STATEMENT BY H.E. JUDGE PETER TOMKA, PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE, AT THE HIGH-LEVEL MEETING ON THE RULE OF LAW

24 September 2012

Dear Mr. President,

Dear Mr. Secretary-General,

Excellencies,

Ladies and Gentlemen,

I welcome the opportunity to address you, on behalf of the International Court of Justice, on this important topic — the rule of law at the national and international levels. I wish to offer a few remarks on the international aspect of this concept.

The Preamble of the Charter confirms that the founding fathers of our Organization, when they decided to create the United Nations in 1945, were determined "to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained". They also reaffirmed their "faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small".

The concept of the "rule of law" is and should be at the very heart of the Organization's mission. All organs of the United Nations must fully adhere to applicable international legal rules. Any action which does not conform to law is devoid of legitimacy. At the international level, the rule of law concept was aptly expressed in the Declaration on Rights and Duties of States, prepared by the International Law Commission. Article 14 states that "[e]very State has the duty to conduct its relations with other States in accordance with international law and with the principle that the sovereignty of each State is subject to the supremacy of international law".

The United Nations have achieved impressive results in the normative realm[1]; the list of conventions codifying international law and progressively developing it is a long one. Similarly, the list of United Nations human rights conventions is a considerable one.

The Secretary-General Ban Ki-moon rightly stresses that nowadays, the real challenge lies in the implementation of the existing [legal] framework[2]. The application of international legal rules and implementation of international legal obligations are not always free from controversies, differences, ultimately resulting in the emergence of open disputes between States.

The concept of the rule of law at the international level requires the existence of effective, and possibly compulsory, adjudicative mechanisms. The legal maxim "nemo iudex in causa sua" (no-one can be a judge in his own case), confirmed by the Permanent Court of International Justice already in 1925[3], should equally be applicable in relations between States.

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[1]Renewing the United Nations: A Programme for Reform, Report of the Secretary-General, UN doc. A 51/950, p. 10, para. 8.

[2]Delivering justice: programme of action to strengthen the rule of law at the national and international levels, UN doc. A/66/749, p. 4, para. 12.

[3]*Interpretation of Article 3, Paragraph 2, of the Treaty of Lausanne*, (Frontier between Turkey and Iraq), *Advisory Opinion, 1925, P.C.I.J., Series B, No. 12*, p. 32.

The Charter of the United Nations declares as one of its principles that "[a]ll members shall settle their international disputes by peaceful means in such a manner that international peace and security, and justice, are not endangered". This principle has been solemnly re-affirmed by the General Assembly in several of its declarations and resolutions.

Judicial settlement of the disputes between States is one of the methods available to them in order to resolve their disagreements and to restore harmony and good relations between them. This is true in particular as regards disputes which are likely to endanger the maintenance of international peace and security, to which the whole Chapter VI of the United Nations Charter is devoted. I will recall that under Article 36 (3) of the Charter of the United Nations, the Security Council could recommend to the Parties to refer a legal dispute to the International Court of Justice.

Mr. President, bringing a dispute before the Court usually contributes to defusing tensions between States, in particular in situations of competing claims to sovereignty or maritime zones. If the Parties are unable to resolve such matters through negotiation to their satisfaction or find a creative solution, such as joint management and exploitation régimes, the Court remains available to assist them by adjudicating the dispute on the strength of their legal arguments and evidence in accordance with international law.

The international community now has over 90 years of experience with the judicial settlement of disputes. The key role in this regard has been assigned by the Charter to the International Court of Justice, which is one of the six main organs of the Organization and its principal judicial organ. The Court — through its activities — is an important agent for upholding and promoting the rule of law at the international level, in relations between States. It has the important and noble role of determining existing law and rendering justice between States.

There were periods when States more frequently referred their disputes to it; there were also periods, in particular in the sixties and seventies, when judges were sitting rather idly in the Peace Palace.

I am glad to report that we have witnessed over the last two decades a renewed willingness of States to submit cases to the Court for adjudication from all corners of the world. In the last 22 years of its activities, since 1990, the Court has rendered more judgments than during the first 44 years of its existence; 60 as compared to 52. Just this year, in addition to one advisory opinion, the Court has rendered three judgments and has advanced its work on the fourth one, and is planning to hold hearings in two further important cases, one concerning a boundary dispute between two African States and the other one regarding a maritime dispute involving two countries from Latin America.

With rather limited resources, its budget representing some 0.8 per cent of the United Nations' regular budget, the Court does its best to contribute to the noble aims and goals of the United Nations.

The jurisdiction of the Court is based on consent of the States involved in a dispute before it. While all 193 Member States of the United Nations are Parties to the Statute of the Court, which is an integral part of the Charter, only 67 of them have made a declaration under Article 36, paragraph 2, of the Statute, recognizing "as compulsory *ipso facto* and without special agreement, in relation to any other State accepting the same obligation, the jurisdiction of the Court in all legal disputes". Thus just slightly more than one third of the Member States of the United Nations have such a declaration in force; no reason to be satisfied.

In fact, we are far from realizing the hope, Mr. President, which your most distant predecessor, the very first President of the United Nations General Assembly, Minister Spaak, expressed on 18 April 1946 when he represented the Assembly at the solemn inaugural sitting of

the then newly established Court. He wished that "one day [the Court's] jurisdiction may become compulsory for all countries and for all disputes without exception"[4]. In the early years of the United Nations, there was stronger adherence to the compulsory jurisdiction of the Court than what we see today. In 1948, out of 58 Member States of the United Nations, 34 (including four out of five permanent members of the Security Council) recognized the compulsory jurisdiction of the Court, some 59 per cent of the United Nations membership as compared to today's rate of 34 per cent (67 States, including only one of the five permanent members of the Security Council, out of 193 Member States).

I therefore welcome and commend the decision of the Secretary-General to "launch a campaign to increase the number of Member States that accept as compulsory the jurisdiction of the International Court of Justice"[5].

On behalf of the Court, I wish to reassure the Member States that the Court will continue in its efforts to adjudicate disputes which my be submitted to it in the future, with dedication, in utmost impartiality, independence, and in accordance with international law within the bounds of the jurisdiction conferred upon it.

Hopefully, the Court will have further opportunities to contribute, through its activities, to the strengthening of the Rule of Law at the international level.

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[4] *Yearbook of the International Court of Justice 1946-1947*, p. 31.

[5] Delivering justice: programme of action to strengthen the rule of law at the national and international levels, Report of the Secretary-General, UN doc. A/66/749, p. 5, para. 15 *(b)*.