

**Speech by H.E. Judge Peter Tomka, President of the International Court of Justice  
to the Asian-African Legal Consultative Organization**

**30 October 2013**

Mr. Secretary-General,  
Excellencies,  
Ladies and Gentlemen,

I am delighted to address the Asian-African Legal Consultative Organization on behalf of the International Court of Justice (“Court” or “ICJ”). I thank H.E. Dr. Rahmat Mohamad, the Secretary-General of the Organization, for kindly hosting me here today. I also congratulate H.E. Dr. Neeru Chadha on her unanimous election as President of the Fifty-Second Session held earlier this year in New Delhi. A special debt of gratitude is owed to Dr. Roy Lee, Permanent Observer of AALCO to the United Nations, for helping to arrange this opportunity to speak to you this afternoon.

I am particularly pleased to be able to exchange views within your distinguished Organization at a time of great activity at the World Court. In fact, the international community has experienced significant change and progress since the end of the Second World War. The advent of modern international institutions — particularly those instituted under the aegis of the United Nations (“UN”) — has no doubt been prompted by the paramount objective of furthering international cooperation and promoting the peaceful settlement of disputes between States, and has translated into efforts to enhance the rule of law on the international plane.

As the principal judicial organ of the United Nations, the Court has been entrusted with the primary responsibility of delivering international justice between disputing States. It does so by settling bilateral and contentious disputes submitted to it by States in areas as diverse as State responsibility, land frontier and maritime boundary disputes, environmental law, the interpretation of bilateral treaties and multilateral conventions, diplomatic protection and human rights. Less frequently, the Court is also called upon to deliver advisory opinions on particular legal questions upon the request of international organizations, in the hopes of illuminating their further work.

We are witnessing a willingness among States to submit their disputes to pacific settlement options, with both judicial settlement and arbitral proceedings remaining viable avenues. After all, Article 33 of the UN Charter provides States with considerable freedom of choice in electing potential dispute resolution options: the overarching principle is that such settlement or adjustment mechanisms must provide for the peaceful resolution of disagreements. This obligation is mirrored in other provisions of the Charter, in particular to signal that Member States undertake to “settle their international dispute by peaceful means in such a manner that international peace and security, and justice, are not endangered”.

Unsurprisingly, the Court is increasingly turned to by States as an effective forum for the pacific settlement of disputes. This tendency may be best explained by the fact that parties to international disputes feel comfortable in putting their confidence in the Court and in the prospect that it will reach well-reasoned and just outcomes, on the basis of the evidence submitted to it and the arguments of the parties appearing before it, and in accordance with the rules and principles of international law. Since its inception after the Second World War, the Court has consistently and efficiently discharged its noble judicial mission. The Court’s judicial output has been particularly impressive over the last quarter century: over the last 23 years, the Court has delivered more judgments than during the first 44 years of its existence.

Other relevant figures confirming an enhanced confidence in the Court's work are equally eloquent: of the 70 declarations recognizing the jurisdiction of the Court as compulsory, more than a third have been deposited in the past 20 years, a large majority of those emanating from States which had never before accepted the Court's jurisdiction. What is more, some States have withdrawn their reservations to multilateral conventions precluding the jurisdiction of the World Court for disputes arising under their specific conventional schemes, thereby indirectly — but importantly — contributing to strengthening the jurisdiction of the Court. Similarly, there has been a proliferation of compromissory clauses enshrined in bilateral treaties and multilateral conventions since the end of the Cold War, granting jurisdiction to the Court over disputes regarding the application or interpretation of the referring international instruments. At present, over 300 such bilateral treaties or multilateral conventions are in existence.

The Court's regular clients include States from Africa, Asia, Latin American, Western Europe and America, and from a contingent formerly designated as Eastern Europe and the Middle East. Needless to say, the Court has been very active in the African context, having resolved several boundary disputes and other cases arising between African States. Sometimes, such disputes involve States from two continents such as the recent case concerning *Questions relating to the Obligation to Prosecute or Extradite*, opposing Belgium and Senegal, or the older but important *Continental Shelf* case opposing Libya and Malta, which was brought to the Court by way of special agreement. In fact, the Court has developed a solid reputation in matters of boundary disputes and maritime delimitation. Its resulting jurisprudence has not only illuminated the work of other international tribunals — such as the International Tribunal for the Law of the Sea and UNCLOS Annex VII arbitral tribunals — but has also informed governments, legal advisers and legal scholars. It is no surprise, therefore, that several African States have put their confidence in the Court to peacefully settle their disputes. Furthermore, at this time 22 African States have in force a declaration recognizing as compulsory the jurisdiction of the Court, in accordance with Article 36 (2) of its Statute. This represents roughly 40 per cent of the 54 States subsumed under the "African Group" according to the UN's Regional Groups of Member States.

Even a cursory glance at the judicial docket, since the inception of the Court, showcases the trust that African nations have afforded the Court in resolving their disagreements. For instance, 17 cases opposing African States have been brought to the Court, with only three of those disputes having been discontinued. As a result, several of the remaining 14 cases have generated at least one judgment by the Court, if not two or three judgments, be it at the preliminary objections, merits or compensation phase, or in some mixed configuration. Moreover, as I indicated earlier, other disputes before the Court have opposed one African State as a party against a European State. In total, nine such cases have been submitted to the Court for adjudication; of those nine cases, four were discontinued, although two of those were discontinued after the delivery of one judgment. Setting aside contentious proceedings for a moment, it is also interesting to underscore that six advisory opinions delivered by the Court have concerned — oftentimes very directly — African States.

By contrast, the litigation picture that emerges from the Asian experience before the Court is one of perhaps more restraint. Among the 53 States falling within the rubric of the "Asia-Pacific Group" under the UN system, only seven States — or roughly 13 per cent of the broader contingent — recognize the jurisdiction of the Court under the optional clause (Article 36 (2)). Since the inception of the Court, eight disputes opposing Asian-Pacific States have been submitted to the Court, including a request for interpretation, namely the *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand) (Cambodia v. Thailand)*. The Judgment in this case is to be delivered very shortly, in less than two weeks. Of those eight cases, only one was eventually discontinued.

Yet, I should like to point out that several Asian States have signed on to clauses in multilateral conventions that refer to the International Court of Justice as a forum for the settlement of disputes arising under the relevant instruments. This has been particularly so in the field of

fundamental human rights protection, with many Asian States signing on to the Genocide Convention, the Convention against Torture, the Convention on the Elimination of All Forms of Racial Discrimination, the 1967 Protocol Relating to the Status of Refugees, and the Convention on the Elimination of All Forms of Discrimination against Women. A similar trend may be observed in other legal fields as well, with considerable adherence by Asian States to the UN Convention on the Law of the Sea and the Vienna Convention on the Law of Treaties, for instance, which both provide the option to disputing States to submit their disagreements to the Court for adjudication.

Similarly to some African States, select nations from the Asia-Pacific regional group have also been involved in litigation before the Court against States from other regions of the world. In total, nine such cases have been brought to the Court; four were discontinued, but prior to discontinuance generated one judgment by the Court in one case. Finally, at least one other contentious case, not directly involving any Asian-Pacific State, and one advisory opinion delivered by the Court nonetheless concerned the interests of some States falling within the purview of the relevant regional group.

Clearly, more needs to be done to improve the situation prevalent today, so as to enhance the compulsory jurisdiction of the principal judicial organ of the United Nations. As I indicated earlier, only slightly more than one third of the UN's membership today — which totals 193 States — has availed itself of the Article 36 (2) mechanism and made a declaration recognizing as compulsory the jurisdiction of the Court. What is more, only one permanent member of the UN Security Council remains among this contingent of States having made Article 36 (2) declarations.

These figures stand in sharp contrast with the reality that existed in 1948: at that time, 34 States out of the 58 Member States of the UN, including four out of the five permanent members of the Security Council, recognized as compulsory the jurisdiction of the Court, nearly 60 per cent of the UN's membership at that time. Needless to say, the enhancement of the Court's compulsory jurisdiction could benefit from further engagement by States in the African and Asian-Pacific regional groups with the prospect of recognizing as compulsory the jurisdiction of the Court. In his report of 2012, the UN Secretary-General launched a campaign aiming to encourage wider recognition of the jurisdiction of the Court as compulsory among UN Member States. This initiative must be commended heartily, as it is high time to issue a call for greater recognition of the Court's jurisdiction so as to further strengthen its role in vindicating the ideals enshrined in the UN Charter. Thus, it is to be hoped that more States from the two regional groups represented in your distinguished Organization will consider submitting their future disputes to the jurisdiction of the Court, including via the adoption of Article 36 (2) declarations. However, I should like to recall that those declarations may be "tailored" to fit the needs and interests of those States making them, determining the scope of the acceptance of the Court's jurisdiction or determining the classes or categories of disputes falling within such jurisdiction.

I take this opportunity to appeal to you — as distinguished practitioners of international law, international relations experts, and legal advisers — to bring your own contributions to bear on further strengthening and upholding the rule of law on the international plane; in particular by promoting dispute resolution by the Court and encouraging your home States to consider making Article 36 (2) declarations if they have not already done so. Such initiative will be instrumental in ensuring that the Court continues to fulfil its noble and vital function of determining international law applicable to the dispute and rendering justice between disputing States. Indeed, as eminent international jurists, you are no doubt particularly well situated to invite your home Governments and Ministers of international affairs to ensure greater adherence to the Court's compulsory jurisdiction as an effective way to achieve peaceful conflict settlement and more harmonious inter-State relations.

Granted, there is no question that negotiation between disputing States remains the most effective and direct means to resolve international disagreements, provided that such an avenue ultimately leads to an agreement between the parties. A recent example of this practice can be pointed to in a case that originated in another part of the world, namely the dispute regarding *Aerial Herbicide Spraying* opposing Ecuador and Colombia. While the case had featured on the Court's docket for some four years, two rounds of written pleadings had been completed, voluminous evidence had been submitted, and the oral hearings were scheduled to take place in late September 2013, the Parties ultimately reached an agreement settling their dispute.

However, in certain circumstances no agreement may be reached between the parties, thereby resulting in negotiations becoming deadlocked. These types of circumstances can sometimes deteriorate, with tensions flaring up between disputing parties, and lead to open conflicts. Disputes involving competing claims to sovereignty over certain land territory or maritime features, or scenarios entailing competing claims over maritime zones, can become especially volatile. When confronted with such disagreements, parties may be able to attain mutually agreeable solutions through negotiation, mediation or some other creative arrangement, such as joint management and exploitation regimes.

But when such settlement seems illusory, the Court remains available to assist States in resolving their international legal disputes in a timely and just fashion. Indeed, it is often best — when confronted with such thorny inter-State disagreements — to have the underlying legal dispute decided by an impartial, third-party institution, such as the Court. While arbitral proceedings are available these days, as a flexible and time-efficient means to resolve disputes, they are also extremely costly. Under UNCLOS, when the States involved in a dispute have not accepted the jurisdiction of the ICJ or ITLOS, an *ad hoc* arbitral tribunal becomes competent to hear the case. Recourse to the Court undoubtedly presents disputing States with a less cost-prohibitive settlement option. What is more, the possibility of resorting to the Court for adjudication may prompt disputing States to work together so as to devise mutually acceptable solutions to their differences before seising the Court, as opposed to pursuing blindly their own positions to the detriment of more promising and constructive negotiations.

After all, in its seminal Judgment in the *North Sea Continental Shelf* cases and in subsequent decisions, the Court insisted that parties “are under an obligation so to conduct themselves that negotiations are meaningful, which will not be the case when either of them insists on its own position without contemplating any modification of it”. When negotiations legitimately fall short in resolving international disagreements, resorting to the Court for adjudication may actually contribute to defusing tensions between disputing States with a view to restoring harmonious relations between them. In this context, the Court remains an important agent for strengthening and upholding the rule of law on the international scene and invariably hands down just decision, in full impartiality, on the basis of the legal arguments and evidence presented to it, along with the relevant principles and rules of international law.

A recent example of the role played by the Court in ensuring the peaceful settlement of disputes, with the effect of further strengthening relations between the parties, arose in the *Frontier Dispute (Burkina Faso/Niger)* case, which resulted in the Court delivering a 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 regarding a section of their common frontier. There is every indication that the Court's Judgment contributed to further strengthening the mutually respectful and harmonious relations between Burkina Faso and Niger, as both Parties have openly praised the outcome attained by the Court in its decision.

That case also demonstrated the utility of submitting disputes to the Court by way of special agreement — also termed *compromis* in French — whereby two States bring their dispute to the Court for adjudication, by common agreement. Such agreements afford parties a large degree of

latitude in fashioning the litigation modalities suitable for their own purposes. In fact, several States represented in your distinguished Organization have availed themselves of this statutory mechanism to seise the Court with a view to resolving their differences, which has, in turn, generated a rich and often influential jurisprudence by the Court. While this has been particularly so in the fields of maritime delimitation and land frontier disputes, other cases brought by special agreement to the Court by African and Asian-Pacific States have also encompassed issues of sovereignty over maritime features and other questions as well.

Many of these cases have become leading decisions, particularly in the area of maritime delimitation and land frontier dispute, thereby informing the further development of relevant international legal principles. What is more, they are frequently invoked by States appearing before the Court and also provide support to the work of other international tribunals. One may think of the following cases: *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge* brought by Malaysia and Singapore; *Frontier Dispute* submitted by Benin and Niger; *Sovereignty over Pulau Ligitan and Pulau Sipadan* brought by Indonesia and Malaysia; *Kasikili/Sedudu Island* submitted by Botswana and Namibia; *Territorial Dispute* brought by Libya and Chad; *Frontier Dispute* submitted by Burkina Faso and Mali; and *Continental Shelf* brought to the Court by Tunisia and Libya, which also generated subsequent proceedings resulting in a Judgment by the Court on the Application for Revision and Interpretation three years after the Judgment on the merits.

African and Asian-Pacific States have also provided a rich contribution to the development of international law, and to the Court as an institution, through the eminent jurists that have served on its Bench. For instance, both regional groups represented in your distinguished Organization have produced six Presidents of the principal judicial organ of the United Nations, out of the 22 individuals<sup>1</sup> elected to that post in the Court's history. But statistics do not tell the whole story, as several judges of great distinction who served on the Court's Bench originated from Asian and Africa. For instance, Judge Sir Mohammad Zafrullah Khan of Pakistan secured the presidency of the Court in 1970, being the first Asian jurist to do so.

After this historical election, other distinguished Asian judges were entrusted with high offices at the Court, including Presidents Nagendra Singh of India, Shi of China and Owada of Japan, as well as Vice-Presidents Ammoun of Lebanon, Oda of Japan, Weeramantry of Sri Lanka and Al-Khasawneh of Jordan. In addition to those judges I have already mentioned, the Court has been privileged to benefit from the contributions of three other Indian judges, namely Judge Sir Benegal Rau (1952-1953) whose term was cut short by his untimely death, Judge Raghunandan Swarup Pathak (1989-1991) and Judge Dalveer Bhandari, who has been a Member of Court since 2012; and two other Southwest Asian judges, both originating from Syria, namely Judge Abdallah Fikri El-Khani (1981-1985) and Judge Salah El Dine Tarazi (1976-1980).

The contributions of Chinese and Japanese judges have been singularly important at the Court, if only for the fact that they have been of the longest and most consistent vintage. In particular, the input of Chinese judges has been felt over the decades, with Judge Hsu Mo serving from 1946 to 1956; Judge Vi Kuyuin Wellington Koo serving from 1957 to 1967; Judge Ni Zhengyu serving from 1985 to 1994; Judge Shi Jiuyong serving from 1994 to 2010; and the current tenure of Judge Xue Hanqin, who has served on the bench since 2009. The Japanese contribution to the work of the Court has been equally impressive, with Judge Kotaro Tanaka serving from 1961 to 1970; Judge Shigeru Oda serving from 1976 to 2003, an unprecedented three terms as judge of the World Court; and Judge Hisashi Owada, who has been a Member of Court since 2003 and its President from 2009 to 2012. What is more, the Japanese contribution to the judicial work carried out in the Peace Palace has been longstanding, even pre-dating the

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<sup>1</sup>Upon the death of Sir Humphrey Waldock on 15 August 1981, the functions of the presidency were thereafter exercised by Judge Elias as Acting President. However, the Waldock/Elias presidency was only tallied as one presidency for the purposes of the body text.

UN Charter, as three Japanese judges served at the Permanent Court of International Justice, the present-day Court's predecessor institution, namely: Judges Yorozu Oda, Minéitciro Adatci and Harukazu Nagaoka. Conversely, Central Asia has not yet been represented on the Bench, whereas only one judge originating from Southeast Asia has served on the Court, Judge César Bengzon of the Philippines, from 1967 to 1976.

The African continent has also contributed greatly to the success of the Court, having produced two Presidents, Judge Taslim Olawale Elias from Nigeria (1982-1985) and Judge Mohammed Bedjaoui from Algeria (1994-1997); and four Vice-Presidents, namely Judge Abdel Hamid Badawi from Egypt (1955-1958), Judge Taslim Olawale Elias from Nigeria (1979-1982), Judge Kéba Mbaye from Senegal (1987-1991) and Judge Raymond Ranjeva from Madagascar (2003-2006). In addition to the African judges I have already mentioned, the Court has benefited from the tenure of Judge Isaac Forster from Senegal (1964-1982), Judge Charles Onyeama from Nigeria (1967-1976), Judge Louis Ignacio-Pinto from Benin (1970-1979), Judge Abdullah El-Erian from Egypt (1979-1981), Judge Prince Bola Adesumbo Ajibola from Nigeria (1991-1994), Judge Abdul Koroma from Sierra Leone (1994-2012) and Judge Nabil Elaraby from Egypt (2001-2006). What is more, the Court in its current composition also includes three Members originating from Africa: Judge Mohamed Bennouna from Morocco (2006-present), Judge Abdulqawi Ahmed Yusuf from Somalia (2009-present), and Judge Julia Sebutinde from Uganda (2012-present).

Mr. Secretary-General,  
Excellencies,  
Ladies and Gentlemen,

The Court has been most privileged to benefit from the various contributions of several eminent Asian and African jurists that have served on its Bench. Granted, their legal input and judicial philosophies are as diverse as they are numerous, with some exhibiting a progressive sensibility towards international legal issues, a rigorous analytical technique, a forward-looking outlook with respect to the international community, consensus-building aptitudes, a universalist stance on the law, or a pluralist appreciation of international law. However, they all remain united in that they provided — without exception — considerable expertise to the Bench of the World Court and contributed to shifting that institution away from its initial Eurocentric orientation. Certainly, the Court may have been created in Europe. Yet, its vast and diverse membership since its inception in 1946 — to which Asian-Pacific and African States have contributed greatly — has not only served to enrich the Court's jurisprudence with a plurality of worldviews, but it has also consecrated the Court as an inclusive, multicultural and representative permanent standing international court for States. A true World Court.

It is to be hoped that more States from the two regional groups represented in your distinguished Organization will consider recognizing the jurisdiction of the Court in the future, be it through compromissory clauses, case-specific special agreements, or via the more general formulation of an Article 36 (2) declaration. I can see few better ways to effectively reflect the deep and longstanding commitment to international law and the rule of law that several Asian and African States have already demonstrated, and which were embodied by the eminent judges from those regions that have served on the World Court. Both these regions remain vital to the work and progress of the Court. I thank you for your kind attention.

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