

**SPEECH BY H.E. JUDGE HISASHI OWADA, PRESIDENT OF THE INTERNATIONAL COURT
OF JUSTICE, ON THE OCCASION OF THE VISIT BY THE PRESIDENT
OF IRELAND, H.E. MRS. MARY MCALEESE**

2 MAY 2011

Madam President, Your Excellencies, Ladies and Gentlemen,

It is a great honour for me to greet you, Madam President, on behalf of the International Court of Justice. May I extend to you a most cordial welcome of the Court on this happy occasion.

Madam President, you have demonstrated, both professionally and personally, a deep and long-standing commitment to peace, justice and reconciliation. Your open-minded outlook is eloquently reflected in the theme that you have chosen to symbolize your Presidency — that of “Building Bridges”. This determination of yours to adopt a positive approach and to encourage others to review their prejudices is captured in your book, “Love in chaos: spiritual growth and the search for peace in Northern Ireland”, which was published shortly after your first election as President of Ireland at the end of the 1990s, and which draws on your own family experiences of the “Troubles”.

Before entering into a life devoted to public service, you had enjoyed an illustrious academic career in the legal field as well as having worked as a current affairs broadcaster, dealing with many issues related to justice, equality and social inclusion. Following your law degree from Queen’s University Belfast, you were called to the bar of Northern Ireland and subsequently held a number of prestigious scholarly positions, including Professor of Criminal Law, Criminology and Penology at Trinity College Dublin and Director of the Institute of Professional Legal Studies at Queen’s University.

Madam President, your commitment to peace and justice finds resonance at a national level in the role played by Ireland in international affairs. Ireland has historically championed neutrality in its quest to promote dialogue over violence. Ireland’s belief in the peaceful settlement of international disputes and the principles of international law has been the stated policy of successive Governments, dating back to the foundation of the State. Since Ireland joined the United Nations on 14 December 1955, it has also provided unwavering support for the objectives of the Charter, in particular in terms of the maintenance of international peace and security, and the

protection of human rights. Ireland is a highly respected member of the United Nations family — it has regularly provided blue helmets for United Nations peacekeeping operations. A number of Irish citizens have also played high-profile roles within the organization, e.g., your distinguished predecessor, Mary Robinson, who ably served as UN High Commissioner for Human Rights from 1997 to 2002.

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Madam President, as you are no doubt aware, the International Court of Justice, as the principal judicial organ of the United Nations, is the only international court of general jurisdiction. It has a dual role to play under the Charter of the United Nations: to settle legal disputes submitted to it by States, and also to provide advisory opinions on legal matters referred to it by the General Assembly, the Security Council and other organs of the United Nations and specialized agencies authorized by the General Assembly.

The Court is open to all 192 Member States of the United Nations. With reference to its contentious procedure, sixty-six States have accepted the compulsory jurisdiction of the Court in accordance with Article 36, paragraph 2, of the Statute. In addition, approximately 400 treaties — some being bilateral, involving about 60 States, and others multilateral, involving a great number of States — also provide jurisdiction to the Court to settle disputes arising out of their interpretation or application.

As for its advisory procedure, on the other hand, the Court can offer a legal opinion to the requesting body, thereby clarifying the legal aspects involved in some pending problem before that organ or agency, or addressing some major legal questions under discussion by the international community. The Court's advisory opinions can thus provide legal enlightenment to the international community as a whole and represent an important contribution to the development of international law. I recall that Ireland has indeed participated in the two most recent advisory proceedings on the questions asked by the General Assembly, one regarding the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* and the other regarding the *Accordance with International Law of the Unilateral Declaration of Independence in*

respect of Kosovo. In both sets of proceedings Ireland filed a Written Statement setting out its views on the legal issues raised.

Madam President, it is important to recall that while the Court has continued to consider classical topics of international law such as maritime delimitation, territorial questions and diplomatic protection, the subject-matter of the disputes which in recent times have been submitted to it for adjudication has widened, reflecting some salient developments in modern inter-State relations. Let me mention in this regard disputes relating to the use of force, such as was considered by the Court in the case concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*; those relating to the protection of human rights, such as the case concerning *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*; and those relating to environmental matters, such as the case concerning *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*.

With a view to illustrating the recent trends in the work of the Court, I would like to refer somewhat more in detail to two sets of proceedings, one contentious and one advisory, which raised a number of challenging issues of contemporary international law.

Within the first category let me mention the dispute on the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*. It was the first case in which allegations of genocide were made by one State against another before this Court. In its Judgment on the merits in 2007, the Court made extensive findings of fact as to whether the atrocities alleged had occurred and, if so, whether they would be characterized as genocide. This Court found that the killing of members of the Muslim community in Srebrenica in July 1995 amounted to genocide. It concluded, however, that the responsibility for those killings could not be attributed to Serbia under the international law of State responsibility, as it was not established that Serbia had conspired to commit genocide, incited the commission of genocide, or been complicit in genocide. At the same time, the Court did find that Serbia had violated its obligation to prevent the Srebrenica genocide, as well as its obligations under the Genocide Convention to transfer Ratko Mladić, who had been indicted for genocide and complicity in genocide, for trial by the International Criminal Tribunal for the former Yugoslavia, and thus fully to co-operate with that Tribunal.

Within the other category, let me mention the Court's Advisory Opinion of 2004 in the case concerning the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*. In its Opinion, the Court considered that the construction of the wall and its associated régime created a *fait accompli* on the ground that could well become permanent, in which case its construction would be tantamount to *de facto* annexation. According to the Court, the construction of the wall severely impeded the exercise by the Palestinian people of its right to self-determination.

The Court found that the construction of the wall and its associated régime were contrary to the relevant provisions of the Hague Regulations of 1907 and of the Fourth Geneva Convention relating to international humanitarian law; and that they impeded the liberty of movement of the inhabitants of the territory as guaranteed by the International Covenant on Civil and Political Rights, as well as the exercise by the persons concerned of the right to work, to health, to education and to an adequate standard of living as proclaimed in the International Covenant on Economic, Social and Cultural Rights and in the Convention on the Rights of the Child, relating to international human rights law.

The Court accordingly concluded that the construction of the wall and its associated régime were contrary to international law.

With respect to the legal consequences of these violations, the Court found, *inter alia*, that all States are under an obligation not to recognize the illegal situation resulting from the construction of the wall. The Court further found that the works of construction of the wall should cease and that those parts of that structure situated within the Occupied Palestinian Territory should be immediately dismantled.

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Madam President, as I stated earlier, since the end of the 1980s the quantity and the quality of cases that come before the Court have gone through a significant transformation. These cases have greatly increased in number and involve States from every continent of the world. In the last

two years, six new contentious cases and one request for an advisory opinion were submitted to the Court. The current number of cases on the docket is 15.

The type of issues that are submitted to the Court is also wide-ranging. In terms of the nature of the cases that come before it, the Court has recently been dealing with varied and diverse matters, for example with the issue of environmental impacts in a transborder context (the *Pulp Mills on the River Uruguay* case and the *Aerial Herbicide Spraying* case, the latter of which is now pending before the Court), with the protection of shareholders (*Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*); and the issue relating to the protection of human rights of arrested or detained individuals in a foreign country, although considered in the context of alleged breaches of the Vienna Convention on Consular Relations (*Avena and Other Mexican Nationals (Mexico v. United States of America)*); *LaGrand (Germany v. United States of America)*).

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Madam President, I hope I have illustrated by a few examples how the International Court of Justice, the principal judicial organ of the United Nations, can play its indispensable role as a forum for promoting peace and upholding justice in the contemporary international relations. The Court is indeed playing a vital role within the international community in terms of conflict prevention and dispute settlement and thus contributing to the consolidation of the rule of law in today's world. The Court's constantly increasing heavy docket is a testament to the trust which States from all continents of the world place in its work. Furthermore, the variety and complexity of the legal problems that are being referred to the Court have made important contributions to the development of international law in its many evolving fields.

Madam President, your presence among us today bears witness to your country's attachment to the cause of international law and to the supreme values of peace and justice. This visit also reflects your personal commitment to justice, freedom and mutual understanding among nations. It encourages the Court in the accomplishment of its mission. We welcome your encouragement to us in the fulfilment of our task. We thank you most warmly for being with us today.

Madam President, may I now kindly invite you to address the Court.

[Speech by H.E. Mrs Mary McAleese]

The PRESIDENT: I wish to thank you Madam President, on behalf of the Court, for your kind words. Tea and coffee will now be served in front of the Small Hall of Justice and I would be grateful if guests could wait for a few minutes, while Madam President and her retinue are accompanied to the refreshments area. Guests will then be invited to join Madam President and Members of the Court. I now declare the present sitting closed.
