

**STATEMENT BY H.E. JUDGE PETER TOMKA, PRESIDENT OF THE INTERNATIONAL COURT
OF JUSTICE, AT THE MINISTERIAL BREAKFAST “100 YEARS PEACE PALACE:
ADVANCING THE FRAMEWORK FOR PEACEFUL
SETTLEMENT OF DISPUTES”**

New York, 25 September 2013

Excellencies, ladies and gentlemen,

It is a pleasure to participate in this Ministerial Breakfast Meeting, which addresses a very important topic. It is also very fitting for the Dutch Government to host this event, as it represents a State with a long-standing tradition in international law dating back to Hugo Grotius, a famous diplomat and legal scholar of the first part of the seventeenth century, largely considered to be one of the founders of international legal doctrine.

As the principal judicial organ of the United Nations, the International Court of Justice (“ICJ” or the “Court”) has been entrusted with the principal responsibility of delivering international justice between States. In particular, its primary role consists in assisting States in peacefully settling their bilateral disputes, a function the Court has carried out very effectively since 1945, particularly over the last quarter century. Indeed, the Court has delivered more judgments in the last 23 years (some 62) than during the first 44 years of its existence, where it made its pronouncements in 52 judgments.

There are currently ten active cases on the Court’s docket, including the proceedings Nicaragua recently initiated against Colombia with a view to securing a pronouncement on whether it is entitled to an extended continental shelf in the Western Caribbean Sea. Over the years, several disputes have been submitted to the Court, resulting in a diversified docket and caseload for the principal judicial organ of the United Nations: consequently, the ICJ has ensured the pacific settlement of disputes involving competing claims to maritime zones, sovereignty of islands, frontier delimitations — both regarding land boundaries and maritime delimitation — and the interpretation and application of multilateral conventions and international treaties.

In matters of maritime boundaries alone, for instance, some 15 cases involving maritime delimitation issues have been submitted to the Court for adjudication concerning maritime areas situated in Western and Eastern Europe, North and South America, including the Caribbean, the Middle East and Africa. Needless to say, the Court has developed a solid reputation in matters of maritime delimitation and boundary disputes, invariably delivering just and well-reasoned judgments, while taking into account both the evidence and legal arguments presented by the parties, along with the relevant principles of international law.

The Court, which is fully integrated into the United Nations architecture — being one of its principal organs —, plays an important role in the dispute settlement system envisaged by the United Nations Charter. In carrying out its judicial mission, it helps to further advance the objectives and principles enshrined in that instrument, not the least of which is the promotion of the rule of law on the international plane. Resort to the Court by States unquestionably falls within these objectives, as Article 2 (3) of the Charter provides that all UN Member States “shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered”. That said, it should be emphasized that Article 33 of the Charter affords UN Member States considerable latitude and freedom of choice in electing those peaceful means of dispute settlement that are best suited in attempting to resolve their disagreements.

In this regard, there is no question that negotiation and, ultimately, agreement between disputing States constitutes the most efficient and direct way to resolve disputes. In such scenarios, it may well be that the judicial intercession by the Court is avoided altogether, and the relations between disputing States ultimately improved by way of peaceful agreement. In other cases, an agreement may emerge between the parties concomitantly with judicial proceedings before the Court, in which scenario the case pending before the Court is typically withdrawn. This exact situation has cropped up very recently, thereby evidencing the utility of continuing negotiations between disputing parties in order to fulfil the objectives enshrined in the Charter, even when those negotiations take place against the backdrop of ongoing litigation. The ultimate objectives should be the neutralization of international relations between those States along with the peaceful resolution of their differences, be they accomplished through negotiation, mediation or arbitral or judicial means.

The Court had been seised, since 2008, of the case concerning *Aerial Herbicide Spraying* opposing Ecuador and Colombia. In that case, the Applicant State — Ecuador — complained of various alleged violations carried out by Colombia as a result of its aerial herbicide programme which targeted illicit plants, particularly coca crops in the south of the country, along the Ecuadorian-Colombian border. Among the charges levelled against Colombia, Ecuador complained that significant quantities of herbicide spray had drifted onto its territory, thereby engendering repercussions on human health, the environment, particularly crops, property and livestock. Ecuador similarly advanced various allegations of violations affecting the areas of human rights, indigenous peoples, State sovereignty, environmental law, the right to health, and so on. The Court had deployed considerable effort in preparing the public hearings in that case, which were set to commence on 30 September 2013 and were to last three weeks.

Over the course of four years, both Parties had produced two rounds of written pleadings before the Court, supplementing those materials with lengthy correspondence and voluminous evidence. In particular, this case demonstrated that States are increasingly resorting to the Court for the purposes of adjudicating disputes that have potentially significant repercussions on the environment and living resources, often involving complex facts, testimonial evidence and technical, scientific or expert considerations. One such dispute was decided by the Court in 2010 in the case concerning *Pulp Mills on the River Uruguay*, opposing Argentina and Uruguay. Similarly, the case concerning *Whaling in the Antarctic* between Japan and Australia, which is currently under deliberation, also entails the examination of considerations lying at the intersection of law and science.

In the *Aerial Herbicide Spraying* case, the Parties pursued active negotiations throughout the lead-up to the public hearings. They eventually reached an agreement to settle their dispute on 9 September 2013. Among other things, the agreement struck by the Parties provided for a 10-km buffer zone along the shared boundary in which Colombia accepted not to carry out aerial herbicide spraying. Based on the assessment of the results, this zone may later be reduced to 2 km under the agreed conditions. Colombia will also provide certain financial funds, which are to be used towards social and economic development in Ecuadorian provinces bordering Colombia. The agreement also establishes a mechanism for the eventual settlement of disputes arising out of its application. More importantly, this case evidenced the important role that the Court can play in assisting parties in peacefully resolving their disputes, even if the proceedings before the Court are eventually discontinued prior to the commencement of public hearings.

In the *Aerial Herbicide Spraying* case, it should be stressed that the Parties expressly acknowledged the significant contribution offered by the Court towards their goal of peacefully settling the dispute. For instance, in a letter addressed to the Court in which it requested discontinuance of the proceedings, Ecuador indicated that it was “extremely grateful to the Court for the time, attention and resources it ha[d] devoted to the case, and for the judicious, impartial and thoroughly equitable manner in which it ha[d] resolved all matters up to this point”. It further observed that it was “convinced that, but for the availability of the Court and its willingness to

resolve the Parties' dispute, and the impending oral hearing scheduled to begin on 30 September 2013, it would have been difficult if not impossible to achieve the settlement agreement".

Similarly, Colombia echoed Ecuador's remarks in its reaction to the request for discontinuance, underscoring that it was "grateful to the Court for its judicious efforts devoted to this case". It went on to say that it was "particularly grateful to the Court for its focus, over the last nine months, on issues of fact, experts, witnesses and evidence", before concluding that it was "convinced that, but for these efforts and focus on the part of the Court, it would have been difficult if not impossible to achieve the agreement of 9 September 2013".

Moving forward, there is no doubt that the Court will continue adjudicating disputes submitted to it with dedication, in utmost impartiality, independence, and in accordance with international law, always within the limits of the jurisdiction conferred upon it. It is to be hoped that, in so doing, the Court will again be able to contribute to strengthening the international rule of law and promote the advancement of peaceful dispute resolution in the future.
