

**Opening Statement by H.E. Judge Peter Tomka, President of the International Court of Justice, at the Conference on the Compulsory Jurisdiction of the International Court of Justice, held in Bucharest on 4 February 2013
(video message, available in English only)**

Good morning. Greetings from The Hague. I regret that my duties at the International Court of Justice (ICJ) have prevented me from being present in Bucharest today as you open the public debate on Romania's possible recognition of the compulsory jurisdiction of the Court which, as you know, is the principal judicial organ of the United Nations. I thank His Excellency Mr. Titus Corlăţean, Minister for Foreign Affairs, for his kind invitation and would like to emphasize how pleased I was to learn that these discussions would be occurring, when he announced them in New York at an event on 24 September 2012 hosted by the Dutch Foreign Minister on the occasion of the United Nations high level event on the rule of law.

I think his initiative is very timely. It does not only respond to the call of the Secretary-General of the United Nations that UN Member States consider recognizing the Court's jurisdiction by making declarations under Article 36 (2) of its Statute, but it is also in the best international law tradition of Romania. Romania participated in the two Hague Peace Conferences which adopted the Conventions on the Peaceful Settlement of Disputes. And Prime Minister Sturdza of Romania was, already at the time of the Second Peace Conference, one of the initiators for the creation of the Hague Academy of International Law.

In 1921, Demetre Negulesco was elected as a deputy judge of the Permanent Court of International Justice, which began its work the following year. He served on the Bench throughout the existence of the Permanent Court, first as deputy judge, and then, from 1931, as judge. His contributions to the work of that pioneering international judicial institution and to the development of its jurisprudence were considerable and remain a source of inspiration for our Court today.

Romania subscribed to the compulsory jurisdiction of the Permanent Court. It signed the Optional Clause on 8 October 1930 and ratified it on 9 June 1931. Its declaration read as follows:

“The Romanian Government declares that it accedes to the Optional Clause of Article 36 of the Statute of the Permanent Court of International Justice for a period of five years in respect of the Governments recognized by Romania and on condition of reciprocity in regard to legal disputes arising out of situations or facts subsequent to ratification by the Romanian Parliament of this accession and with the exception of matters for which a special procedure has been or may be established and subject to

the right of Romania to submit the dispute to the Council of the League of Nations before having recourse to the Court.

The following are, however, excepted:

- (a) Any question of substance or of procedure which might directly or indirectly cause the existing territorial integrity of Romania and her sovereign rights, including her rights over her ports and communications, to be brought into question;
- (b) Disputes relating to questions which, according to international law, fall under the domestic jurisdiction of Romania.”

In June 1936, Romania renewed its declaration for a period of five years.

The outbreak of World War II not only prevented Romania from extending its Declaration further, but it also cut short the judicial activities of the Permanent Court.

In June 1945, at the end of the war, the United Nations Charter was adopted in San Francisco. A decision was taken to replace the Permanent Court with a new court, the International Court of Justice, as one of the six main organs of the new organization and as its principal judicial body.

The political division of Europe following the war brought with it a reluctance among States belonging to the Eastern (socialist) bloc to recognize the jurisdiction of the Court. In fact, no State from that part of Europe made such a declaration.

Political transformation of Europe in 1989-1990 led several of these countries to revisit their international judicial policy vis-à-vis the Court. Poland recognized the jurisdiction of the Court in 1990. It was shortly followed by Estonia, Bulgaria, Hungary, later Georgia, then Slovakia and finally, last year, by Lithuania.

Several countries from the region have also agreed to bring particular disputes to the Court. In 1993, Hungary and Slovakia jointly submitted their dispute concerning the joint construction and operation of the project involving the two dams and power stations in Gabčíkovo and Nagymaros on the Danube to the Court.

In June 1997, Romania and Ukraine concluded, through an exchange of letters between their Foreign Ministers, an Additional Agreement with reference to Article 2 of the Treaty on the Relations of Good Neighbourliness and Cooperation. Under that Agreement, the two Governments agreed that, if their negotiations concerning the delimitation of the continental shelf and exclusive economic zones in the Black Sea failed to produce results in a reasonable period of time, the

problem would be solved by the International Court of Justice, at the request of any of the parties. In this way the two Parties accepted, subject to certain conditions, the jurisdiction of the Court to adjudicate this particular issue. It was the Government of Romania that took the initiative and submitted the case to the Court on 16 September 2004. The outcome is well known to you. In its Judgment, rendered four years ago, on 3 February 2009, the Court unanimously — and, I should add, in the only case in its history where no judge filed a separate opinion or declaration — determined the course of the single maritime boundary delimiting the continental shelf and the exclusive economic zones of Romania and Ukraine. The importance of that Judgment transcends the strictly bilateral context. The Court took the opportunity to distil the many years of evolution of its maritime delimitation jurisprudence, beginning with its 1969 Judgment in the *North Sea Continental Shelf* cases, and presented its delimitation methodology in clear and succinct terms (*I.C.J. Reports 2009*, pp 101-103, paras. 115-122). This methodology has now been applied in its latest Judgment, rendered on 19 November 2012, in a territorial and maritime dispute between Nicaragua and Colombia. What is even more encouraging for the cohesion of the international legal system is the fact that the International Tribunal for the Law of the Sea has now drawn upon that Judgment, following the same methodology in its first Judgment on delimitation, rendered on 14 March 2012 in a dispute concerning the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal.

Romania now belongs to the European Union, a community of States that share the same values, that are strong supporters of democracy, human rights and of the rule of law, both on a domestic and international level.

This concept — the rule of law — requires the availability of independent and impartial courts, where disputes can be adjudicated and rights asserted.

In international relations, a court's jurisdiction is dependent on the consent of the States before it. For some courts, this is automatic, arising out of membership in an international or regional organization of which the court is an organ. This is true, for example, of the European Court in Luxembourg, or the European Court of Human Rights in Strasbourg. The situation with the ICJ is different. United Nations membership does not automatically entail acceptance of the Court's jurisdiction, and consent must be given. States can do this when they become party to a

convention which contains a compromissory clause allowing disputes relating to the application or interpretation of the convention to be brought before the Court by any party. Two States can also agree, after a dispute has arisen, to submit it jointly to the Court. And finally, States can make a declaration under Article 36, paragraph 2, of the Statute, that they recognize as compulsory, in relation to any other State accepting the same obligation, the jurisdiction of the Court in all legal disputes. Of course, States are free to exclude certain categories of disputes from a declaration of this type or to make it subject to specified conditions.

At present, 69 States out of 193 Member States of the United Nations have declarations in force recognizing the Court's jurisdiction. Among the strongest supporters of the Court are Members of the European Union. Of its 27 Members, 21 have accepted the jurisdiction of the principal judicial organ of the United Nations by depositing a declaration under Article 36 (2) of the Statute with the United Nations Secretary-General. One Member State has pledged last September in the United Nations General Assembly to make such a declaration in the near future.

Disputes are mostly resolved by negotiations between States. In fact a friendly settlement demonstrates that States have been able to accommodate mutually their rights and claims. But in case that reaching an amicable solution is out of reach for the disputing parties, it is important that a settlement mechanism, involving an independent and impartial body, be available to them. The Court has through its history demonstrated that it is always ready to provide its services. In fact, the possibility of submitting a dispute to the Court may have a positive impact on the negotiations in good faith between the States. Already the Permanent Court emphasized in the case of *Railway Traffic between Lithuania and Poland* that the obligation to negotiate means "not only to enter into negotiations but also to pursue them as far as possible, with a view to concluding agreements" (*P.C.I.J., Series A/B, No. 42, 1931*, p. 116).

The International Court of Justice, in the *North Sea Continental Shelf* cases, elaborated on that by stating that "[the Parties] are under an obligation so to conduct themselves that the negotiations are meaningful, which will not be the case when either of them insists upon its own position without contemplating any modification of it" (*I.C.J. Reports 1969*, p. 47, para. 85).

It recalled this dictum in its 1997 Judgment in the *Gabčíkovo Nagymaros Project* case (*I.C.J. Reports 1997*, p. 98, para. 141).

Knowing that a dispute may be brought before the Court could perhaps encourage them in searching for a mutually acceptable outcome instead of insisting on their own positions.

The seising of the Court with a dispute may also contribute to defusing tensions between States, knowing that it will be decided by an impartial organ on the strength of evidence and legal argument of the States which are equal before the Court. The Manila Declaration on the Peaceful Settlement of Disputes emphasizes that referring a dispute to the Court should not be considered an unfriendly act (*acte peu amical*).

It is my hope that Romania, with its strong legal tradition and rich experience, will soon take its place among those European Union Member States that recognize the Court's jurisdiction.

I therefore warmly welcome the opening of a public debate in Romania on this issue and am certain that you will support the idea of Romania making such a declaration, after careful consideration and due attention to the advice of Romanian lawyers and diplomats on its proper scope.
