

# The Opinions of Judge Dionisio Anzilotti at the Permanent Court of International Justice

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## I. Introduction

Dionisio Anzilotti was one of three judges who served on the Permanent Court of International Justice from its inception in 1922 until its end in 1946, when the new International Court of Justice was established. Judges Rafael Altamira of Spain and Antonio Sánchez de Bustamante of Cuba were the other two jurists who sat on the bench together with Anzilotti throughout that period.

The first term of judges of the Permanent Court of International Justice extended from 1922 to 1930, and the second from 1930 to 1939. Anzilotti was elected on the first occasion, and then reelected on the second. Then, on 1st September 1939, World War II broke out in Europe. Due to the prevailing circumstances, the Assembly of the League of Nations determined that it was inadvisable to proceed with elections for the third term of the Court, and that the existing members of the Court should therefore, pursuant to Article 13, paragraph 3, of its Statute, continue to discharge their duties. The Council of the League of Nations tacitly agreed. On that basis, the mandate of the members of the Court was extended until 1946, when the last Assembly of the League of Nations convened. For this reason, Anzilotti retained his position until the end of the War.

The final two cases submitted to the Permanent Court were *The Electricity Company of Sofia and Bulgaria*, between Belgium and Bulgaria, and 'Gerliczy', between Liechtenstein and Hungary. Both cases were interrupted by the outbreak of the War and the invasion of the Netherlands. Therefore, for all practical purposes, the work of the Permanent Court can be considered to have ceased as of 5th December 1939, when it issued an Order concerning an interim measure relating to *The Electricity Company of Sofia and Bulgaria*.

In 1919, before joining the Court, Anzilotti participated as a member of the Italian delegation to the Peace Conference in Paris. He was immediately appointed, in 1920,

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as Under-Secretary of the League of Nations in charge of Legal Affairs. In that capacity, he was among the drafters of the Statute of the Permanent Court, and was therefore involved in the work of the Court from its very inception.

Anzilotti was a highly active judge. He participated in all the cases before the Court from 1922 to 1939, and he presided over it from 1928 to 1930, succeeding Max Huber.

During this long period of devoted service to the Court, Anzilotti wrote numerous opinions in several cases. Of course, some of those opinions were either separate or in dissent; however, he always maintained a very prudent and respectful approach to the opinions of his colleagues. In 1930, in the Advisory Opinion on *Danzig and the International Labour Organization*, Anzilotti defined his understanding of the nature of a dissenting opinion in the following terms:

Very much to my regret I do not concur in the opinion of the Court and it is my duty to say so. Since, in my view, a dissenting opinion should not be a criticism of that which the Court has seen fit to say, but rather an exposition of the views of the writer, I shall confine myself to indicating as briefly as possible what my point of view is and the grounds on which it is based.<sup>1</sup>

Anzilotti's opinions were of different lengths. In the first years of the Court, they were shorter than afterwards. That was also the general trend of the Court itself, and perhaps this development made him feel obliged to gradually formulate more extensive lines of argument when formulating opinions.

From the viewpoint of contemporary interest, the most important portions of Anzilotti's opinions are undoubtedly his general pronouncements on points of law. Of course, in all his opinions in any particular case, the manner in which he applied legal norms to the specific facts is also important. However, such material is clearly outside the scope of this paper because it is bound to the particular circumstances of each case. With this in mind, we shall mention first the most important statements whereby Anzilotti sought to develop a general rule on the main problems of international law. Then we shall deal with Anzilotti's points of view on procedural matters.

<sup>1</sup> Series B, No. 18, 18.

## II. General Rules of Law

### A. International Law and Municipal Law

In 1905, Anzilotti published his famous work *Il diritto internazionale nei giudizi interni*, wherein he developed his dualistic conception of the relationship between international law and municipal law, a conception to which he remained faithful throughout his life.<sup>2</sup>

In 1935, in the Advisory Opinion on the *Consistency of Certain Danzig Legislative Decrees with the Constitution of the Free City*, Anzilotti began by mentioning the position of municipal law in relation to the sources of law to be applied by the Court, in accordance with its famous Article 38. There, he stated that

The question submitted to the Court is one purely of Danzig constitutional law; international law does not come into it at all. It neither is nor can be disputed, however, that the Court has been created to administer international law. Article 38 of the Statute, which states the sources of law to be applied by the Court, only mentions international treaties or custom and the elements subsidiary to these two sources, to be applied if both of them are lacking. It follows that the Court is reputed to know international law; but it is not reputed to know the domestic law of the different countries.

Of course the Court may have – and has often had – to decide as to the meaning and scope of a municipal law; it has even laid down in this connection some very important principles to which I will revert later. It has however done so only if and in so far as this is necessary for the settlement of international disputes, or in order to answer questions of international law. The interpretation of a municipal law as such and apart from any question or dispute of an international character is no part of the Court's functions: it is fitted neither by its organization nor by its composition to undertake this; its authority and prestige have nothing to gain therefrom.<sup>3</sup>

Then, in a subsequent paragraph, he refers to a much-quoted decision by the Court which has been interpreted by several writers as constituting the core of the dualistic doctrine, a position which they also believe was endorsed by the Court as a whole from 1926 onwards, under Anzilotti's influence. In that paragraph he held that

It should be observed, in regard to this matter, that the Court, in performing its function as an organ of international law, may have to consider municipal laws from two entirely distinct stand-points.

In the first place, it may have to examine municipal laws from the stand-point of their consistency with international law. The Court has sovereign power of adjudication on this point: 'from the stand-point of international law and of the Court which is its organ, municipal laws are merely facts which express the will and constitute the activities of States, in the same manner as do legal decisions or administrative measures'.<sup>4</sup>

Secondly, the Court may find it necessary to interpret a municipal law, quite apart from any

2 See the contribution by Gaja in this issue, p. 123.

3 Series A/B, No. 65, 61-62.

4 Judgment No. 7 – Case concerning certain German interests in Polish Upper Silesia, 19.

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question of its consistency or inconsistency with international law, simply as a law which governs certain facts, the legal import of which the Court is called upon to appraise.<sup>5</sup>

Related to this issue is a portion of Anzilotti's 1939 opinion in *The Electricity Company of Sofia and Bulgaria*. There, he dealt with the problem faced by the Court when there are two sources of jurisdiction. The manner in which Anzilotti presents the question reflects his dualist approach, for by referring to 'the same legal system', he presupposes that there might possibly exist several different legal systems, contrary to the monist position. According to Anzilotti,

It follows that there are or may be cases where recourse to the Court is permitted by the Treaty but not by the Declarations, and cases where recourse to the Court is possible under the Declarations, but not under the Treaty.

It is clear that, in the same legal system, there cannot at the same time exist two rules relating to the same facts and attaching to these facts contradictory consequences. It is for instance impossible that the relations between two States should be governed at one and the same time by a rule to the effect that, if certain conditions are fulfilled, the Court has jurisdiction and by another rule laying down that, if the same conditions are fulfilled, the Court has no jurisdiction – by a rule to the effect that in certain circumstances the State concerned may have recourse to the Court and by another to the effect that in the same circumstances the State has no right to do so, etc., etc. In cases of this kind, either the contradiction is only apparent and the two rules are really coordinated so that each has its own sphere of application and does not encroach on the sphere of application of the other, or else one prevails over the other, i.e., is applicable to the exclusion of the other. I know of no clearer, more certain, or more universally accepted principle than this.

To decide whether a contradiction between two rules is only apparent and how they should be co-related to one another, or to determine which of two contradictory rules applies to the exclusion of the other, is among the most important and most difficult tasks in the interpretation of legal texts. It is precisely this task which confronts the Court in the present case.<sup>6</sup>

### B. General Principles of Law

General principles of law were mentioned in Article 38 of the Statute of the Court, in order to avoid a situation where the Court could declare a *non liquet*. Anzilotti invoked some of those general principles in several opinions.

In the judgment on the *Legal Status of Eastern Greenland*, rendered in 1933, whereby the Court rejected a Norwegian claim, Anzilotti stated his position in succinct language which serves as a typical example of his style. There, in two lines, he set forth a general principle deriving from pure logic, saying that 'This claim should in my view, be

<sup>5</sup> Ibid., 63.

<sup>6</sup> Series A/B, No. 77, 90.

rejected, for an unlawful act cannot serve as a basis for an action in law'.<sup>7</sup> In that same case, Anzilotti also very briefly stated the principle of the precedence of special law over general law:

8. It is consequently on the basis of that agreement which, as between the Parties, has precedence over general law, that the dispute ought to have been decided.<sup>8</sup>

As for principles of civil procedure as general principles of law, Anzilotti applied them in relation to *res judicata*. In the 1927 judgment, *Interpretation of Judgments No. 7 and 8 concerning the case of the Factory of Chorzow*, he made clear reference to the invocation of these principles, as follows:

7. In coming to this conclusion I have relied upon principles obtaining in civil procedure; this I feel justified in doing for the following reasons:

As I have already observed, the Court's Statute, in Article 59, clearly refers to a traditional and generally accepted theory in regard to the material limits of *res judicata*; it was only natural therefore to keep to the essential factors and fundamental data of that theory, failing any indication to the contrary, which I find nowhere, either in the Statute itself or in international law.

In the second place, it appears to me that if there be a case in which it is legitimate to have recourse, in the absence of conventions and custom, to 'the general principles of law recognized by civilized nations', mentioned in No. 3 of Article 38 of the Statute, that case is assuredly the present one. Not without reason was the binding effect of *res judicata* expressly mentioned by the Committee of Jurists entrusted with the preparation of a plan for the establishment of a Permanent Court of International Justice, amongst the principles included in the above-mentioned article (Minutes, p. 335).<sup>9</sup>

In that same judgment, Anzilotti clarified in one sentence the objective limits of *res judicata*. There he declared:

4. It is a well-known principle that the objective limits of *res judicata* are determined by the claim.<sup>10</sup>

Then, in that same case, he circumscribed the effect of the principle of *res judicata* on decisions on incidental or preliminary questions, adding that:

It is, moreover, clear that, under a generally accepted rule which is derived from the very conception of *res judicata*, decisions on incidental or preliminary questions which have been rendered with the sole object of adjudicating upon the Parties' claims (*incidenter tantum*) are not binding in another case.<sup>11</sup>

Another example of Anzilotti's invocation of general principles of law is his reference to the expression *inadimplenti non est adimplendum*, in his dissenting opinion to the

7 Series A/B, No. 53, 95.

8 Ibid., 94.

9 Series A, No. 13, 27.

10 Ibid., 25.

11 Ibid., 26.

1932 judgment in the *Case concerning diversion of water from the Meuse*. There, he expresses the view that

As regards the first point, I am convinced that the principle underlying this submission (*inadimplenti non est adimplendum*) is so just, so equitable, so universally recognized, that it must be applied in international relations also. In any case, it is one of these 'general principles of law recognized by civilized nations' which the Court applies in virtue of Article 38 of its Statute.<sup>12</sup>

### C. Equity and Law

These two concepts, equity and law, have always been among the most fundamental subjects of reflection by lawyers and philosophers. It is well-known that Anzilotti belonged to the positivist school of juridical thought. However, in his 1937 opinion in the case of the *Lighthouses in Crete and Samos*, he made certain interesting observations, whereby he endeavoured to reconcile equity and law without departing from his positivist approach. In that case, he stated that:

9. The conclusion to which I have been led may appear to be very rigorous, since it makes the obligation of Greece to respect the lighthouse concession dependent upon the approval of the Turkish Parliament, an approval which that body – so the Court was informed – was never known to refuse. I do not deny that it is so, but I desire to add the following remarks.

This is manifestly a consideration founded rather upon equity than upon law; for it is certain that, in law, the Turkish Parliament was perfectly free to give, or to withhold, its approval. But, in the sphere of equity, there are other considerations that come into play, and restrain the effect of that which has been set forth above.

The whole of Protocol XII is of an exceptional character; but nowhere is that character so clearly revealed as in Article 9, which accords separate treatment to the Powers – whom it only obliges to respect concessions granted by Turkey before the War – and to the Balkan States – whom it obliges to respect even concessions granted during the War and until the coming into force of the Treaty of Peace. That being so, a strict application of the conditions governing the subrogation referred to in Article 9 is not only in harmony with the rules for the interpretation of texts, but also in conformity with the requirements of equity.<sup>13</sup>

### D. Interpretation of Treaties

Anzilotti expressed his views on this subject on several occasions, which was natural due to the fact that the interpretation of agreements constitutes an everyday part of life for an international jurist. With his usual power of synthesis, he set forth his opinions in very simple and straight-forward language. It is worthwhile to give here some

12 Series A/B, No. 70, 50.

13 Series A/B, No. 71, 38-89.

examples of the degree to which his terminology influenced the rules of interpretation later enshrined in Article 31 of the Vienna Convention on the Law of Treaties.

In the 1931 Advisory Opinion on the *Customs Union between Germany and Austria*, Anzilotti summarized in two short paragraphs certain basic rules for the interpretation of treaties:

(b) It is a fundamental rule of interpretation that words must be given the ordinary meaning which they bear in their context unless such an interpretation leads to unreasonable or absurd results.<sup>14</sup>

The Austro-German argument really deprives the second sentence of all importance, and thus it runs counter to a fundamental rule in the interpretation of legal texts according to which, when there are two interpretations, one of them attributing a reasonable meaning to each part of the text and the other not fulfilling these conditions, the first must be preferred.<sup>15</sup>

Anzilotti employed the same language in *The Legal Status of Eastern Greenland*, where he remarked in 1933:

I am therefore of the opinion that, if one reads the documents as they stand, giving the words the sense which they naturally bear in the context, one is inevitably led to the conclusion that the Danish Government was making a distinction between the colonized districts of Greenland and the other parts of the country, and that what it was requesting from the States whom it approached was, not the recognition of an already existing sovereignty, but the recognition of the right to extend its sovereignty to the whole of Greenland.<sup>16</sup>

In that same judgment, he added the following comment in relation to literal interpretation:

It remains to be seen whether this conclusion is inexplicable or inconsistent, having regard to the position of Denmark in Greenland at the moment when the overtures were made. It is in this connection that the historical question of Danish sovereignty in Greenland arises in the present suit: a literal interpretation fails where it would lead to absurd or inconsistent results.<sup>17</sup>

In 1937, Anzilotti expanded upon his idea as expressed in the final part of the preceding quotation, when he affirmed as follows, in his opinion in the *Case concerning diversion of water from the Meuse*:

But it is always dangerous to be guided by the literal sense of the words before one is clear as to the object and intent of the Treaty; for it is only in this Treaty, and with reference to this

14 Series A/B, No. 41, 60.

15 Ibid., 62.

16 Series A/B, No. 53, 82.

17 Ibid.

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Treaty, that these words – which have no value except in so far as they express the intention of the Parties – assume their true significance.<sup>18</sup>

Although not in such precise language, the same ideas had already been stated by Anzilotti in 1923, in the case *S.S. Wimbledon*, when he said:

3. It must in the first place be observed that, for the purposes of the interpretation of contracts which take the form of international conventions, account must be taken of the complexity of interstate relations and of the fact that the contracting parties are independent political entities. Though it is true that when the wording of a treaty is clear its literal meaning must be accepted as it stands, without limitation or extension, it is equally true that the words have no value except in so far as they express an idea; but it must not be presumed that the intention was to express an idea which leads to contradictory or impossible consequences or which, in the circumstances, must be regarded as going beyond the intention of the parties. The purely grammatical interpretation of every contract, and more especially of international treaties, must stop at this point.<sup>19</sup>

Similar statements may be found in Anzilotti's opinions in the Advisory Opinion of 1932 on the *Interpretation of the Convention of 1919 concerning the employment of women during the Night*<sup>20</sup> and in the judgment of 1934 in the *Lighthouses* case.<sup>21</sup>

Anzilotti also referred in several instances to the function of *travaux préparatoires* in the interpretation of treaties. In the Advisory Opinion on the *Interpretation of the Convention of 1919 concerning employment of women during the Night*, he said:

If however any doubt were possible, it would be necessary to refer to the preparatory work, which, in such case, would be adduced not to extend or limit the scope of a text clear in itself, but to verify the existence of an intention not necessarily emerging from the text but likewise not necessarily excluded by that text.<sup>22</sup>

Also in relation to the interpretation of treaties, in 1939 in the case *The Electricity Company of Sofia and Bulgaria*, Anzilotti stated in the following terms the rule that the treaty which is later in time should prevail :

4. The Treaty being of later date than the Declarations, it is in the text of the former that we must seek the intention of the Parties in regard to rules previously in force.<sup>23</sup>

18 Series A/B, No. 70, 46.

19 Series A, No. 1, 36.

20 Series A/B, No. 50, 383.

21 Series A/B, No. 62, 31.

22 Series A/B, No. 50, 388.

23 Series A/B, No. 77, 91.

### **E. Oral Agreements and the Power of Foreign Ministers to Engage the State**

Article 38 of the Statute of the Permanent Court, as well as of the International Court of Justice, established international conventions as the first source of international law to be applied by the Court. Normally, of course, international conventions are written agreements, but on some important occasions agreements have been concluded orally. Anzilotti referred to this situation in the case of the *Legal Status of Eastern Greenland*, in 1933. He said:

7. The outcome of all this is therefore an agreement, concluded between the Danish Minister at Christiania, on behalf of the Danish Government, and the Norwegian Minister for Foreign Affairs, on behalf of the Norwegian Government, by means of purely verbal declarations. Moreover, there does not seem to be any rule of international law requiring that agreements of this kind must necessarily be in writing, in order to be valid.<sup>24</sup>

In the same case and in relation to the famous Ihlen Declaration, Anzilotti presented his point of view on a very practical subject, the power of a foreign minister to engage the responsibility of his state. The first paragraph of the quotation below is a clear and succinct statement of the law on the subject; the second paragraph refers to the rule that prohibits a state from invoking its internal laws to avoid the fulfillment of its international obligations. Anzilotti stated:

No arbitral or judicial decision relating to the international competence of a Minister for Foreign Affairs has been brought to the knowledge of the Court; nor has this question been exhaustively treated by legal authorities. In my opinion, it must be recognized that the constant and general practice of States has been to invest the Minister for Foreign Affairs – the direct agent of the chief of the State – with authority to make statements on current affairs to foreign diplomatic representatives, and in particular to inform them as to the attitude which the government, in whose name he speaks, will adopt in a given question. Declarations of this kind are binding upon the State.

As regards the question whether Norwegian constitutional law authorized the Minister for Foreign Affairs to make the declaration, that is a point which, in my opinion, does not concern the Danish Government: it was M. Ihlen's duty to refrain from giving his reply until he had obtained any assent that might be requisite under the Norwegian laws.<sup>25</sup>

### **F. Circumstances Excusing a State from the Fulfillment of International Obligations**

Anzilotti referred on several occasions to some of the causes that could excuse a state from the fulfillment of its international obligations.

<sup>24</sup> Series A/B, No. 53, 91.

<sup>25</sup> Ibid., 91-92.

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In the *Oscar Chinn* case, in 1934, between the United Kingdom and Belgium, Anzilotti dealt with the invocation of public interests and public necessity, which are two germane, but different concepts. As to the first, he said:

6. If, assuming the facts alleged by the Government of the United Kingdom to have been duly established, the measures adopted by the Belgian Government were contrary to the Convention of Saint-Germain, the circumstance that these measures were taken to meet the dangers of the economic depression cannot be admitted to consideration. It is clear that international law would be merely an empty phrase if it sufficed for a State to invoke the public interest in order to evade the fulfilment of its engagements.<sup>26</sup>

Regarding the recourse to public necessity, he added:

7. The situation would have been entirely different if the Belgian Government had been acting under the law of necessity, since necessity may excuse the non-observation of international obligations.

The question whether the Belgian Government was acting, as the saying is, under the law of necessity is an issue of fact which would have had to be raised, if need be, and proved by the Belgian Government. I do not believe that that Government meant to raise the plea of necessity, if the Court had found that the measures were unlawful; it merely represented that the measures were taken for grave reasons of public interest in order to save the colony from the disastrous consequences of the collapse in prices.<sup>27</sup>

No one can, or does, dispute that it rested with the Belgian Government to say what were the measures best adapted to overcome the crisis: provided always that the measures selected were not inconsistent with its international obligations, for the Government's freedom of choice was indisputably limited by the duty of observing those obligations. On the other hand, the existence of that freedom is incompatible with the plea of necessity which, by definition, implies the impossibility of proceeding by any other method than the one contrary to law.<sup>28</sup>

In the case *The Electricity Company of Sofia and Bulgaria*, Anzilotti made some observations on the concept of *force majeure* and the theory of abuse of rights. On the first he said:

(b) The second argument, namely, that the denunciation of the Treaty by the Bulgarian Government released the Belgian Government from the duty of awaiting the result of the recourse to cassation, is based mainly upon the consideration that, since the Treaty was about to expire, it became impossible to submit the Application.

This argument seems to me no better founded than the first argument. If the Bulgarian Government had the right to denounce the Treaty, it was perfectly natural that the Belgian Government should be rendered incapable of benefiting by it. It is impossible to describe as *force majeure* what was really only a consequence of the exercise by the Bulgarian Government of its right of denunciation.<sup>29</sup>

26 Series A/B, No. 63, 112.

27 Ibid., 113.

28 Ibid., 114.

29 Series A/B, No. 77, 97.

On the abuse of rights he understandably took a very cautious position, as follows:

True, the representatives of the Belgian Government alluded cautiously to an abuse of right said to have been committed by the Bulgarian Government when it denounced the Treaty in order to remove from the jurisdiction of this Court the case which the Belgian Government was proposing to submit.

The theory of abuse of right is an extremely delicate one, and I should hesitate long before applying it to such a question as the compulsory jurisdiction of the Court. The old rule, a rule in such complete harmony with the spirit of international law, *Qui iure suo utitur neminem laedit*, would seem peculiarly applicable. The Bulgarian Government was entitled to denounce the Treaty and was sole judge of the expediency or necessity of doing so.<sup>30</sup>

Another issue that Anzilotti analyzed was that of excusable error in the performance of international obligations. In the case *Legal Status of Eastern Greenland*, he made the following comments on this important point:

If a mistake is pleaded it must be of an excusable character; and one can scarcely believe that a government could be ignorant of the legitimate consequences following upon an extension of sovereignty; I would add that, of all the governments in the world, that of Norway was the least likely to be ignorant of the Danish methods of administration in Greenland, or of the part played therein by the monopoly system and the regime of exclusion.<sup>31</sup>

### G. Sovereignty and Right of Self-Government

In 1931, the Council of the League of Nations requested an Advisory Opinion from the Permanent Court on whether a customs union established between Germany and Austria in the Protocol of Vienna of 1931 would be compatible with Article 88 of the Treaty of Saint-Germain and with Protocol I of Geneva, signed in 1922, in which Austria undertook not to alienate its independence. In a separate opinion Anzilotti made some interesting comments about the concepts of independence and sovereignty, which he rightly considered to be synonyms. He said in the Advisory Opinion on the *Customs Union between Germany and Austria*:

Independence as thus understood is really no more than the normal condition of States according to international law; it may also be described as sovereignty (*suprema potestas*), or external sovereignty, by which is meant that the State has over it no other authority than that of international law.

The conception of independence, regarded as the normal characteristic of States as subjects of international law, cannot be better defined than by comparing it with the exceptional and, to some extent, abnormal class of States known as 'dependent States'. These are States subject to the authority of one or more other States. The idea of dependence therefore necessarily implies a relation between a superior State (suzerain, protector, etc.) and an inferior or subject State (vassal, protegee, etc.); the relation between the State which can legally impose its will

<sup>30</sup> Ibid., 98.

<sup>31</sup> Series A/B, No. 53, 92.

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and the State which is legally compelled to submit to that will. Where there is no such relation of superiority and subordination, it is impossible to speak of dependence within the meaning of international law.

It follows that the legal conception of independence has nothing to do with a State's subordination to international law or with the numerous and constantly increasing states of de facto dependence which characterize the relation of one country to other countries.

It also follows that the restrictions upon a State's liberty, whether arising out of ordinary international law or contractual engagements, do not as such in the least affect its independence. As long as these restrictions do not place the State under the legal authority of another State, the former remains an independent State however extensive and burdensome those obligations may be.<sup>32</sup>

According to ordinary international law, every country is free to renounce its independence and even its existence; this rule does not apply to Austria who, under Article 88, cannot voluntarily lose her independence, still less therefore her existence, except with the consent of the Council of the League of Nations.

Similarly, according to ordinary international law, each country must respect the independence of other countries, but it is not forbidden to agree to another State's voluntarily renouncing its independence in its favour. This is not allowed in the case of Austria, as regards the signatory States to the Treaty of Saint-Germain, except of course with the consent of the Council of the League of Nations.<sup>33</sup>

The right of self-government was very much in the minds of the drafters of the Treaty of Versailles and the Covenant of the League of Nations, which was a part of the Treaty. In the Advisory Opinion on the *Free City of Danzig and the ILO* Anzilotti described this right:

Now what distinguishes Dominions and Colonies which are fully self-governing from states is, above all, the fact that such Dominions and Colonies, though enjoying a very wide measure of self-government, do not or do not necessarily possess the right themselves to conduct their foreign relations. The right of self-government which Article I of the Covenant considers as a condition necessary for admission to the League of Nations and on which Article 421, paragraph 1, of the Treaty of Versailles is based, can therefore only be a right relating to internal affairs, for otherwise the interpretation of this article would lead to absurd or contradictory results.<sup>34</sup>

### H. Occupation

Occupation as a means of acquiring territory was the main problem discussed in the case of the *Legal Status of Eastern Greenland*, in 1933. Denmark brought an action against Norway, relating to a Resolution of 1931 by which Norway announced her occupation of certain territories in Eastern Greenland, over which Denmark claimed to have sovereignty.

32 Series A/B, No. 41, 57-58.

33 Ibid., 59.

34 Series A/B, No. 18, 22.

Anzilotti's opinion dealt with this subject in a rather detailed fashion. He considered, first, the *animus possidendi* as follows:

Again, this historic claim manifests itself in legislation or in treaties relating to Greenland as a whole. The *animus possidendi*, of which so much has been said in these proceedings, is, at bottom, nothing else than the old claim on the basis of which, first the kings of Denmark and Norway and later the kings of Denmark, did not hesitate to act as sovereigns of Greenland when opportunity offered itself.<sup>35</sup>

He then analyzed the requirement, according to contemporary international law, of effective exercise of sovereignty over a territory as the basis of title. He said:

Historic claims to dominion over whole regions – claims which had, formerly, played an important part in the allocation of territorial sovereignty – lost weight and were gradually abandoned even by the States which had relied upon them. International law established an ever closer connection between the existence of sovereignty and the effective exercise thereof, and States successfully disputed any claim not accompanied by such exercise.<sup>36</sup>

Then he clarified, in my opinion correctly, the relationship between the concepts of possession and occupation. He explained:

But in that case it is a question of the occupation of a *terra nullius*. To say that the title resides in possession and not in occupation is a verbal quibble, for possession of a territory which formerly belonged neither to the State possessing it nor to any other State is nothing else than occupation considered at a moment subsequent to the original act of occupying. In short, either the so-called second colonization is the manifestation of a pre-existing sovereignty and the title to this sovereignty must be established and shown to be valid; or else Greenland, in 1721, was a *terra nullius* and we have before us an occupation which must be appraised in accordance with the rules governing occupation.<sup>37</sup>

## I. The Laws of Neutrality and War

In its 1923 judgment in *S.S. Wimbledon*, a case brought by the United Kingdom, France, Italy, Japan, and Poland against Germany, the Permanent Court had to decide several issues concerning the laws of war and neutrality. This was the first inter-state dispute submitted to the Court, as well as the first judgment delivered by it.

The British *S.S. Wimbledon*, chartered by a French company and carrying a cargo of munitions to Danzig consigned to Poland, was refused access to the Kiel Canal by the German authorities acting under German neutrality regulations. At that time, Poland was at war with the Soviet Union. According to Article 380 of the Treaty of Versailles,

<sup>35</sup> Series A/B, No. 53, 83.

<sup>36</sup> *Ibid.*, 84.

<sup>37</sup> *Ibid.*

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the Kiel Canal was to be maintained free and open to vessels of commerce and war of all nations at peace with Germany on terms of complete equality.

The Court decided that Germany was wrong in refusing passage to the S.S. Wimbledon and was therefore liable for the prejudice sustained, which was evaluated at 140,000 francs.

Judge Anzilotti, together with Judge Max Huber, submitted a joint dissenting opinion. They stated:

In this respect, it must be remembered that international conventions and more particularly those relating to commerce and communications are generally concluded having regard to normal peace conditions. If, as a result of a war, a neutral or belligerent State is faced with the necessity of taking extraordinary measures temporarily affecting the application of such conventions in order to protect its neutrality or for the purposes of national defence, it is entitled to do so even if no express reservations are made in the convention.

At this point, it must be stated that a State may enter into engagements affecting its freedom of action as regards wars between third States. But engagements of this kind, having regard to the gravity of the consequences which may ensue, can never be assumed; they must always result from provisions expressly contemplating the situations arising out of a war. The right of a State to adopt the course which it considers best suited to the exigencies of its security and to the maintenance of its integrity, is so essential a right that, in case of doubt, treaty stipulations cannot be interpreted as limiting it, even though these stipulations do not conflict with such an interpretation.

This consideration applies with particular force in the case of perpetual provisions without reciprocity which affect the interests of third States.<sup>38</sup>

Later on, they added on the same question:

7. The conclusion, therefore, which appears to follow from the foregoing considerations is that the obligations undertaken by Germany to maintain the Kiel Canal free and open to vessels of nations at peace with her does not exclude her right to take the measures necessary to protect her interests as a belligerent or neutral power. This does not mean that the Canal is not also free in time of war, but this freedom will then necessarily be limited either by the exigencies of national defence, if Germany is a belligerent, or, if she is neutral, by the measures – differing according to circumstances – which she may take. This principle corresponds exactly to the rule already mentioned which was adopted in the Barcelona Conventions. The legal status of the Kiel Canal, therefore, resembles that of the internal navigable waterways of international concern.<sup>39</sup>

The judges referred also in this dissenting opinion to contraband of war. They commented:

It is not disputed that present international law allows neutrals the option of suppressing or tolerating in their territory commerce in and transport of contraband, and more especially of

38 Series A, No. 1, 36-37.

39 Ibid., 40.

arms and munitions. Again the transport of such commodities, even under a neutral flag, is not protected against a belligerent, and the latter is entitled, in certain conditions, to confiscate as a penalty even the neutral vessel and that part of its cargo which is not contraband. This is explained by the fact that commerce in and transport of contraband, although not necessarily affecting the neutrality of States, is regarded under the law of nations as unlawful because it assumes the guise of peaceful commerce for warlike purposes. This idea seems to acquire still greater force when considered in the light of the Covenant of the League of Nations, and more especially of its Articles 8 and 23 paragraph (d).<sup>40</sup>

### III. Procedural Matters

#### A. Tacit Abrogation and Temporary Suspension of a Declaration Made Under the Optional Clause

In the case *The Electricity Company of Sofia and Bulgaria* (1939), there was a conflict between the obligations assumed by Belgium and Bulgaria under the 1931 Treaty of Conciliation, Arbitration and Judicial Settlement, which provided for recourse to the Court, and those obligations accepted under the Declarations made by Bulgaria in 1921 and by Belgium in 1926, in accordance with Article 36, paragraph 2, of the Statute of the Court. The question in the 1939 case was whether the Declarations had been abrogated by the subsequent Treaty. This is not an easy problem, because in the case of declarations made under the optional clause, the consent to the Court's jurisdiction is given at different times by means of complementary unilateral acts, whereas in the case of treaties, the agreement is given simultaneously pursuant to a single act:

5. Since the Treaty covers all disputes referred to in the Declarations, the question arises whether the latter must not be held to have been abrogated by the Treaty.

There was no express abrogation. But it is generally agreed that, beside express abrogation, there is also tacit abrogation resulting from the fact that the new provisions are incompatible with the previous provisions, or that the whole matter which formed the subject of these latter is henceforward governed by the new provisions.

I consider that it would be difficult to resist the argument in favour of tacit abrogation, were it not for the following circumstance.

The Declarations and the Treaty have not the same period of validity, nor an indefinite period. As has already been seen, the periods of duration of the Declarations and of the Treaty were such that the life of the Declarations continued beyond that of the Treaty. It follows that the coming into force of the Treaty did not entirely do away with the *raison d'être* of the Declarations: this *raison d'être* ceased for so long as the Treaty should be in force; but it revived as soon as the Treaty should terminate. On the other hand, a treaty whose purpose was to extend and strengthen the peaceful settlement of disputes between the two States cannot be deemed to have intended to set aside, save in so far as was strictly necessary, an agreement which, in a more limited way, pursued the same object. While it is true that once the Treaty had come into

40 Ibid., 42.

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force, it left no room for the application of the Declarations, it is also true that it had no need to suppress them.

In these circumstances, it is not the abrogation of the Declarations, but its temporary suspension which we must consider to be the effect of the coming into force of the Treaty. It follows that the expiration of the Treaty eliminated the obstacle standing in the way of the application of the Declarations. The latter, never having ceased to be in force, again became applicable at the same moment as the Treaty terminated, namely March 4th, 1938.<sup>41</sup>

### B. Preliminary Objections

In *The Electricity Company of Sofia and Bulgaria* (1939), Bulgaria disputed the Court's jurisdiction, *inter alia*, on the ground that the dispute did not fall under any of the categories enumerated in Article 36, paragraph 2, of the Statute. The Court did not consider this objection to be a preliminary objection, arguing instead that it was closely related to the merits of the case. In a separate opinion, Anzilotti concurred in the Court's finding. There, he reasoned that:

7. It is not easy to say exactly what is the objection which the Bulgarian Government claims to draw from the matter of the dispute before the Court. It would appear, however, that it may be summed up as follows: the right which the Belgian Government denies to the Bulgarian Government is, in reality, the right of Bulgarian courts to try disputes between a Belgian company that is a concessionaire of public undertakings in Bulgaria and a Bulgarian Municipality; now this right is inherent in the sovereignty of the State and falls within Bulgaria's exclusive jurisdiction, and the Belgian Government cannot invoke the Treaty of 1931 in order to come before the Court.

If that really is the Bulgarian Government's objection, it seems to me certain that it is not a preliminary objection against the Court's jurisdiction, but a defence on the merits.

A preliminary objection is an objection of which the purpose and the effect are to prevent the continuance of proceedings before the Court, without prejudging the question whether the right claimed by the Applicant exists or not. Now it is clear that if the Court gave a decision on the Bulgarian objection, it would in reality be admitting or denying the right claimed by Bulgaria, without having heard the merits.

This objection cannot therefore be upheld, for it is not of the nature of a preliminary objection.

It is hardly necessary to add that the Bulgarian Government is quite free to put forward its argument during proceedings on the merits.<sup>42</sup>

### C. Interim Measures

In 1933, during the preliminary phases of the case *Polish Agrarian Reform and the German Minority*, the Court addressed the conditions for application of Article 41 of its Statute, relating to interim measures of protection. The Application submitted by Germany against Poland related to alleged acts of unfair discrimination by Poland

41 Series A/B, No. 77, 90.

42 Series A/B, No. 77, 94-95.

against Polish nationals of German origin, in carrying out agrarian reform in certain districts. Upon a review of the German Government's application for interim measures of protection, the Court ruled that the German request did not conform to Article 41 of the Court's Statute.

In that case, too, Anzilotti reached the same conclusions as did the Court, but he submitted a dissenting opinion because he could not subscribe to the reasons advanced in the Court's Order. He explained his position as follows:

I wish to state in the first place that, speaking generally, if there was ever a case in which the application of Article 41 of the Statute would be in every way appropriate, it would certainly be so in the case before us. The German Government alleges that certain acts of expropriation, which have been, or are being carried out, involve discriminatory treatment of Polish citizens of German race, as compared with Polish citizens of Polish race and, hence, that on this ground these acts are contrary to the Treaty of June 28th, 1919: founding itself on this reason, it asks that the expropriations now in progress should be suspended, as an interim measure of protection, until the Court has finally decided whether the said expropriations are legal or illegal. If the *summaria cognitio*, which is characteristic of a procedure of this kind, enabled us to take into account the possibility of the right claimed by the German Government, and the possibility of the danger to which that right was exposed, I should find it difficult to imagine any request for the indication of interim measures more just, more opportune or more appropriate than the one which we are considering.

Apart from all questions relating to the interpretation of Article 12 of the Treaty of June 28th, 1919, for the protection of Minorities, the only reason which, in my view, made it impossible for the Court to grant the German Government's request, in the present state of the proceedings, was the uncertainty (which the Application instituting the main proceedings) allows to subsist as to what the said Government seeks to obtain from the Court, and, in consequence, as to the extent of any rights which the interim measures would have to protect.<sup>43</sup>

#### **D. The Power of the Court to Decline to Render an Advisory Opinion**

One of Anzilotti's primary preoccupations as a judge was to protect the judicial character of the Court. He dealt with this subject in opinions relating to several cases, and was very rigorous on this point.

In 1930, in his individual opinion on the Advisory Opinion on the *Free City of Danzig and the International Labour Organization*, Anzilotti wrote that:

As the hypothesis assumed by the request relates to a point of law, the Court cannot accept it without first ascertaining whether it is sound or not. It is clear that the Court cannot give an opinion based on a hypothesis which is contrary to treaties in force.<sup>44</sup>

<sup>43</sup> Series A/B, No. 58, 181.

<sup>44</sup> Series B, No. 18, 19.

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4. In this way I reach the conclusion that the hypothesis upon which the request proceeds cannot be accepted by the Court, because it is in contradiction with the Treaty of Versailles. Having stated this, the Court should, in my opinion, have declared that it could not give the opinion for which it was asked. To my mind, it is equally inadmissible for the Court to comply with a request based on a hypothesis which is legally unsound or for the Court to modify the request in order to bring it into harmony with what the Court holds to be the law in force. It would have been for the Council to alter the request in accordance with the Court's indications, if it thought fit to ask for an opinion on the basis of such indications.<sup>45</sup>

The strictness of Anzilotti's judicial approach to the attitude of the Court towards a request for an advisory opinion is clearly reflected in his individual opinion in the case on *The Customs Union between Germany and Austria* (1931), where he stated that:

Everything points to the fact that the answer depends on considerations which are for the most part, if not entirely, of a political and economic kind. It may therefore be asked whether the Council really wished to obtain the Court's opinion on this aspect of the question and whether the Court ought to deal with it.<sup>46</sup>

I grant that the Court may refuse to give an opinion which would compel it to depart from the essential rules governing its activity as a tribunal,<sup>47</sup> but I am unable to admit that the Court can answer a question other than that which has been put to it or confine itself to answering a part of that question. To my mind that would be an abuse of its powers.<sup>48</sup>

In 1935, Anzilotti fully developed his views on this delicate subject in an individual opinion in the case *Consistency of Certain Legislative Decrees with the Constitution of the Free City*. There, he reasoned as follows:

The attention of the Court at that time was particularly directed to the question whether and in what circumstances it could refuse to comply with a request for an advisory opinion addressed to it by the Assembly or by the Council of the League of Nations. This question was discussed at length in a memorandum which Judge J.B. Moore submitted to the Court on February 18th, 1922, and which is to be found in Series D., No. 2, of the Publications of the Court (Acts and Documents concerning the organization of the Court), pages 383-398. The conclusion reached by Mr. J.B. Moore was that the Court is not under an unconditional obligation to give advisory opinions upon request, but that if it receives a request of this kind, it should then deal with the application according to what should be found to be the nature and the merits of the case. This conclusion was based, firstly, on a comparison of the two official texts of Article 14 of the Covenant, in which alone is the subject mentioned, and on the necessity of adopting an interpretation paying due regard to the permissive language – importing discretion – of the English text (The Court may also ...) and not

45 Ibid., 20.

46 Series A/B, No. 41, 68.

47 Advisory Opinion No. 5, 29.

48 Ibid., 69.

incompatible with the wider terms of the French text (Elle donnera aussi ...). Secondly, this conclusion was based on the fact that it is the duty of the Court at all costs to safeguard the fundamental purpose which it is designed to achieve, namely, the advancement of the application between nations of the principle and method of judicial decision.

The Court concurred in this view.<sup>49</sup>

The Court, applying these principles and because it would have been constrained to deviate from the essential rules which govern its function as a court and which it must follow even when giving an advisory opinion, refused to give the opinion for which it had been asked by the Council in the case concerning Eastern Carelia.<sup>50</sup> There is no reason to suppose that the Court has ever meant to modify its attitude. It is, indeed, difficult to see how the Court's independence of the political organs of the League of Nations could be safeguarded, if it were in the power of the Assembly or the Council to oblige the Court to answer any question which they might see fit to submit to it.<sup>51</sup>

4. The fact that the Court's opinion has been sought on a question which relates to the municipal law of a particular country, apart from any question of international law or of an international dispute, suffices, in my view, to justify the Court in declining to give its opinion. This argument applies with even greater force when the Court finds itself compelled, in order to give an opinion on a question of municipal law, to deviate from the rules which govern its action and procedure.<sup>52</sup>

I find it very difficult to agree that the Court, which is a judicial body and an organ of international law, should undertake to give its own interpretation of a municipal law, with which it is not reputed to be acquainted and of which it is certainly not an organ. If this procedure is the consequence of the question put by the Council, the only conclusion that I am able to draw is that the Council has asked the Court a question which it ought not to answer.<sup>53</sup>

That, however, is not the point with which I am concerned. The essential point to my mind is that the Court, in order to be able to give this Opinion, was obliged either to set aside its Rules and create a procedure *ad hoc*, or to deviate from a rule so fundamental as that of the equality of parties; and the reason for this was that the case concerned a question of municipal law arising in connection with a domestic political dispute.

This more than suffices, once again, to lead to the conclusion that the opinion asked for was outside the scope of the functions for which the Court has been created and organized, and that it should not have given the opinion.<sup>54</sup>

49 Series A/B, No. 65, 60.

50 Publications of the Court, Series B., No. 5.

51 Ibid., 61.

52 Ibid., 62-63.

53 Ibid., 64.

54 Ibid., 66.

### **E. Disputes as to the Meaning and Scope of a Judgment (Article 60 of the Statute)**

Article 60 of the Statute of the Court provides that ‘... In the event of dispute as to the meaning and scope of the judgment, the Court shall construe it upon the request of any party’. The interpretation of the scope of the word ‘dispute’ was at issue in the case *Interpretation of Judgments No. 7 and 8 concerning the case of the Factory of Chorzwow* (1927), between Germany and Poland. In a dissenting opinion, Anzilotti made a strict interpretation of the term ‘dispute’, holding that it was limited to the operative part of the judgment. There, he stated that:

It appears to me to be clear that a binding interpretation of a judgment can only have reference to the binding portion of the judgment construed.

2. To say that the request for an interpretation can only relate to the binding part of the judgment is equivalent to saying that it can only relate to the meaning and scope of the operative part thereof, as it is certain that the binding effect attaches only to the operative part of the judgment and not to the statement of reasons.

The grounds of a judgment are simply logical arguments, the aim of which is to lead up to the formulation of what the law is in the case in question. And for this purpose there is no need to distinguish between essential and non-essential grounds, a more or less arbitrary distinction which rests on no solid basis and which can only be regarded as an inaccurate way of expressing the different degree of importance which the various grounds of a judgment may possess for the interpretation of its operative part.

When I say that only the terms of a judgment are binding, I do not mean that only what is actually written in the operative part constitutes the Court’s decision. On the contrary, it is certain that it is almost always necessary to refer to the statement of reasons to understand clearly the operative part and above all to ascertain the *causa petendi*. But, at all events, it is the operative part which contains the Court’s binding decision and which, consequently, may form the subject of a request for an interpretation.<sup>55</sup>

### **F. The Operative Part of a Judgment**

In 1936, the Netherlands instituted proceedings against Belgium, asking the Court to declare that certain Belgian canal and irrigation works already under construction were in violation of Belgium’s obligations under an 1863 Treaty on the diversion of waters from the river Meuse. Belgium filed a counterclaim in which it claimed, conversely, that certain Dutch construction works in the same basin were contrary to international obligations assumed by the Netherlands pursuant to the same treaty. The Court, confining itself exclusively to an interpretation of the Treaty, rejected all the Dutch and Belgian submissions.

Anzilotti dissented in a very detailed opinion. It is interesting to note his views as to the necessary content of the operative part of a judgment:

55 Series A, No. 13, 13-14.

The operative clause of the judgment merely rejects the submissions of the principal claim and of the counter-claim. In my opinion, in a suit the main object of which was to obtain the interpretation of a treaty with reference to certain concrete facts, and in which both the Applicant and the Respondent presented submissions indicating, in regard to each point, the interpretation which they respectively wished to see adopted by the Court, the latter should not have confined itself to a mere rejection of the submissions of the Applicant: it should also have expressed its opinion on the submissions of the Respondent; and, in any case, it should have declared what it considered to be the correct interpretation of the Treaty.

It is from the stand-point of this conception of the functions of the Court in the present suit that the following observations have been drawn up.<sup>56</sup>

### **G. Political Considerations as Facts Influencing a Judicial Decision**

In the above-mentioned advisory opinion on the customs union between Austria and Germany, the majority of judges considered that the customs regime would not be compatible with the treaties in question. Anzilotti expressed his views in a separate opinion wherein he concurred with the majority decision, but for different reasons.

This opinion illustrates his conception of the relationship between politics and the administration of justice. The relevant provisions of Article 88 of the Saint-Germain Peace Treaty of 1919, and of Protocol No. 1 signed in Geneva in 1922, established obligations which foresaw the possibility of a future political evolution in the relations between Germany and Austria, and had as their main purpose to secure the independent existence of Austria against the danger of an eventual annexation by Germany. The political object of the treaties was therefore clear.

In his opinion, Anzilotti took this political objective into account, in order to determine what acts were authorized under the terms of the treaties. The following excerpts give a brief statement of his views:

This movement would be supported by one of the strongest forces in social life, namely economic solidarity. I admit that economic union does not necessarily lead to political union, but its influence is very decidedly in that direction.<sup>57</sup>

From this point of view, the Austro-German Customs Union must, in my opinion, be considered a fact which might compromise Austria's independence within the meaning of Article 88 of the Treaty of Saint-Germain.<sup>58</sup>

Man's will, however has only a limited influence over social forces like those which are urging Austria towards fusion with Germany, and in all probability the consequences of the union would ensue despite the precautions taken in the Protocol.<sup>59</sup>

Arguing still from the same stand-point, I find it difficult to attach importance to the fact that other customs unions have been regarded as perfectly compatible with the independence of

56 Series A/B, No. 70, 45.

57 Series A/B, No. AI, 71.

58 Ibid.

59 Ibid.

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States and have in fact exercised no appreciable influence over that independence. Everything depends upon the situation of the States which contracted these unions and, as these situations are never the same, the utmost care has to be taken in arguing from one case to another. The only pertinent historic precedent would appear to be the German *Zollverein*, owing to the analogy between the present situation of Germany and Austria and the situation of the various German States in the XIXth century. I do not wish to exaggerate its importance, but it seems to me that the *Zollverein* played a by no means unimportant part in paving the way for German unity.<sup>60</sup>

### IV. Final Remarks

Of course, the contribution of a judge to the work of the Court is not limited to his written opinions. Rather, as in the case with any judge, Anzilotti's most valued services were rendered during the deliberations and in connection with his participation in the drafting of judgments and advisory opinions. All of this important and treasured work, however, remains secret, as it should, in accordance with the provisions of Article 54, paragraph 3, of the Court's Statute, which provides: '3. The deliberations of the Court shall take place in private and remain secret'.

We will therefore never know for certain the extent of Anzilotti's contribution to the work of the Court in any particular case in which he participated. Normally, the judges of the Court do not write about their colleagues' participation in the proceedings. However, in the case of Anzilotti, we do have the brief testimony of Judge Charles De Visscher, who sat with him on the bench from May 1937 onwards. De Visscher writes:

Mais ce qui m'a frappé le plus durant ma collaboration avec Anzilotti à la Cour permanente et plus particulièrement au cours des séances privées en chambre du Conseil, ce fut de constater combien ce grand théoricien du droit international, si enclin à la systématisation, approfondissait le dossier de chaque affaire et conservait à travers la discussion la vision directe des particularités de l'espèce. Il n'avait peut-être pas son égal pour situer une affaire, pour dégager, en des termes lapidaires, ses aspects essentiels et les ramener aux critères juridiques.<sup>61</sup>

This short description of Anzilotti's approach to the Court's deliberations is consistent with the style of his opinions, articles, and other works. Anzilotti was always clear and brief, supporting his arguments with succinct and cogent reasoning that was very difficult to refute. It is perhaps possible to disagree with the point of departure of his logic, but once this point of departure is accepted, Anzilotti's conclusions are inevitable.

After devoting several weeks to a very careful reading of the judgments of the Court and of the opinions of Anzilotti, and having thoroughly appreciated his ideas and

<sup>60</sup> Ibid.

<sup>61</sup> *La Comunità Internazionale*, Vol. VI (1951) 252.

methods of reasoning, I am confident that several of the most-often quoted judgments of the Court were penned by Anzilotti himself.

Even more important than his intellectual contribution to the Court's judgments and opinions was Anzilotti's preoccupation with safeguarding the strictly judicial character of the Court. That concern found particular expression in relation to advisory opinions. In the Continental procedural law and tradition, the possibility of rendering an advisory opinion is alien to the functions of a tribunal; it was perhaps for this reason that Anzilotti was always very firm in dealing with requests for advisory opinions. Thus, even in controversies between two states where the jurisdiction of the Court was not accepted, his opinions more nearly resembled judgments than non-binding dicta. The following famous excerpt from the Advisory Opinion on the *Status of Eastern Carelia*, written as early as 1923, reflects Anzilotti's ideas on the functions of the Court:

The Court, being a Court of Justice, cannot, even in giving advisory opinions, depart from the essential rules guiding their activity as a Court.<sup>62</sup>

Anzilotti made an outstanding contribution to the jurisprudence of the Permanent Court of Justice from the very first years of its existence, when it was necessary to consolidate its prestige and to create faith and confidence in that new institution, which stood in the vanguard of the emerging idea that disputes and conflicts between states could always find a solution through the fair and just application of the law. But above and beyond the intellectual contribution which a judge might make to the work of the court, it is more important to evaluate his conduct in the performance of his duties, and particularly in connection with his international obligations as a jurist serving on an international court. Independence, impartiality, and objectivity are the most essential and elevated qualities required of an international judge in the performance of his duties; to be true to those qualities, he must set aside all personal feelings, sympathies, and considerations of national interest. Anzilotti is one of those judges who, over the history of two Courts, had the integrity and courage to take stands that were contrary to the positions of their own countries. As Jorge Luis Borges said, 'Siempre el coraje es mejor' ('Courage is always better').

62 Series B, No. 5, 29.