

**SPEECH BY H.E. JUDGE PETER TOMKA, PRESIDENT OF THE INTERNATIONAL COURT
OF JUSTICE, TO THE SIXTY-SEVENTH SESSION OF THE GENERAL
ASSEMBLY OF THE UNITED NATIONS**

1 NOVEMBER 2012

Mr. President,
Excellencies,
Ladies and Gentlemen,

I would first like to take this opportunity to congratulate His Excellency Mr. Vuk Jeremić on his election as President of the Sixty-seventh Session of the United Nations General Assembly. I wish him every success in this distinguished office.

In accordance with a well-established tradition, which reflects the interest in and support for the Court shown by your eminent Assembly, I would like to present a brief review of the judicial activities of the Court over the last 12 months. During this period, the Court continued to fulfil its role as the international community of States' forum of choice for the peaceful settlement of every kind of international dispute over which it has jurisdiction. It made every effort to meet the expectations of the parties appearing before it in a timely manner. It should be noted in this regard that, since the Court has been able to clear its backlog of cases, States thinking of submitting cases to the principal judicial organ of the United Nations can be confident that, as soon as they have finished their written exchanges, the Court will be able to move to the hearings without delay.

During the period under review, as many as 15 contentious cases and one advisory procedure were pending before the Court; 11 contentious cases remained so on 31 July 2012. During the same period, one new contentious case was submitted to the Court by Nicaragua, relating to the *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*. During the year 2011-2012, the Court held public hearings in turn in the following three cases: *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*; *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*; and the *Territorial and Maritime Dispute (Nicaragua v. Colombia)*. The Court is now deliberating in this last case and intends on delivering its Judgment during this month. It also held hearings in the case concerning the *Frontier Dispute (Burkina Faso/Niger)* from 8 to 17 October 2012 and has begun its deliberation. Lastly, hearings will begin in the case concerning the *Maritime Dispute (Peru v. Chile)* on 3 December.

During the reporting period, the Court delivered four Judgments in the following cases: *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece)*; *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*; *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, on the question of compensation owed to Guinea; and *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*. The Court also delivered an Advisory Opinion concerning *Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a complaint filed against the International Fund for Agricultural Development*.

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As is traditional, I will report briefly on the four Judgments and the Advisory Opinion rendered by the Court during the period under review. I shall deal with these decisions in chronological order.

On 5 December 2011, the Court delivered its Judgment in the case concerning the *Application of the Interim Accord of 13 September 1995 (the former Yugoslav Republic of Macedonia v. Greece)*. The case had been brought on 17 November 2008 by the former Yugoslav Republic of Macedonia against Greece for what it described as “a flagrant violation of [Greece’s] obligations under article 11” of the Interim Accord signed by the parties on 13 September 1995. After asking the Court, in its Application, “to protect its rights under the Interim Accord and to ensure that it is allowed to exercise its rights as an independent State acting in accordance with international law, including the right to pursue membership of relevant international organisations”, the former Yugoslav Republic of Macedonia requested the Court to order Greece to “immediately take all necessary steps to comply with its obligations under Article 11, paragraph 1” and “to cease and desist from objecting in any way, whether directly or indirectly, to the Applicant’s membership of the North Atlantic Treaty Organisation and/or of any other ‘international, multilateral and regional organizations and institutions’ of which [Greece] is a member . . .”. Greece, for its part, considered that the case brought by the Applicant did not fall within the jurisdiction of the Court and that the Applicant’s claims were inadmissible; it argued, in the alternative, that, were the Court to find that it had jurisdiction and that the claims were admissible, those claims were without foundation.

With regard to the Respondent’s objections as to the jurisdiction of the Court and the admissibility of the Applicant’s claims, the Court ruled that it not only had jurisdiction to entertain the Application filed by the former Yugoslav Republic of Macedonia, but also that the Application was admissible. As for the second part of the Applicant’s claims, the Court found that the Hellenic Republic, by objecting to the admission of the former Yugoslav Republic of Macedonia to NATO, had violated its obligation under Article 11, paragraph 1, of the Interim Accord. The Court rejected all other submissions made by the former Yugoslav Republic of Macedonia.

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On 3 February 2012, the Court rendered its Judgment in the case concerning *Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening)*. It was Germany which, on 23 December 2008, filed an Application instituting proceedings against Italy, whereby it requested the Court to find that Italy had failed to respect the jurisdictional immunity enjoyed by Germany under international law by allowing civil claims to be brought against it in the Italian courts, seeking reparation for injuries caused by violations of international humanitarian law committed by the German Reich during the Second World War; that Italy had also violated Germany’s immunity by taking measures of constraint against Villa Vigoni, German State property situated in Italian territory; and that Italy had further breached Germany’s jurisdictional immunity by declaring enforceable in Italy decisions of Greek civil courts rendered against Germany on the basis of acts similar to those which had given rise to the claims brought before Italian courts. Consequently, Germany requested the Court to adjudge and declare that Italy’s international responsibility was engaged; that Italy must, by means of its own choosing, take any and all steps to ensure that all the decisions of its courts and other judicial authorities infringing Germany’s sovereign immunity became unenforceable; and that Italy must take any and all steps to ensure that in the future Italian courts did not entertain legal actions against Germany founded on the above-mentioned occurrences.

In its Judgment, the Court found that Italy had violated its obligation to respect the immunity which Germany enjoys under international law by allowing civil claims to be brought against it based on violations of international humanitarian law committed by the German Reich between 1943 and 1945; that Italy had violated its obligation to respect the immunity which Germany enjoys under international law by taking measures of constraint against Villa Vigoni; and that Italy had violated its obligation to respect the immunity which Germany enjoys under international law by declaring enforceable in Italy decisions of Greek courts based on violations of international

humanitarian law committed in Greece by the German Reich. The Court also found that Italy must, by enacting appropriate legislation, or by resorting to other methods of its choosing, ensure that the decisions of its courts and those of other judicial authorities infringing the immunity which Germany enjoys under international law cease to have effect.

Last September, the Italian Minister for Foreign Affairs and Minister of Justice, in agreement with the Minister of Economy and Finance, presented draft legislation to the Italian Chamber of Deputies providing for the authorization of ratification by Italy of the United Nations Convention on Jurisdictional Immunities of States and Their Property, and its implementation. Furthermore, the draft law also addresses the effect in the Italian legal system of the Judgment of the Court in the aforementioned case, so as to ensure compliance with that decision.

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It was on 19 June 2012 that the Court delivered its third Judgment during the period under review, namely in the case concerning *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*. That Judgment concerned the question of compensation owed by the DRC to Guinea. It should be recalled that, in the Judgment on the merits on 30 November 2010, the Court had found, amongst other things, that the DRC had violated certain international obligations as a result of Mr. Diallo, a Guinean national, being continuously detained in Congolese territory for 66 days, from 5 November 1995 until 10 January 1996 and being detained for a second time between 25 and 31 January 1996, that is, for a total of 72 days. In that connection, the Court had found that Guinea had failed to demonstrate that Mr. Diallo had been subjected to inhuman or degrading treatment during his detentions. In addition, it had observed that Mr. Diallo had been expelled by the DRC on 31 January 1996 and that he had received notice of his expulsion on the same day. Accordingly, the Court had stated that the DRC was required to compensate Guinea for breaches of its obligations under certain human rights conventions, namely the International Covenant on Civil and Political Rights and the African Charter on Human and Peoples' Rights. Under the terms of the Judgment on the merits, it followed that the amount of compensation to be paid by the DRC had to be set "for the injury flowing from the wrongful detentions and expulsion of Mr. Diallo in 1995-1996, including the resulting loss of his personal belongings".

In the final stage of the proceedings, Guinea sought compensation amounting to eleven million five hundred and ninety thousand one hundred and forty-eight American dollars (US\$11,590,148), not including statutory default interest, under four heads of damage: non-material injury (referred to by Guinea as "mental and moral damage"); and three heads of material damage: alleged loss of personal property; alleged loss of professional remuneration (referred to by Guinea as "loss of earnings") during Mr. Diallo's detentions and after his expulsion; and alleged deprivation of "potential earnings". Guinea also requested the Court to order the DRC not only to pay all the costs, but also to pay it the amount of US\$500,000 for costs which it had been forced to incur in the proceedings. The DRC, for its part, requested the Court to adjudge that compensation in an amount of US\$30,000, payable within a time-limit of six months from the date of the Court's Judgment, was due to Guinea to make good the non-pecuniary injury suffered by Mr. Diallo as a result of his wrongful detentions and expulsion in 1995-1996; the DRC rejected all other claims by Guinea.

In ruling on the non-material injury alleged by Guinea, the Court considered that the amount of US\$85,000 would provide appropriate compensation for the damage suffered by Mr. Diallo. With regard to the compensation for material injury, the Court, relying on the jurisprudence of regional human rights courts, awarded the sum of US\$10,000 for the loss of Mr. Diallo's personal property. Having then found that Guinea had not proven to the satisfaction of the Court that Mr. Diallo had suffered a loss of professional remuneration during his detentions and following his expulsion, the Court decided to award no compensation for that injury; lastly, the Court decided to

award no compensation to Guinea in respect of its claim relating to the “potential earnings” of Mr. Diallo, in so far as such a claim, which was beyond the scope of those proceedings, amounted to a claim relating to the injuries alleged to have been caused to Africom-Zaire and Africontainers-Zaire, while the Court had already declared those claims inadmissible. After fixing 31 August 2012 as the time-limit for payment of the compensation owed by the DRC to Guinea, with post-judgment interest accruing at an annual rate of 6 per cent in the event of late payment, the Court decided that each Party should bear its own procedural costs. The Court was informed that compensation was duly paid by the DRC within the time-limit fixed for that purpose.

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I now come to the Judgment rendered by the Court in the case concerning *Questions relating to the Obligation to Prosecute or Extradite* between Belgium and Senegal. In this case, which it submitted to the Court by means of an Application dated 19 February 2009, Belgium complained that Senegal, where the former President of Chad, Hissène Habré, has been living in exile since 1990, had taken no action on its repeated requests to ensure that the latter be brought to trial in Senegal, failing his extradition to Belgium, for acts characterized as torture, crimes against humanity, war crimes and the crime of genocide, allegedly committed while he was President of Chad between 1982 and 1990. Belgium contended that Senegal was in breach of its obligations under Article 5, paragraph 2, Article 6, paragraph 2, and Article 7, paragraph 1, of the 1984 Convention against Torture and its obligations under customary international law. Senegal, for its part, submitted that there was no dispute between the Parties with regard to the interpretation or application of the Convention against Torture or any other relevant rule of international law; according to the Respondent, the Court therefore lacked jurisdiction in the case. Arguing, in particular, that none of the alleged victims of the acts attributed to Mr. Habré was of Belgian nationality at the time when the acts were committed, Senegal also objected to the admissibility of Belgium’s claims because, in its view, the latter was not entitled to invoke the international responsibility of Senegal for the alleged breach of its obligation to submit the Hissène Habré case to its competent authorities for the purpose of prosecution, failing his extradition.

Given that the existence of a dispute was a condition of the jurisdiction of the Court under both bases of jurisdiction invoked by Belgium, namely Article 30, paragraph 1, of the Convention against Torture and the declarations made by the Parties under Article 36, paragraph 2, of the Statute of the Court, the Court began by considering that question: it found that, in view of the legislative and constitutional reforms carried out in Senegal in 2007 and 2008, any dispute that might have existed between the Parties with regard to the interpretation or application of Article 5, paragraph 2, of the Convention, which requires a State party to the Convention to “take such measures as may be necessary to establish its jurisdiction” over acts of torture when the alleged offender is “present in any territory under its jurisdiction”, if it does not extradite him to one of the States referred to in paragraph 1 of the same article, had ended by the time the Application was filed.

As regards Belgium’s claims relating to Senegal’s duty to comply with its obligations under Article 6, paragraph 2, and Article 7, paragraph 1, of the Convention against Torture, which respectively require a State party to the Convention, when a person who has allegedly committed an act of torture is found on its territory, to hold “a preliminary inquiry into the facts” and, “if it does not extradite him”, to “submit the case to its competent authorities for the purpose of prosecution”, the Court, after analysing the diplomatic exchanges between the Parties, found that they had conflicting views concerning the interpretation and application of the above-mentioned provisions at the time of the filing of the Application. However, the Court considered that the dispute which had thus arisen did not relate to breaches of obligations under customary international law.

After recalling that, in the words of its preamble, the object and purpose of the Convention against Torture is to make more effective the struggle against torture throughout the world, the Court found that Belgium, as a State party to that Convention, had standing to invoke the responsibility of Senegal for the alleged breaches of its obligations *erga omnes partes* under Article 6, paragraph 2, and Article 7, paragraph 1; the claims of Belgium based on these provisions were thus declared admissible.

After assessing questions relating to the merits, the Court found that Senegal had violated its obligations under the two above-mentioned provisions of the Convention and that it had engaged its international responsibility. Noting the continuing nature of those violations, it declared that Senegal was required to cease them by “tak[ing] without further delay the necessary measures to submit the case to its competent authorities for the purpose of prosecution, if it does not extradite Mr. Habré”.

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I shall now turn to the Court’s Advisory Opinion concerning *Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a complaint filed against the International Fund for Agricultural Development*. In that case, the Court was asked to examine the validity of a judgment rendered by the Administrative Tribunal of the International Labour Organization (hereinafter “Tribunal” or “ILOAT”) concerning the contract of employment of Ms Saez García. It should be recalled that the latter had accepted from the International Fund for Agricultural Development (hereinafter “IFAD” or “Fund”) an offer of a two-year fixed-term contract serving as a Programme Officer in the Global Mechanism, an institution housed at the Fund. That contract of employment had been renewed on two occasions. The Tribunal was seized of a dispute concerning the decision of the President of the Fund to reject the recommendations of the Fund’s Joint Appeals Board following several internal procedures relating to the non-renewal of the contract of the individual concerned and the abolition of her post. In its judgment, the Tribunal set aside the President’s decision and ordered the Fund to pay damages and expenses. In the course of the advisory proceedings before the Court, the Fund asserted, in particular, that Ms Saez García was a staff member of the Global Mechanism and not of IFAD and that her employment status had to be assessed in the context of the arrangement for the housing of the Global Mechanism made between the Fund and the Conference of the Parties to the UN Convention to Combat Desertification.

After examining the texts defining the respective powers of, and relationships between, IFAD and the Global Mechanism, the Court came to the conclusion that the Global Mechanism, which is devoid of any international legal personality, had no power and had not purported to exercise any power to enter into contracts, agreements or “arrangements”, internationally or nationally. With respect to Ms Saez García’s employment status, the Court found that there was an employment relationship between her and the Fund, given that the staff regulations and rules of the Fund were applicable to her. Accordingly, the Court unanimously found that the Tribunal was competent, under Article II of its Statute, to hear the complaint introduced against IFAD on 8 July 2008 by Ms Saez García and that the decision given by the Tribunal in its Judgment No. 2867 was valid.

In the light of its concern “about the inequality of access to the Court arising from the review process under Article XII of the Annex to the Statute of the ILOAT”, the Court examined the principle of the equality before the Court of the Fund and Ms Saez García. It declared that the “principle [of equality] must now be understood as including access on an equal basis to available appellate or similar remedies unless an exception can be justified on objective and reasonable grounds”. In this connection, the Court questioned whether the system established in 1946 allowed

for the implementation of this modern-day concept of the principle of equality and access to justice, stating, however, that it did not fall to it to reform the current system.

In the case in question, the Court found that “the unequal position before the Court of the employing institution and its official, arising from provisions of the Court’s Statute, ha[d] been substantially alleviated” by its decision that “the President of the Fund was to transmit to the Court any statement setting forth the views of Ms Saez García which she might wish to bring to the attention of the Court and [to fix] the same time-limits for her as for the Fund for the filing of written statements in the first round of written argument and comments in the second round”. Moreover, the Court concluded that the situation of inequality was also alleviated by its decision not to hold hearings, pointing out that its “Statute does not allow individuals to appear in hearings in such cases, by contrast to international organizations concerned”.

While the UN has reformed its system of administrative justice some time ago, it remains nonetheless still possible to request revision of a judgment of the ILOAT. In fact, the opportunity to challenge a judgment of the Tribunal is only available to international organizations duly authorized to do so under the Statute of the ILOAT, and not to any staff member affected by such a decision. In that regard, the question arises whether the time has not come for the International Labour Organization to also consider initiating a reform of the current system, such as the one already carried out by the UN.

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Turning to more practical matters, I am delighted to tell you that the Court is refurbishing the Great Hall of Justice in the Peace Palace. This project, which has received the support of the Carnegie Foundation, is the first major renovation of this Hall in 100 years. In the past, minor works were carried out in order to extend the bench in order to accommodate the enlarged composition of the Court’s predecessor, namely the Permanent Court of International Justice. However, no renovation on the scale of the current project has previously been envisaged; furthermore, the newly-renovated Great Hall of Justice will also be equipped with improved modern technical facilities offering a wide range of possibilities.

I am therefore very pleased to assure Member States that, of course, we hear and shall continue to hear cases submitted to the Court faithfully and impartially, as required by the noble judicial mission entrusted to us, but that we are also modernizing the setting in which we exercise this function. We have thus been able to put the funds mobilized by the United Nations General Assembly to good use in this refurbishment and renovation project.

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Mr. President,
Excellencies,
Ladies and Gentlemen,

I hope that I have conveyed to you the extent to which the Court seeks to meet the expectations of the international community as a whole, including, as in the last decision that I reviewed, in relation to particular aspects of the law of international organizations. This is why the Court has already discussed the schedule of its judicial work for 2013 and 2014 with a view to fixing several series of hearings. I have already mentioned that hearings will begin in the case concerning the *Maritime Dispute (Peru v. Chile)* in December. In addition, the Court envisages holding hearings in April in the case concerning the *Request for Interpretation of the Judgment of*

15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand) (Cambodia v. Thailand), and in early summer next year in the case concerning Whaling in the Antarctic (Australia v. Japan).

Of course, the Court must do its utmost to serve the noble purposes and goals of the United Nations using limited resources, since the Member States award it less than 1 per cent, exactly 0.8 per cent, of the Organization's regular budget. Nevertheless, I hope that I have shown that the recent contributions of the Court are not to be measured in terms of the financial resources that sustain it, but against the great progress made by it in the advancement of international justice and the peaceful settlement of disputes between States.

I would like to thank you for giving me this opportunity to speak to you today. I wish you every success for this Sixty-seventh Session of the Assembly.
