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著 者： Philippe Couvreur

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上智大学法学会

講 演

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# 70 years of the International Court of Justice: how does it remain relevant in a changing world?

Philippe Couvreur<sup>(1)</sup>

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Excellencies,

Ladies and gentlemen,

Before I begin my presentation, allow me, if you will, to offer my sincere thanks - first of all, to the Japanese Government and the Ministry of Foreign Affairs, for inviting me to Japan and for their warm hospitality. It is a privilege and a great pleasure for me to be here.

Secondly, I should like to thank the Sophia University for asking me here today; I am particularly grateful to all those who have helped organize this conference.

Finally, I wish to extend my warm thanks to Professors Yajima, Kanehara, Eto and Horiguchi for their introductory remarks and very kind words of welcome.

The objective of this conference is to assess the relevance of the International Court of Justice in today's world.

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(1) Registrar of the International Court of Justice. The opinions expressed in this article in no way involve the responsibility of the International Court of Justice.

This text reproduces certain (updated) passages already published by the author in "La Corte Internacional de Justicia: su contribución al Derecho Internacional", in José Martín y Pérez de Nanclares (co-ord.), *España y la práctica del Derecho internacional*, Ministerio de Asuntos Exteriores, Escuela Diplomática, 2014, p. 145.

In fact, the question - which has been rightly framed - is how can the Court *maintain* its relevance and effectiveness? As confirmed by its ever-expanding workload in recent decades, the International Court of Justice has proved itself capable of responding to the aspirations of States for a universal, independent and impartial judicial forum, permanently available to settle their disputes in accordance with international law. Furthermore, it has been successful in fulfilling its judicial function and in settling complex legal disputes, and cases of non-compliance with its decisions remain extremely rare. The Court has thus greatly contributed to the enforcement of international obligations - by settling inter-State disputes - and to the achievement of one of the main objectives for which it was established as the principal organ of the United Nations in 1945: the peaceful settlement of international disputes.

Nevertheless, the Court will continue to come up against changes in the global order and international relations in the future, and it must respond to these changes as it has done successfully throughout its 70-year history. In this respect, one might think, *inter alia*, of the ever-increasing role played in international life by non-State actors (e. g., individuals, groups, international governmental or non-governmental organizations), a situation - far removed from that which prevailed in 1945, at a time when the State was the only protagonist in international relations. We might also consider the new threats and challenges facing the international community, and the corresponding demands which the Member States and principal organs of the United Nations must now satisfy in order to uphold the objectives and principles enshrined in the UN Charter. These are only a few examples of general questions that might arise when discussing the continuing relevance of the role of the International Court of Justice in international life.

Another set of questions, relating to the Court more directly, concern the profound transformation of international law itself. Indeed, the determination

and clarification of that law is at the heart of the Court's judicial function; international law, which "must always be a reflection" of international life, is, like that life, in "a state of constant evolution" <sup>(2)</sup>. In this respect, the Court has always had to face the development of new rules and, on occasion, to apply the law in the light of completely new international circumstances or situations. In recent decades, the expanding scope of international law has also been observed, with the adoption of a number of instruments covering new fields of application or responding to new needs and aspirations of the international community. The development of the protection of human rights, as well as the growing awareness concerning the protection of the environment, constitute the most obvious examples of two, relatively new branches of international law. These evolutions have been reflected in the subject-matters of cases brought by States before the International Court of Justice in recent years, and it is most likely that the Court will continue to be seised in the future of disputes involving controversial issues linked to the development of international law.

Beyond the substantive development of international law, another striking new feature of today's international life is the growth in numbers of international organizations and other institutions, at both universal and regional level, entrusted with law-making functions, and the corresponding increase of international courts and tribunals or other quasi-judicial bodies. This trend has not only been remarkable because of the confusion which it can create, not just among the general public, between international courts and tribunals. A question which has often been discussed, especially in recent years, is whether there is a risk of international law becoming "fragmented", because of the possible divergent approaches of international courts and tribunals towards the same legal issues and, therefore, a lack of consistency in the application of the law,

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(2) Individual opinion of Judge Alvarez, *Corfu Channel case, Judgment of April 9<sup>th</sup>, 1949, I.C.J. Reports 1949*, p. 41.

contrary to the very idea of an international legal order based on the rule of law. Fears have also been expressed that some kind of competition might ensue from the so-called “proliferation” of international courts or tribunals, or even that States might be encouraged to engage in “forum shopping”, although this last notion should be irrelevant in the context of international law - I shall come back to these questions in concluding my remarks today. Overall, most of these fears or questionings have proven unfounded, and the actual practice has shown that they might have been over-amplified.

Be that as it may, the multiplication of courts and tribunals, as well as some of the other recent developments I have just mentioned, raises the following questions: what makes the International Court of Justice unique, and how can its mandate, as established in 1945, remain relevant in the 21st century?

To answer these questions, my address today will take stock of the achievements of the International Court of Justice. I will begin with a succinct history of the Court’s judicial activities, before giving what must be a brief account of some of the key points of the Court’s contribution to the fulfilment of the purposes of the United Nations and to the clarification and development of international law. I will then address the perspective for the Court’s functions and activities, in view of some of the challenges it might face in the future.

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As we all know, the International Court of Justice was established in 1945, by the United Nations Charter and the Statute annexed thereto, as the principal judicial organ of the United Nations. Though it will come as no surprise that the actual date of the Hague Court’s creation can be traced back even further, to 1920, when Article 14 of the Covenant of the League of Nations provided for the principle of establishing a Permanent Court of International Justice

competent to hear and determine “any dispute of an international character which the parties thereto submit to it” and to give, in accordance with President Wilson’s wishes, “advisory opinion[s] upon any dispute or question referred to it” by the Council or by the Assembly. Japan, a founding Member of the League of Nations, ratified the Protocol of Signature of the Permanent Court’s Statute less than one year after its adoption (16 December 1920), on 16 November 1921. As one of only a few Asian States party to the Statute, Japan participated in the functioning of the first ever permanent international judicial institution, even after its withdrawal from the League of Nations in 1933. Throughout almost its entire existence, the Permanent Court included on its Bench a judge of Japanese nationality, namely: Judge Yorozu Oda, from 1922 to 1930; Judge Mineichiro Adachi, from 1931 to 1934 (who served as President of the Court from 1931 to 1933); and Judge Harukazu Nagaoka from 1936 to 1942.

Given the historical and judicial continuity that exists between the two courts, I do not believe it is possible to assess the achievements of the International Court of Justice today without briefly considering those of its predecessor.

The Permanent Court was pioneering in all respects. It was a critical link in the progressive strengthening of the role of judicial settlement - its creation embodied what had hitherto been the frustrated and unfulfilled hopes of establishing a completely new and more effective legal means of resolving disputes between States, one that was permanent and open, in principle, to all States.

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The Permanent Court, whose Statute entered into force on 1 September 1921 following its ratification by a majority of the Members of the League of Nations,

was effectively in operation for 18 years - from 1922, when it began its work, to 1940 - before it was officially dissolved in 1946. The experience rapidly gained in such a short period of time was foundational, notwithstanding the increasingly sensitive political backdrop.

The first Hague Court and its members in particular laid the groundwork for a truly international judicial process, drawing on both practice in international arbitration and general principles deriving from domestic legal systems. The preparatory work carried out for the first Rules of Court in 1922, and for its successive revisions, is still a vital point of reference for the interpretation and application of the texts currently in force. Moreover, the procedural practice followed by the Permanent Court in certain areas might be considered surprisingly modern today.

Just as remarkable, but sometimes overlooked, is the fact that the Permanent Court was a particularly valuable and effective part of the first attempt to establish an universal political organization - the League of Nations. It heard 29 cases brought by States and gave 27 advisory opinions. During its entire period of operation (1922-1940), the PCIJ thus delivered on average between three or four judgments or advisory opinions each year, a pace which has only recently - since the middle of the 2000s - been achieved by the International Court of Justice.

Japan, together with France, Italy and the United Kingdom, was a Party in the first ever contentious case submitted to the newly established Permanent Court, the case concerning the *SS "Wimbledon"*, introduced against Germany<sup>(3)</sup>. Ten years later, Japan appeared again alongside France, Italy and the United Kingdom as an Applicant, this time against Lithuania, in the case concerning the *Interpretation of the Statute of the Memel Territory*<sup>(4)</sup>.

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(3) S.S. "*Wimbledon*", Judgment of 17 August 1923, series A, No. 1.

(4) *Interpretation of the Statute of the Memel Territory (Preliminary Objection)*, Judgment of 24

Beyond what is strictly quantifiable, the PCIJ made an effective contribution to the resolution of situations and disputes resulting from the First World War. On the basis of the 1919 peace treaties, which linked the maintenance of peace to the judicial settlement of disputes, the Permanent Court examined a number of questions arising from the territorial transfers effected by those treaties, and related matters linked to these treaties, as illustrated by the two cases to which Japan, together with the Principal Allied Powers, was party. This important work accounted for almost half of the cases brought before the Permanent Court. Attention should also be drawn, in this connection, to the fact that the Council of the League of Nations frequently had recourse to the Permanent Court's advisory function. It routinely sought advisory opinions from the Court, on its own initiative or at the request of the States concerned, in order to help it to resolve questions or legal disputes submitted to it. The Council would then very often implement the solution identified in the opinion by political means. This is in stark contrast to the Security Council, which, since 1946, has only once asked the Court for an advisory opinion.

I need hardly recall here the important contribution made by the Permanent Court to the very foundation of international law, through the clarification of certain general principles of international law in its decisions, and in particular through its jurisprudence in the area of treaty law and the engagement of State responsibility, jurisprudence to which the current Court still makes frequent reference. It is thus clear that the groundwork laid by the Permanent Court fulfilled the hope that the establishment of a permanent court of a universal character with general jurisdiction would better ensure the creation of a consistent jurisprudence, thereby satisfying States' aspirations for greater predictability and legal certainty, something which earlier arbitral tribunals had

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*June 1932, series A/B, No. 47; Interpretation of the Statute of the Memel Territory, Judgment of 11 August 1932 (Merits), series A/B, No. 49.*

failed to do. And since the earliest attempts to create a new international organization at the end of the Second World War, the idea of re-establishing a permanent international court, in the same or in a new form, was never called into question.

Indeed, despite the historical and legal rupture created by the foundation of the United Nations in place of the defunct League of Nations, the ICJ's Statute was drawn up on the basis of that of its predecessor (Article 92 of the Charter) and a continuity was ensured between the two courts, as demonstrated, for example, by Article 36, paragraph 5, and Article 37 of the new Statute. Nevertheless, the page that was turned in 1945, in terms of the development of international relations and the way in which international peace and security were upheld, left the Court facing a profoundly different world and new institutional realities. The first meeting of the new Court, in 1946, marked a new chapter in the history of the Hague Court.

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Since 1946, the ICJ has rendered 125 judgments and given 27 advisory opinions. It has adapted to major developments in international relations. Its composition has diversified in order to better reflect the huge increase in the number of States making up the international community. When it was first established, the Court served 51 States; it is now open to 193. I would recall, in this connection, that, just four years after Japan became a Member State of the United Nations and therefore, *ipso facto*, party to the Court's Statute, in 1956, the first judge of Japanese nationality was elected to the Court (Kotaro Tanaka, former Chief Justice of the Supreme Court of Japan, who served from 1961 to 1970). Since 1976, there has always been a judge of Japanese nationality sitting on the Bench (Sigeru Oda, from 1976 to 2003 (Vice-President from 1991 to 1994), and

Hisashi Owada, since 2003 (President from 2009 to 2012)). Japan is also one of only a few Asian States <sup>(5)</sup> to have accepted the compulsory jurisdiction of the Court in accordance with Article 36, paragraph 2 of the Statute, which it has done continuously since 1958 <sup>(6)</sup>.

The questions considered by the Court quickly went beyond the European framework to which the Permanent Court of International Justice had principally been confined. A study of the Court's role shows the true universality of recourse to its services for the settlement of international disputes. Almost 100 States, from all regions of the world, have been parties to cases before the Court, and it has entertained both disputes between States from the same region (Europe (over 30), Latin America (approximately 15), Africa (approximately 20) and Asia (around 10)) and mixed or "intercontinental" disputes (40 or so). As you know, Japan's first appearance as a party in contentious proceedings before the ICJ came very recently, in the case concerning *Whaling in the Antarctic (Australia v. Japan: New Zealand intervening)* <sup>(7)</sup>.

In addition to its more universal composition and jurisdiction *ratione personae*, when compared to that of the PCIJ, the role played by the International Court of Justice can also be characterized by the nature of the questions submitted to it. As a matter of principle, the Court enjoys a general jurisdiction *ratione materiae*, with the consequence that States may refer to the

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(5) Only six of the 72 States that accept the compulsory jurisdiction of the Court today are from Asia (Cambodia, India, Japan, Pakistan, Philippines, Timor-Leste).

(6) Japan modified its declaration in 2007 and 2015.

(7) *Judgment of 31 March 2014, I.C.J. Rep. 2014, p. 226*; Japan had previously participated in three advisory proceedings before the Court (*Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Rep. 1996, p. 226*; *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Rep. 2004, p. 136*; *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo, Advisory Opinion, I.C.J. Rep. 2010, p. 403*).

Court all cases of legal disputes concerning any question of international law; likewise, under Article 96 of the United Nations Charter, the Court's advisory jurisdiction provides for requests, from the General Assembly or the Security Council, on "any legal question" (while "other organs of the United Nations and specialized agencies, which may at any time be so authorized by the General Assembly, may also request advisory opinions of the Court on legal questions arising within the scope of their activities").

In this respect, the history of the ICJ's judicial activities, which span 70 years, is by no means linear and has evolved over time, as has international society itself. Yet, the achievements of the Court can be broadly measured in the light of the two missions ascribed to it, first as a principal organ of the United Nations, and, secondly, as a judicial organ with universal and general jurisdiction. I will now address in turn the main contribution of the Court with respect to both aspects.

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*The ICJ and the purposes of the United Nations: the maintenance of international peace and security and the peaceful settlement of disputes*

As a principal organ of the United Nations, the Court plays a part in the fulfilment of the first purpose of the United Nations, which is to maintain international peace and security by bringing about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes (Article 1, paragraph 1, of the Charter of the United Nations). The role played by the Court in this respect has, however, varied throughout its history. It is thus important to recall the circumstances surrounding the creation of the new Court: the Cold War and a more or less

peaceful coexistence explains why recourse to judicial settlement was rare.

It is essentially through the clarification and strengthening of United Nations law that the Court first contributed to the objectives of the Organization. In a unique sequence of advisory opinions, the Court confirmed, for example, that the United Nations had an international legal personality, could bring a claim for reparation and had implied powers, in addition to those expressly conferred upon it, in order to achieve its mission<sup>(8)</sup>. It further affirmed that the contributions calculated by the General Assembly were binding on all States, which must bear that part of the expenses apportioned to them<sup>(9)</sup>. It has also recognized the normative role of the General Assembly in the formation of international law<sup>(10)</sup>.

Those advisory opinions played a significant part in strengthening the United Nations. The Court thus contributed, as an organ of the United Nations, to the peaceful settlement of disputes, its work enabling the other organs to achieve the purposes set out in the Charter as effectively as possible. This aspect of the Court's activity has continued, as demonstrated by the advisory proceedings relating to the *Legality of the Threat or Use of Nuclear Weapons*<sup>(11)</sup> and the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*<sup>(12)</sup>. The oft-voiced wish to see the organs of the United Nations make more frequent use of the Court's advisory function has not, however, produced the desired results. This is particularly true of the Security

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(8) *Reparation for injuries suffered in the service of the United Nations, Advisory Opinion, I.C.J. Rep. 1949, p. 174.*

(9) *Certain expenses of the United Nations (Article 17, paragraph 2, of the Charter), Advisory Opinion, I.C.J. Rep. 1962, p. 151.*

(10) *Western Sahara, Advisory Opinion, I. C. J. Rep. 1975, p. 12;* and more recently *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Rep. 2004, p. 136.*

(11) *Advisory Opinion, I.C.J. Rep. 1996, p. 226.*

(12) *Advisory Opinion, I.C.J. Rep. 2004, p. 136.*

Council, which, as I have already mentioned, has only once asked the Court for an advisory opinion, more than 40 years ago<sup>(13)</sup>.

As regards the Court's contentious jurisdiction, major international crises which posed immediate threats to security largely escaped examination by the Court for many years, owing to a lack of political will among States to submit the legal aspects of those problems to it. The principle of consent, as legitimate as this may be in what remains a poorly integrated international society, naturally places limits on the extent to which the Court can contribute to the peaceful settlement of disputes. Despite this, when the Court has been seised, it has played its part to the full.

Until the 1970s, the judgments rendered tended to concern questions of territorial delimitation and diplomatic protection. In this respect, the Court's contribution to the realization of the purposes of the United Nations could be described as preventive, since questions relating to territory and the treatment of aliens and their property are undoubtedly at the heart of numerous conflicts. The judgments of the Court which settled those issues were implemented by the parties. The disputes in question were thus definitively resolved. Although not spectacular, the Court's contribution to the prevention of conflicts, either through the resolution of such disputes or, more generally, through the development of international law, was nevertheless both efficient and effective, a point I will return to a little later.

An important development took place at the beginning of the 1980s, when the Court began to entertain disputes that posed more immediate threats to international peace and security. The cases concerning *United States Diplomatic and Consular Staff in Tehran* (1979-1980), *Military and Paramilitary Activities*

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(13) *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Rep. 1971, p. 16.*

*in and against Nicaragua* (1984-1986) and the *Frontier Dispute (Burkina Faso/Republic of Mali)* (1983-1986), following the “Christmas war” between Burkina Faso and Mali, provided the Court with an opportunity to exercise its judicial functions in respect of acute international crisis. In particular, the Court affirmed that parallel recourse to political means of settlement did not prevent it from fulfilling its functions. It thus clarified the relationship between the various pacific means of dispute settlement, emphasizing their complementary nature. It is also pointed out that Article 24 of the Charter gave the Council principal, but not exclusive, responsibility for maintaining international peace and security.

The Court has also, in this context, been called upon to indicate a wide range of provisional measures, including measures of a military nature, as in the case concerning the *Frontier Dispute (Burkina Faso/Republic of Mali)* <sup>(14)</sup>. It subsequently expressly confirmed the binding nature of such measures <sup>(15)</sup>.

Since 1986, this trend of bringing highly political legal disputes before the Court has been confirmed. The Court has thus been seised of cases concerning some of the most serious conflicts of recent years, from the Great Lakes of Africa crisis to the wars in the former Yugoslavia. In the cases concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)* and the *Application of the Convention of the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, in particular, the Court intervened not only as a matter of urgency, to indicate provisional measures, but also once those conflicts were over, in order to establish the responsibility of the States concerned, thereby paving the way for the restoration of friendly relations between the parties.

Moreover, the Court has entertained a number of disputes, which, while not directly or formally related to the use of force, were nonetheless likely to lead to

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(14) *Judgment of 22 December 1986, I.C.J. Rep. 1986, p. 554.*

(15) *La Grand (Germany v. United States of America), Judgment, I.C.J. Rep. 2001, p. 466.*

it, or which had developed during armed incidents, as more recently in the Caucasus (*Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation)*), or in Eastern Europe (*Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*).

The widening of the Court's operational scope has of course not prevented it from developing, in parallel, its jurisprudence in the more traditional areas of its activity. Thus, in respect of territorial disputes, it has confirmed and clarified in a number of subsequent decisions the fundamental principles set forth in its *Burkina Faso/Mali* Judgment, for example, with respect to the relationship between "titles" and "effectivités"<sup>(16)</sup>. In the area of maritime delimitation, it has reconciled the "equidistance/special circumstances" rule (applicable to the territorial sea) and the "equitable principles/relevant circumstances" rule (applicable to the continental shelf and exclusive economic zone), and paved the way for a true "standard method" of delimitation<sup>(17)</sup>: the judgment rendered in the case concerning *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*<sup>(18)</sup>, adopted unanimously and without any opinions or declarations

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(16) *Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)*, Judgment, I.C.J. Rep. 1992, p. 351; *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*, Judgment, I.C.J. Rep. 2002, p. 625; *Frontier Dispute (Benin/Niger)*, Judgment, I.C.J. Rep. 2005, p. 90; *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)*, Judgment, I.C.J. Rep. 2008, p. 12; *Frontier Dispute (Burkina Faso/Niger)*, Judgment, I.C.J. Rep. 2013, p. 44.

(17) *Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway)*, Judgment, I.C.J. Rep. 1993, p. 38; *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)*, Judgment, I.C.J. Rep. 2001, p. 40; *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*, Judgment, I.C.J. Rep. 2002, p. 303; *Maritime Delimitation in the Black Sea (Romania v. Ukraine)*, Judgment, I.C.J. Rep. 2009, p. 61; *Territorial and Maritime Dispute (Nicaragua v. Colombia)*.

(18) *Judgment of 3 February 2009*, I.C.J. Rep. 2009, p. 61.

appended thereto, is exemplary in this respect. Lastly, the Court has also had the opportunity to revisit, in the light of contemporary law, the criteria for the exercise of diplomatic protection identified in the *Barcelona Traction* case (case concerning *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*).

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***The ICJ and the principles of the United Nations: the strengthening and development of international law at the international level***

As well as the Court's direct participation in the achievement of the purpose of the United Nations, the jurisprudence that has been developed by the Court over a period of now more than 70 years - during which time the needs of international society have evolved - has made a unique contribution to the confirmation and strengthening of the law in international relations. To use a phrase that has become quite fashionable in recent years, the Court has played and continues to play an irreplaceable role in the "promotion of the rule of law" at the international level <sup>(19)</sup>. In this part of my address, I will very briefly describe the contribution made by the International Court of Justice to what I consider to be three essential pillars of the rule of law at the international level <sup>(20)</sup>.

First, all of the Court's activities are directed towards the promotion of the rule of law, in so far as they aim to ensure respect for the law and for justice

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(19) *Declaration of the High-Level Meeting of the General Assembly on the Rule of Law at the National and International levels*, resolution of the General Assembly, adopted on 24 September 2012, A/RES/67/1.

(20) See Ph. Couvreur, "The International Court of Justice", in *The Contribution of International and Supranational Courts to the Rule of Law*, G. De Baere, J. Wouters, (eds.), Leuven Global Governance Series, Cheltenham/ Northampton, UK/ USA: Edward Elgar Pub., 2015, pp. 85-126.

within international society. In this regard, the Court's decisions provide a point of reference in a number of areas, which can help both States and international organizations to "guide all of their activities and accord predictability and legitimacy to their actions" <sup>(21)</sup>. I have already mentioned the Court's contribution, through its advisory opinions, to the confirmation of the pre-eminence of law as an instrument for the effective functioning of international organizations; as stated by the Court in its very first advisory opinion, "[t]he political character of an organ cannot release it from the observance of the treaty provisions established by the Charter when they constitute limitations on its powers or criteria for its judgment" <sup>(22)</sup>.

In exercising its contentious jurisdiction, the Court has also clarified a number of fundamental principles of international law, as laid down, in particular, in the Charter of the United Nations. One naturally thinks of the especially important contribution made by the Court's jurisprudence to the prohibition of the use of force and the question of self-defence. In its very first contentious case, the *Corfu Channel* case, the Court confirmed that the policy of force "such as has, in the past, given rise to most serious abuses ... cannot, whatever be the present defects in international organization, find a place in international law" <sup>(23)</sup>. In its 1986 Judgment in the case concerning *Military and Paramilitary Activities in and against Nicaragua*, the Court had the opportunity to examine the relevant international rules in detail and was thus able to determine their customary nature and clarify the conditions for recourse to self-defence. It confirmed those rules ten years later in its Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons*. The Court was also required

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(21) Cf. the above-mentioned resolution, para. 2.

(22) *Conditions of Admission of a State to Membership in the United Nations (Article 4 of the Charter)*, Advisory Opinion, 1948, I.C.J. Reports 1947-1948, p. 64.

(23) *Judgment of 9 April 1949 (Merits)*, I.C.J. Reports 1949, p. 35.

to address questions relating to the use of force and self-defence in the case concerning *Oil Platforms*, the advisory proceedings on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* and in the case concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*.

Mention should also be made here of the Court's jurisprudence in the area of human rights, respect for and the development of such rights featuring among the purposes of the United Nations (Article 1, paragraph 3, and Article 55 of the Charter). Although the Court's jurisdiction is limited to inter-State disputes and to legal questions mainly relating to the activities of international organizations, it has on various occasions been required to emphasize the importance of fundamental human rights<sup>(24)</sup>, and effectively confirmed their existence and scope at the international level. The Court's jurisprudence has been decisive for the recognition of general principles, which bind States even without any conventional obligation. In one of its first advisory opinions (1951), relating to the effects of reservations and objections made by States when ratifying the Convention on the Prevention and Punishment of the Crime of Genocide, the Court famously observed that the principles underlying this Convention were recognized by all nations as binding, irrespective of any conventional obligation, taking into account its purely humanitarian and civilizing purpose. The Court also recently confirmed the peremptory nature of the prohibition of genocide<sup>(25)</sup> as well as of the prohibition of torture<sup>(26)</sup>.

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(24) *Barcelona Traction, Light and Power Company, Limited, Judgment, I.C.J. Rep. 1970, p. 3; Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Rep. 1971, p. 16; Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Rep. 2004, p. 136.*

(25) *Armed Activities on the Territory of the Congo (New Application: 2002)(Democratic Republic of the Congo v. Rwanda), Jurisdiction and Admissibility, Judgment, I.C.J. Rep. 2006, p. 6; Application of the Convention on the Prevention and Punishment of the Crime of Genocide*

The Court's role in giving practical effect to the protection of individual rights is particularly evident in the *LaGrand (Germany v. United States of America)* <sup>(27)</sup> and *Avena and Other Mexican Nationals (Mexico v. United States of America)* <sup>(28)</sup> cases, in which it recognized that Article 36 of the Vienna Convention on Consular Relations directly conferred rights on individuals (without, however, determining their nature as "human rights"), and that a State could assert those rights before the Court in parallel to a violation of its own rights. The case concerning *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)* also presented an opportunity to ascertain the contemporary extent of the applicable scope of diplomatic protection, which, "originally limited to alleged violations of the minimum standard of treatment of aliens, has subsequently widened to include, *inter alia*, internationally guaranteed human rights" <sup>(29)</sup>. In the same case, the Court recognized that the compensation owed by the DRC to the Republic of Guinea, for the unlawful detention and expulsion from the Congolese territory of Mr. Diallo, a Guinean national, was intended to provide reparation for the injury suffered by the individual.

Mention could also be made of the Court's decisions in respect, for instance, of the law of decolonization, international humanitarian law, or international environmental law. In these various branches of international law, the Court has been led to underline and endorse some of the values that lie at the heart of the international community's concerns.

*Secondly*, the Court's contribution to the promotion of the rule of law can be

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*(Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Rep. 2007, p. 43.

(26) *Questions relating to the Obligation to Prosecute or Extradite (Belgium v. Senegal)*, Judgment, I.C.J. Rep. 2012, p. 422.

(27) *Judgment of 27 June 2001*, I.C.J. Reports 2001, p. 466.

(28) *Judgment of 31 March 2004*, I.C.J. Reports 2004, p. 12.

(29) *Judgment of 24 May 2007*, I.C.J. Reports 2007, p. 599, para. 39.

measured by the influence exerted by its jurisprudence on the development of international law. In fulfilling its mission to apply international law, the Court has often played an important role in the crystallization of new norms of international law. Its influence is particularly evident in the definition of the principles to be applied in the delimitation of continental shelves and exclusive economic zones. The Court has also played a central role in establishing and developing the principles governing the international responsibility of States. In these two areas, in particular, codification work has relied heavily on the Court's jurisprudence and the solutions identified by it when disputes have been submitted to it. And it goes without saying that the Court, in its turn, has also relied on the vast works of codification conducted throughout the twentieth century, to identify certain principles and rules, the customary nature of which it has confirmed.

*Thirdly* and finally, in addition to respect for and the development of international law, the Court has a particular responsibility for ensuring the consistency and unity of international law, factors which are undoubtedly just as important for the creation of an international society founded on law. Its duty to do so derives from its unique status as the highest world court, as well as its universality. The ICJ is thus not only the principal judicial organ of the United Nations, but also, as it has itself stated, "the organ" of international law (*Corfu Channel*), whose decisions and jurisprudence have particular authority and legitimacy. Both its judgments and its advisory opinions provide a unique instrument for identifying the law and a guide to its application. The Court's task in this area has nevertheless evolved since 1945, in order to take account of both the growing complexity of international society and the increase, to which I have referred in my introduction, in the number of organizations and other bodies charged with producing and applying law.

In this connection, the ICJ's recent jurisprudence demonstrates its concern

to be mindful of the creation of new legal bodies, at both the national and international levels, which may have been called upon to interpret and apply the rules of which the Court must also take cognizance.

While never abdicating its own judgment or the mission specifically assigned to it, the Court is thus able to ensure that the progress of law within international society does not come at the price of greater legal instability and insecurity: in the words of the Court: “[t]he point here is to achieve the necessary clarity and the essential consistency of international law, as well as legal security, to which both the individuals with guaranteed rights and the States obliged to comply with treaty obligations are entitled”<sup>(30)</sup>.

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Excellencies,

Ladies and gentlemen,

The very brief assessment I have just made undoubtedly calls for some remarks on the future of the International Court of Justice. Without venturing too far, I would like to make a few observations of a more prospective nature.

First, State consent is required in order for the Court to exercise its judicial function; this results in respect for and the immediate and full implementation of its decisions in cases to which those States are parties. We should therefore celebrate the fact that, even though the Court’s decisions are not, strictly speaking, “executory” (which does not prevent the Security Council from being able to intervene, in accordance with Article 94, paragraph 2, of the Charter), they have almost always been fully implemented in practice by the States concerned. This testimony to the effectiveness of the Court, and, therefore, to its contribution to

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(30) *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Merits, I.C.J. Rep. 2010, p. 664, para. 66.*

ensuring respect for the rule of law at the international level, needs to be stressed.

At the same time, there is room for an increased acceptance of the Court's jurisdiction by UN Member States, either through general declarations to be made in accordance with Article 36, paragraph 2, of the Statute, or through any other means available (*compromis* and compromissory clauses). Although their results may appear modest until now<sup>(31)</sup>, the repeated calls, either by the General Assembly, the Security Council or the Secretary-General, for States to consider accepting the compulsory jurisdiction of the Court are certainly most welcome. States may also be encouraged to resort with moderation to reservations, i. e.. the exclusion of particular categories of disputes, when accepting the compulsory jurisdiction of the Court.

Looking forwards, other ways could be explored to further enhance the role of the International Court of Justice. One of these avenues might be to extend the Court's jurisdiction *ratione personae*, in particular to public international organizations, which nowadays play an increasing role in international legal relations. Undoubtedly, such an evolution, which would however involve a number of complex legal as well as political questions, could offer the opportunity for the Court to fulfil more effectively its function, not only as the principal judicial organ of the United Nations, but also as the "highest" Court in the world.

As I have already mentioned, a greater recourse to the Court's advisory function would certainly also be a welcome development in the current practice of UN organs, or other specialized agencies which are authorized to request an advisory opinion from the Court. Indeed, recourse to the advisory procedure

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(31) In recent years, only a few States have recognized the compulsory jurisdiction of the Court by way of a declaration under Article 36, paragraph 2, of the Statute: Lithuania and Timor-Leste in 2012, the Republic of the Marshall Islands in 2013, Italy in 2014 and Romania in 2015.

may not only be a useful tool for the purposes of clarifying legal issues, at an early stage, so as to promote the prevention and removal of disputes or situations. It is also an invaluable instrument for ensuring respect of the rule of law at the international level, a principle which has been strongly reaffirmed by the UN Member States, recently, as applying also “to international organizations, including the United Nations and its principal organs”<sup>(32)</sup>.

*Secondly*, the success of an international court depends on the confidence of States in its ability to carry out its mission in a prompt, cost-effective and efficient manner. The ICJ has also proved itself capable of responding to the aspirations of States here, by regularly revising its working methods and adapting the way it functions to new realities, in order to face up to the demands of a constantly growing and increasingly complex workload. The Court has not only been able to respond to the steady increase in its workload; it has also proved its ability to react quickly, despite the limited amount of time available, to the urgent and almost always unpredictable requests brought before it on a regular basis - such promptness was very recently displayed in the case brought by India against Pakistan, in which the Court delivered an Order on a request for provisional measures in under two weeks. Furthermore, the Court constitutes without doubt an extremely cost-effective means of settling disputes peacefully, its budget amounting to less than one per cent of the entire United Nations regular budget. Thus, over the last 70 years, the political support enjoyed by the Court from Member States and organs of the UN has certainly improved. The overall confidence of States in the function entrusted to the Court, and their recognition of its effective contribution to the peaceful settlement of disputes and the maintenance of peace, have been reflected in the support provided by

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(32) *Declaration of the High-Level meeting of the General Assembly on the Rule of Law at the National and International levels*, resolution of the General Assembly, adopted on 24 September 2012, A/RES/67/1, para. 2.

them to the Court, through the organs of the United Nations<sup>(33)</sup>. In this respect, I must emphasize Japan's continued support for the Court, which is invaluable.

While continuous dialogue and close co-operation between the Court and both the other principal organs and the Member States of the United Nations continues to be of prime importance, the Court is nonetheless solely responsible for the high level of efficiency and integrity it has maintained in settling international disputes throughout its history.

*Thirdly*, one should certainly refrain from exacerbating the feeling or perception of a possible competition between the International Court of Justice and other disputes settlement mechanisms, in particular *ad hoc* arbitration and other international courts and tribunals with specialized or limited, regional jurisdiction. Notwithstanding its efforts to continue to adapt itself to the needs of States and international organizations, the Court would certainly be very reluctant to enter into such a competition and to seek to attract more disputants or to increase its workload by whatever means. It would indeed be very unfortunate for a judicial institution such as the Court to regard States or

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(33) Reference may be made here to the resolutions by which the General Assembly has reaffirmed and emphasized the role that the Court should play as the principal judicial organ of the United Nations: *Proclamation of the Decade of International Law by the General Assembly*, 17 November 1989, A/RES/44/23; *2005 World Summit Outcome*, resolution of the General Assembly, adopted on 16 September 2005, A/RES/60/1; *Commemoration of the sixtieth anniversary of the International Court of Justice*, 4 December 2006, A/RES/61/37; *Declaration of the High-Level meeting of the General Assembly on the Rule of Law at the National and International levels*, 24 September 2012, A/RES/67/1; *Commemoration of the seventieth anniversary of the International Court of Justice*, 13 December 2016, A/RES/71/147.

See also: *Statement by the President of the Security Council*, 22 June 2006, S/PRST/2006/28 (“The Council emphasizes the important role of the International Court of Justice, the principal judicial organ of the United Nations, in adjudicating disputes among States”); *Statement by the President of the Security Council*, 19 January 2012, S/PRST/2012/1 (“The Council emphasizes the key role of the International Court of Justice, the principal judicial organ of the United Nations, in adjudicating disputes among States and the value of its work. To this end the Council calls upon States that have not yet done so to consider accepting the jurisdiction of the Court in accordance with its Statute”).

international organizations as clientele or a market to be conquered, and indeed such an approach would be contrary to the very nature of the ICJ. It would also run against the most basic principles of international law, as well as the purposes of the international organization, to compare and prioritize the respective merits of every means of disputes settlement open to States. The latter continue to enjoy the freedom to select the most appropriate means available, either in general, for broad categories of disputes, or for a particular dispute, provided that they respect the principles of the United Nations Charter. Although the ICJ's universal composition and general jurisdiction place it in a unique position, allowing it to play a role in the unifying or streamlining of the interpretation and application of certain rules of international law, and in particular rules of general international law, recourse to its services for the settlement of international disputes remains a matter left to the sole discretion of States. Moreover, as practice has shown over the last decades, the increased options open to States for resolving peacefully their disputes, and the creation of new international courts and tribunals, also corresponded with a wider recourse to the ICJ. Far from indicating a real competition, observable trends in practice thus point more towards a sensible complementarity between existing international judicial mechanisms (as well as with other methods of dispute settlement), in the best interests of peace and the strengthening of amicable relations between States.

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Excellencies,

Ladies and gentlemen,

In summary, the rude health of a legal institution, which last year celebrated its seventieth anniversary, is definitely not a bar to further evolution and improvements of the Court's role, procedures and activities — quite the

contrary. However, potential changes should be carefully weighed, so as to strike a fair balance between, on the one hand, adapting to the new realities and evolving needs of the international society in which the Court is called to operate, and, on the other hand, maintaining and safeguarding the essential features of an institution which has proved its ability to contribute effectively to the peaceful settlement of international disputes and the strengthening of international law.

Thank you.