Fitzmaurice asserted in his classic, The Law and Procedure of the International Court of Justice, Vol. 2, that

> International tribunals at any rate have usually regarded it as an important part of their function, *not only to decide, but, in deciding, to expound generally the law having a bearing on the matters decided* […].

cited *in* Weeramantry, *supra* note 35, at 321 (Weeramantry's emphasis added). *See also*, Nuclear Tests case, *supra* note 25, at 32–33.
47. *The Function of the International Court of Justice*, *supra* note 35, at 312 (emphasis in original).

Weeramantry's vision. The Court is the principal judicial organ of the United Nations; and the United Nations Charter expresses the norms which are fundamental to the maintenance of world order. The overarching goal of the enterprise of international law is the creation of peace. To Judge Weeramantry, the judicial function is inseparable from achieving this central objective of international law. If the ultimate prerogative of the sovereign is to engage in war, and if the problem of war has proved over the centuries to be the greatest challenge to international law, then the Court must assert itself on the side of international law in this primordial conflict.

In a passage Judge Weeramantry found sufficiently important to repeat, he asserted that:

> A great judge once observed that the laws are not silent amidst the clash of arms. In our age we need also to assert that the laws are not powerless to prevent the clash of arms. The entire law of the United Nations has been built up around the notion of peace and the prevention of conflict. The Court, in an appropriate case, where possible conflict threatens rights that are being litigated before it, is not powerless to issue provisional measures […]. If international law is to grow and serve the cause of peace as it is meant to do, the Court cannot avoid that responsibility in an appropriate case.[48]

Peace is the cornerstone of the UN Charter and the Statute of the Court; it is "a metaphor for the unity of the legal system."[49] Since the judicial function is so intimately connected with the furtherance of peace, since this is the fundamental human value as expressed not only in the Charter but in the preponderance of civilizations and cultures around the world, it is important for Judge Weeramantry to extend rather than limit the scope of the Court's activity.[50]

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48. *See* Legality of Use of Force, *supra* note 3, Dissenting Opinion of Judge Weeramantry, at 13, citing Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie, 1992 ICJ Rep. 70, at 180–181.
49. Legality of Use of Force, *id.*, at 14.
50. My focus is on Judge Weeramantry's jurisprudence. But it must also be noted that he sought in various other ways to publicize the Court and its activities, and to emphasize its importance to the international community. Thus Arthur Eyffinger, the author of the superbly written and illustrated book, The International Court of Justice, 1946–1996 (1996), states in his Acknowledgments, that

    > To many who have come to appreciate his work in past years, it will not come as a surprise that the *auctor intellectualis* of this book's concept is Judge Christopher Weeramantry. It is with him that the project originated and it is due to his persuasive qualities that it materialized. If anything, the book itself must serve as a token of my acknowledgment to him.

    In this regard, President Stephen Schwebel graciously states, when recognizing Judge Weeramantry's contributions to the Court, that "Those contributions have been publicly manifested in his outstanding separate and dissenting opinions, and in his conception and organization of the Colloquium in 1996 in celebration of the 50th Anniversary of the Court." *See* S. Schwebel, *Greetings*, *in* Anghie & Sturgess, *supra* note 16, at 5. The colloquium led to the production of a very distinguished volume: C. Peck & R.S. Lee (Eds.), Increasing

5. The Vocation of a Third World Judge

Judge Weeramantry's vision of international law has, of course, been powerfully shaped by his experience of growing up in the colony of Ceylon and experiencing at first hand the long and difficult process by which that country achieved independence and sought to consolidate it. The problems faced by Third World societies is the subject of his book, *Equality and Freedom: Some Third World Perspectives*. Crucially, furthermore, he seemed to live out and transmute his experiences as a jurist from the Third World in his work on the Court rather than attempt to suppress these experiences in the interest of presenting himself as a 'true' international lawyer expert in the neutral, objective language of the discipline. His Opinions reflect a sensitivity to many questions which are of fundamental importance to Third World societies: questions of poverty, inequality, and environmental degradation.

The use of the rule of law to protect weaker states is also a fundamental aspect of his work. Moreover, it is important to note that he is a judge from one of the smaller Third World countries, as more powerful Third World states which sometimes aspire to become super powers themselves and therefore often subscribe to the same dominant philosophies even while proclaiming their Third World credentials. Thus we might see Judge Weeramantry's *East Timor* Opinion as an extended study of the role that international law has to play in protecting vulnerable states against aggression – in this case, ironically, aggression committed by a major Third World state, Indonesia, a prominent leader of the Non-Aligned Movement. For Judge Weeramantry, however, colonialism and oppression of any form is unacceptable. His *Nuclear Weapons* judgment may also be seen in these terms, as being shaped by the injustices inherent in a system where nuclear states could be subjected to one regime and non-nuclear states to another with respect to international humanitarian law.[51]

To label a judge as a 'Third World' judge based on the positions he takes on specific issues is a relatively simple, and perhaps simplistic way of characterizing a judge. The more complex issue is the relationship between the Third World judge and international law itself, given that

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the Effectiveness of the International Court of Justice, Proceedings of the ICJ/UNIDIR Colloquium to Celebrate the 50th Anniversary of the Court, The Peace Palace, 16–18 April 1996, Legal Aspects of International Organization Series, Vol. 29 (Martinus Nijhoff Publishers/UNIDIR, October 1997).

51. *See* Nuclear Weapons case, *supra* note 19, Dissenting Opinion, at 526–527; "Least of all can there be one law for the powerful and another law for the rest." *Id.* Further, Weeramantry points out,

> A legal rule would be inconceivable that some nations alone have the right to use chemical or bacteriological weapons in self-defence and others do not. The principle involved, in the claim of some nations to be able to use nuclear weapons in self-defence, rests on no different juristic basis.

Id., at 527.

historically, international law has marginalized Third World peoples and legitimized their dispossession and conquest. Judge Weeramantry confronts an analogous tension in his relationship to Grotius himself: to Judge Weeramantry, Grotius is the father of international law who played such a significant role in advancing the cause of world peace, a jurist and thinker whom he admires almost more than any other; yet, he recognizes that it is the same Grotius who acted as the lawyer for the Dutch East India company which colonized Sri Lanka.[52] This problem is not simply a personal psychological issue. It takes a far more concrete form for the Third World judge because it raises a profound challenge: can the concerns and experiences of the Third World be adequately rendered and addressed in a language which has been so profoundly shaped by colonialism, the language of the powerful? Do the methodologies, techniques, and theories of international law present inherent barriers to developing country aspirations? There is of course the further problem that the Third World judge who deviates from the established standards and methodologies of international law is sometimes seen as an incompetent and inferior practitioner of the discipline.

Judge Weeramantry has confronted this problem by expanding the sources and, thereby, the character of international law. We may understand his approach to sources doctrine as a part of his response. By drawing upon the legal and ethical principles of numerous cultures over the centuries, he enormously enlarges the jurisprudence of the Court. His Dissenting Opinion in the *Nuclear Weapons* case, for example, includes a section on the "Multicultural Background to the Humanitarian Laws of War" which draws on Hindu traditions expressed in the Ramayana and Mahabharatha, Christian traditions as found in the Second Lateran Council of 1139, Buddhism, and the Qua'an.[53] Further, this exploration does not take place at the expense of more conventional materials: the same Dissenting Judgment examines the development of international humanitarian law in considerable depth.[54] His basic approach is to retain and develop the ideals of international law through his reliance on civilizational norms. Further, he develops the flexible elements of international law, such as equity[55] and indeed, the Charter of the UN itself, as a source of authority. In these ways, he suggests that international law is not alien to the Third World; it is part of the heritage of Third World countries which have contributed to its development. Broadly, then, Judge Weeramantry seeks to develop an international law in which the developing world might recognize itself and pursue its own aspirations as a part of the global com-

52. *See* C. Weeramantry & N. Berman, *The Grotius Lecture Series*, 14 American University International Law Review 1515, at 1557 (1999).
53. *See* Nuclear Weapons case, *supra* note 19, Dissenting Opinion, at 478–482.
54. *Id.*, at 476 *et seq*.
55. *See* in particular his Separate Opinion in Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark *v.* Norway), 1993 ICJ Rep. 38, at 211, which takes the form of an extended analysis of equity and its importance for international law.

munity. The legitimacy of international law depends crucially on these factors.

5.1. Universality

Perhaps the most interesting and provocative aspect of Judge Weeramantry's approach is his sustained emphasis on the universality of international law. The concept of universality has historically been used to suppress Third World peoples, as it has been continuously deployed to promote Western interests and values in the guise of 'universal' values. However, it is precisely this extremely problematic concept that Judge Weeramantry addresses seriously, by taking the logical, yet, on the whole neglected, step of studying the cultural and religious principles which have regulated many of the world's civilizations, by pointing to the applicability of these principles to international issues, and by actually using them for the purpose of resolving international disputes. For Judge Weeramantry, this is important, not simply to expand international law, but to give to it the legitimacy essential for its development. As he states in the *Nuclear Weapons* case, "it greatly strengthens the concept of humanitarian laws of war to note that this is not a recent invention, nor the product of any one culture."[56] In this way, he attempts to promote a truly 'universal' international law and has challenged the use of 'universality' to simply promote Western values.

5.2. Pluralist International Law

Judge Weeramantry's position as a Third World judge who simultaneously promotes a universal international law has challenged another powerfully established set of ideas. The appellation 'Third World' is often used faintly pejoratively in the field of international law, whether the term is applied to describe a particular judge, intellectual tradition, or scholar. Even when ostensibly simply describing a tradition, it sometimes suggests an approach which is stridently 'political' and hopelessly partial in its perspectives, an exotic variant of the study and practice of international law properly so called. What Judge Weeramantry's approach suggests, however, is that it is this Third World judge who has attempted to create an international law that is cognisant of the cultural traditions and legal systems of the world's many civilizations. He takes seriously the idea that international law is universal, and should therefore reflect all the world's civilizations, rather than contenting himself with the shallow cosmopolitanism which so often presents itself as embodying 'the universal.'

Judge Weeramantry is in a unique position to engage in this project of creating a universal international law because he has devoted a significant part of his career to a study of the legal and belief systems of dif-

56. Nuclear Weapons case, *supra* note 19, at 478.

ferent civilizations. He has written extensively on Islamic jurisprudence[57] and on Buddhism;[58] he is extremely proud of a book he has written on The Lord's Prayer.[59] Equally important, however, he is expert in both the civil law and the common law, as Sri Lanka had a hybrid legal system that combined elements of Roman-Dutch law and English common law. Thus, in adopting a developing country position, Judge Weeramantry does not blindly reject Western thinking and legal systems out of hand. Rather, he studies all these systems as part of a rich heritage which should be drawn upon in constructing a meaningful international law. No single tradition should be dominant; rather, they must all be seen in the context of broader concerns that preoccupy the discipline of international law. I am not aware of any other Opinion of the Court which draws upon the practices of indigenous peoples, such as the Aboriginal people of Australia, as a source of law as Judge Weeramantry does in *Gabčikovo*. His jurisprudence, then, is fundamentally based on an enormous inclusiveness and generosity of vision, qualities absent in much of the Court's work which contents itself by relying principally on the classic works in English and French.

This is, of course, a far-reaching and provocative vision of a universal international law, and it raises its own problems. As a simple example, different traditions might adopt entirely different approaches to the dispute in question.[60] For Judge Weeramantry, however – and it is here that we see most clearly his natural law foundations – the most fundamental principles of human conduct are found, in one form or another, in all civilizations. As such, conflicts will not arise. In addition, for Judge Weeramantry, the wisdom of certain civilizations may offer guidance for the resolution of contemporary problems. For Judge Weeramantry, principles of 'sustainable development' of trusteeship, of the rights of future generations, suggest this process. These principles, which are becoming increasingly important in contemporary international law are, as he points out, principles which were developed and practiced many centuries ago by many civilizations. They exemplify for him the process by which these fundamental principles can be embraced by the international community

57. C.G. Weeramantry, Islamic Jurisprudence: An International Perspective (1988).
58. C.G. Weeramantry, *Some Buddhist Perspectives on International Law*, *in* Peace, Development, Democracy, Boutros Boutros-Ghali, Amicorum Discipulorumque Liber 775 (1998).
59. C.G. Weeramantry, The Lord's Prayer: Bridge to a Better World (1999). *See* the review by R. Clark *in* 94 AJIL 231–232 (2000).
60. For example, as Judge Weeramantry's own Opinion points out, the Buddhist tradition seems to disavow the doctrine of just war which has played an important historical role in other religious traditions and which is being revived in various forms now. *See* Nuclear Weapons case, *supra* note 19, at 481.

> According to Buddhism there is nothing that can be called a 'just war' – which is only a false term coined and put into circulation to justify and to excuse hatred, cruelty, violence and massacre. Who decides what is just and unjust? The mighty and victorious are 'just' and the weak and defeated are 'unjust'. Our war is always 'just' and your war is always 'unjust'. Buddhism does not accept this position.
>
> (Citing W. Rahula, What the Buddha Taught (1986)).

because they are so intimately linked with the maintenance of society. Judge Weeramantry has done more than perhaps any other judge in integrating other legal systems into the jurisprudence of the ICJ, not simply in an incidental or ornamental fashion, but in a way which contributes to the richness, depth, and legitimacy of international law.

To many he will be seen as an eminent and inspiring Third World jurist, not only because of his erudition and his attempts to create a universal international law, but because of his particular quality of integrity. The professional, psychological, and personal challenges facing a Third World jurist are considerable. Should the judge attempt to prove himself by simply adopting the given methodologies? How should he respond to the many subtle pressures to conform with the orthodoxies of the status quo? And then there is the delicate issue of the professional rewards which often accompany such conformity. For Judge Weeramantry, these questions never became issues because he simply devoted himself to the task of fulfilling the mission which he had set himself in the first place: furthering the cause of international justice. He calmly and rigorously applied to himself his cardinal principle, that a judge should assert and develop the law regardless of the political consequences. Thus, for example, he wrote powerful Separate and Dissenting Opinions against many states which were at that time members of the Security Council and which were to play a decisive role in his unsuccessful bid for re-election in 1999. A less courageous person may have chosen a more cautious course of action.

6. CONCLUSION

Judge Weeramantry came to international law late in his career. His interest in the subject did not develop out of an ambition to become a diplomat or a statesmen, or even an international jurist, and to ascend thereby to a more glamorous and elevated stage. Rather, his interest was based on the belief that only international law could address the major problems of war, poverty, the violation of human dignity. His work was informed by a growing realization that these issues were never purely *national* in character. He is not so much concerned with the distinctions between domestic law and international law, but rather with the broader concepts: the relationships between law and justice, and between law and society – be it a particular domestic society or the international community itself. For Judge Weeramantry, what makes international law distinct is its potential for establishing international *justice* and it is this view of international law which has shaped his jurisprudence.

It is surely paradoxical that this outsider, trained essentially as a domestic lawyer, has been so eloquent in asserting the completeness and authority of international law, and who has been so insistent in articulating an international law that seeks to serve the needs of international society.[61]

It is also paradoxical that it is a supposedly Third World jurist who has

sought to create a truly universal international law – one that reflects the experiences and aspirations of the different peoples of the world instead of relying on philosophical ingenuity to suggest that Western doctrines and ideas are universal. Yet, Judge Weeramantry's achievement may suggest an advantage of being the outsider; it is the outsider who might be in the best position to reassess, with his different vision, an institution or a discipline. The insiders, those of us who have been trained from the outset in international law, come to accept and be constructed by the language of sovereignty and jurisdiction, the problem of creating order among sovereign states and the imperatives of 'political realities' to which international law must often defer. All these problems tend to produce a cautious and inhibited jurisprudence, and a narrow vision of the possibilities of international law which must always be conditioned by the imperatives of sovereignty.

Judge Weeramantry differs in his approach. In the *NATO* cases, in the *Nuclear Weapons* case, in the *Nuclear Tests 2* case, he firmly adopts the position that state sovereignty is limited by international law, as the latter furthers the common good. He was particularly fond of a phrase, taken from Hindu writings, which referred to "the kingless authority of the law." The fact that many of his Opinions are dissenting opinions suggests that his views were not the views of the Court. Judge Weeramantry's Opinions laid down his view of the law calmly undeterred by whether it would be followed or enforced. It might therefore be seen as "idealistic" and "ignorant" of the diplomatic subtleties and nuanced politics of the situation in question – be it the use of nuclear weapons or the fate of the people of East Timor. But supporters of the Court and of international law must surely be disappointed by the numerous occasions on which the Court has emphatically and gravely asserted principles, only to then, through an elaborate logic, find some other reason for not applying them in the relevant case: the importance of environmental protection is affirmed in *Nuclear Tests 2*, and then found to be inapplicable; the right of self-determination and the concept of obligations *erga omnes* are among the fundamental principles of contemporary international law, and yet incapable of providing the people of East Timor with any remedy.

In the final analysis, Judge Weeramantry's vision is animated by an elemental simplicity: the purpose of international law is to further inter-

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61. In this respect, Judge Weeramantry's jurisprudence might be seen as attempting the task outlined by Philip Allott:

> There is nothing to prevent the Court from reimagining itself a source of a new legal reality, of a true international law, which is not merely a system for aggregating the so-called *interests* of so-called *states* in a wasteland of injustice. The true international law is the actualizing in the form of legal relations of the public interest of the true international society, the society of all societies, the society of the whole human race.

P. Allott, *The International Court and the Voice of Justice*, *in* V. Lowe & M. Fitzmaurice (Eds.), Fifty Years of the International Court of Justice 39 (1996) (emphasis in original).

national justice. It is this passion for justice which has been the guiding principle of Judge Weeramantry's life and work. It is the singular achievement of Christopher Weeramantry that in pursuing this quest, he has presented a vision of the Court and of international law with such sincerity and grace, eloquence and power that it compels us to realize, with a strange shock of recognition, that the institution he served with such distinction and dignity is, after all, called the International Court of … Justice.

https://doi.org/10.1017/S0922156501000395 Published online by Cambridge University Press