

**Statement by H.E. Judge Peter Tomka, President of the International Court of Justice,
to Students of the St. Petersburg State University**

14 May 2013

**THE ROLE OF THE INTERNATIONAL COURT OF JUSTICE
IN THE INTER-STATE LEGAL ORDER**

Excellencies,

Distinguished guests,

It is a pleasure to participate in this discussion with the new generation of future lawyers, practitioners and academics from the St. Petersburg State University. I am particularly looking forward to our exchanges in the discussion to follow. In the interim, I take this opportunity to offer a few brief remarks about the role of the International Court of Justice — commonly termed the “World Court” — in the inter-State legal order.

The Court is the principal judicial organ of the United Nations and the only principal organ of that organisation to have its seat outside New York City. The Court sits in The Hague, in the Netherlands. The present Court was created in 1946 and succeeded the Permanent Court of International Justice (“PCIJ”), which was instituted in 1922. The Charter of the United Nations ensures institutional continuity between the present-day Court and its predecessor institution, as the Statute of the Court is based on that of the PCIJ, which means that the jurisprudence developed by the PCIJ remains relevant to the work of the Court. Taken together, both institutions count over 90 years of accumulated experience in the pacific settlement of international disputes. Thus, a key and vital function has been conferred upon the World Court in furthering the promotion of the international rule of law through the pacific settlement of disputes, which constitutes one of the ideals underpinning the UN system.

In short, the Court’s primary role is to assist States in peacefully settling their bilateral disputes, a function the Court has carried out very effectively since 1945, particularly in the last quarter century. Indeed, the Court has delivered more judgments in the last 22 years than during the first 44 years of its existence. There are currently eleven active cases on the Court’s docket. Over the years, several disputes have been submitted to the Court, resulting in an eloquent docket and a diversified case-load: as a result, the Court has ensured the pacific settlement of disputes involving competing claims to maritime zones, sovereignty or islands, frontier delimitations — both with respect to 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 fourteen 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. Another perhaps less important — but still valid — role for the Court is that of delivering advisory opinions on international legal issues upon the request of an international organization, in the hope that the resulting opinion will illuminate the future work of that entity.

Increasingly, the Court is turned to as a forum for the pacific settlement of disputes which have potential consequences for the conservation of the natural environment, living resources and human health. By way of example, the Court delivered its Judgment in the case concerning *Pulp Mills on the River Uruguay (Argentina v. Uruguay)* in 2010; currently, the Court's docket also features two ongoing cases with similar implications, namely the case concerning *Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)* and the dispute regarding *Aerial Herbicide Spraying (Ecuador v. Colombia)*.

There is no question that negotiation and, ultimately, agreement between States is the most efficient and direct way to resolve disputes. However, there are instances in which no agreement can be reached between the parties, in which case the involvement of the Court can help defuse tensions between disputing States so as to avoid the prospect of those disagreements escalating into open conflicts. This is particularly true in situations where disputes arise with respect to competing claims to sovereignty over certain land territory or maritime features, or in scenarios involving equally clashing claims over maritime zones. It may well be that parties to such disputes find a mutually agreeable solution through negotiation or some other creative solution, such as joint management and exploitation régimes. However, when such attempts fall short, the Court is often resorted to so as to assist the parties in attaining a peaceful settlement.

The Court's judicial process culminates into impartial judgments that are grounded in the legal arguments and the evidence presented by both parties to a dispute appearing before the Court, all subject to applicable rules and principles of international law. At the end of the day, by carrying out its judicial function with a view to reaching a well-reasoned outcome and the peaceful settlement of a dispute, the Court contributes both to maintaining good relations between States and to furthering and strengthening the international rule of law. Moreover, the Charter of the United Nations provides that the Security Council has the power to recommend to the parties to refer a legal dispute to the World Court for adjudication. In many ways, therefore, the Court remains an important agent for strengthening and upholding the rule of law on the international plane, particularly in the context of inter-State relations. In sum, the Court fulfils its noble and vital function of determining existing international law and rendering justice between disputing States.

The Court's jurisdiction on contentious matters is primarily based on State consent. In that regard, a dispute may be brought to the Court in four different ways. First, a State may make a unilateral declaration which enables it to recognize as compulsory the jurisdiction of the Court, with reciprocal effect on other States. Efforts are currently being deployed to increase the number of States having subscribed to this jurisdictional avenue, as only slightly over a third of the UN membership has made such declarations as when compared to 59 per cent in 1948. In particular, the UN Secretary-General recently launched a campaign to enhance the number of Member States electing a pro-jurisdiction stance on the Court via the formulation of unilateral declarations, an initiative that should be commended. Second, two disputing States can conclude a "Special Agreement" — commonly referred to as *compromis* in French — with the stated purpose of submitting their dispute to the Court. This is by far the most efficient and direct route for electing recourse to the Court.

Third, a special provision — commonly termed "compromissory clause" — granting jurisdiction to the Court in respect of disputes over the interpretation or application of a bilateral or multilateral international treaty, in which such clause is enshrined, may be invoked by a party to submit a dispute to the Court. Prior to the merits phase, the Court often has to hear the parties regarding preliminary objections formulated by the respondent State to the jurisdiction of the Court, or to the admissibility of the Applicant's claims, or both. Fourth, by way of *forum prorogatum* a State may refer a dispute to the Court, over which it does not have jurisdiction initially, and invite the other State to accept the Court's jurisdiction in that specific case. Should this second State consent to such arrangement, the Court is then able to consider the matter. In

short, this option enables a State which did not recognize the jurisdiction of the Court at the moment when the application instituting proceedings against it was filed to nonetheless accept such jurisdiction subsequently, so that the Court may decide the case.

The Court's judgments are not formally binding on the larger international community, although they always receive the imprimatur of binding force as between the immediate parties to the dispute, which means they are binding not only on their governments but also on all State organs including the judiciary. Although the Court's judgments are not formally binding, they nonetheless exert a great deal of influence on the development of public international law and are generally taken very seriously, chiefly because they emanate from the principal judicial organ of the United Nations. Judgments of the Court, which may contain its interpretation of a particular international convention or its ascertainment of relevant principles or customary rules of international law in a given dispute, are studied meticulously by legal scholars, counsel and legal advisers of foreign ministries of other States.

The reach and influence of the Court's work has been equally pervasive in other international judicial settings, as international judges and arbitrators are also avid students of the Court's jurisprudence. As such, it is not uncommon to see references to the Court's decisions in the judgments of other tribunals and courts for support of the existence of an applicable legal principle or customary norm, for determining what maritime delimitation methodology should be applied in a particular case, or for the purposes of ascertaining the correct interpretation of an international treaty, to list a few examples. As a result, the Court's pronouncements are frequently referred to in the jurisprudence of several international courts and arbitral tribunals. Unsurprisingly, the Court's work has also played a central role in informing the codification projects of the International Law Commission, with that body citing liberally from the Court's jurisprudence in developing its own texts and documents on a wide array of international legal topics. Finally, the Court's jurisprudence has also provided considerable inspiration for the programme of work of certain high profile and high-level learned societies, active in the field of international law, such as the International Law Institute.

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.
