SPEECH BY H.E. JUDGE HISASHI OWADA, PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE, TO THE LEGAL ADVISERS OF UNITED NATIONS MEMBER STATES

Introductory Remarks at the Seminar on the Contentious Jurisdiction of the International Court of Justice

26 October 2010

Mr. Secretary-General

Madame Deputy-Secretary-General,

Madame Legal Counsel,

Legal Advisers and distinguished guests,

I am delighted to address this conference of the Legal Advisers taking place within the framework of the International Legal Week of the United Nations. This is the second time since my appointment as President of the International Court of Justice that I have the honour to deliver this address. I am especially pleased this year to address you in close relationship with the opening of a seminar, organized by the United Nations Office of Legal Affairs, which is focused on the issue of jurisdiction of the International Court of Justice. I understand that the present seminar is expected to be the first in a three-year schedule of seminars organized by the Office of Legal Affairs concerning the role of the Court in the rule of law at the national and international level.

Presenting my remarks primarily as an address to the Conference of the Legal Advisers during "International Legal Week", but taking advantage of this occasion by way of an introduction to today's seminar on the jurisdiction of the Court, I would like to make a few comments on some specific aspects of this topic. As you may be aware, the last few years have been among the very busiest in the Court's history. Yet, while States have been increasingly inclined to come to the Court to resolve their disputes, by judicial means, there is also an incessant tendency of States to circumscribe the conditions for their acceptance of the Court's jurisdiction. I would like to focus my comments today on the issue of compulsory jurisdiction of the Court and especially the issue of conditions attached to clauses providing for the compulsory jurisdiction of the Court, and their legal implications.

As you know, the jurisdiction of the Court is based on the consent of the Parties coming before it. This consent may manifest itself either in the form of a *compromis* (special agreement) relating to a specific dispute, or a State may accept the "compulsory jurisdiction" of the Court more generally under Article 36 of the Statute in one of two ways. First, under Article 36, paragraph 1, of the Statute, States may express their consent to the Court's jurisdiction by entering into a conventional agreement that contains a compromissory clause to the effect that disputes as to the interpretation or application of that agreement are to be adjudicated by the Court. Second, under Article 36, paragraph 2, — commonly known as the "optional clause" of the Statute — States may make a unilateral declaration that they recognize as compulsory *ipso facto* the jurisdiction of the Court in all legal disputes concerning certain categories of questions mentioned therein. (There is exceptionally the third means of conferring jurisdiction upon the Court, namely through the institution of *forum prorogatum*, but today I am not going to touch upon this issue.)

I will begin first by discussing compromissory clauses and the problem of reservations thereto; second, I will turn to the problem of conditions attached to optional clause declarations. I should emphasize at the outset, in disclaimer, that these comments are made entirely in my personal capacity, and are not to be attributed to, nor do they reflect, the view of the Court of which I am President.

1. Reservations to compromissory clauses

The compromissory clause has become an increasingly important part of the Court's jurisdictional toolbox in recent years, due to a combination of two trends: While the number of States making optional clause declarations has declined in comparative terms, the number of States signing treaties containing compromissory clauses has increased significantly. For example, in the era of the Permanent Court of International Justice, 76 per cent of States party to the Statute had made optional clause declarations (42 out of 55). Today, only 34 per cent of States have made such a declaration (66 of 192). In contrast to this marked decline in the acceptance of the optional clause, the number of States entering into treaties containing compromissory clauses providing the Court jurisdiction has increased significantly. Some 300 bilateral or multilateral treaties at present provide for compulsory recourse to the International Court of Justice in the resolution of disputes concerning the interpretation and application of the treaty in question. This is reflected also in the increase in the number of cases brought before this Court each year, relying as their jurisdictional basis on one or more compromissory clauses. The proportion of pending cases brought under a compromissory clause has risen from 15 per cent in the 1980's, to 40 per cent at the end of the last century, to more than 50 per cent in this past decade.

This trend seems to point to the fact that the inclusion of a compromissory clause in a multilateral convention or a bilateral treaty can have quite a significant result, because the combination of all such clauses has indeed begun to create a new avenue to the compulsory jurisdiction of the ICJ. This may not be what was envisioned at the time of the creation of the PCIJ but is nevertheless significant and now represents a substantial share of the total bases for the Court's jurisdiction, that is: half of its pending cases. In considering ways to strengthen the role of the Court in the international judicial landscape of the twenty-first century, therefore, the compromissory clause is an important tool to be utilized.

While the number of treaties containing compromissory clauses has thus been on the increase, the jurisdiction offered by these clauses has not always been as broad as it could be. This is due to the fact that an increasing number of reservations are entered by States when signing those international conventions that contain such compromissory clauses[1]. Those reservations have taken multiple forms. Some place limitations on the Court's jurisdiction *ratione temporis*. Others limit the Court's jurisdiction *ratione materiae*. Yet others attempt to limit the Court's jurisdiction *ratione personae*.

With some international conventions, the compromissory clause itself is stipulated as a separate optional protocol, allowing State parties to a convention to opt for the acceptance of the compulsory jurisdiction or its total rejection. A positive aspect of this last device — a separate optional protocol containing the compromissory clause — might be that States may become parties to the substantive provisions, while remaining free to reject the compulsory jurisdiction of the Court contained in the compromissory clauses and thus they may sign treaties that they otherwise would not have signed, thus increasing the substantive obligations they have undertaken. It could be argued on this point that, by consequence, at least the goal of the Court to strengthen the

[1]The problem does not usually arise in relation to bilateral treaties containing compromissory clauses for the obvious reason that the parties, in agreeing to insert such clauses, will agree on the exact scope of the clause.

international legal order has been achieved[2]. However, this view ignores the important role of the Court in the international legal order created by those substantive obligations. The Court plays a crucial role in ensuring the application of the conventions in question, without which the substantive obligations contained in the conventions would be reduced to mere words. The Court provides a forum where State parties can raise situations of non-compliance in a concrete case, and it thus serves to contribute to the consolidation, clarification and development of the law contained in the conventions in question. (For this reasoning, see the joint separate opinion of five judges in the *Congo* v. *Rwanda* case.)

It is therefore critically important that the international community of States take a fresh look at the issue of reservations with a view to consolidating the jurisdictional reach of the Court. This question has a long history before the Court, dating back to its 1951 Advisory Opinion on *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide*. In that opinion, the Court stated that:

> "[I]t is the compatibility of a reservation with the object and purpose of a Convention that must furnish the criteria for the attitude of a State in making the reservation on accession as well as for the appraisal by a State in objecting to the reservation"[3].

This concept was subsequently codified in Article 19 *(c)* of the Vienna Convention on the Law of Treaties, and has served as an important guide to States and commentators concerning the scope of permissible reservations[4].

In applying this rule in the context of reservations to compromissory clauses, two questions immediately arise. First, who decides whether a reservation to a compromissory clause is contrary to the object and purpose of the convention containing that clause — the State making the reservation, the State opposing it, or the international Court, tribunal, or body to which the compromissory clause refers disputes? Second, how should this question be resolved, i.e., is a reservation to a compromissory clause providing for dispute settlement contrary to the object and purpose of the treaty? I will consider each of these questions in turn.

First, the question of who decides whether a reservation to a compromissory clause is contrary to the object and purpose of the treaty is more complicated than it may initially seem. The 1951 Advisory Opinion states that the test is meant to "furnish the criterion for the attitude of a State in making the reservation on accession as well as for the appraisal by a State in objecting to the reservation"[5]. This language could be read as implying that the test is meant to be applied *prima facie* by the States themselves in making the reservation. Article 19 *(c)* of the Vienna Convention, however, contains no language that would allow such an interpretation. Moreover, the compromissory clause itself would empower the Court or monitoring body in question to resolve this question as an issue of interpretation or application of the treaty.

A variety of human rights bodies have already concluded that reservations preventing third-party review of human rights conventions are invalid. Regarding reservations to the International Covenant on Civil and Political Rights of 1966, the Human Rights Committee explained in General Comment 24 that "a reservation that rejects the Committee's competence to interpret the requirements of any provisions of the Covenant would also be contrary to the object

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[2]See for example the ruling in: *Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide, Advisory Opinion, I.C.J. Reports 1951*.

[3]*I.C.J. Reports 1951*, p. 24.

[4]Vienna Convention on the Law of Treaties, opened for signature 23 May 1969, Art. 19 *(c)*, 1155 *UNTS* 331.

[5]*I.C.J. Reports 1951*, p. 24.

and purpose of that treaty"[6]. Similarly, the Human Rights Committee concluded that a reservation made by one State party to the ICCPR excluding the Committee's competence to consider communications relating to a prisoner under sentence of death was not valid[7]. The European Court of Human Rights determined, in *Loizidou* v. *Turkey*, that States may not qualify their acceptance of the Convention so as to "effectively exclude[e] areas of their law and practice within their 'jurisdiction' from supervision by the Convention institutions" because such practice would violate the object and purpose of the European Convention on Human Rights[8].

The International Court of Justice is not a human rights monitoring body, and until recently the question remained whether it had the same power to review reservations in light of the object and purpose of the treaty containing the relevant compromissory clause. This question was effectively answered in the recent case of *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo* v. *Rwanda)*. In that case, the Applicant had put forward the compromissory clauses in numerous treaties as a basis for the Court's jurisdiction, including several human rights treaties and the Convention on the Prevention and Punishment of the Crime of Genocide. The Respondent had entered a reservation in the case of several of these compromissory clauses, and argued before the Court that, consequently, the Court lacked jurisdiction. The Applicant argued that the reservation either had been subsequently withdrawn, or conflicted with the object and purpose of the treaty, or both, and that the Court had jurisdiction to hear the case by virtue of the compromissory clauses.

Although the Court found that it lacked jurisdiction under each compromissory clause put forward by the Applicant, the very fact that the Court considered the claims demonstrates that the answer to the question of whether a State's reservation is contrary to the object and purpose of the treaty is not a matter to be left exclusively to the States making that reservation. This demonstrates that the Court has a role to play in determining whether a reservation to a compromissory clause is contrary to the object and purpose of the treaty at issue. With respect to the Respondent's reservation to Article IX of the Genocide Convention, the Court stated that:

> "Rwanda's reservation to Article IX of the Genocide Convention bears on the jurisdiction of the Court, and does not affect substantive obligations relating to acts of genocide themselves under that Convention. In the circumstances of the present case, the Court cannot conclude that the reservation of Rwanda in question, which is meant to exclude a particular method of settling a dispute relating to the interpretation, application or fulfilment of the Convention, is to be regarded as being incompatible with the object and purpose of the Convention."[9]

In their joint separate opinion, five judges observed that the Court had "gone beyond noting a reservation by one State and a failure by the other to object"[10]. It is to be noted that in this quoted passage, the Court could be said to have taken the position that the validity of such reservations fell to be determined not simply by the States themselves, but ultimately by the Court.

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[6]Human Rights Committee, General Comment No. 24, para. 11.

[7]Communication No. 845/1999, *Kennedy* v. *Trinidad and Tobago*, CCPR/C/67/D/845/1999, Report of the Human Rights Committee (A/55/40), Vol. 3, Ann. XI.A, para. 6.7.

[8]European Court of Human Rights, *Loizidou* v. *Turkey*, Judgment of 23 March 1995 (Preliminary Objections), Publication of the European Court of Human Rights, Series A., Vol. 310, paras. 77-78. See also *Belilos* v. *Switzerland*, Judgment of 29 April 1988, Publication of the European Court of Human Rights, Series A, Vol. 132.

[9]*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. Reports 2006*, para. 67.

[10]*Ibid.*, joint separate opinion of Judges Higgins, Kooijmans, Elaraby, Owada and Simma, para. 21.

Even when the Court has the power to examine whether a reservation to a compromissory clause is contrary to the object and purpose of the treaty, another more difficult issue arises: what should the Court conclude following examination of such reservations? In this regard, the draft guidelines with regard to reservations prepared by the International Law Commission provide in Section 3.1.13, entitled "Reservations to treaty clauses concerning dispute settlement or the monitoring of the implementation of the treaty" as follows:

> "A reservation to a treaty clause concerning dispute settlement or the monitoring of the implementation of the treaty is not, in itself, incompatible with the object and purpose of the treaty."[11]

The guideline then provides exceptions to this general rule, most notably in relation to dispute settlement provisions that constitute "the *raison d'être* of the treaty"[12]. The question which arises, here, is in what context would a dispute settlement clause constitute the very "*raison d'être* of the treaty", so that a reservation may be said to be contrary to the object and purpose of that treaty? I would like to submit that because compromissory clauses are playing an increasingly crucial role as a primary method for providing the Court with jurisdiction to resolve disputes between States, these clauses must be considered as more likely to constitute part of the "*raison d'être* of the treaty" and thus such reservations would not be permissible. These reservations are fracturing and dividing the web of consent created by the increasing number of compromissory clauses, with the result that the Court is made unable to adjudicate upon disputes submitted to it — as was the case with *Congo* v. *Rwanda* case.

Arguably, Article IX of the Genocide Convention provides an example of a dispute settlement clause which might be considered to constitute part of the "*raison d'être* of the treaty" to the extent that Article IX speaks not only of disputes over the interpretation and application of the Convention, but also disputes over the "fulfilment of the Convention, including those relating to the responsibility of a State for genocide". Given the nature of the crime, it is difficult to imagine how genocide could be committed without some form of state complicity or involvement. Article IX offers the only mechanism in the Convention for the punishment of State violations of the crimes listed in Article III of that Convention (which include genocide, conspiracy to commit genocide, direct and public incitement to commit genocide, attempt to commit genocide, and complicity in genocide). It is for this reason that, while the Court concluded in *Congo* v. *Rwanda* that the Respondent's reservation to Article IX was not contrary to the object and purpose of the Convention, the Joint Separate Opinion emphasized as follows:

> "It is a matter for serious concern that at the beginning of the twenty-first century it is still for States to choose whether they consent to the Court adjudicating claims that they have committed genocide. It must be regarded as a very grave matter that a State should be in a position to shield from international judicial scrutiny any claim that might be made against it concerning genocide. A State so doing shows the world scant confidence that it would never, ever, commit genocide, one of the greatest crimes known."[13]

It is my submission that the time has come to recognize the importance of compromissory clauses as a whole and the value inherent in the dispute settlement procedures before the Court. It would strengthen the international rule of law in a world which is increasingly governed by a web of multilateral conventions, many of which provide for dispute settlement before the Court.

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[11] Tenth Report on reservations to treaties, doc. A/CN.4/558/Add.1 (14 June 2005), para. 99, Sec. 3.1.13.

[12] *Ibid.*, Sec. 3.1.13 (i). See also *ibid.*, Sec. 3.1.13 (ii) (providing a second exception when "[t]he reservation has the effect of excluding its author from a dispute settlement or treaty implementation monitoring mechanism with respect to a treaty provision that the author has previously accepted, if the very purpose of the treaty is to put such a mechanism into effect").

[13] Joint separate opinion of Judges Higgins, Kooijmans, Elaraby, Owada and Simma, *supra*, para. 25.

2. Conditions attached to optional clause declarations

As I said at the outset, in addition to compromissory clauses, the compulsory jurisdiction of the Court also includes optional clause declarations made under Article 36, paragraph 2, of the Statute. By making such a declaration, States recognize "as compulsory *ipso facto* and without special agreement the jurisdiction of the Court"[14]. Parallel to the increasing trend to attach reservations to compromissory clauses, States have also been increasingly attaching conditions to their optional clause declarations, including some which have the effect of excluding certain categories of disputes from the jurisdiction of the Court.

Since this form of acceptance of the Court's jurisdiction is, in reality, a unilateral declaration, the Court has concluded that it is not strictly speaking subject to the Vienna Convention on the Law of Treaties or other rules governing reservations to treaties[15]. In the case of a reservation to a compromissory clause, that compromissory clause has already been negotiated by the States taking part in a multilateral negotiation. The reserving State can thus be considered to disrupt a balance that has been struck through compromise among all the States participating in that treaty negotiation. By contrast, in the case of a condition attached to an optional clause declaration made under Article 36, paragraph 2, of the Statute, the State begins with a *tabula rasa*: it may decide to accept the jurisdiction of the Court and, if it does, the State is free to decide whether to do so with restrictions or unconditionally. As the Court stated in *Military and Paramilitary activities in and against Nicaragua*,

> "Declarations of acceptance of the compulsory jurisdiction of the Court are facultative, unilateral engagements, that states are absolutely free to make or not to make. In making the declaration a state is equally free either to do so unconditionally and without limit of time for its duration, or to qualify it with conditions or reservations."[16]

They are thus truly "optional" declarations, as they have come to be known. However, when States limit their acceptance of the compulsory jurisdiction of the Court in the optional clause declaration, the ultimate effect for the Court's jurisdiction is the same as when they enter reservations to treaties containing compromissory clauses: the overall jurisdiction of the Court is weakened.

In principle, States are free to condition their optional clause declarations in any number of ways, and there are several such conditions which States include in their declarations with increasing frequency. Let me introduce some of the most typical ones.

First, out of the 66 such declarations, 63 States explicitly refer to reciprocity, i.e., that they accept the jurisdiction of the Court only in relation to other States accepting the same obligation. This reference to reciprocity is of course made *ex abundanti cautela*. The principle is implicit in the provisions of Article 36, paragraph 2, where it speaks of "any other State accepting the same obligation".

Second, 32 States limit their consent to jurisdiction *ratione temporis*, such as specifying that the declaration covers only disputes which arose after it was made or only disputes in relation to situations which arose after that date. I would like to elaborate on this in more detail in a moment.

Third, 27 States have qualified their optional clause declarations by excluding matters within their domestic jurisdiction. In theory, this again can be said to be to a large extent *ex abundanti cautela.* This condition really adds very little protection for the State because, if a dispute truly

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[14]Statute of the Court, Art. 36, para. 2.

[15]*Fisheries Jurisdiction (Spain* v. *Canada), Jurisdiction of the Court, Judgment, I.C.J. Reports 1998*, para. 46.

[16]*I.C.J. Reports 1984*, p. 418, para 59.

concerns matters that are exclusively within the domestic jurisdiction of the State, then it would be outside the scope of Article 36, paragraph 2, of the Statute and the Court would lack jurisdiction in any case. States could thus consider eliminating this condition with little or no change to their consent to the Court's jurisdiction.

Fourth, 18 States have included a condition in their declaration that the Court may not have jurisdiction unless all parties to any treaty affected by the decision are also parties to the case before the Court. This is the case of the "Vandenberg reservation" introduced by the United States, which prevented the Court from applying the United Nations Charter in the case between Nicaragua and the United States[17]. Five other States have opted for similar language in their declarations.

Fifth, 40 States have limited their optional clause declarations by stipulating that any other mechanisms of dispute settlement as agreed between the parties will prevail over the general jurisdiction of the Court. In the few cases where this condition has been at issue, the Court found that it did not exclude recourse to ICJ adjudication[18].

Finally, certain States exclude some specific issues or categories of issues from the jurisdiction they grant the Court in their declarations, such as territorial disputes, maritime disputes, disputes concerning their armed forces, or "disputes between members of the British Commonwealth of Nations"[19]. These are explicit conditions in the sense those issues are excluded *eo nomine* from the scope of jurisdiction of the Court.

There is thus no question that a great variety of conditions have been attached to optional clause declarations. This situation is further multiplied by the principle of reciprocity, which has the effect of making the limitation applicable both for and against the State making it.

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It is one of the fundamental principles of contemporary international law that the jurisdiction of the Court International Court of Justice is based on the consent of States. It follows that any conditions attached to the declaration accepting the jurisdiction of the Court are left to the will of that State making that declaration. As I stated earlier, in this sense, the "optional clause" is indeed "optional". Moreover, as with reservations to compromissory clauses, the case could be made that the option of attaching conditions to optional clause declarations has provided a necessary flexibility to States, without which they may not have been able to make the declaration in the first place. However, it must be admitted that such reservations and conditions may also complicate the work of the Court, and serve to weaken its overall jurisdictional reach. I would like to offer in closing one such example of a difficulty the international Court of Justice may face in this regard. This is the common inclusion of conditions *ratione temporis* limiting the jurisdiction of the Court to disputes arising after the making of the declaration. The most common formulation of this type of condition excludes "disputes prior to the date of the declaration, including any dispute the

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[17]*I.C.J. Reports 1986*, p. 38, para. 56, and p. 97, para 182.

[18]*Electricity Company of Sofia and Bulgaria, Judgment, 1939, P.C.I.J., Series A/B, No. 77*, p. 76; Case concerning the *Arbitral Award of 31 July 1989 (Guinea-Bissau* v. *Senegal), Judgment, I.C.J. Reports 1991*, pp. 61-62, paras. 22-24.

[19]The declarations of six members of the British Commonwealth contained such a declaration with regard to the jurisdiction of the PCIJ: Australia, Canada, India, New Zealand, South Africa and the United Kingdom. The declarations of eight States currently contain this reservation with regard to the jurisdiction of the ICJ: Barbados, Canada, Gambia, India, Kenya, Malta, Mauritius, United Kingdom.

foundations, reasons, facts, causes, origins, definitions, allegations or bases of which existed prior to that date, even if they are submitted or brought to the knowledge of the Court thereafter"[20].

The difficulty that has arisen with such a condition is that it can be nearly impossible to determine exactly how far back to consider the foundations, reasons, and causes of the dispute to have begun, since ultimately everything in history is related to and results from that which happened before it. The Permanent Court dealt with this question in the *Phosphates in Morocco*[21] and *Electricity Company of Sofia and Bulgaria*[22] cases, developing a test whereby the Court would begin the clock at what it considers to be the "real cause" of the dispute. The current Court has followed this approach in the *Right of Passage* case. In that case, the Court determined that although the Applicant's right of passage existed prior to 5 February 1930 — the date of Respondent's optional clause declaration which contained a condition making it non-retroactive — the dispute had not arisen until the date when the Applicant contended that Respondent had taken measures to prevent the exercise of that right[23]. This issue came up again in more recent cases, such as the case concerning *Certain Properties (Liechtenstein* v. *Germany)* and *Jurisdictional Immunities of the State (Germany* v. *Italy)*.

Certainly, there are cases when one or more parties to a treaty may wish to limit the temporal scope of the treaty's application. However, it cannot be denied that this comes at a cost in terms of resources, both of the parties and of the Court, in order to determine if such a temporal limitation applies in the case under consideration. It may be the case that certain States, in entering this type of reservation, have in mind a very specific dispute existing prior to the optional clause declaration, which they are interested in excluding. In such a case, a reservation drafted in more specific terms could facilitate judicial efficiency, as it would be easier to determine whether it was applicable.

(c) ***Concluding comments***

Mr. Secretary-General

Madame Deputy-Secretary-General,

Madame Legal Counsel,

Legal Advisers and distinguished guests,

By way of conclusion, I may recall that the importance of the Court's compulsory jurisdiction has been a priority within the United Nations for many years. The Manila Declaration on the Peaceful Settlement of International Disputes, adopted by the General Assembly on 15 November 1982, placed a particular emphasis on the significance of recognizing the jurisdiction of the Court. In its Article 5, the Declaration provides that "legal disputes should as a general rule

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[20]See, for example, the Reservation of India.

[21]*Phosphates in Morocco, Judgment, 1938, P.C.I.J., Series A/B, No. 74*, pp. 23-24.

[22]*Electricity Company of Sofia and Bulgaria, Judgment, 1939, P.C.I.J., Series A/B, No. 77*, pp. 63, 82.

[23]Case concerning *Right of Passage over Indian Territory (Merits), Judgment of 12 April 1960, I.C.J. Reports 1960*, pp. 33-35. Most recently, in the case concerning *Jurisdictional Immunities of the State (Germany* v. *Italy)* earlier this year, the Court also followed this approach, but with the opposite result. In that case the temporal limitation did not come from a reservation to an optional clause declaration but was included directly in a treaty containing a compromissory clause providing for jurisdiction of the Court. The Court decided that the dispute that Italy intended to bring before the Court by way of its counter-claim related to facts and situations existing prior to the entry into force of that treaty (*Jurisdictional Immunities of the State (Germany* v. *Italy)*, Order of 6 July 2010, para. 30). The Court therefore found that what Italy claimed to be the cause of the dispute was not the "real cause" of the dispute and concluded that the counter-claim presented by Italy did not come within its jurisdiction. *Ibid.*, paras. 26-31.

be referred by the parties to the International Court of Justice"[24]. It urges States to "[c]onsider the possibility of inserting in treaties, whenever appropriate, clauses providing for the submission to the International Court of Justice of disputes which may arise from the interpretation or application of such treaties"[25]. It further stresses that States should "[s]tudy the possibility of choosing, in the free exercise of their sovereignty, to recognize as compulsory the jurisdiction of the International Court of Justice in accordance with Article 36 of its Statute"[26].

In 1992, Secretary-General Boutros-Ghali called on States to submit to the compulsory jurisdiction of the Court, emphasizing that that acceptance should be "without reservation"[27]. Secretary-General Kofi Annan made a similar plea to States to accept the compulsory jurisdiction of the Court in 2001, emphasizing that "the more States that accept compulsory jurisdiction of the Court, the higher the chances that potential disputes can be expeditiously resolved through peaceful means"[28]. Taking note of these efforts, a Member of the Court in his Declaration in a recent case observed that

> "[W]hile consent forms the cornerstone of the system of international adjudication, States have a duty under the Charter to settle their disputes peacefully. Recognition of the compulsory jurisdiction of the Court fulfils this duty."[29]

Today, in 2010, recognition of the Court's compulsory jurisdiction is as important as ever before. It is the inter-connected web of optional clause declarations and compromissory clauses which create a foundation upon which the Court can develop a continuous jurisdiction that does not have to be re-established with each new dispute as does jurisdiction by special agreement. Yet, as I have discussed today, both the compromissory jurisdiction and the optional clause jurisdiction of the Court are riddled with many reservations and conditions, limiting the role that the Court can have in upholding the rule of law. I am thus very happy to remain as a participant in the seminar which will now be launched by the Office of Legal Affairs on the contentious jurisdiction of the Court, and I look forward to hearing your ideas on ways in which that contentious jurisdiction could be strengthened. Thank you very much for the opportunity to address you today.

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[24]Manila Declaration on the Peaceful Settlement of International Disputes, adopted by the General Assembly in resolution 37/10 of 15 November 1982.

[25]*Ibid.*

[26]*Ibid.*

[27]*An Agenda for Peace: Preventive Diplomacy, Peacemaking and Peace-keeping*, Report of the Secretary-General adopted by a summit meeting of the Security Council on 31 January 1992, A/47/277-S/24111, para. 39.

[28]*Prevention of Armed Conflict*, Report of the Secretary-General, 7 June 2001, A/55/985-S/2001/574, para. 48.

[29]*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. Reports 2006*, declaration of Judge Elaraby, paras. 8-9.