

THE ROLE OF THE INTERNATIONAL COURT OF JUSTICE IN THE GLOBAL COMMUNITY

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INTRODUCTION

It is both an honour and a pleasure to be invited to give a lecture here at the California International Law Center. I would like to begin by thanking Professor Diane Amann, the Director of the Center, for her kindness in extending this invitation to me, Ms. Kate Doty, Fellow of the Center, for organizing the visit, and Baber Khan and his team at the Journal of International Law and Policy for editing and publishing the text.¹

My theme today is the role of the International Court of Justice in the global community. For just over two years I have had the privilege of being one of the fifteen judges elected by the United Nations to serve on the Court.² During that period, I have participated in four judgments in inter-

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¹ Thanks are also due to Dr. Gérardine Goh Escolar, my legal assistant, and Mr. Ernesto Feliz, university trainee at the Court, who assisted me with research. I should, however, make clear that responsibility for any errors in the text is mine alone.

² The composition of the Court, as of March 1, 2011, is Hisashi Owada (Japan), President; Peter Tomka (Slovakia), Vice-President; Abdul Koroma (Sierra Leone), Awn Al-Khasawneh (Jordan), Bruno Simma (Germany), Ronny Abraham (France), Kenneth Keith (New Zealand), Bernardo Sepúlveda-Amor (Mexico), Mohammed Bennouna (Morocco), Antonio Cancado Trindade (Brazil), Abdulqawi Ahmed Yusuf (Somalia), Christopher Greenwood (United Kingdom), Xue Hanqin (China) and Joan Donoghue (United States), Judges. The nationality of each Judge is given for information but it is important always to bear in mind that judges do not represent the States of which they are nationals and are

State disputes,³ one advisory opinion,⁴ two orders regarding applications for provisional measures of protection⁵ and an order regarding jurisdiction over a counterclaim.⁶ The Court has also heard two applications to intervene in a maritime boundary case in which I did not participate.⁷ The contrast with the 1970's (when I first studied international law) could not be more marked. In 1977, when I took my postgraduate degree in international law, the Court gave no judgments at all. The volume of law reports for that year contains only a single, short procedural order, fixing the time limits for a case⁸ and the following year the Court held that it lacked jurisdiction in that case after holding hearings in which the respondent State declined to participate.⁹ 1977 was a particularly bleak year in the history of the Court but it did not stand alone. Between 1974 and 1980 only three inter-State cases were commenced,¹⁰ although there were also two requests for advisory opinions.¹¹ By contrast, at the time of writing the Court had fourteen inter-State cases¹²

required to be independent and impartial.

³ Navigational and Related Rights (Costa Rica v. Nicar.), 2009 ICJ REP.210 (July 13); Pulp Mills on the River Uruguay (Arg. v. Uru.), (Apr. 20, 2010) at <http://www.icj-cij.org>; Ahmadou Diallo (Guinea v. Dem. Rep. Congo) (Nov. 30, 2010) at <http://www.icj-cij.org>; Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Geor. v. Russ.), (Apr. 1, 2011) at <http://www.icj-cij.org> (the judgment was delivered after the date of this lecture, but the hearings had already taken place in late 2010).

⁴ Accordance with International Law of Unilateral Declaration of Independence in respect of Kosovo, Advisory Opinion, (July 22, 2011) at <http://www.icj-cij.org>.

⁵ Questions relating to the Obligation to Prosecute or Extradite (Belg. v. Sen.), 2009 ICJ REP. 139 (Order of May 28) and Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicar.), (Order of Mar. 8, 2011) at <http://www.icj-cij.org>.

⁶ Jurisdictional Immunities of the State (Germany v. Italy), (Order of July 6, 2010) at <http://www.icj-cij.org> (regarding a counter-claim by Italy).

⁷ The case is Territorial and Maritime Dispute (Nicar. v. Colom.). Costa Rica and Honduras each applied to intervene in this case. The hearings on those applications took place in October 2010 and the Court rejected both applications in separate judgments delivered on May 4, 2011, at <http://www.icj-cij.org>.

⁸ Aegean Sea Continental Shelf (Greece v. Turk.) 1977 ICJ REP. 3 (Apr. 18).

⁹ Aegean Sea Continental Shelf (Greece v. Turk.), 1978 ICJ REP. 3 (Dec. 19).

¹⁰ In addition to *Aegean Sea*, *supra* note 9, these were Continental Shelf (Tunis./Libyan Arab Jamahiriya), 1982 ICJ REP. 18 (Feb. 24), (filed in 1978) and United States Diplomatic and Consular Staff in Tehran (U.S. v. Iran), 1980 ICJ REP. 3 (May 24) (filed in 1979). The Tunisia/Libya case was the only one of the three in which both parties participated in the proceedings.

¹¹ These were the request by the United Nations General Assembly for an opinion on the status of Western Sahara, sent to the Court in 1974, to which the Court replied in 1975, Western Sahara, Advisory Opinion, 1975 ICJ REP. 12 (Oct. 16), and a request from the World Health Organization in 1980, Interpretation of Agreement of 25 March 1951 between the WHO and Egypt, Advisory Opinion, 1980 ICJ REP. 73 (Dec. 20).

¹² Gabčíkovo-Nagymaros Project (Hung./Slovk.) 1997 ICJ REP. 7 (Sept. 25); Ahmadou Diallo (Guinea v. Dem. Rep. Congo), *supra* note 4; Armed Activities on the Territory of the

and a request for an advisory opinion¹³ on its list.

On a purely quantitative basis, therefore, the role of the Court is certainly greater than was the case thirty-four years ago. Numbers are, of course, only a small part of the story but on any criterion the Court today is busier, more productive and more significant in the global community than it has been for most, if not all, of its history. My purpose today is to examine the nature of the contribution which the Court makes to the global community. Before doing so, however, it is necessary to say a little more about the Court and the global community of which it is a part.

I. THE GLOBAL COMMUNITY

What we refer to as the “global community” has always been a rather curious creature, quite different from the national communities to which we are perhaps more accustomed. Its most striking feature is that it is still, first and foremost, a community of States. They are not, of course, the only members of that community. It is also necessary to consider the more than 2,000 international organizations, ranging from the United Nations to specialized bodies like the Universal Postal Union or regional gatherings such as the Arab Maghreb Union. Multinational companies frequently dispose of greater economic resources than many of the States in which they operate and non-governmental organizations (NGOs) such as Greenpeace often wield very considerable influence over policy and law-making at national and international levels. Most importantly, all of these entities – States, international organizations, corporations and NGOs – are means by which human beings participate in and shape international life. One of the great changes which has come about in international law, and to which I shall return later, is that it now gives a greater role to individuals and to entities other than States. Nevertheless, it is still true that the States are the primary subjects of international law and the most prominent members of

Congo (Dem. Rep. Congo v. Uganda) 2005 ICJ REP. 168 (Dec. 19); Application of Convention on the Prevention and Punishment of the Crime of Genocide (Croat. v. Serb.) 2008 ICJ REP. 412 (Nov. 18) ; Territorial and Maritime Dispute (Nicar. v. Colom.), *supra* note 8; Maritime Dispute (Peru v. Chile); Aerial Herbicide Spraying (Ecuador v. Colom.); Application of the Interim Accord of 13 September 1995 (former Yugoslav Republic of Macedonia v. Greece); Jurisdictional Immunities of State (Germany v. Italy); Questions relating to Obligation to Prosecute or Extradite (Belg. v. Sen.) ; Whaling in the Antarctic (Austl. v. Japan); Frontier Dispute (Burk. Faso v. Niger); Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicar.) and Temple of Preah Vihear, Request for Interpretation of the Judgment rendered by the Court on 15 June 1962 (Cambodia v. Thail.). Details of all these cases appear on the Court’s website at www.icj-cij.org/docket.

¹³ Judgment No. 2867 of the Administrative Tribunal of the International Labour Organization upon a Complaint filed against the International Fund for Agricultural Development.

the global community. It is they who make new customary international law, through their practice, and who determine the majority of treaties. States are the members of the international organizations and it is their votes that control the activities of those organizations. Their laws regulate the activities of individuals, corporations and NGOs.

This central role of States highlights two crucial features of the global community. The first is its extraordinary diversity. While the equality of States is a fundamental principle of international law, their diversity is an equally fundamental fact of life. The 192 member States of the United Nations vary enormously in size, population, economic and military power. The smallest, Monaco,¹⁴ occupies less than two square kilometres, while the territory of the largest, the Russian Federation, encompasses more than seventeen million square kilometres. Nauru has a population of barely 10,000, while the two largest States, China and India, each has a population well in excess of one billion and together account for almost forty percent of the global population. The gross domestic product (GDP) of the world's largest economy, that of the United States, is almost one quarter of the GDP of the entire world and is estimated to be greater than the combined GDP of the next four largest economies.¹⁵ So far as military power is concerned, United States military expenditure in 2007 was greater than the combined totals of the next twenty States.¹⁶ While this last figure is particularly difficult to verify and military expenditure does not always equate to military power, it points to a marked disparity in military matters between the United States and other countries and certainly puts in the shade the nineteenth century "two power standard" of the United Kingdom (under which the Royal Navy had to be larger than the combined navies of the next two largest naval powers). While these statistics are, of course, only a very crude indicator they illustrate the fact that there is a far greater diversity of wealth and power among the State of the global community than between the individuals that make up the community within any particular State.

The second feature of the global community is that the relationship between the power wielded by the central institutions of that community and

¹⁴ Vatican City is even smaller, but it is not a member of the United Nations and its status, which is bound up with that of the Holy See, is unique; see JAMES R. CRAWFORD, *THE CREATION OF STATES IN INTERNATIONAL LAW* 221-33 (Oxford Univ. Press, 2d ed. 2006).

¹⁵ *THE ECONOMIST POCKET WORLD IN FIGURES* 26 (Economist Newspaper, 2010 ed., 2010) estimates the 2007 GDP of the five largest economies in US dollars as: United States, 13,751 billion; Japan, 4,384 billion; Germany, 3,317 billion; China, 3,206 billion and the United Kingdom, 2,772 billion. Their combined GDP is estimated to be almost half that of the entire world. While such estimates are frequently disputed, the economic pre-eminence of the United States is not in doubt, nor is the fact that the largest ten economies account for well over half of world GDP.

¹⁶ *Id.* at 103.

the power of its larger and more influential members is very different from anything which exists within a national community. Although the establishment of the United Nations in 1945 significantly strengthened the centralized institutions of the community, it came nowhere near transforming the relationship between the institutions of the community and the members of that community into something familiar to the student of national constitutions and was not intended to do so. The limits of what was intended in 1945 were eloquently summarised by Lord Halifax, a leading member of the United Kingdom delegation to the San Francisco conference, which adopted the Charter of the United Nations. He said that –

“We cannot indeed claim that our work is perfect or that we have created an unbreakable guarantee of peace. For ours is no enchanted palace to ‘spring into sight at once’ by magic touch or hidden power. But we have, I am convinced, forged an instrument by which, if men are serious in wanting peace and are ready to make sacrifices for it, they may find means to win it.”¹⁷

The global community has no legislature of the kind found within States, in which the will of a majority can be made to prevail over that of the minority in creating new law. The United Nations General Assembly does not have a legislative power, although its resolutions can play a part in the development of customary international law. The Security Council can take decisions under Chapter VII of the United Nations Charter, which are binding on States by virtue of Article 25 of the Charter and, since 1990, has regularly exercised this power. However, its decisions take the form of the imposition of specific obligations (e.g., to impose economic sanctions upon a particular State or group) or the creation of an institution (e.g., the International Criminal Tribunal for the Former Yugoslavia), not the creation of entirely novel rules of international law. For the most part, international law alters and new rules evolve either through the adoption of new treaties or the evolution of customary international law. Both of these processes involve a degree of voluntarism. States are under no legal obligation to become party to a treaty and are not bound by it if they choose not to become party; the numerous human rights treaties, the Statute of the International Criminal Court and the Convention on the Law of the Sea, for example, are not universally applicable, because a significant minority of States have elected not to become party to them. In addition, most multilateral treaties allow States a measure of freedom to make their participation subject to reservations entered at the time of signing or becoming party to that treaty.¹⁸ The picture is more complicated in the case

¹⁷ MARK MAZOWER, *NO ENCHANTED PALACE: THE END OF EMPIRE AND THE IDEOLOGICAL ORIGINS OF THE UNITED NATIONS* 1 (Princeton Univ. Press, 2009).

¹⁸ A noticeable exception is the United Nations Convention on the Law of the Sea, Dec.

of customary international law, since, in principle, its rules bind all States but the creation of a new rule of customary international law requires widespread and consistent State practice, not simply the support of a majority of States.¹⁹ Moreover, while a small minority may not be able to prevent the evolution of a new rule, the “persistent objector” principle (by which a new rule of international law does not bind a State which has been a persistent objector from the very start of the process of evolution of that rule) offers some scope for States to opt out of new rules of which they disapprove.²⁰

Similarly, there is no true concept of compulsory jurisdiction of courts and tribunals in the global community. As the International Court of Justice has repeatedly stated –

“...one of the fundamental principles of [the Statute of the Court] is that it cannot decide a dispute between States without the consent of those States to its jurisdiction; and . . . the Court therefore has jurisdiction only between States parties to a dispute who not only have access to the Court but also have accepted the jurisdiction of the Court, either in general form or for the individual dispute concerned.”²¹

The same principle applies to other international courts and tribunals, although in some cases the provisions of a treaty stipulate that any State which chooses to become party to the treaty must accept the jurisdiction of a specific court or tribunal.²²

In marked contrast to the position in national communities, the central institutions of the global community possess no police force or standing armed forces. Although the United Nations Charter envisaged that the major military powers would conclude agreements with the United Nations by

10, 1982, 1833 U.N.T.S. 397, art. 309, which precludes reservations or exceptions unless expressly permitted by specific provisions of the Convention.

¹⁹ See *North Sea Continental Shelf* (Den./F.R.G.; Neth./F.R.G.), 1969 ICJ REP. 3, 44-45, para. 78 (Feb. 20).

²⁰ See *Fisheries* (U.K. v. Nor.), 1951 ICJ REP. 116, 131 (Dec. 18). The scope and extent of this doctrine are the subject of much debate; see Jonathan Charney, *The Persistent Objector Rule and the Development of Customary International Law*, 1985 BRIT. Y.B. INT'L L. 1.

²¹ *Armed Activities on the Territory of the Congo*, New Application: 2002, (Dem. Rep. Congo v. Rwanda), 2002 ICJ REP. 219, 241, para. 57 (Order of July 10)

²² For example, since its revision in 1998, the European Convention requires that all States parties accept the jurisdiction of the European Court of Human Rights. The Convention on the Law of the Sea requires all parties to accept some form of third party settlement of certain types of dispute but leaves a measure of choice between the International Court of Justice, the International Tribunal for the Law of the Sea and arbitration. See *United Nations Convention on the Law of the Sea*, Dec. 10, 1982, 1833 U.N.T.S. 397 (Part XV and Annex VII).

which they would contract to make parts of their forces available to the United Nations,²³ no such agreements have ever been concluded and any military operation established or authorized by the United Nations Security Council is entirely dependent upon the voluntary contribution of units by member States. Even on this basis, the United Nations has never been able to deploy armed forces on anything like the scale of those possessed by any of the bigger military powers.

The global community is, therefore, markedly more diverse and decentralized than almost any of the States. It is not an unchanging community. The number of States has increased dramatically since the Second World War. There were 55 original members of the United Nations in 1945 (although a significant number of States were excluded from membership at that date), whereas the Organization now has 192 members, forty-five of which have joined since 1977. The age of the colonial empires has ended with a remarkable number of former colonies and imperial possessions in Africa, Asia and the Caribbean becoming independent States. The end of the Cold War in 1989-91 not only saw an end to the armed stand-off between NATO and the Warsaw Pact but also the emergence (or, in the case of the three Baltic republics of Estonia, Latvia and Lithuania the re-emergence) of fourteen newly independent countries in what had been the Soviet Union and the incorporation into the European Union and NATO of ten States that had been part of the Soviet bloc. The global economy has become integrated to a degree that would have been difficult to imagine in 1945 and today's World Trade Organization has established machinery for adjudication and settlement of disputes, doing much to eliminate many of the protectionist devices of the recent past. International human rights law has progressed from the largely aspirational provisions of the United Nations Charter²⁴ and the Universal Declaration of Human Rights to embrace a multitude of global and regional treaties many of which are accompanied by extensive machinery for enforcement.²⁵

The growth of human rights law is indicative of one of the most significant changes to have taken place in international law. There has been an increased emphasis upon the rights and obligations of the individual and of entities other than States. Although a treaty for the protection of human

²³ U.N. Charter, art. 43.

²⁴ See U.N. Charter, preamble and art. 1 and 55-56.

²⁵ Human rights courts include the European Court of Human Rights, the Inter-American Court of Human Rights and the African Court of Human and Peoples' Rights. In addition, many of the global conventions contain machinery for enforcement, frequently in the form of a quasi-judicial committee with the power to hear individual petitions as well as to scrutinise periodic reports from States; see in particular the role of the U.N. Human Rights Committee under the International Covenant on Civil and Political Rights and the Optional Protocol thereto.

rights is an international agreement between the States which are parties to that treaty, it has long been established that such a treaty is more than simply a series of obligations owed by each State party to the other States parties and is rather an instrument which confers rights directly upon individuals within the terms of the treaty.²⁶ The steady evolution of the international law of human rights has in many cases seen the grant of substantive rights to individuals accompanied by the grant of a right of direct access to an international court or tribunal to enable them to vindicate those rights. Similarly, since the 1990's international law on the protection of investments has evolved, as a result of the conclusion by States of over 2,000 bilateral investment treaties and a number of multilateral treaties such as the Energy Charter and the Treaty establishing the North American Free Trade Area, so as to give many foreign investors extensive substantive rights not to be subjected to expropriation or unfair and inequitable treatment, coupled with rights of access to international arbitration to enforce those rights against the State in which they have invested.²⁷ At the same time, the obligations of individuals under international law have been made clear by the development of international humanitarian law, through the Geneva Conventions of 1949 and the 1977 Protocols thereto, and the emergence of a body of international criminal law with courts and tribunals such as the International Criminal Court and the International Criminal Tribunals for the Former Yugoslavia and Rwanda, before which individuals have been tried for violations of those obligations.

These changes are remarkable but their impact should not be overstated. They have qualified but not removed the pre-eminent role which States play in the global community. Nor have they removed the disparities between the power of individual States or between the power of the central institutions of the community and the States. The use of the popular term "global village" is, in this respect at least, more than a little misleading.

²⁶ Thus, Article 1 of the European Convention on Human Rights confers upon all persons within the jurisdiction of a State party the right to treatment by that State which is in accordance with the substantive provisions of the Convention. On the meaning of "jurisdiction" in this context. See *Bankovic v. Belgium and Others*, 123 I.L.R. 94 (Dec. 19, 2001).

²⁷ For recent decisions which determine that those rights are conferred directly upon the investor and are not the rights of the State of the investor's nationality, see the award of the NAFTA Chapter XI tribunal in *Corn Products International Inc. v. Mexico*, ICSID Case No. ARB (AF)/04/1, paras. 165-176 (Jan. 15, 2008) (available at <http://icsid.worldbank.org>) and the decision of the Court of Appeal of England and Wales in *Republic of Ecuador v. Occidental Exploration and Production Co.* [2005] EWCA Civ 1116; [2006] Q.B. 432 at ¶¶ 14-22.

II. THE INTERNATIONAL COURT OF JUSTICE

That, then, is the global community within which the International Court of Justice functions. The Court was created in 1945 and began work in 1946. Its antecedents, however, go back to the time of the League of Nations as it has inherited the premises and much of the structure and rules of the pre-war Permanent Court of International Justice. But unlike the Permanent Court, which had a separate existence from the League of Nations, the International Court of Justice is an integral part of the United Nations. The United Nations Charter established the Court as “the principal judicial organ of the United Nations”.²⁸ Its Statute is appended to the Charter and all members of the United Nations are *ipso facto* parties to the Statute.²⁹

At the time of its establishment, the International Court of Justice was the global community’s only standing international court. Today, it has been joined by a multitude of courts and tribunals dealing with matters of trade law, human rights law, international criminal law and the law of the sea, as well as a large number of ad hoc tribunals created for the purpose of hearing a single case. There are, however, a number of features of the International Court of Justice which set it apart. It has a universality which other courts and tribunals do not possess. Any of the 192 member States of the United Nations can be parties to cases before it and all can participate in the vote in the General assembly to elect the judges of the Court.³⁰ Today, that universality is more pronounced than ever. 88 States have been parties in cases before the Court (twenty-five are parties to pending cases). Moreover, they come from all regions of the world: of the parties to pending cases, six are from Africa, six from Latin America and the Caribbean, three from Asia, five from Eastern Europe, and five from the West European and Others Group.³¹ Forty-three States took part in the recent proceedings on the request for an advisory opinion regarding the declaration of independence in respect of Kosovo. All 192 member States of the United Nations took part in the last vote to elect five judges in 2008.

The Court is also universal in another sense. Unlike specialized courts and tribunals whose jurisdiction is confined to particular areas of international law (as is the case, for example, with the International Tribunal for the Law of the Sea), the jurisdiction of the International Court of Justice

²⁸ U.N. Charter, art. 92.

²⁹ *Id.* at art. 93.

³⁰ Article 4 of the Statute of the Court provides that the judges are elected by the General Assembly and the Security Council. The two organs vote separately but simultaneously; a candidate must secure a majority in both organs to be elected. Statute of the International Court of Justice, 3 Bevens 1179, art. 8-12.

³¹ These are the regional groups which exist within the United Nations.

covers the whole field of international law. The cases currently before the Court include land and maritime boundary disputes, environmental issues, whaling, the prosecution or extradition of a former head of State, sovereign immunity and the use of force. Moreover, a glance at the current cases and the recent decisions of the Court will show that many of the cases have involved issues of great importance to the parties and often to the global community as a whole.

The Court has jurisdiction in two different types of case. Its contentious jurisdiction, decisions in which are binding on the parties to the dispute,³² is confined to cases between States.³³ Individuals, corporations, NGOs and even international organizations can neither sue nor be sued in the Court.³⁴ The second type of case which the Court can entertain is a request for an advisory opinion on a point of international law. Requests may be made by the United Nations General Assembly or Security Council or by other organs of the United Nations or specialized agencies which are authorized by the General Assembly to request an opinion.³⁵ Under Article 66(2) of the Statute, the Court decides which States and international organizations are likely to be able to furnish information on the question asked and invites them to participate in the proceedings. Where the question is one of general legal importance, the Court has invited all member States of the United Nations to participate.³⁶ In addition, the Court sometimes invites entities which are not parties to the Statute to take part in the proceedings.³⁷ There are no parties to proceedings on a request for an advisory opinion and the opinion is not binding as such, although it is an important source of guidance on the content of rules of international law which are themselves, of course, legally binding.

The fact that all of the 192 member States of the United Nations are parties to the Statute means that any of them can, in principle, be a party to a case before the Court. That does not mean, however, that the Court will

³² Statute of the Court, *supra* note 31, at art. 59; see also U.N. Charter, art. 94.

³³ Statute of the Court, *supra* note 31, at arts. 34 to 37.

³⁴ That fact is often overlooked. In *JH Rayner v. Dep't of Trade* [1990] 2 A.C. 418 (House of Lords) Lord Oliver, dismissing an appeal against the Member States of the International Tin Council by a group of banks and brokers who were creditors of the Council, suggested that the creditors' only remedy lay in proceedings in the International Court of Justice. In reality, no action in that Court had ever been open to them.

³⁵ U.N. Charter, art. 46.

³⁶ That was done, e.g., in *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, 2004 I.C.J. 136, and *Accordance with International Law of the Unilateral Declaration of Independence in respect of Kosovo*, Advisory Opinion (July 22, 2010).

³⁷ The Court invited Palestine to participate in the *Wall* proceedings, *supra* note 37, and the Provisional Institutions of Self-Government of Kosovo to participate in the *Kosovo* proceedings, *supra* note 37.

have jurisdiction in any case instituted by one of those States. As we have seen, the jurisdiction of the Court is dependent upon the consent of the parties to a given case. Unless both parties have at some stage consented to the Court's jurisdiction, the Court cannot rule on the merits of the case between them. Such consent may be given in several different ways. In many of the cases in which the Court has given judgment on the merits, the parties had concluded an agreement after the dispute between them had come into existence agreeing to refer that dispute to the Court. This form of consent (which is seldom open to any argument³⁸) has been particularly common in territorial disputes; the recent judgments of the Court in the disputes between Malaysia and Singapore,³⁹ Malaysia and Indonesia⁴⁰ and Benin and Niger⁴¹, for example, have all been based upon consent given in the form of this kind of agreement (frequently called a *compromis*).

Alternatively, consent may be given in advance of a dispute arising.⁴² Such consent may be found in a specific bilateral treaty providing that, should a particular dispute arise between the parties to the treaty, either party may refer the dispute to the Court.⁴³ Consent may also be found in the dispute settlement provision of a multilateral treaty, such as Article 14(1) of the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, 1971, which provides that –

“Any dispute between two or more Contracting States concerning the interpretation or application of this Convention which cannot be settled through negotiation, shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.”

This provision, which follows a pattern employed in many conventions

³⁸ There have, however, been occasional instances of States disputing the scope of such agreement or even whether an agreement had actually been concluded. *See, e.g., Maritime Delimitation and Territorial Questions between Qatar and Bahrain*, 1994 ICJ REP. 112 (July 1).

³⁹ *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malay./Sing.)*, 2008 ICJ REP. 12 (May 23).

⁴⁰ *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indon./Malay.)*, 2002 ICJ REP. 575 (Oct. 23)

⁴¹ *Frontier Dispute (Benin/Niger)*, 2005 ICJ REP. 90 (July 12).

⁴² There are currently some 300 treaties in force which provide for reference of disputes to the Court. *See Report of the International Court of Justice to the United Nations*, 2009-2010, UN Doc. A/65/4, para. 55.

⁴³ In *Fisheries Jurisdiction (U.K. v. Ice.)*, 1973 ICJ REP. 3 (Order of Feb. 2), for example, the two States had agreed in a 1961 Exchange of Notes that, the event of a future dispute arising between them regarding fishing limits in the waters off the coast of Iceland, either State could refer the matter to the Court.

on terrorism and is similar to those in many treaties on other subjects, was the basis for the Court's decision that it had jurisdiction in the cases brought by Libya against the United Kingdom and the United States regarding the Lockerbie air atrocity in which a Pan-Am airliner was destroyed over Lockerbie, Scotland in December 1988 with the deaths of 279 passengers, crew and residents of Lockerbie.⁴⁴

Where consent has been given in a prior treaty, whether bilateral or multilateral, which is still in force when Court proceedings are commenced and which is applicable to the dispute in question, the Court has jurisdiction even if the respondent State is vigorously opposed to the Court hearing the case. The requirement of consent is satisfied by the prior agreement which cannot be overridden by subsequent opposition.⁴⁵ The consent, however, is limited by the terms of the relevant treaty provision (known as "the compromissory clause). In most cases, these are confined to disputes relating to a specific subject-matter, such as disputes regarding the "interpretation and application" of that treaty, as is the case with the Montreal Convention provision just quoted. The jurisdiction of the Court is, therefore, restricted to the subject-matter specified in the treaty provision, even if the applicant State might want to bring other matters before the Court as well. An example is the case between Bosnia and Herzegovina and the Federal Republic of Yugoslavia ("the FRY"). That case was commenced in 1993 with an application to the Court by Bosnia accusing the FRY of violating the Genocide Convention, the United Nations Charter, the Geneva Conventions on international humanitarian law, the law of human rights and other rules of international law. The dispute, as thus defined was a very broad one. The Court held, however, that the only basis for its jurisdiction was Article IX of the Genocide Convention, 1948, which limited its jurisdiction to a dispute relating to the interpretation, application or fulfilment of the Convention.⁴⁶ When, therefore, the Court ruled on the merits of the case, it considered only the allegations of breach of the Genocide Convention and was not able to consider alleged breaches of other rules of international law.⁴⁷ Many compromissory clauses also include procedural requirements which should be satisfied before proceedings may

⁴⁴ Questions of Interpretation of 1971 Montreal Convention arising from Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. U.K.), 1998 ICJ REP. 9 (Feb. 27) and Questions of Interpretation of 1971 Montreal Convention arising from Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. U.S.A.), 1998 ICJ REP. 115 (Feb. 27).

⁴⁵ In both Fisheries Jurisdiction, *supra* note 44 and *Lockerbie*, *supra* note 45, the respondent States contested the jurisdiction of the Court, which rejected their objections.

⁴⁶ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Yugoslavia), 1996 ICJ REP. 595 (July 14).

⁴⁷ Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosn. & Herz. v. Serb. & Mont.), 2007 ICJ REP. 43 (Feb. 26).

be begun in Court. The precise effect depends upon the wording of the particular provision but the Court has generally treated such requirements as preconditions, so that the failure to satisfy them before the application is made will prevent the Court from having jurisdiction.⁴⁸

The most ambitious scheme by which a State can consent in advance to the jurisdiction of the Court is contained in Article 36(2) of the Statute. Under this provision a State can consent to the jurisdiction of the Court in respect of any international law dispute which may arise between itself and any other State which accepts the same obligation. While this provision is referred to as providing for compulsory jurisdiction, it is generally known as “the optional clause”. In fact the notion that Article 36(2) is a means by which a State can opt for compulsory jurisdiction is a fair description of the process. To date 66 States have made declarations under Article 36(2). The effect of such a declaration is that it enables any one of those States to bring proceedings against any of the other 65 States which have made such a declaration but it also exposes that State to the risk of one of the other 65 States bringing it before the Court. That risk has undoubtedly deterred many States. Of the five permanent members of the United Nations Security Council, only the United Kingdom has a declaration which is still valid. France and the United States of America withdrew theirs (France in 1973 and the United States in 1984) and neither China nor the Russian Federation has ever made such a declaration. States may qualify their declarations by entering reservations. If they do so, then the reservations will apply on the basis of reciprocity; not only will another State not be able to bring proceedings against the State entering the reservation if the dispute is excluded by that reservation, the reserving State will not itself be able to bring a case which would fall within that reservation.

The effect of these limits on the jurisdiction of the Court is that there are many disputes which, although they are legal in character and could in principle be the subject of adjudication, the Court cannot hear. Moreover, there are frequently disputes in respect of which the Court has only a partial jurisdiction. The *Bosnia* case, to which I have already referred, is one example. Another concerns the disputes between the Democratic Republic of the Congo (“the DRC”) and its neighbours, Uganda, Rwanda and Burundi, which it accused of having invaded its territory and committed violations of international humanitarian law and human rights law there. The DRC and Uganda have both made declarations under Article 36(2) of the Statute. The Court, therefore, had jurisdiction to hear all of the DRC’s complaints against Uganda and in 2005 delivered a judgment in which it

⁴⁸ For a recent example, see Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Geor. v. Russ.), *supra* note 4.

found Uganda responsible for a number of violations of international law.⁴⁹ Rwanda, on the other hand, has made no Article 36(2) declaration, so the DRC attempted to base jurisdiction on the compromissory clauses of a series of multilateral treaties but the Court rejected that argument and held it had no jurisdiction to hear the DRC's case against Rwanda.⁵⁰ A case against Burundi was withdrawn by the DRC. I am not suggesting that, had jurisdiction existed, the Court would have come to the same conclusion on the merits of the cases against Rwanda and Burundi that it reached in the case against Uganda. The point is simply that it was only as between the DRC and one of its three neighbours that the Court had jurisdiction to make any ruling at all upon the merits.

The Court has faithfully applied the provisions of its Statute, under which consent is clearly a precondition for jurisdiction. Nevertheless, in recent years, there have been suggestions that this condition should not apply in cases where the rules which the respondent is alleged to have violated have the status of *jus cogens* (peremptory rules possessing a higher legal status than the ordinary rules of law) or create obligations *erga omnes* (i.e., obligation owed to the whole global community and not just on a State-to-State basis). The Court has acknowledged that some rules have one or both of these characteristics but has maintained that the character of the rule which is alleged to have been violated is not relevant to the entirely separate question of whether the Court has jurisdiction to adjudicate upon those allegations.⁵¹

Proceedings in the International Court of Justice can take time,⁵² often because the parties to a case request two rounds of written pleadings for which they seek periods of a year or more.⁵³ Contentious cases, however, often involve a degree of urgency. The Court is, therefore, empowered by Article 41 of its Statute to indicate provisional measures of protection (in effect, the equivalent of an interlocutory injunction) where it considers this is necessary to protect rights which might be the subject of a judgment on

⁴⁹ Armed Activities on the Territory of the Congo (Dem. Rep. Congo v. Uganda), 2005 ICJ REP. 168 (Dec. 19).

⁵⁰ Armed Activities on the Territory of the Congo, New Application 2002, (Dem. Rep. Congo v. Rwanda), 2006 ICJ REP. 6 (Feb. 3).

⁵¹ See the judgments in East Timor (Port. v. Austl.), 1995 ICJ REP. 90, para. 29 (June 30) (regarding obligations owed *erga omnes*) and Armed Activities (Dem. Rep. Congo v. Rwanda), *supra* note 51 at para. 125 (regarding *jus cogens* norms).

⁵² *Bosnia*, *supra* notes 47 and 48, was exceptional. Not only was the case itself very complicated but the proceedings took place against the background of the conflicts in the former Yugoslavia, the peace negotiations and several changes in the composition of the State which was the respondent.

⁵³ For the general policy followed by the International Court of Justice, see Practice Directions I to III, V and VI available at <http://www.icj-cij.org/documents/index.php?p1=4&p2=4&p3=0>.

the merits from an urgent risk of irreparable harm.⁵⁴ Such measures are legally binding on the parties to the case.⁵⁵ The urgency of a request for provisional measures means that the Court has to consider whether or not to grant such measures before it can conduct a full examination of whether it possesses jurisdiction. The Court has nevertheless held that it will not indicate provisional measures unless it is satisfied that there is at least a basis on which the jurisdiction of the Court might, *prima facie*, be established.⁵⁶ A decision at the provisional measures phase of a case that this test has been satisfied in no way prevents the Court from holding in a later phase, when a full examination of the issue is possible, that jurisdiction is absent, in which case the Order for provisional measures will cease to have effect.⁵⁷

Of course, it is one thing to say that provisional measures and judgments of the Court are legally binding; it is quite another to enforce them. In contrast to national courts, the International Court of Justice has no policemen or bailiffs to which it can turn if a party does not comply with its rulings. Article 94(2) of the United Nations Charter provides that:

“If any party to a case fails to perform the obligations incumbent upon it under a judgment rendered by the Court, the other party may have recourse to the Security Council, which may, if it deems necessary, make recommendations or decide upon measures to be taken to give effect to the judgment.”

The possibility therefore exists that the Security Council might impose sanctions, or even authorize military action, to enforce a judgment of the Court. To date, however, it has never done so. In practice, therefore, the enforcement of decisions of the Court has depended upon the willingness of the States to which they were addressed to comply with them and the pressure which the global community can bring to bear upon a recalcitrant member.

There is one further comment I wish to make, in passing, regarding the way in which the Court functions. Lawyers in the common law tradition are accustomed to a system in which each judge in a multi-member court writes his or her own judgment, although sometimes (as is customary in the United States Supreme Court and more occasionally in the Supreme Court of the United Kingdom) one judge will write for the majority or plurality. By contrast, in many civil law jurisdictions, the court gives a single judgment, frequently with no indication of whether it was reached unanimously or by a

⁵⁴ For a recent example, see *Certain Activities carried out by Nicaragua in the Border Area* (Costa Rica v. Nicar.) (Order of Mar. 8, 2011) at <http://www.icj-cij.org>.

⁵⁵ *LaGrand* (Germany v. U.S.), 2001 ICJ REP. 466, para. 109 (June 27).

⁵⁶ See, e.g., *Costa Rica v. Nicar.*, *supra* note 55 at para. 49.

⁵⁷ See, e.g., *Geor. v. Russ.*, *supra* note 4 and paras. 2-5 of Separate Opinion of Judge Greenwood in that case..

majority, a model followed by the European Court of Justice. The International Court of Justice follows a course between these two models. It produces a judgment of the Court in the civil law fashion but the vote on the operative paragraphs of the judgment is set out in full, so it is possible to see which judges voted for or against each paragraph of the judgment.⁵⁸ In addition, in contrast to the practice of the European Court of Justice, each judge is entitled to add his or her separate or dissenting opinion to the judgment of the Court.⁵⁹

III. THE SIGNIFICANCE OF THE INTERNATIONAL COURT OF JUSTICE IN THE GLOBAL COMMUNITY

Just as the global community is very different from a national community, so the International Court of Justice is quite different from the national courts with which we are familiar. What, then, is the significance of the Court in international life? It would be easy to conclude that a court which has no genuinely compulsory jurisdiction and which cannot turn to any of the normal apparatus of the State (on which national courts can rely) to enforce the judgments which it gives cannot play a significant role. Such a conclusion would be facile and misleading. Even in the lean years of the 1970's when the Court heard only a handful of cases, in most of which the respondent boycotted the proceedings, it would have been wrong to dismiss the Court as irrelevant. Its existence as a means for the impartial adjudication of disputes, even if little used, had an effect upon decision-making. France boycotted the *Nuclear Tests* cases brought by Australia and New Zealand against France in 1973 but it did not ignore them. On the contrary, the proceedings seem to have played a part in leading France to the decision that it would put an end to atmospheric nuclear testing, albeit not as early as the applicant States had wished.⁶⁰ When the United States diplomatic staff in Tehran were taken hostage at the end of the decade, it was to the Court that the United States turned for the first time in twenty-five years.⁶¹ That case does, of course, reveal the limits of what the Court

⁵⁸ See, e.g., *Geor. v. Russ.*, *supra* note 4 at para. 187 (disclosing the voting on the three operative paragraphs).

⁵⁹ The Court is remarkably open about the procedures it follows in its internal deliberations. Resolution on the Internal Judicial Practice of the Court, adopted on Apr. 12, 1976 (available at <http://www.icj-cij.org/documents/index.php?p1=4&p2=5&p3=2>).

⁶⁰ See *Nuclear Tests, Provisional Measures*, (Austl. v. Fr.), 1973 ICJ REP. 99 (Order of June 22); *Nuclear Tests, Provisional Measures*, (N.Z. v. Fr.), 1973 ICJ REP. 135 (Order of June 22); *Nuclear Tests, Preliminary Objections*, (Austl. v. Fr.), 1974 ICJ REP. 253 (Dec. 20); *Nuclear Tests, Preliminary Objections*, (N.Z. v. Fr.), 1974 ICJ REP. 457 (Dec. 20).

⁶¹ *United States Diplomatic and Consular Staff in Tehran, Provisional Measures*, (U.S. v. Iran), 1979 ICJ REP. 23 (Order of Dec. 19); *United States Diplomatic and Consular Staff in Tehran* (U.S. v. Iran) 1980 ICJ REP. 3 (May 24).

could do, because Iran did not comply with the Court's judgment of 24 May 1980 (which required the immediate release of the hostages) until it concluded a broader settlement with the United States in January 1981. Nevertheless, it is significant that the United States Administration thought it worthwhile to take the matter to the Court and the judgment seems, at least, to have had some influence in mobilizing international opinion.

The *Diplomatic Staff* case came, moreover, at the end of the lean years and was followed by the far more active period which I described at the beginning of this lecture. The Court's activity during this period justifies a far more positive appraisal of its role in the global community. First, the Court has played an important role in settling a range of disputes which the parties have chosen, by mutual agreement, to refer to it. Since the end of the 1970's, eleven substantial cases have been referred to the Court by agreement, most of them concerning land or maritime boundaries.⁶² Such cases do not involve disputes over jurisdiction and, because both parties have opted to refer the case to the Court, there are usually no difficulties regarding implementation of the judgment concerned. The availability of a standing international court competent to deal with disputes of this kind and possessing the authority to grant provisional measures of protection in a case of urgency has been a valuable resource in helping to resolve disputes and reduce tensions. To paraphrase Lord Halifax, whose remarks about the United Nations I quoted earlier, the Court has been an instrument by which, if States are serious in wanting peaceful settlement of their borders in accordance with law and are ready to make sacrifices for it, they may find means to do so.

Secondly, even in those cases (which are a clear majority) in which the Court is seised by only one party to a dispute, the Court's verdict has almost always been accepted, even if reluctantly. In marked contrast to the position in the 1970's when the respondent States boycotted proceedings in seven of

⁶² The following cases were concerned with disputes over title to land territory, including the location of borders: Frontier Dispute (Burk. Faso/Mali), 1986 ICJ REP. 554 (Dec 22); Territorial Dispute (Libyan Arab Jamahiriya/Chad), 1994 ICJ REP. 6 (Feb. 3); Kasikili/Sedudu Island (Bots./Namib.), 1999 ICJ REP. 1045 (Dec. 13); Sovereignty over Pulau Ligitan and Pulau Sipadan (Indon./Malay.), 2002 ICJ REP. 575 (Oct. 23); Frontier Dispute (Benin/Niger), 2005 ICJ REP. 90 (July 12) and Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and S. Ledge (Malay./Sing.), 2008 ICJ REP. 12 (May 23). The following cases were concerned with maritime boundaries: Continental Shelf (Tunis./Libyan Arab Jamahiriya) 1982 ICJ REP. 18 (Feb. 24); Delimitation of the Maritime Boundary in the Gulf of Maine Area (Can./U.S.), 1984 ICJ REP. 246 (Oct. 12) and Continental Shelf (Libyan Arab Jamahiriya/Malta), 1985 ICJ REP. 13 (June 3). Land, Island and Maritime Frontier Dispute (El Sal./Hond., Nicar. intervening), 1992 ICJ REP. 351 (Sept. 11), as its name suggests, involved disputes over both land and maritime territory, while Gabčíkovo-Nagymaros Project (Hung./Slovk.), 1997 ICJ REP. 7 (Sept. 25), concerned a dispute regarding damming on the River Danube.

the eight contentious cases brought before the Court,⁶³ since 1981 there has been only one case (out of fifty) in which a State has declined to appear and only in the later phase of the proceedings,⁶⁴ although many of the cases involved vigorous challenges to the jurisdiction of the Court. Moreover, a significant number of cases commenced by unilateral application have proceeded without any challenge to the jurisdiction of the Court.⁶⁵

Thirdly, notwithstanding the relative lack of machinery for the enforcement of judgments of the Court, in practice those judgments have generally been complied with. One example is the judgment in *Libya/Chad*.⁶⁶ That case concerned a dispute regarding title to territory, in particular a border area known as the Aouzu Strip. In its judgment of 3 February 1994, the Court held, by sixteen votes to one, that the whole of the disputed area lay within Chad. Yet at that time the Aouzu Strip was occupied by Libya, which was much the more powerful of the two States. Nevertheless, only two months after the Court gave its judgment, the two governments concluded an agreement for the withdrawal of Libyan troops and administration from the Aouzu Strip under the supervision of a United Nations mission.⁶⁷ Withdrawal took place shortly afterwards and the entire territory has been administered by Chad since then. Although the judgment of the Court had merely determined that the disputed area belonged to Chad and had not specified the measures to be taken for its implementation, it was implicit in the ruling that Libya had to withdraw from the area. It is also instructive to consider the Court's more recent judgment in the *Pulp Mills* case between Argentina and Uruguay.⁶⁸ The Court there held that Uruguay had breached its procedural but not its substantive obligations regarding

⁶³ In *Fisheries Jurisdiction* (U.K. v. Ice.), 1974 ICJ REP. 3 (July 25), *Fisheries Jurisdiction* (F.R.G. v. Ice.), 1974 ICJ REP. 175 (July 25), *Nuclear Tests* (Austl. v. Fr.), 1974 ICJ REP. 253 (Dec 20), *Nuclear Tests* (N.Z. v. Fr.) 1974 ICJ REP. 457, *Aegean Sea Continental Shelf* (Greece v. Turk.), 1978 ICJ REP. 3 and *Diplomatic and Consular Staff in Tehran* (U.S. v. Iran) 1980 ICJ REP. 3, the respondent State boycotted the proceedings throughout. India did not appear in the one brief hearing on the *Trial of Pakistani Prisoners of War* (Pak. v. India), 1973 ICJ REP. 328. The only contentious case commenced by unilateral application during the decade in which both parties were represented was *Appeal relating to Jurisdiction of ICAO Council* (India v. Pak.), 1972 ICJ REP. 46.

⁶⁴ In *Armed Activities in and against Nicaragua* (Nicar. v. U.S.), 1986 ICJ REP. 14 (June 27), the United States withdrew from the proceedings after unsuccessfully contesting jurisdiction (1984 ICJ REP. 392) and was accordingly not represented at the hearings on the merits.

⁶⁵ For a recent example, see *Maritime Delimitation in the Black Sea* (Rom. v. Ukr.), 2009 ICJ REP. 61 (Feb. 3).

⁶⁶ *Libya/Chad*, *supra* note 63.

⁶⁷ See The Secretary-General, *Report of the Secretary-General*, U.N. Doc. S/1994/512 (Apr. 27, 1994) and S.C. Res. 915 U.N. Doc. S/RES/915 (May 4, 1994).

⁶⁸ *Pulp Mills*, (Arg. v. Uru.), *supra* note 4.

environmental protection of the river. The operative part of the Judgment did not call for any action by the parties but, in paragraph 281, the Court reminded the parties of their duty of co-operation under the Statute of the River Uruguay. The two governments concluded an agreement regarding co-operation in monitoring the relevant pulp mill shortly afterwards.⁶⁹

Fourthly, I want to highlight what I regard as a particular success on the part of the Court, albeit one that has not always been free of controversy. Between the late 1960's and early 1980's the international law of the sea underwent dramatic changes. Those changes are reflected in the United Nations Convention on the Law of the Sea, 1982, but the process of negotiating that Convention (a process which took over a decade) acted as a catalyst for far-reaching changes in customary international law. The effect of those changes was significantly to increase the areas of the seabed and the waters above it which fell within the jurisdiction of coastal States. That process turned huge areas which had formerly been *res communis* (the property of all mankind and falling within the sovereignty of no State) into national maritime territories. It also created hundreds of instances in which the claims of adjacent or opposite States to a continental shelf, territorial sea and exclusive economic zone overlapped. These factors created a potential for numerous conflicts. In practice, however, those conflicts have generally been avoided in large part due to a series of rulings on maritime boundaries which have not only resolved the specific disputes to which they related but also articulated a body of principles for the determination of overlapping claims which have built up into a substantial body of law. While some of the decisions in question have emanated from arbitration tribunals,⁷⁰ by far the largest contribution comes from the ten judgments of the International Court of Justice.⁷¹

⁶⁹ IHS Global Insight Daily Analysis reported, on 16 Nov. 2010, that the two governments had concluded a final accord on the subject; an interim agreement had been reached earlier.

⁷⁰ See, e.g., the UK-France Continental Shelf Award, (1977) 54 I.L.R. 6 and the more recent awards in *Barbados v. Trinidad and Tobago*, (2006) 139 I.L.R. 449 and *Guyana v. Suriname*, (2007) 139 I.L.R. 566.

⁷¹ *North Sea Continental Shelf* (Denmark/F.R.G.; Netherlands/F.R.G.), 1960 ICJ REP. 3; *Continental Shelf (Tunis/Libyan Arab Jamahiriya)* 1982 ICJ REP. 18; *Delimitation of the Maritime Boundary in Gulf of Maine Area (Can./U.S.)*, 1984 ICJ REP. 246 (Oct. 12); *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, 1985 ICJ REP. 13; *Land, Island and Maritime Frontier Dispute (El Sal./Hond., Nicar. intervening)*, 1992 ICJ REP. 351 (Sept. 11); *Maritime Delimitation in the Area between Jan Mayen and Greenland (Den. v. Nor.)*, 1993 ICJ REP. 38; *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahr.)*, 2001 ICJ REP. 40 (Mar. 16); *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nig.; Eq. Guinea intervening)*, 2002 ICJ REP. 303 (Oct. 10); *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicar. v. Hond.)*, 2007 ICJ REP. 659 (Oct. 8) and *Maritime Delimitation in the Black Sea (Rom. v.*

Lastly, while no-one would argue that the International Court (or any of the other international institutions) has realized the dreams of some of those who, at the Hague Peace Conferences of 1899 and 1907 saw international adjudication as something that would abolish war, it is worth noting the record of the Court in resolving disputes which had led to outbreaks of fighting. Several of the cases discussed above, including in particular the *Libya/Chad*, *Burkina Faso/Mali* and *Cameroon v. Nigeria* cases had led to fighting either before they were referred to the Court or while the cases were pending. In such cases the combination of provisional measures of protection where appropriate and an effective procedure of adjudication has halted a number of conflicts in their tracks.

CONCLUSION

No-one can claim that the International Court of Justice has yet established the kind of significance in the global community that the court system has obtained in, for example, the United States. Some of the most dangerous disputes of modern times continue to inflame passions without any realistic possibility of recourse to the Court. The jurisdiction of the Court is still not as widely accepted as one would wish.⁷² Yet the achievements of the Court in resolving those cases which it has been able to hear and in settling the law on matters as important as the claims to maritime territory are of considerable significance in ensuring peace and stability in the global community and in beginning to establish an international concept of the rule of law. The lean years in which almost all States ignored the Court are now behind us. The challenge for the future is to ensure that the Court can deal fairly and expeditiously with its greatly enhanced caseload and thereby enhance the contribution it is able to make.

Ukr.), 2009 ICJ REP. 61 (Feb. 3).

⁷² While the number of States accepting the compulsory jurisdiction of the Court, for example, has increased steadily over the years, the 66 States which currently accept that jurisdiction represent a much smaller percentage (34 percent) of the 192 members of the United Nations than did the 42 States which accepted that jurisdiction at the height of the League of Nations era (which represented 75 percent of the 55 States members of the League); Speech by The President of the Court to Legal Advisers, United Nations, Oct. 28, 2010, text at <http://www.icj-cij.org/presscom/files/5/16225.pdf>.