

**SPEECH BY H.E. MR. RONNY ABRAHAM, PRESIDENT OF THE INTERNATIONAL COURT OF
JUSTICE, ON THE OCCASION OF THE SEVENTY-SECOND SESSION OF THE
UNITED NATIONS GENERAL ASSEMBLY**

26 October 2017

[Translation]

Mr. President,
Excellencies,
Ladies and gentlemen,

It is an honour for me to be addressing the General Assembly once again as it considers the annual report of the International Court of Justice on its activities over the past year. I am happy to be carrying on what is already a very old tradition.

I am pleased to have the opportunity to do so before an Assembly meeting under the presidency of H.E. Mr. Miroslav Lajčák, to whom I offer my warm congratulations on his election; he has my very best wishes for this most distinguished of missions.

Between 1 August 2016 — the starting date of the period covered by the Court's report — and today, up to 19 contentious cases and one advisory proceeding have been pending before the Court.

During this same period, the Court has held hearings in six cases. The Court first heard the Parties' oral arguments on the preliminary objections submitted by Kenya in the case concerning *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*. It then held hearings on three requests for provisional measures submitted, in turn, in the case concerning *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*, in the case concerning *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)* and in the *Jadhav Case (India v. Pakistan)*. Finally, in early July 2017, the Court heard the Parties' oral arguments on the merits in the cases concerning *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua)* and *Land Boundary in the Northern Part of Isla Portillos (Costa Rica v. Nicaragua)*, which were joined in February 2017.

Since 1 August 2016, the Court has also delivered four Judgments and three Orders indicating provisional measures. The first three Judgments concerned questions of jurisdiction and admissibility raised in the cases regarding *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. India)*, *(Marshall Islands v. Pakistan)* and *(Marshall Islands v. United Kingdom)*; the fourth addressed the preliminary objections raised by Kenya in the case concerning *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*. The Orders indicating provisional measures were made, in turn, in the case instituted by Equatorial Guinea against France, in the case instituted by Ukraine against the Russian Federation, and in the case instituted by India against Pakistan.

[Original]

As is customary, I shall now give a brief overview of the substance of those decisions.

Having presented the three Judgments rendered by the Court on 5 October 2016 in the cases concerning *Obligations concerning Negotiations relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. India)*, *(Marshall Islands v. Pakistan)* and *(Marshall Islands v. United Kingdom)* in the address which I had the honour to give last year to this Assembly, I shall not go back over those decisions. I shall therefore begin by recalling certain elements of the Judgment rendered by the Court on 2 February 2017 on the Preliminary Objections raised by Kenya in the case concerning *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*.

In this regard, let me first recall some factual elements.

Somalia and Kenya, adjacent States on the coast of East Africa, are parties to the United Nations Convention on the Law of the Sea (UNCLOS). Under Article 76, paragraph 8, of UNCLOS, a State party to the Convention intending to establish the outer limits of its continental shelf beyond 200 nautical miles shall submit information on such limits to the Commission on the Limits of the Continental Shelf (CLCS). The role of the CLCS is to make recommendations to coastal States on matters related to the establishment of the outer limits of their continental shelf beyond 200 nautical miles. With regard to disputed maritime areas, the CLCS requires the prior consent of all the States concerned before it will consider submissions regarding such areas.

As the Court recalls in its Judgment, Somalia and Kenya signed on 7 April 2009 a Memorandum of Understanding (MOU), agreeing to grant to each other no-objection in respect of submissions made to the CLCS on the outer limits of the continental shelf beyond 200 nautical miles. Paragraph 6 of the MOU further provides that: “[t]he delimitation of maritime boundaries in the areas under dispute . . . shall be agreed between the two coastal States . . . after the Commission has concluded its examination of the separate submissions made by each of the two coastal States and made its recommendations . . .”. In the following years, both Parties raised and withdrew objections to the consideration of each other’s submissions by the CLCS. Those submissions are currently under consideration by the CLCS.

On 28 August 2014, Somalia instituted proceedings against Kenya before the Court, requesting the latter to determine, on the basis of international law, the complete course of the single maritime boundary dividing all the maritime areas appertaining to Somalia and to Kenya in the Indian Ocean, including the continental shelf beyond 200 nautical miles. As a basis for the Court’s jurisdiction, Somalia invoked the declarations recognizing the Court’s jurisdiction as compulsory made by the two States. Kenya, however, raised two preliminary objections: one concerning the jurisdiction of the Court, the other the admissibility of the Application.

In its Judgment dated 2 February 2017, the Court first examined Kenya’s objection concerning the jurisdiction of the Court. In this objection, Kenya argued that the Court lacked jurisdiction to entertain the case as a result of one of the reservations to its declaration accepting the compulsory jurisdiction of the Court, which excludes disputes in regard to which the parties have agreed “to have recourse to some other method or methods of settlement”. Kenya asserted that the MOU constituted an agreement to have recourse to another method of settlement. It added that the relevant provisions of UNCLOS on dispute settlement also amounted to an agreement on the method of settlement.

The Court first considered whether the MOU fell within the scope of Kenya’s reservation. Having examined the legal status of that instrument under international law, it concluded that it was a valid treaty which entered into force upon signature and which was binding on the Parties under

international law. The Court then proceeded to interpret the MOU and concluded that it did not constitute an agreement by the Parties “to have recourse to some other method or methods of settlement” within the meaning of Kenya’s reservation to its declaration recognizing the Court’s jurisdiction. Therefore, it did not fall within the scope of that reservation.

The Court next considered whether Part XV of UNCLOS (entitled “Settlement of disputes”) amounted to an agreement between the Parties on a method of settlement for their maritime boundary dispute within the meaning of Kenya’s reservation. It focused on Article 282 of the Convention in particular, which provides that “[i]f the States Parties which are parties to a dispute concerning the interpretation or application of [UNCLOS] have agreed, through a general, regional or bilateral agreement or otherwise, that such dispute shall, at the request of any party to the dispute, be submitted to a procedure that entails a binding decision, that procedure shall apply in lieu of the procedures provided for in [Part XV], unless the parties to the dispute otherwise agree”.

The Court was of the view that the phrase “or otherwise” in Article 282 encompassed agreement to the jurisdiction of the Court resulting from optional clause declarations even when such declarations contain a reservation to the same effect as that of Kenya. It concluded from this that under Article 282, the optional clause declarations of the Parties constituted an agreement, reached “otherwise”, to settle in the Court disputes concerning the interpretation or application of UNCLOS, and that the procedure before the Court should thus apply “in lieu” of procedures provided for in Section 2 of Part XV. Accordingly, the dispute did not, by virtue of Part XV of UNCLOS, fall outside the scope of Kenya’s optional clause declaration.

The Court concluded that Kenya’s preliminary objection to the jurisdiction of the Court had to be rejected. It then turned to the second preliminary objection raised by Kenya, which concerned the admissibility of the Application.

The Court recalled that, according to Kenya, the Application was inadmissible for two reasons. First, Kenya argued that the Parties had agreed in the MOU to delimit their boundary by negotiation, and only after the completion of the CLCS review of their submissions. Having previously found that the MOU did not bound the Parties to wait for the outcome of the CLCS process, and did not impose an obligation on the Parties to settle their maritime boundary dispute through a particular method of settlement, the Court also rejected this aspect of Kenya’s second preliminary objection. Secondly, Kenya contended that Somalia’s withdrawal of its consent to the consideration by the CLCS of Kenya’s submission was in breach of the MOU. The Court observed that the violation by Somalia of a treaty at issue in the case did not per se affect the admissibility of its Application. In light of the foregoing, the Court found that the preliminary objection to the admissibility of Somalia’s Application had to be rejected.

The Court therefore found that it had jurisdiction to entertain the Application filed by the Federal Republic of Somalia on 28 August 2014 and that the Application was admissible.

By an Order dated 2 February 2017, the Court fixed 18 December 2017 as the time-limit for the filing of the Counter-Memorial of Kenya in the case.

The proceedings are therefore currently pending.

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As already mentioned, during the reporting period, the Court also handed down three Orders for the indication of provisional measures, which I will briefly present in chronological order.

The first one was issued on 7 December 2016 in the case concerning *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*. As a French national, I did not exercise the functions of the presidency in this case, in accordance with Article 32, paragraph 1, of the Rules of Court. This role was assumed by the Vice-President of the Court, in conformity with Article 13 of the Rules. Let me recall that, on 13 June 2016, Equatorial Guinea instituted proceedings against France with regard to a dispute concerning the alleged immunity from criminal jurisdiction of the Vice-President of the Republic of Equatorial Guinea, Mr. Teodoro Nguema Obiang Mangue, and the legal status of a building located at 42 avenue Foch in Paris. Equatorial Guinea contended *inter alia* that, by initiating criminal proceedings against its Second Vice-President in charge of Defence and State Security, and by ordering the attachment (*saisie pénale immobilière*) of a building said to house its Embassy, France had disregarded immunities accorded under international law and violated Equatorial Guinea's sovereignty.

A few weeks later, on 29 September 2016, Equatorial Guinea submitted a Request for the indication of provisional measures, asking the Court, *inter alia*, to order that France suspend all the criminal proceedings brought against the Vice-President of Equatorial Guinea; that France ensure that the building located at 42 avenue Foch in Paris is treated as premises of Equatorial Guinea's diplomatic mission in France and, in particular, assure its inviolability; and that France refrain from taking any other measure that might aggravate or extend the dispute submitted to the Court.

Equatorial Guinea sought to found the Court's jurisdiction on two instruments, namely the Convention against Transnational Organized Crime and the Optional Protocol to the Vienna Convention on Diplomatic Relations.

In its Order, the Court, following its usual methodology, first examined whether the jurisdictional clauses contained in these instruments conferred upon it *prima facie* jurisdiction to rule on the merits, enabling it — if the other necessary conditions were fulfilled — to indicate provisional measures. Having examined the relevant elements, the Court considered that it did not have *prima facie* jurisdiction under Article 35, paragraph 2, of the Convention against Transnational Organized Crime to entertain Equatorial Guinea's Request relating to the alleged immunity of Mr. Teodoro Nguema Obiang Mangue. It did however find that it had *prima facie* jurisdiction under Article I of the Optional Protocol to the Vienna Convention to entertain the second aspect of the dispute, concerning the building located at 42 avenue Foch in Paris. The Court was therefore of the view that it could, on this basis, examine Equatorial Guinea's Request for the indication of provisional measures, in so far as it concerned that building.

Having found that it did not have *prima facie* jurisdiction to entertain the alleged violations of the Convention against Transnational Organized Crime, the Court addressed only Equatorial Guinea's alleged right to "the inviolability of the premises of its diplomatic mission", in respect of which Article 22 of the Vienna Convention was invoked. The Court concluded that the conditions required by its Statute for it to indicate provisional measures in respect of the building located at 42 avenue Foch in Paris had been met. It therefore indicated that France should, pending a final decision in the case, take all measures at its disposal to ensure that the premises presented as housing the diplomatic mission of Equatorial Guinea at 42 avenue Foch in Paris enjoy treatment equivalent to that required by Article 22 of the Vienna Convention on Diplomatic Relations, in order to ensure their inviolability.

On 19 April 2017, the Court handed down a second Order for the indication of provisional measures, in the case concerning *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*.

This case was instituted on 16 January 2017 by Ukraine against the Russian Federation with regard to alleged violations of the International Convention for the Suppression of the Financing of Terrorism (ICSFT) and the International Convention on the Elimination of All Forms of Racial

Discrimination (CERD). With reference to the ICSFT, Ukraine contended that the Russian Federation, in violation of its obligations under that Convention, had failed to take appropriate measures to prevent the financing of terrorism in Ukraine by public and private actors on the territory of the Russian Federation and that it had repeatedly refused to investigate, prosecute, or extradite “offenders within its territory brought to its attention by Ukraine”. With reference to CERD, Ukraine contended that the Russian Federation, in violation of its obligations under that Convention, had imposed in the Crimean peninsula “a regime of ethnic Russian dominance”, and had engaged in systematic discrimination against the Crimean Tatars and ethnic Ukrainians in Crimea.

The Court’s decision followed a Request for the indication of provisional measures submitted by Ukraine also on 16 January 2017. In its request, Ukraine stated that it was seeking to safeguard the rights it claimed under those two conventions pending the Court’s decision on the merits.

In its Order, the Court first recalled that it was not called upon, for the purposes of its decision on the Request for the indication of provisional measures, to establish the existence of breaches of the Parties’ obligations under either of these conventions, but to determine whether the circumstances required the indication of provisional measures for the protection of rights.

It stated that it was fully aware of the context in which the case had been brought before it, in particular the fighting taking place in large parts of eastern Ukraine and the destruction, on 17 July 2014, of Malaysia Airlines Flight MH17 while it was flying over Ukrainian territory en route between Amsterdam and Kuala Lumpur, which claimed a large number of lives. Nevertheless, the Court recalled that the case before it was limited in scope. In respect of the events in the eastern part of its territory, Ukraine brought proceedings only under the ICSFT. With regard to the events in Crimea, Ukraine’s claim was based solely upon CERD, and the Court was not called upon, as Ukraine expressly recognized, to rule on any issue other than allegations of racial discrimination made by the latter.

Moreover, the Court reminded the Parties that the Security Council, in its resolution 2202 (2015), had endorsed the “Package of Measures for the Implementation of the Minsk Agreements”, adopted and signed in Minsk on 12 February 2015. The Court said that it expected the Parties, through individual and joint efforts, to work for the full implementation of this “Package of Measures” in order to achieve a peaceful settlement of the conflict in the eastern regions of Ukraine.

The Court thereafter turned to the question whether the jurisdictional clauses contained in the ICSFT and CERD conferred upon it *prima facie* jurisdiction to rule on the merits, enabling it — if the other necessary conditions were fulfilled — to indicate provisional measures. It considered that the evidence before it was sufficient to establish, *prima facie*, that the procedural preconditions for its seisin, set out in Article 24, paragraph 1, of the ICSFT and in Article 22 of CERD, had been met.

The Court then turned to the rights whose protection was sought and was of the view that the conditions required for the indication of provisional measures in respect of the rights alleged by Ukraine on the basis of the ICSFT had not been met. With regard to CERD, it considered that the conditions required by its Statute for it to indicate provisional measures were met. It therefore found that, in order to protect the rights claimed by Ukraine with regard to the situation in Crimea, the Russian Federation should, in accordance with its obligations under CERD: (i) refrain from maintaining or imposing limitations on the ability of the Crimean Tatar community to conserve its representative institutions, including the *Mejlis*; and (ii) ensure the availability of education in the Ukrainian language. The Court added that both Parties should refrain from any action which might aggravate or extend the dispute before it or make it more difficult to resolve.

A few weeks later, on 18 May 2017, the Court handed down a third Order for the indication of provisional measures, in the *Jadhav Case (India v. Pakistan)*. In this case, instituted on 8 May 2017, India alleges that Pakistan violated Article 36 of the Vienna Convention on Consular Relations of 24 April 1963 with respect to an Indian national, Mr. Jadhav, sentenced to death in Pakistan. The Applicant contends that it had not been informed of Mr. Jadhav's detention until weeks after his arrest and that Pakistan failed to inform the accused of his rights. It further alleges that, in violation of the Vienna Convention, the authorities of Pakistan have been denying India its right of consular access to Mr. Jadhav, despite its repeated requests. The Court's Order was made in response to a Request for the indication of provisional measures also filed on 8 May 2017.

In its Request for the indication of provisional measures, India maintained that the alleged violation of the Vienna Convention by Pakistan "ha[d] prevented India from exercising its rights under the Convention and ha[d] deprived the Indian national from the protection accorded under the Convention". It added that Mr. Jadhav "[would] be subjected to execution unless the Court indicate[d] provisional measures directing the Government of Pakistan to take all measures necessary to ensure that he [was] not executed until th[e] Court's decision on the merits" of the case.

In its Order, having found that it had prima facie jurisdiction under Article I of the Optional Protocol to the Vienna Convention on Consular Relations, and having concluded that the conditions required by its Statute for it to indicate provisional measures had been met, the Court decided that Pakistan should take all measures at its disposal to ensure that Mr. Jadhav was not executed pending the final decision in these proceedings and should inform the Court of all the measures taken in implementation of the said Order. The Court also decided that, until it had given its final decision, it should remain seised of the matters which form the subject-matter of the said Order.

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[Translation]

I will turn to the new cases brought before the Court during the accounting period. In addition to the two cases just referred to — between Ukraine and the Russian Federation, and between India and Pakistan — in which the Court issued Orders on the indication of provisional measures, a further four sets of proceedings were instituted, three of them contentious, and one advisory.

First, on 16 January 2017, the Republic of Costa Rica instituted proceedings against the Republic of Nicaragua with regard to a "dispute concerning the precise definition of the boundary in the area of Los Portillos/Harbor Head Lagoon and the establishment of a new military camp by Nicaragua" on the beach of Isla Portillos. Given the nature of the claims made by Costa Rica in these new proceedings and the close link between those claims and certain aspects of the dispute in the case concerning *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua)*, the Court decided to join the proceedings in the two cases on 2 February 2017. As I mentioned in my opening remarks, hearings were held at the start of July 2017, and this new case is currently under deliberation.

A second set of proceedings was brought before the Court on 2 February 2017, when Malaysia filed an Application for revision of the Judgment rendered by the Court on 23 May 2008

in the case concerning *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)*. In its Application, Malaysia contends that “there exists a new fact of such a nature as to be a decisive factor within the meaning of Article 61” of the Statute of the Court, which authorizes a State, under certain conditions, to request the revision of a judgment. Malaysia refers in particular to three documents discovered in the National Archives of the United Kingdom between 4 August 2016 and 30 January 2017. It claims that these documents establish a new fact, namely that “officials at the highest levels in the British colonial and Singaporean administration appreciated that Pedra Branca/Pulau Batu Puteh did not form part of Singapore’s sovereign territory” during the relevant period. Malaysia argues that “the Court would have been bound to reach a different conclusion on the question of sovereignty over Pedra Branca/Pulau Batu Puteh had it been aware of this new evidence”.

A few months later, on 30 June 2017, Malaysia seized the Court of a new case by filing an Application requesting interpretation of the Judgment rendered by the Court on 23 May 2008 in the case concerning *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)*. Malaysia bases its request for interpretation on Article 60 of the Statute of the Court, which provides that “[i]n the event of a dispute as to the meaning or scope of the judgment, the Court shall construe it upon the request of any party”. It also invokes Article 98 of the Rules of Court. The Applicant explains that “Malaysia and Singapore have attempted to implement the 2008 Judgment through co-operative processes”. To that end, it states, they established a Joint Technical Committee, which was in particular tasked with addressing “the delimitation of the maritime boundaries between the territorial waters of both countries”. According to Malaysia, that Committee reached an impasse in November 2013. Malaysia asserts that “[o]ne reason [for] this impasse is that the Parties have been unable to agree over the meaning of the 2008 Judgment as it concerns South Ledge and the waters surrounding Pedra Branca/Pulau Batu Puteh”.

To conclude this overview, it remains for me to mention the request for an advisory opinion made by this Assembly in June 2017 regarding the legal consequences of the separation of the Chagos Archipelago from Mauritius in 1965.

As you are aware, on a procedural level, the Court decided in its Order dated 14 July 2017 “that the United Nations and its Member States [were] likely to be able to furnish information on the question submitted to the Court for an advisory opinion”. It fixed 30 January 2018 as the time-limit within which written statements on the question may be presented to the Court, in accordance with Article 66, paragraph 2, of the Statute, and 16 April 2018 as the time-limit within which States and organizations having presented written statements may submit written comments on the other written statements, in accordance with Article 66, paragraph 4, of the Statute.

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I come now to the budgetary requests for the biennium 2018-2019 which the Court submitted to the Assembly this year. The Court is fully aware of the financial difficulties faced by the Organization and its Member States and of the need for the United Nations as a whole, and the Court in particular, to exercise the budgetary restraint required in this context. The resources requested by the Court this year, which have increased slightly, are vital to ensure the sound administration of international justice and to enable the Court to fulfil its mandate under the United Nations Charter. The Court’s costs represent less than 1 per cent of the United Nations regular budget. In the light of its pre-eminent role and its ever-growing workload, the Court is without doubt an extremely cost-effective means of settling disputes peacefully. The Court is convinced that it can count on the understanding and support of the Assembly in this regard.

The Assembly's support will be particularly crucial in ensuring that the Court is provided with the means to implement an enterprise resource planning system – or EPR – (Umoja) during the next biennium. This EPR, which was designed to facilitate and streamline the flow of information between all areas of activity within the United Nations Secretariat, has been used by it since 2016. The revised budget estimates required for its implementation have been communicated to the Secretariat by the Court. In view of the modest size and specific nature of the Court's Registry, it was necessary to undertake various preliminary studies in order to assess the implications of adopting such software for the administration of the Court. Those studies having been duly completed, the Court has been able to take the necessary decisions and is now ready to implement the EPR it has chosen (Umoja) under the best possible conditions.

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This brings an end to my third address before you as President of the International Court of Justice. It seems an appropriate time to note the confidence that the international community continues to place in the Court by submitting to it a wide variety of disputes, each raising important legal questions concerning numerous areas of international law. Beyond the clear role the Court has played — and continues to play — in consolidating and developing the law governing issues that could be described as traditional, such as territorial and maritime delimitations, it is increasingly called upon to decide on questions at the heart of the international community's current concerns, relating to the conservation of the environment, for example. The substantive questions referred to the Court for resolution are often supplemented by incidental proceedings, meaning that the Court is constantly required to deal with several cases at the same time. The increase in the number of requests for the indication of provisional measures shows that States do not hesitate to turn to the Court in times of crisis, when their rights are at risk of irreparable harm. The Court then mobilizes all its resources to offer a timely and appropriate response to urgent situations. Whatever the mission entrusted to it by States, the Court never loses sight of its primary concern, which is to contribute to the maintenance of international peace and security through the application of the law.

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Mr. President,
Excellencies,
Ladies and gentlemen,

Thank you for giving me the opportunity to address you today. I wish this Seventy-second Session of the General Assembly every success.
