Statement by H.E. Judge Peter Tomka, President of the International Court of Justice, on Panel titled "The Hague International City of Peace and Justice"

16 May 2013

Excellencies,

Distinguished guests,

I am pleased to participate in this panel on "The Hague International City of Peace and Justice". I am particularly excited to join the delegation of the city of The Hague on this occasion. Indeed, it is quite fitting as The Hague, and the Netherlands more broadly, both espouse a long-standing tradition in international law dating back to Hugo Grotius, a great diplomat and legal scholar of the first part of the seventeenth century who is widely seen as a key founder of international legal doctrine. Indeed, for over a century the City of The Hague has been a vital incubator for the development and application of international law, as chiefly evidenced by its various contributions to the peaceful settlement of disputes. It was also there that, in the wake of the First and Second International Peace Conferences in 1899 and 1907, respectively, the two Hague Conventions for the Pacific Settlement of International Disputes were adopted.

In 1913, the Peace Palace was built for the Permanent Court of Arbitration and the Library, which will be celebrating its centennial anniversary this year, only to later become the home of the first standing universal international Court for States, the Permanent Court of International Justice ("PCIJ"). During its 18 years in operation, until early 1940, the PCIJ left an enduring legacy, having delivered 32 judgments settling disputes between States and provided 27 advisory opinions upon the request of the organs of the League of Nations. In so doing, it contributed to clarifying and developing international law. The PCIJ's legacy also includes a considerable corpus of procedural law which still provides solid foundations for the proper administration of international justice.

What is more, the PCIJ's jurisprudence not only provides inspiration to parties appearing before the International Court of Justice ("ICJ") — the PCIJ's successor, commonly referred to as the "World Court" — in crafting their legal arguments, but it also illuminates the work of the Court itself. As the PCIJ operated primarily in a period where international law was largely uncodified, that institution had the opportunity to contribute to the advancement of international law by clarifying specific international legal rules in vital areas of the discipline, such as the law of treaties and the law of State responsibility, to list only a few.

The United Nations Charter, adopted in 1945, instituted jurisprudential continuity by modelling the present-day Court's Statute after that of its predecessor institution. Having been vested with the primary responsibility of delivering international justice as the principal judicial organ of the United Nations, the Court carries out its primary judicial function by peacefully settling bilateral disputes between sovereign States. The Court also fulfils another function, which is that of providing advisory opinions upon the request of international organizations in the hopes that the resulting opinion might illuminate the future work of the requesting international organization.

In carrying out the principal judicial function devolved to it by virtue of the United Nations Charter, the Court has become increasingly busy. Its docket currently features 11 active cases originating in disputes from all corners of the globe, as a result of the Court clearing some of its judicial backlog in recent years: by contrast, at any time between 2003 and 2005, the Court had roughly 25 cases in its docket. Moreover, the Court has always carried out its function as the primary judicial organ of the United Nations effectively since 1945, especially over the last quarter

century during which it has been particularly prolific. Indeed, States are increasingly turning to the Court to resolve their disputes related to treaty interpretation, land and maritime frontiers, the environment and the conservation of living resources, and so on. Consequently, the Court has delivered more judgments in the last 22 years than during the first 44 years of its existence.

While the more immediate effect of the Court's judgments is to peacefully settle the disputes submitted to it, the influence of its jurisprudence is felt more broadly, as it is studied meticulously by other courts and tribunals, legal scholars, legal advisers to foreign ministries and States. Its pronouncements are widely perceived as authoritative statements of international law and, much in the vein of its predecessor, the present-day Court has had the opportunity to contribute to the development of international law, for instance by clarifying specific rules of customary international law. As a result, and in addition to its impact on the jurisprudence of other courts and tribunals, the Court's work has been highly influential in informing the codification projects undertaken by the International Law Commission, with that entity relying heavily on the Court's pronouncements in its efforts to codify international law.

In fact, in his 1997 report United Nations Secretary-General Kofi Annan underscored that the greatest achievement made by the United Nations was in the normative area. The Court's jurisprudence, which undoubtedly helped solidify the views developed on various topics in the International Law Commission, eventually prompted the transition to a dialogue between the Court and the Commission. In short, the latter continued to cite liberally the Court's precedents in its codification work, whereas the Court in turn referred in its judgments to the instruments developed by the Commission, be they in the form of conventions adopted by States or in the form of draft articles, such as the much-discussed articles on State responsibility.

As evidenced by the diverse membership among the panel this morning, the World Court is also privileged to work alongside other distinguished judicial and legal institutions in The Hague. Particularly relevant to the Court's work is the Permanent Court of Arbitration, which was established even earlier than the PCIJ, and which is also housed in the Peace Palace. Unquestionably, the PCA and other arbitral tribunals interact informally together as decisions rendered by international courts — in particular the judgments of the World Court — often inform the work of arbitral tribunals. In addition, the ICJ also at times cultivates close links with the Permanent Court of Arbitration and other arbitral tribunals, as its Members occasionally serve as arbitrators. There is no doubt that this long-standing practice of both PCIJ and ICJ judges serving as arbitrators facilitates better consistency in the jurisprudence, across the board, with respect to both interpretation and decision-making. Ultimately, the resulting jurisprudence — both in the Court's own practice and in that of arbitral tribunals — is cogent and coherent, as illustrated by the judicial and arbitral treatment of maritime delimitation, for instance. By way of mere example, it is telling that the Award rendered in the *Guyana* v. *Suriname* Arbitration, which was conducted under the auspices of the PCA, relied on the approach to maritime delimitation developed by the ICJ.

Moreover, this interaction between different institutions also manifests itself through the World Court's own jurisprudence, most prominently in the recent past, as the Court has been more inclined to cite arbitral decisions in its own judgments over the last 10 or 15 years. Prior to that, the Court almost never expressly referred to the decisions of arbitral tribunals, whereas nowadays it invokes arbitral precedents without hesitation, or similarly relies upon the jurisprudence of regional human rights courts, should such decisions put forward sound legal analyses that may help bolster the Court's own reasoning. Evidence of this practice can be seen in some of the Court's most recent decisions, which invoke both arbitral decisions and the jurisprudence of regional human rights courts in laying out their reasoning: the Court's Judgments in the cases concerning the *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)*, the *Jurisdictional Immunities of the State (Germany* v. *Italy*: *Greece intervening)*, and *Ahmadou Sadio Diallo (Republic of Guinea* v. *Democratic Republic of the Congo) (Compensation owed by the Democratic Republic of the Congo to the Republic of Guinea)* all corroborate this judicial inclination.

Conversely, a fairly sharp distinction must be drawn between the judicial function of the World Court which, as the principal judicial organ of the United Nations, must ensure the pacific settlement of disputes between sovereign States, on one hand, and international criminal tribunals situated in The Hague, on the other. Those latter institutions — particularly the International Criminal Tribunal for the former Yugoslavia ("ICTY") and the International Criminal Court — have a decidedly different role, namely that of determining individual criminal responsibility, as opposed to being organs for the settlement of disputes. That said, it may well be that a situation arises in which the same event triggers two types of international responsibility, the responsibility of the State and individual criminal responsibility. This very scenario occurred in the *Bosnian Genocide* case, which the Court decided in 2007, and which prompted it to closely examine judgments of the ICTY, such as *Krstić*, *Blagojević* and other decisions. There is every indication that the Court will once again be called upon to study ICTY jurisprudence meticulously in the near future, as there is another pending case relating to the Convention on the Prevention and Punishment of the Crime of Genocide in the Court's docket, opposing Croatia and Serbia. What is more, the parties themselves appear to expect that the Court will do so, as they are referencing ICTY decisions in their pleadings.

By contrast, the Court has not yet had the opportunity to seek inspiration from the jurisprudence of the ICC given that its first judgment in the *Lubanga* case has no relationship to any of the pending cases in the Court's docket. On a related and concluding note, there is always some danger in the public perception about the respective roles and functions of these institutions, particularly when journalists refer to the "World Court", which leads some to associate that term with the work of the ICTY in light of some of its high-profile cases, or with that of the ICC. In the past, the term "World Court" was exclusively used to designate the principal judicial organ of the United Nations, the International Court of Justice. In fact, I believe it was coined by one of the world's foremost experts on that Court — the late Shabtai Rosenne — and one of its ardent supporters.

In addition to the occasional interaction between the ICJ and other Hague-based tribunals, the World Court has enjoyed a privileged relationship to the International Tribunal for the Law of the Sea ("ITLOS"), which is based in Hamburg. While it has been very much in vogue to hypothesize about the possible fragmentation of international law over the last 15 years in legal scholarship, the very first judgment of ITLOS on maritime delimitation clearly points in the opposite direction: it appears that the initial anxieties over a potentially fragmented future for public international law were much ado about nothing. Quite to the contrary, international jurisprudence on maritime delimitation has become unified, cogent and consistent, as evidenced by ITLOS's judgment in the *Dispute concerning delimitation of the maritime boundary between Bangladesh and Myanmar in the Bay of Bengal (Bangladesh/Myanmar)*. In that decision, ITLOS specifically relied upon the World Court's jurisprudence in laying out its reasoning, with particular emphasis on the Court's 2009 unanimous decision in the *Maritime Delimitation in the Black Sea* case, opposing Romania and Ukraine. Hence, by its judgment, ITLOS confirmed that the World Court's 2009 decision had consecrated the basic maritime delimitation methodology under international law, thereby dispelling the fears voiced some years earlier about a potentially chaotic and fragmented international legal order resulting from the multiplication of courts and tribunals on the international plane.

I thank you very much for your attention and I look forward to the discussion that will follow.

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