

**SPEECH BY H.E. JUDGE PETER TOMKA, PRESIDENT OF THE INTERNATIONAL COURT
OF JUSTICE, AT THE SIXTY-FIFTH SESSION OF THE INTERNATIONAL
LAW COMMISSION**

18 July 2013

Mr. Chairman,

Ladies and Gentlemen,

Colleagues and Friends,

I am pleased to address the International Law Commission (“ILC” or the “Commission”) on the occasion of its Sixty-fifth Session, and for the second time in my capacity as President of the International Court of Justice (“ICJ” or the “Court”). I would like to take this opportunity to congratulate the Members elected as Officers of the Commission in May, including the Chairman, Mr. Bernd Niehaus.

For many years now, the Commission has invited the President of the Court to address the plenary meeting and engage in an exchange of views with the Commission. The Court is, of course, privileged to be able to take part in this enriching dialogue and to benefit from the collegiality and exchange of ideas stemming from the bonds of collaboration that bind our respective institutions. I am delighted to have the opportunity to continue the tradition today and am very grateful to you for that.

Today, I would like to focus my remarks on the Court’s judicial activities over the last year and offer some thoughts on current efforts to strengthen the compulsory jurisdiction of the Court, the latter being a very important topic falling within the broader mission of further bolstering the rule of law on the international plane. Fulfilling its role as the principal judicial organ of the United Nations over the last year, the Court has been particularly instrumental in furthering this objective, having rendered two major decisions on the merits in boundary disputes.

What is more, in handing down its decisions, the Court also contributed to maintaining international peace and security, an absolutely central objective of the UN Charter¹, primarily by settling long-standing maritime and land frontier disputes and, in one of the cases, by granting sovereignty to one party over certain maritime features. After all, it is no secret that adjudication by the Court of differences between disputing States can assist them in defusing tensions and prevent the escalation of such disagreements into open conflicts. The Court’s year in review unquestionably illustrates its important role as a judicial body in neutralizing such tensions between disputing States, with a view to ultimately normalizing the relations between them.

The first case in point arose in the context of the *Territorial and Maritime Dispute (Nicaragua v. Colombia)*, a long-standing dispute which concerned both sovereignty over certain maritime features and maritime delimitation in the Western Caribbean Sea. At the outset, it should be recalled that in its 2007 Judgment on preliminary objections², the Court determined that it lacked jurisdiction regarding Nicaragua’s claim to sovereignty over the islands of San Andrés, Providencia and Santa Catalina in view of Article VI of the Pact of Bogotá. The Court opined that sovereignty over these three islands had been resolved in favour of Colombia by the Treaty

¹See *Charter of the United Nations* (adopted 26 June 1945, entered into force 24 October 1945), Art. 1 (1).

²*Territorial and Maritime Dispute (Nicaragua v. Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2007 (II)*, p. 832.

concerning Territorial Questions at Issue between Colombia and Nicaragua, signed at Managua on 24 March 1928 (the “1928 Treaty”) and, consequently, the procedures under the Pact of Bogotá could not be applied, as these matters were settled before the entry into force of the Pact³. Nevertheless, this left several maritime features in dispute lying in the maritime area where the delimitation sought was to be carried out by the Court: these features were the Albuquerque Cays, East-Southeast Cays, Roncador, Serrana, Quitasueño, Serranilla and Bajo Nuevo. It must be stressed that in its 2007 Judgment, the Court *unanimously* rejected the preliminary objection of Colombia based on the contention that the 1928 Treaty and the 1930 Protocol settled the question of maritime delimitation⁴, Colombia arguing that the Parties agreed on the 82nd meridian as the delimitation line dividing their respective maritime areas⁵. The Court rendered its Judgment on the merits on 19 November 2012.

Before pronouncing on the question of sovereignty over these features, the Court assessed whether they were capable of appropriation, underscoring that small islands are subject to claims as to sovereignty, irrespective of size. By contrast, the Court continued, low-tide elevations (essentially meaning features which are above water at low tide but submerged at high tide) cannot be the object of appropriation. That said, the Court nonetheless went on to say that low-tide elevations located within the territorial sea of a coastal State are subject to its sovereignty and may be taken into account for the purpose of measuring the breadth of the territorial sea⁶. Noting that no disagreement had taken root between the Parties as to the status of all disputed maritime features as “islands” pursuant to international law, except one, the Court analysed the Parties’ differences over “whether any of the features on Quitasueño qualify as islands”⁷. Upon review of the scientific evidence, the Court ultimately concluded that the feature referred to as QS 32 in one relevant scientific report is above water at high tide, and thus capable of appropriation. All other features at Quitasueño were equated with low-tide elevations by the Court, in the light of insufficient evidence submitted by Colombia that would have led it to a contrary conclusion⁸.

Turning to the issue of sovereignty over the maritime features in dispute, the Court first analysed the terms of the 1928 Treaty, which stated that Colombia has sovereignty over “San Andrés, Providencia and Santa Catalina and over the other islands, islets and reefs forming part of the San Andrés Archipelago”⁹, leading it to investigate what constitutes this Archipelago. Ultimately, the Court found both the 1928 Treaty and the historical records invoked by the Parties to be silent on this point, while, in particular, the 1930 Protocol of Exchange of Ratifications of the 1928 Treaty did no more than establish the 82nd meridian as the western limit of the Archipelago. Rather, the Court had to weigh the evidence and arguments submitted by the Parties to support their claims to sovereignty over the disputed features, which were not articulated around the composition of the Archipelago¹⁰.

In this regard, the Court dismissed the arguments advanced by the Parties on the basis of *uti possidetis juris*, expounding that such principle failed to illuminate the sovereignty question in the present case, primarily because the historical record did not clearly demonstrate that the maritime features were attributed to the colonial provinces of either of the Parties prior to

³*Territorial and Maritime Dispute (Nicaragua v. Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2007 (II)*, pp. 860-861.

⁴*Ibid.*, pp. 875, para. 142 (1) (c); p. 869, para. 120.

⁵*Ibid.*, p. 865.

⁶*Territorial and Maritime Dispute (Nicaragua v. Colombia), Judgment, I.C.J. Reports 2012 (II)*, p. 641, paras. 25-26.

⁷*Ibid.*, p. 642, para. 27.

⁸*Ibid.*, p. 645, paras. 37-38.

⁹*Ibid.*, p. 646, para. 40, citing Art. I of the 1928 Treaty.

¹⁰*Ibid.*, pp. 648-649, paras. 52-56.

decolonization¹¹. Moving on, the Court underscored Colombia's contention that *effectivités* confirm its pre-existing title to the contentious maritime features before assessing the various categories of *effectivités* submitted by Colombia, namely: public administration and legislation, regulation of economic activities, public works, law enforcement measures, naval visits and search and rescue operations, and consular representation¹².

Confronted with the various evidentiary elements presented in the case file, the Court found that Colombia continuously and consistently acted *à titre de souverain* with regard to the maritime features in dispute, over a period of several decades. What is more, the Court concluded, such sovereign authority exerted by Colombia was public and elicited no protest from Nicaragua prior to 1969, which corresponds with the period when the dispute now before the Court crystallized. The Court also ascribed some weight to the fact that these administrative acts carried out by Colombia stood in sharp contrast with the lack of evidence revealing any such acts, *à titre de souverain*, on the part of Nicaragua. Thus, this prompted the Court to conclude that the facts lend very strong support to Colombia's claim of sovereignty over the disputed maritime features¹³. Along similar lines, the Court equated Nicaragua's conduct with respect to the islands, the practice of third States, and maps, with elements supportive of Colombia's claim, although it declined to propel these items to the ranks of evidence of sovereignty given their limited value¹⁴.

Interestingly, the Court was also confronted with the admissibility of Nicaragua's final submission I (3) that the Court effect a continental shelf boundary dividing by equal parts the overlapping entitlements to a continental shelf of both Parties. This new submission was at a variance with Nicaragua's original claim, formulated in its Application and Memorial, that the Court determine the "single maritime boundary" between the continental shelf areas and exclusive economic zones of both States, i.e., by way of median line between the mainland coasts of the Parties¹⁵. However, the Court remained unpersuaded by Colombia's pleas that this revised claim transformed the subject-matter of the dispute before it; in short, Nicaragua's claim to an extended continental shelf did not, in itself, render the claim inadmissible and arose directly out of the original dispute¹⁶.

Underscoring that Colombia is not a State party to UNCLOS, therefore triggering the application of customary international law in the case before it¹⁷, the Court observed that the definition of the continental shelf laid down in Article 76 (1) of that instrument forms part of customary international law¹⁸. It went on to reiterate the statement it delivered in the case concerning the *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, that "any claim of continental shelf rights beyond 200 miles [by a State party to UNCLOS] must be in accordance with Article 76 of UNCLOS and reviewed by the Commission on the Limits of the Continental Shelf established thereunder"¹⁹.

¹¹*Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2012 (II), p. 651, para. 65.

¹²*Ibid.*, p. 653, para. 72; pp. 655-657, para. 82.

¹³*Ibid.*, p. 657, para. 84.

¹⁴*Ibid.*, p. 659, para. 90; p. 660, para. 95; p. 662, para. 102.

¹⁵*Ibid.*, p. 662, para. 104; p. 664, para. 108.

¹⁶*Ibid.*, p. 665, paras. 111-112.

¹⁷Later in its Judgment, the Court would also indicate that the law applicable to the delimitation it ultimately carried out was customary international law. In this vein, the Court considered that the principles of maritime delimitation enshrined in Arts. 74 and 83 of UNCLOS, along with the régime of islands articulated in Art. 121, reflect customary international law: see *ibid.*, p. 673, para. 137; p. 674, para. 139.

¹⁸*Ibid.*, p. 666, para. 118.

¹⁹*Ibid.*, p. 669, para. 126, citing *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*, I.C.J. Reports 2007 (II), p. 759, para. 319.

Colombia's status as non-party to UNCLOS in no way absolving Nicaragua of the obligation spelled out in *Nicaragua v. Honduras*, the Court highlighted that that State had only submitted "Preliminary Information", which — even of its own admission — failed to fulfil the requisite criteria to enable the Commission on the Limits of the Continental Shelf to make a recommendation pertaining to the establishment of the outer limits of the continental shelf²⁰. In short, the Court decided that Nicaragua's claim contained in final submission I (3) could not be upheld: the dearth of information submitted in the course of the proceedings could not lead to the conclusion that Nicaragua had established that it has a continental margin extending sufficiently to overlap with Colombia's 200-nautical-mile continental shelf entitlement, as measured from Colombia's mainland coast²¹.

The Court was, however, called upon to effect a maritime delimitation between the overlapping maritime entitlements of the Parties within 200 nautical miles of the Nicaraguan coast, as there existed an overlap between the entitlement of Nicaragua to a continental shelf and EEZ "extending to 200 nautical miles from its mainland coast and adjacent islands" and the entitlement of Colombia to a continental shelf and EEZ derived from the islands that the Court had attributed to Colombia²². In carrying out the delimitation, the Court determined that the whole Nicaraguan coast, with the exception of the short stretch of coast near Punta de Perlas, was relevant in the exercise. Furthermore, the Court observed that Nicaragua's maritime entitlement to a 200-nautical-mile continental shelf and EEZ was to be measured from the islands fringing its coast, while the east-facing-coasts of Nicaraguan islands were to be disregarded in determining the length of the relevant coast. These fringing islands would nonetheless contribute to the baselines from which Nicaragua's entitlement was to be measured²³.

For Colombia, the Court deemed only the coasts of the islands under Colombian sovereignty facing the Nicaraguan mainland as relevant, as the Colombian mainland did not generate any entitlement that would overlap with the continental shelf and EEZ entitlements within 200 nautical miles of Nicaragua's coast. Given that the area of overlapping entitlements extended "well to the east of the Colombian islands", the Court determined that the entire coastline of these features would be taken into account as relevant, with the most important islands being San Andrés, Providencia and Santa Catalina²⁴. However, the Court also determined that the coasts of Alburquerque Cays, East-Southeast Cays, Roncador and Serrana would form part of the relevant coast²⁵. In sum, the lengths of the Parties' respective relevant coasts — measured at a total of 531 km for Nicaragua and 65 km for Colombia — produced "a ratio of approximately 1:8.2 in favour of Nicaragua"²⁶.

Recalling important legal aspects related to the concept of relevant area under the law governing maritime delimitation, with particular emphasis on the overarching objective of devising an equitable solution as opposed to equal apportionment of maritime areas²⁷, the Court described the relevant area in this case: it extended from the Nicaraguan coast to a line in the east, located "200 nautical miles from the baselines from which the breadth of Nicaragua's territorial sea is measured"²⁸. In the north and south, the case presented a considerably more complex set of

²⁰*Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2012 (II), p. 669, para. 127.

²¹*Ibid.*, p. 669, para. 129; p. 670, para. 131.

²²*Ibid.*, p. 670, para. 132.

²³*Ibid.*, p. 678, para. 145.

²⁴*Ibid.*, p. 680, para. 151.

²⁵*Ibid.*, para. 152.

²⁶*Ibid.*, para. 153.

²⁷*Ibid.*, paras. 157-158.

²⁸*Ibid.*, p. 683, para. 159.

circumstances with which the Court had to grapple, chief amongst them being the interests of third States. Among other findings, the Court held that the various agreements involving Colombia, Costa Rica, Jamaica and Panama were *res inter alios acta* with respect to Nicaragua. Conversely, the position of Honduras was different in the eyes of the Court, as the boundary between Honduras and Nicaragua was established by the Court's 2007 Judgment, even though the endpoint of that frontier was not fixed. Undoubtedly facilitating the work of the Court in the present case was the broad agreement between the Parties that the area of overlapping entitlements did "not extend beyond the boundaries already established between either of them and any third State"²⁹.

With all these considerations in mind, the Court proceeded to identify the relevant area in the north as following the course of the maritime boundary between Nicaragua and Honduras, as determined by the Court in its 2007 Judgment, until it reached latitude 16 degrees north. Continuing due east until it reached the boundary of the Colombia-Jamaica "Joint Regime Area", the boundary of the relevant area followed the boundary of the "Joint Regime Area", "skirting a line 12 nautical miles from Serranilla, until it intersect[ed] with the line 200 nautical miles from Nicaragua"³⁰. In the southern sector, the boundary of the relevant area started "in the east at the point where the line 200 nautical miles from Nicaragua intersect[ed] with the boundary line agreed between Colombia and Panama"; it then continued along the Colombia-Panama line to the west before reaching the line agreed between Colombia and Costa Rica. Finally, it "follow[ed] that line westwards and then northwards, until it intersect[ed] with a hypothetical equidistance line between the Costa Rican and Nicaraguan coasts"³¹. In total, the relevant area determined by the Court was approximately 209,280 sq km³².

With respect to the entitlements generated by the relevant maritime features, the Court underscored that the only points of contention between the Parties pertained to the entitlements which may have been generated by Quitasueño, Albuquerque Cays, East-Southeast Cays, Roncador, Serrana, Serranilla and Bajo Nuevo. At the outset, the Court set aside Serranilla and Bajo Nuevo, as those features fell outside the relevant area as defined by the Court in the immediately preceding section of its Judgment³³. In short, the Court held that Albuquerque Cays, East-Southeast Cays, Roncador and Serrana were all entitled to a 12-nautical-mile territorial sea by virtue of contemporary international law. Given the reach of the entitlements generated by San Andrés, Providencia and Santa Catalina, the Court deemed it unnecessary to pronounce on the precise status of the smaller islands whose potential entitlements would inevitably overlap with those of the three other major islands of the San Andrés Archipelago³⁴. Furthermore, the Court found that Colombia was entitled to a territorial sea of 12 nautical miles around QS 32 at Quitasueño, and that it could "use those low-tide elevations within 12 nautical miles of QS 32 for the purpose of measuring the breadth of its territorial sea"³⁵. Echoing the views of the Parties that QS 32 is nothing more than a rock, "which is incapable of sustaining human habitation or economic life of its own" pursuant to Article 121 (3) of UNCLOS, the Court concluded that this feature generated no entitlement to a continental shelf or EEZ³⁶.

Before beginning the actual delimitation, the Court recalled that this type of exercise is governed by the basic delimitation methodology developed in its jurisprudence and best expressed

²⁹*Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2012 (II), p. 685, para. 162.

³⁰*Ibid.*, p. 686, para. 164.

³¹*Ibid.*, para. 165.

³²*Ibid.*, para. 166.

³³*Ibid.*, p. 689, para. 175.

³⁴*Ibid.*, pp. 691-692, para. 180.

³⁵*Ibid.*, pp. 692-693, para. 182.

³⁶*Ibid.*, p. 693, para. 183.

as the three-stage analysis it articulated in the 2009 case concerning *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*³⁷. Applying this jurisprudence, the Court first indicated that the following base points would be used when plotting the provisional equidistance line: on the Nicaraguan coast, base points located on Edinburgh Reef, Muerto Cay, Miskitos Cays, Ned Thomas Cay, Roca Tyra, Little Corn Island and Great Corn Island; on the Colombian coast, base points on Santa Catalina, Providencia and San Andrés islands and on Albuquerque Cays³⁸. The Court then turned to the second step of the delimitation methodology to investigate whether there were any relevant circumstances which may have called for an adjustment or shifting of the provisional equidistance line so as to achieve an equitable result. In particular, the Court noted that the Parties had advanced several different such relevant circumstances³⁹.

Noting a substantial disparity between the relevant Colombian coast and that of Nicaragua of approximately 1:8.2, the Court considered that “an adjustment or shifting of the provisional line” was required, particularly in the light of “the overlapping maritime areas to the east of the Colombian islands”⁴⁰. The Court rejected Nicaragua’s contention that the Colombian islands were located on Nicaragua’s continental shelf, recalling its *jurisprudence constante* to the effect that “geological and geomorphological considerations are not relevant to the delimitation of overlapping entitlements within 200 nautical miles of the coasts of States”⁴¹. That said, the Court did consider that the cut-off effect of the provisional median line — which “cut Nicaragua off from some three quarters of the area into which its coast project[ed]” — amounted to a relevant consideration requiring adjustment of the provisional line⁴². Similarly, the Court indicated that it would bear in mind any legitimate security concerns in the second stage of the three-step analysis⁴³. Conversely, the Court declined to equate the conduct of the Parties or the issue of equitable access to natural resources with relevant circumstances in the present case⁴⁴. The Court also declined to consider the recognition by third States of Colombian claims in certain maritime areas, which stemmed from Colombia’s delimitation agreements and an unratified treaty with Panama, Costa Rica and Jamaica, as a relevant circumstance. Recalling the importance of Article 59 of its Statute, which ensures that its judgments are binding only on the parties to a case, the Court observed that these agreements with third States did not confer upon Colombia rights against Nicaragua, nor did they entitle it to “a greater share of the area in which its maritime entitlements overlap[ped] with those of Nicaragua than it would otherwise receive”⁴⁵.

In shifting the provisional line, the Court remarked that in the first, western, part of the relevant area, the provisional median line should be shifted eastwards; moreover, “the disparity in coastal lengths [was] so marked as to justify a significant shift”. Yet, the Court was not persuaded that the line should be shifted so far that it would cut “across the 12-nautical-mile territorial sea around any of the Colombian islands”⁴⁶. For reasons it canvassed in the Judgment, the Court

³⁷*Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, *I.C.J. Reports 2012 (II)*, p. 695, para. 190, citing *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, *I.C.J. Reports 2009*, p. 101, paras. 115-116; also citing *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment, *I.C.J. Reports 1985*, p. 46, para. 60.

³⁸*Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, *I.C.J. Reports 2012 (II)*, pp. 698-699, para. 201; p. 699, para. 203.

³⁹*Ibid.*, p. 700, paras. 206-207.

⁴⁰*Ibid.*, p. 702, para. 211.

⁴¹*Ibid.*, p. 703, para. 214.

⁴²*Ibid.*, pp. 703-704, para. 215.

⁴³*Ibid.*, p. 706, para. 222.

⁴⁴*Ibid.*, p. 705, para. 220; p. 706, para. 223.

⁴⁵*Ibid.*, p. 707, paras. 227-228.

⁴⁶*Ibid.*, p. 709, para. 233.

ultimately favoured a weighted line using a 3:1 ratio⁴⁷, which it subsequently simplified “by reducing the number of turning points and connecting them by geodetic lines”⁴⁸. In order to take account of both the disparity in coastal lengths and the need to avoid cutting off either State from the maritime space into which its coasts projected, the Court continued “the boundary line out to the line 200 nautical miles from the Nicaraguan baselines along lines of latitude”⁴⁹.

The boundary line ultimately plotted by the Court, “from the extreme northern point of the simplified weighted line . . . , which [was] located on the parallel passing through the northernmost point on the 12-nautical-mile envelope of arcs around Roncador”, follows “the parallel of latitude until it reaches the 200-nautical-mile limit from the baselines from which the territorial sea of Nicaragua is measured”. “[F]rom the extreme southern point of the adjusted line”, the boundary line runs “in a south-east direction until it intersects with the 12-nautical-mile envelope of arcs around South Cay of Albuquerque Cays”; it then “continues along that 12-nautical-mile envelope of arcs around South Cay of Albuquerque Cays until it reaches the point . . . where that envelope of arcs intersects with the parallel passing through the southernmost point on the 12-nautical-mile envelope of arcs around East-Southeast Cays. The boundary line then follows that parallel until it reaches the southernmost point of the 12-nautical-mile envelope of arcs around East-Southeast Cays . . . and continues along that envelope of arcs until its most eastward point . . . From that point the boundary line follows the parallel of latitude until it reaches the 200-nautical-mile limit from the baselines from which the territorial sea of Nicaragua is measured”⁵⁰.

With respect to Quitasueño and Serrana, given that both features fall on the Nicaraguan side of the plotted boundary line I have just described, the Court thought it best to enclave those features as a way to achieve the most equitable solution. Therefore, both features are entitled to a 12-nautical-mile territorial sea and, for the reasons I alluded to earlier, Quitasueño is not entitled to a continental shelf or EEZ. Consequently, the Court indicated that the boundary between the continental shelf and EEZ of Nicaragua and the Colombian territorial sea around Quitasueño would “follow a 12-nautical-mile envelope of arcs measured from QS 32 and from the low-tide elevations located within 12 nautical miles from QS 32”. With respect to Serrana, and after echoing its earlier conclusion that no pronouncement as to the legal status of that feature under Article 121 (3) of UNCLOS was required, the Court decided that the boundary line would “follow the outer limit of the territorial sea around the island”, thereby following “a 12-nautical-mile envelope of arcs measured from Serrana Cay and other cays in its vicinity”⁵¹.

In the final step of its analysis pursuant to the methodology laid down in *Maritime Delimitation in the Black Sea*⁵², the Court concluded that, upon consideration of all the circumstances, the result achieved by its maritime delimitation did not entail a significant disproportionality such as to create an inequitable result⁵³. In short, the boundary line “has the effect of dividing the relevant area between the Parties in a ratio of approximately 1:3.44 in Nicaragua’s favour”, whereas the ratio of relevant coasts is approximately 1:8.2⁵⁴. As its last order of business in the case, the Court ultimately found that Nicaragua’s request that “Colombia is not acting in accordance with her obligations under international law by stopping and otherwise

⁴⁷*Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2012 (II), pp. 709-710, para. 234.

⁴⁸*Ibid.*, p. 710, para. 235.

⁴⁹*Ibid.*, para. 236.

⁵⁰*Ibid.*, pp. 710-713, para. 237.

⁵¹*Ibid.*, pp. 713-715, para. 238.

⁵²See above note 37.

⁵³*Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, I.C.J. Reports 2012 (II), p. 717, para. 247.

⁵⁴*Ibid.*, p. 716, para. 243.

hindering Nicaragua from accessing and disposing of her natural resources to the east of the 82nd meridian”, formulated in its final submissions⁵⁵, was unfounded. This conclusion was substantiated by the fact that the delimitation effected by the Court now attributed to Colombia part of the maritime spaces in respect of which Nicaragua was seeking a declaration regarding access to natural resources prior to the Court’s Judgment⁵⁶.

Over the last year, the Court was also kept busy with another boundary delimitation case — this time a land frontier — concerning another part of the world in the *Frontier Dispute (Burkina Faso/Niger)*, which culminated in the Court’s Judgment on the merits on 16 April 2013. That case was brought to the Court by way of Special Agreement between Burkina Faso and Niger, whereby the Parties agreed to submit their frontier dispute to the Court with respect to a section of their common frontier. Accompanying the letter to the Court submitting the case was the 2009 Protocol of Exchange of the Instruments of Ratification of the Special Agreement and an exchange of Notes, placing on record the agreement (“entente”) between the two States on the result of the work of the Joint Technical Commission on Demarcation concerning the demarcated sectors of the boundary. These sectors run, in the north, from the heights of N’Gouma to the astronomic marker of Tong-Tong and, in the south, from the beginning of the Botou bend to the River Mekrou. The Court was entrusted — by virtue of Article 2 of the Special Agreement — to determine the course of the boundary between the Parties in the sector from the astronomic marker of Tong-Tong to the beginning of the Botou bend, and to place on record the Parties’ agreement (“leur entente”) on the results of the work of the Joint Technical Commission on Demarcation of the boundary⁵⁷.

Prior to delving into the dispute submitted to it, the Court had to deal with Burkina Faso’s request concerning the two demarcated sectors of the boundary running, in the north, from the heights of N’Gouma to the Tong-Tong astronomic marker and, in the south, from the beginning of the Botou bend to the River Mekrou. In particular, Burkina Faso requested that the Court recognize the course of the boundary in those two sectors in the operative part of its Judgment, as recorded in 2009 by a joint mission mandated with conducting surveys based on the work of the Joint Technical Commission⁵⁸. After some discussion regarding the linkages between special agreements and its jurisdiction, the Court concluded that Burkina Faso’s request, which it formulated in its final submissions, was at odds with the Special Agreement. This conclusion was supported by the fact that this State did not request the Court to “place on record the Parties’ agreement” (“leur entente”) regarding the delimitation of the frontier in the two demarcated sectors, but rather to delimit the frontier according to a line that corresponded to the Joint Technical Commission’s conclusions⁵⁹.

Thus, in a literal sense, Burkina Faso’s request could have been discarded by the Court as going beyond the confines of its jurisdiction as defined by the Special Agreement. However, the Court nonetheless underscored its power to interpret the final submissions of the Parties with a view to maintaining them, to the extent possible, within its jurisdictional limits under the Special Agreement; as a corollary, this signalled that the Court could interpret Burkina Faso’s final submission as requesting it to place on record the agreement of the Parties⁶⁰. Absolutely central to the Court’s analysis was the question whether a dispute existed between the Parties concerning the two demarcated sectors on the date when proceedings were instituted at the Court. It followed that

⁵⁵*Territorial and Maritime Dispute (Nicaragua v. Colombia)*, Judgment, *I.C.J. Reports 2012 (II)*, pp. 717-718, para. 248.

⁵⁶*Ibid.*, p. 718, para. 250.

⁵⁷*Frontier Dispute (Burkina Faso/Niger)*, Judgment of 16 April 2013, paras. 1-2.

⁵⁸*Ibid.*, paras. 35-37.

⁵⁹*Ibid.*, para. 43.

⁶⁰*Ibid.*, paras. 43-44.

no significance should be attached to whether or not the “entente” struck by the Parties had already been incorporated into a legally binding instrument⁶¹. As a result, the Court took the view that Burkina Faso’s request exceeded the limits of its judicial function⁶².

The Court then turned to the course of the section of the frontier remaining in dispute between the Parties, electing to tackle the question of the applicable law at the outset. Article 6 of the Special Agreement, entitled “Applicable law”, provided that “[t]he rules and principles of international law applicable to the dispute are those referred to in Article 38, paragraph 1, of the Statute of the International Court of Justice, including the principle of the intangibility of boundaries inherited from colonization and the Agreement of 28 March 1987”⁶³. Thus, the 1987 Agreement, which bound the Parties, warranted application, its principal objective being, as reflected in its title, “the demarcation of the frontier between the two countries” through the installation of markers⁶⁴. First and foremost, the Court highlighted, this Agreement enshrined criteria to be applied in determining the “course” of the frontier⁶⁵.

The Court pointed out that the first two provisions of that Agreement specified the acts and documents of the French colonial administration to be resorted to in order to determine the delimitation line that existed when the Parties, both former colonies of French West Africa (“FWA”), acceded to independence⁶⁶. In light of the Agreement, the Court determined the applicable instrument for the purpose of delimiting the boundary, namely the *Arrêté* of 31 August 1927 adopted by the Governor-General *ad interim* of FWA with a view to “fixing the boundaries of the colonies of Upper Volta and Niger”, as clarified by its Erratum of 5 October 1927. In respect of this second instrument, the Court observed that since the purpose of the Erratum was to retroactively correct the text of the *Arrêté*, it was part and parcel of the latter⁶⁷. Furthermore, the Court drew attention to the fact that Article 2 of the 1987 Agreement contemplated the eventuality of “the *Arrêté* and Erratum not suffic[ing]” and, in such scenario, stipulated that “the course shall be that shown on the 1:200,000-scale map of the *Institut géographique national de France*, 1960 edition” (“1960 IGN map”) or resulting from “any other relevant document accepted by joint agreement of the Parties”. However, no relevant document in the latter category had been accepted by the Parties, thereby consecrating the 1960 IGN map as the only alternative interpretive tool in case of insufficiency of the *Arrêté* and its Erratum⁶⁸.

Undertaking the task of determining the course of the frontier in the first sector, the Court underscored the Parties’ agreement that their common boundary connects the two points at which the Tong-Tong and Tao astronomic markers are respectively located. The Court noted that their disagreement rather resided in how to connect the two points at which they are situated⁶⁹. Based on the interpretation of the *Arrêté* carried out by the colonial administration officials with respect to the relevant sector, the Court concluded that “a straight line connecting the Tong-Tong and Tao astronomic markers” should constitute the land boundary⁷⁰. However, the second sector of the frontier presented a more complex situation, and the Court came to the conclusion that it was

⁶¹*Frontier Dispute (Burkina Faso/Niger)*, Judgment of 16 April 2013, paras. 52-53.

⁶²*Ibid.*, para. 58.

⁶³*Ibid.*, para. 61.

⁶⁴*Ibid.*, paras. 64, 65.

⁶⁵*Ibid.*, para. 65.

⁶⁶*Ibid.*

⁶⁷*Ibid.*, para. 66.

⁶⁸*Ibid.*, para. 67.

⁶⁹*Ibid.*, paras. 72-73.

⁷⁰*Ibid.*, para. 79.

impossible to determine from the *Arrêté* how to connect the Tao astronomic marker to the River Sirba at Bossébangou⁷¹.

Relying on an *expressis verbis* reading of the *Arrêté*, the Court found that the boundary line necessarily reached the River Sirba at Bossébangou⁷². It then invoked the Decree of the President of the French Republic of 28 December 1926 in addressing the question of how the Tao astronomic marker was to be connected to the “River Sirba at Bossébangou”⁷³, and highlighted the dual purpose of this Decree: first to transfer certain *cercles* and *cantons* from the Colony of Upper Volta to the Colony of Niger and, second, to empower the Governor-General of FWA “to draw the new inter-colonial boundaries between Niger and Upper Volta”⁷⁴. While the Governor-General sought to identify the pre-existing frontiers of the *cercles* and *cantons*, there was no support for the conclusion that these boundaries followed a straight line in the relevant sector. Otherwise, the Court opined, it would have been rather straightforward to plot this line on a map⁷⁵. Moreover, the Court pointed out that subsequent documents to the *Arrêté* sufficiently demonstrated that the village of Bangaré was administered by the authorities of the Colony of Niger during the pertinent colonial period, and until the critical date of independence. In the Court’s view, this element lent credence to an interpretation of the *Arrêté* that should not have led it to draw a straight line between Tao and Bossébangou, a construction that was also espoused by the relevant authorities during the colonial period⁷⁶.

When seeking guidance from the 1987 Agreement, the Court continued, the *Arrêté* revealed itself to be “not suffic[ient]” with respect to the sector between the Tao astronomic marker and Bossébangou⁷⁷. As a result, the Court concluded that the line shown on the 1960 IGN map should be adopted in the sector of the frontier running from the Tao astronomic marker to the River Sirba at Bossébangou⁷⁸. When dealing with the next sector of the land boundary, namely the course of the frontier in the area of Bossébangou, the Court considered that it was required to identify the endpoint where the frontier line coming from the Tao astronomic marker reaches the River Sirba at Bossébangou⁷⁹. In this regard, the *Arrêté* provided a clear answer: the frontier line ends at the River Sirba, as opposed to the village of Bossébangou. The Court pursued its analysis by pointing out the lack of evidence showing that “the River Sirba in the area of Bossébangou was attributed entirely to one of the two colonies”. Bearing in mind the importance of access to water resources for all people living in the riparian villages, the Court concluded, by reference to the *Arrêté*, that the endpoint of the boundary line in the area of Bossébangou was situated in the River Sirba. Given that the frontier line must satisfy the requirements of legal security which are inextricably linked to the exercise of devising an international boundary — a particularly important consideration when dealing with “a non-navigable river with the characteristics of the Sirba” — the Court specified that the endpoint of the frontier line was situated on the median line of that water course⁸⁰.

While the language of the *Arrêté* indicated that the frontier line was intended to follow the Sirba upstream for a certain distance, the Erratum provided less guidance. Yet, it nonetheless

⁷¹*Frontier Dispute (Burkina Faso/Niger)*, Judgment of 16 April 2013, para. 80.

⁷²*Ibid.*, para. 85.

⁷³*Ibid.*, para. 86.

⁷⁴*Ibid.*, para. 90.

⁷⁵*Ibid.*, para. 93.

⁷⁶*Ibid.*, para. 95.

⁷⁷*Ibid.*, para. 96.

⁷⁸*Ibid.*, para. 99.

⁷⁹*Ibid.*, para. 100.

⁸⁰*Ibid.*, para. 101.

specified that after reaching the Sirba, the boundary “almost immediately turns back up towards the north-west”. In the Court’s view, it was clear that the Erratum did not entirely operate as an amendment of the *Arrêté* on this question, which entailed that the boundary would follow the Sirba for a short distance along its median line⁸¹. That said, the Court observed that the corrected text of the *Arrêté*, by virtue of which the boundary line “almost immediately turns back up towards the north-west”, failed to specify the precise point at which that line left the River Sirba in order to “[turn] back up”. The only logical conclusion in this regard, the Court opined, was that the *Arrêté* did not suffice and that recourse should be had, once again, to the 1960 IGN map so as to pinpoint the location where the boundary line leaves the River Sirba and “turns back up towards the north-west”, along with the course that it must follow after that point⁸². In this regard, the *Arrêté* specified that the boundary line, after turning up towards the north-west, “turn[s] back to the south, . . . [and] again cuts the Sirba at the level of the Say parallel”. This prompted the Court to conclude that once that location had been identified, the meridian passing through it could be “followed northwards until the parallel running through the point where the line drawn on the [1960] IGN map turns back to the south”⁸³.

By way of conclusion, again relying on the wording enshrined in the *Arrêté*, the Court thus decided that the boundary drawn “from the area of Bossébangou to the point where the Say parallel cuts the River Sirba” formed what could be envisaged as a “salient”⁸⁴. In sum, the course of the frontier drawn by the Court in this sector may be described as follows (precise co-ordinates omitted): after reaching the median line of the River Sirba while heading towards Bossébangou, the line boundary follows that line upstream until its intersection with the 1960 IGN map line before following the IGN line, turning up towards the north-west until the point where the 1960 IGN line markedly shifts direction, turning due south in a straight line. The line then continues due west in a straight line until the point where it reaches the meridian which passes through the intersection of the Say parallel with the right bank of the River Sirba. Ultimately, the boundary runs southwards along that meridian until this intersection, which marks the starting-point of the last sector of the boundary in dispute⁸⁵.

In fact, this last segment of the boundary engendered little difficulty for the Court, as the *Arrêté* specified that “[f]rom that point the frontier, following an east-south-east direction, continues in a straight line up to a point located 1,200 m to the west of the village of Tchenguiliba”⁸⁶. Confronted with rather straightforward prescriptions in the *Arrêté*, the Court correspondingly drew this section of the frontier by way of a straight line connecting “the intersection of the Say parallel with the right bank of the River Sirba and the beginning of the Botou bend”⁸⁷. In its concluding remarks, the Court accepted the task entrusted to it by the Parties of nominating three experts to assist them in demarcating their frontier in the disputed area. Instead of heeding this request in the Judgment on the merits, however, the Court indicated that it would do so by way of subsequent Order, after ascertaining the views of the Parties⁸⁸. [I am happy to report that this process is now well underway: the Court has canvassed the Parties on the practical aspects related to the exercise of the experts’ functions and finalized its Order on the

⁸¹*Frontier Dispute (Burkina Faso/Niger)*, Judgment of 16 April 2013, para. 102. In its original wording, the *Arrêté* located the meeting-point of the frontier line from Tao with the River Sirba further downstream, specifying that this line “then joins the River Sirba”: *ibid.*

⁸²*Ibid.*, para. 103.

⁸³*Ibid.*, para. 104.

⁸⁴*Ibid.*, para. 106.

⁸⁵*Ibid.*, para. 107.

⁸⁶*Ibid.*, para. 108.

⁸⁷*Ibid.*, para. 111.

⁸⁸*Ibid.*, para. 113.

matter, which it expects to deliver shortly⁸⁹.] There is every indication that the Court's decision on the merits contributed to further strengthening the mutually respectful and harmonious relations between Burkina Faso and Niger, as both Parties have praised the Court's Judgment.

The Court has remained also very much engaged in the drafting and deliberative process in a few other matters. For instance, it held public hearings last December in the *Maritime Dispute (Peru v. Chile)*, in which the Parties have taken opposite views as to whether the maritime boundary has been agreed between them in the past, or whether the Court has to perform a maritime delimitation. The Court is now in the advanced stages of its deliberation and has been working intensively on the case. There too, one hopes, the Court's Judgment will settle a long-standing dispute over the maritime frontier between the two States, and appease the tensions that have arisen between them as a result of their conflicting claims. Similarly, the Court held public 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)* and has held its deliberations recently. The Court is now in the process of constructing its Judgment on interpretation, which should be handed down later this year.

Just this week, the Court completed three weeks of public hearings in the case concerning *Whaling in the Antarctic (Australia v. Japan)*, which included both an intervention by New Zealand and the production of expert testimonial evidence, which comprised examinations-in-chief, cross-examinations and re-examinations. This case is now under deliberation as the Court is also actively preparing for three weeks of public hearings this fall in the case concerning *Aerial Herbicide Spraying*, opposing Ecuador and Colombia. Similarly to the case the Court has just heard, the *Aerial Herbicide Spraying* dispute promises to be a factually dense and evidence-heavy case, which also has both scientific and environmental implications.

The Court has also been kept busy with two cases with identical parties, namely *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* and *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, in which it joined the proceedings by way of two separate Orders dated 17 April 2013. Confronted with four counter-claims formulated by Nicaragua in the Counter-Memorial it submitted in the case concerning *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)* prior to the joinder of proceedings, the Court issued an Order on 18 April 2013 dismissing those claims. In particular, the Court grounded its rejection of Nicaragua's first counter-claim⁹⁰ on the Order on joinder it rendered the previous day, indicating that this counter-claim was without object and would be examined in the context of the joined proceedings⁹¹; the Court then discarded Nicaragua's second and third counter-claims⁹² on the basis that they were inadmissible given their lack of direct connection — be it in fact or in law — with the principal claims advanced by Costa Rica⁹³; finally, the Court decided that it was not necessary for it to entertain the fourth counter-claim, according to which Nicaragua essentially complained of

⁸⁹See *Frontier Dispute (Burkina Faso/Niger), Nomination of Experts*, Order of 12 July 2013.

⁹⁰In its first counter-claim, Nicaragua requested the Court to declare that “Costa Rica bears responsibility to Nicaragua” for impairing navigation on the San Juan River and for environmental damage caused by the construction by Costa Rica of a road next to its right bank (in violation of its obligations stemming from the 1858 Treaty of Limits and various treaty or customary rules relating to the protection of the environment and good neighbourliness): see *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*; *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, Counter-claims, Order of 18 April 2013, para. 22.

⁹¹*Ibid.*, para. 24.

⁹²In its second counter-claim, Nicaragua asked the Court to declare that it “has become the sole sovereign over the area formerly occupied by the Bay of San Juan del Norte”. In its third counter-claim, Nicaragua requested the Court to find that “Nicaragua has a right to free navigation on the Colorado Branch of the San Juan de Nicaragua River until the conditions of navigability existing at the time the 1858 Treaty was concluded are re-established”: see *ibid.*, para. 25.

⁹³*Ibid.*, para. 38.

Costa Rica's non-compliance with the Court's Order on provisional measures of 8 March 2011 in the now joined proceeding opposing Costa Rica and Nicaragua⁹⁴.

Most recently, in late May 2013, the Court received a request from Costa Rica for the modification of the Order on provisional measures of 8 March 2011 in the case concerning *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, pursuant to Article 41 of the Statute of the Court and Article 76 of its Rules. In its Written Observations in response to this request, Nicaragua also presented a stand-alone request that the Order of 8 March 2011 be amended on the basis of Article 76 of the Rules of Court. However, the Court concluded that the circumstances, as they then presented themselves, did not warrant that it exercise its powers to modify the measures indicated in the Order of 8 March 2011. Rather, in addition to providing some discussion on the legal aspects of this modification procedure, the Court elected to reaffirm the measures contained in its 2011 Order⁹⁵.

The Court's recent activities undoubtedly show that the principal judicial organ of the United Nations is increasingly turned to by States as a propitious forum to address the pacific settlement of disputes which have potential consequences for the conservation of the natural environment and related issues, in addition to more traditional types of disagreements. Indeed, adjudication of such disputes by the ICJ remains an exceedingly attractive option for the pacific resolution of maritime or land boundary disputes, disagreements over treaty interpretation, environmental law, sovereignty over maritime features, and the protection of living resources and human health. The statistics are eloquent: over the last 23 years, the Court has delivered more judgments than during the first 44 years of its existence. These rising figures are no doubt prompted by the fact that the Court always strives to attain well-reasoned and just outcomes. Yet, like all international adjudicative models, the Court's jurisdiction to proceed with the peaceful settlement of disputes between States remains subject to the consent of parties appearing before it. This is particularly important for United Nations Member States, as they are *ipso facto* parties to the Court's Statute and, by virtue of their obligations under the UN Charter, have undertaken to peacefully settle their international disputes⁹⁶.

Article 36 (2) of the Court's Statute⁹⁷ provides that the Court's compulsory jurisdiction can be accepted under the "Optional Clause", by a declaration whereby a State recognizes *ipso facto* and without special agreement in relation to any other State accepting the same obligations the jurisdiction of the Court in all legal disputes. Such a declaration — which typically engenders

⁹⁴*Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*; *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, *Counter-claims*, Order of 18 April 2013, paras. 39-40.

⁹⁵*Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*; *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, *Requests for the modification of the Order of 8 March 2011 indicating provisional measures*, Order of 16 July 2013, para. 40.

⁹⁶See *Charter of the United Nations* (adopted 26 June 1945, entered into force 24 October 1945), Art. 33.

⁹⁷*Statute of the International Court of Justice* (adopted 26 June 1945, entered into force 24 October 1945). The relevant provisions of Art. 36 of the Court's Statute read as follows:

“2. The States parties to the present Statute may at any time declare that they recognize as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the Court in all legal disputes concerning:

- (a) the interpretation of a treaty;
- (b) any question of international law;
- (c) the existence of any fact which, if established, would constitute a breach of an international obligation;
- (d) the nature or extent of the reparation to be made for the breach of an international obligation.

3. The declarations referred to above may be made unconditionally or on condition of reciprocity on the part of several or certain States, or for a certain time.”

reciprocal effects — is to be deposited with the UN Secretary-General. Of course, States making such declarations are entirely free to determine the scope of such declarations by excluding certain classes or types of disputes, for example.

It is fitting that the 2005 World Summit Outcome “[r]ecognize[d] the important role of the International Court of Justice . . . in adjudicating disputes among States and the value of its work”, thereby also calling “upon States that have not yet done so to consider accepting the jurisdiction of the Court in accordance with its Statute”⁹⁸. More recently, the UN Secretary-General announced the decision to “launch a campaign to increase the number of Member States that accept as compulsory the jurisdiction of the International Court of Justice”⁹⁹, an initiative that must be commended heartily. Indeed, this campaign further serves to bolster the pre-eminence of the World Court as the principal judicial organ of the United Nations and as the foremost judicial institution entrusted with the peaceful settlement of disputes and the promotion of the rule of law on the international plane. After all, the Manila Declaration on the Peaceful Settlement of International Disputes, among other documents, tells us that the submission of a dispute to the Court should not be construed as an “unfriendly act”¹⁰⁰.

Yet, the picture that emerges is far from encouraging. For one thing, UN membership does not inherently carry with it recognition by States parties of the jurisdiction of the Court as compulsory; rather, as I indicated earlier, consent must be given by States and, in the case of compulsory jurisdiction, such consent may be expressed in the form of a unilateral declaration made pursuant to Article 36 (2) of the Court’s Statute. Today, 70 States out of 193 Members of the United Nations have made or maintained such declarations, which is slightly over a third of the UN membership. This figure stands in contrast with those States that had Article 36 (2) declarations in force in 1948, which represented 59 per cent of the Organization’s membership (34 out of 58 Member States) and included four out of the five permanent Members of the Security Council.

Today, we are witnessing a decrease in States’ adherence to the compulsory jurisdiction of the Court both across UN membership and with respect to permanent Members of the Security Council, with only one P5 State having maintained its Article 36 (2) declaration. The situation prevalent within your Commission also leaves room for improvement: out of the 34 States currently having a national in the ILC, only 14 have made or maintained Article 36 (2) declarations, a figure that represents slightly over 40 per cent of the Commission’s Members¹⁰¹. That said, it is to be hoped that the figures will keep rising steadily, towards greater patterns of recognition of the Court’s jurisdiction: for instance, three new Article 36 (2) declarations have been made over the last two-and-a-half years (by Ireland, Lithuania and Timor-Leste, respectively) whereas the previous three such declarations had been made over a period of three years (by the Commonwealth of Dominica, Japan and Germany, respectively), but some three-and-a-half years before this new series of declarations to which I have just alluded.

Granted, negotiation between disputing States is by far the best means to resolve any differences, provided such course of action ultimately culminates in an agreement between the parties. However, some scenarios preclude reaching an agreement and the disputing parties are confronted with a stalemate in negotiations. Such instances can prove particularly volatile in the context of disputes regarding competing claims to sovereignty over certain land territory or

⁹⁸2005 World Summit Outcome, General Assembly resolution 60/1, 16 September 2005, *Official Records of the General Assembly, Sixtieth Session, Supplement No. 49 (A/60/49)*, para. 134 (f).

⁹⁹*Delivering justice: programme of action to strengthen the rule of law at the national and international levels*, Report of the Secretary-General (UN doc. A/66/749), 16 March 2012, para. 15 (b).

¹⁰⁰*Manila Declaration on the Peaceful Settlement of International Disputes*, Annexed to General Assembly resolution 37/10, 15 November 1982, *Official Records of the General Assembly, Thirty-Seventh Session, Supplement No. 51 (A/37/51)*, para. II (5).

¹⁰¹Those States are Cameroon, Canada, Costa Rica, Egypt, Germany, India, Japan, Kenya, Mexico, Nigeria, Spain, Sweden, Switzerland and the United Kingdom.

maritime features, or in situations involving conflicting claims over maritime zones. Sometimes, the parties may be able — and inclined — to identify mutually agreeable solutions through negotiation or some other creative arrangement, such as joint management and exploitation régimes. When such attempts fall short, however, the Court becomes the focal point of international adjudication and remains available to assist States in resolving their disagreements. The possibility of resorting to the Court in the case of an impasse may also encourage disputing States to work resolutely, and in concert, so as to achieve a mutually agreeable outcome before seising the Court, as opposed to espousing a blind pursuit of their own positions at the detriment of more conciliatory or constructive solutions. What is more, the prospect of the Court's involvement in dispute resolution may actually contribute to defusing tensions between those disputing States and ultimately help normalize the relations between them. This assertion is no doubt supported by the fact that, in all instances, the Court hands down just decisions — in full impartiality — and on the basis of the evidence and legal arguments submitted to it.

Mr. Chairman,

Ladies and Gentlemen,

For the concept of the “rule of law” to be imbued with any kind of meaningful force on the international plane, independent and impartial courts, where disputes can be adjudicated and rights asserted, are absolutely vital. This role is best reserved for the world's foremost judicial institution and principal judicial organ of the United Nations. Thus, it is high time to consider the ways in which the role of the Court may be enhanced so as to further bolster the international rule of law and provide broader access to the peaceful settlement of international disputes. In fact, it is time to reassert the singular role devolved to the Court by the UN Charter, as it is vested with the primordial responsibility of delivering justice in the international community by peacefully settling bilateral disputes submitted to it by States. We must look for ways to further strengthen the objectives and ideals enshrined in the UN Charter, with a view to strengthening both the role of international law and the rule of law in the international arena, a mission that undoubtedly stems from the establishment of the pre-eminence of law under the UN system. This, in turn, will ensure the transition to more just and equitable societies. The International Law Commission aptly encapsulated this commitment to the international rule of law in Article 14 of its 1949 Declaration on Rights and Duties of States: “[e]very State has the duty to conduct its relations with other States in accordance with international law and with the principle that the sovereignty of each State is subject to the supremacy of international law”¹⁰².

One way to achieve these objectives is to enhance the compulsory jurisdiction of the Court by encouraging more States to recognize such jurisdiction under the Optional Clause, which forms the basis of the campaign recently launched by the UN Secretary-General. Needless to say, for some courts jurisdiction is an automatic feature resulting from membership in an international or regional organization of which the judicial institution is an organ. Such is the case of signatory States to the constituent treaties of the European Court of Justice in Luxembourg or the European Court of Human Rights in Strasbourg¹⁰³. Two regional conventions provide for compulsory jurisdiction of the World Court, which signatory States accept when adhering to the relevant convention. The European Convention for the Peaceful Settlement of Disputes¹⁰⁴ enshrines such a jurisdictional mechanism and was invoked — and accepted by the Court — as the jurisdictional

¹⁰²International Law Commission, *Draft Declaration on Rights and Duties of States*, Annexed to General Assembly Resolution 375 (IV), 6 December 1949, *Official Records of the General Assembly, Fourth Session*.

¹⁰³See *Treaty on European Union (consolidated version)* [2012] Official Journal of the European Union C326/1; *Convention for the Protection of Human Rights and Fundamental Freedoms (as amended)* (adopted 4 November 1950, entered into force 3 September 1953) 213 *UNTS* 221.

¹⁰⁴*European Convention for the Peaceful Settlement of Disputes* (adopted 29 April 1957, entered into force 30 April 1958) 320 *UNTS* 243. The number of ratifications and accessions under that Convention now totals 14.

basis in the recent case concerning *Jurisdictional Immunities of the State* between Germany and Italy¹⁰⁵. The other convention is the instrument known as the Pact of Bogotá, which has provided the basis for the Court's jurisdiction in a good number of cases.

As I have attempted to emphasize, a call for greater recognition of the Court's jurisdiction must be issued so as to further strengthen its role in vindicating the ideals enshrined in the UN Charter, which echoes the UN Secretary-General's own invitation to States do so. This is a welcome and forward-looking initiative. As I participate in this exchange of views with the Commission today, let me now appeal to you, dear colleagues and friends. As distinguished and privileged counsel, advisers and scholars working specifically in the field of public international law, you are particularly well situated when advising your home States. Hence, in that context, I wish to invite you to envisage promoting both dispute settlement by the Court and greater adherence to its compulsory jurisdiction as ways to achieve peaceful conflict resolution and more harmonious inter-State relations.

The very first President of the United Nations General Assembly, Minister Paul Henri Charles Spaak, expressed the hope that, some day, the international community's commitment to the rule of law would be mirrored in States' acceptance of the compulsory jurisdiction of the Court. It was against the backdrop of the solemn inaugural sitting of the then newly established ICJ, on 18 April 1946, that he wished that "one day [the Court's] jurisdiction may become compulsory for all countries and for all disputes without exception"¹⁰⁶. Surely, one must appreciate the consensual limits of the international legal system we all know. However, one hopes that the sentiment embodied in Minister Spaak's remarks — one that promotes the vision of a more equitable international society in which international law and the peaceful settlement of disputes are paramount — will not be relegated to the oubliettes of history.

¹⁰⁵*Jurisdictional Immunities of the State (Germany v. Italy: Greece intervening), Judgment, I.C.J. Reports 2012 (I), p. 99.*

¹⁰⁶See *Yearbook of the International Court of Justice 1946-1947*, p. 31.