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The Role Of The International Court Of Justice In The Peaceful Settlement Of International Disputes

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The United States has a long and enduring tradition of interest in the peaceful settlement of international disputes. As early as 1871, the United States government chose international arbitration to settle its dispute with the United Kingdom in the *Alabama* Claims. As you might remember, the *Alabama* was a Confederate cruiser of British make which inflicted a great deal of damage on Northern merchant ships during the Civil War. The United States claimed after the war that England had violated its neutrality by allowing the *Alabama* and similar ships to be constructed and put to sea knowing that these ships would enter the service of the Confederacy. Under the Treaty of Washington of 1871, the United States and the United Kingdom agreed to submit the dispute to arbitration and the arbitral tribunal awarded more than $15 million to the United States in 1872.

The proceedings in the *Alabama* Claims case served as a demonstration of the effectiveness of inter-state arbitration in the settlement of major disputes, and is still considered as having contributed to the success of arbitration and peaceful dispute settlement during the rest of the nineteenth and the twentieth century. Since that date, many prominent American statesmen have fostered the idea of a world tribunal which would resolve disputes between nations according to international law. At the beginning of the twentieth century, American diplomats and lawyers campaigned for the creation of a world court as issues of international law were debated around the world. At the two Hague Peace Conferences of 1899 and 1907, the delegation of the United States lobbied for the establishment of a permanent international tribunal. Under the guidance of the Secretary of state Elihu Root, the United States engaged in a forceful effort to promote the peaceful settlement of international disputes during the first two decades of the twentieth century. This effort led, among other things, to the creation of the Central American Court of Justice and the negotiation of nearly 40 international arbitration treaties.

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In the early 1920s, Mr. Root represented the United States in the Advisory Committee of Jurists, which was charged with drafting the Statute of the Permanent Court of International Justice (PCIJ), the first permanent universal international tribunal and the predecessor of the International Court of Justice. Although the United States never joined the League of Nations, American lawyers played an important role in the creation of the PCIJ. The idea that the PCIJ should be a judicial institution associated with the League of Nations had been earlier suggested by one of President Wilson's closest confidantes, Colonel House. Supported by many distinguished Americans, such as Secretary of State John Hay and editors Edward Everett Hale and Edwin D. Mead, this proposal became part of the Covenant of the League of Nations. The Permanent Court of International Justice could, alas, not prevent the devastations of World War II. It did, however, settle a number of international disputes and laid down many legal principles which have become the backbone of modern international law. The Permanent Court of International Justice also paved the way for the establishment of the International Court of Justice after World War II.

The effort to create this new world court was led, *inter alia*, by another American, the prominent international lawyer G. H. Hackworth, who served as chairman of the Committee of Jurists, which was entrusted with the preparation of a draft Statute for the future International Court of Justice. It was adopted by the San Francisco Conference on June 26, 1945 as an annex to the Charter of the United Nations. The Statute or constitution of the Court has governed its operations for almost 60 years. Judge Hackworth served as a

Judge on the Court from 1946 to 1961, including three years as its president.

In briefly reviewing the contribution the United States has made to the advancement of international justice, I cannot fail to mention that it was an American businessman, the industrialist Andrew Carnegie, who made possible the building of the Peace Palace in The Hague, the seat of the International Court of Justice (ICJ). In 1904, wishing to contribute some of his amassed fortune to the burgeoning world peace movement, Carnegie donated $1.5 million to the building of the Peace Palace. Originally created to house what was to become the largest library dedicated to international law, this imposing structure soon became the home of the Permanent Court of Arbitration. Some years later it became the seat of the Permanent Court of International Justice as well. Since 1946, it has housed the International Court of Justice.

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Your presence here today, ladies and gentlemen, some hundred years after the first peace conferences and 59 years after the International Court of Justice met for the first time, confirms, if anything, that this great American tradition of support for international justice continues to be well and truly alive. With your indulgence, I shall take the opportunity that has been given me today to discuss a very important aspect of the work of the International Court of Justice, that is, the contribution of the ICJ to the peaceful settlement of international disputes.

As you may be aware, the past decade has seen a large increase in the number of international tribunals. In addition to the ICJ, the city of The Hague is home to the International Criminal Court, the International Criminal Tribunal for the Former Yugoslavia, the Iran-U.S. Claims Tribunal and the Permanent Court of Arbitration. New tribunals have also been, and continue to be established elsewhere, for instance the International Criminal Tribunal for Rwanda in Arusha, Tanzania; the WTO Dispute Settlement Mechanism in Geneva; the International Tribunal for the Law of the Sea in Hamburg, Germany—the list is already long and I have not yet mentioned any of the many regional courts and tribunals which operate in Europe, Africa or Central and South America. Each of these courts and tribunals has a different jurisdiction. Many of them may only deal with cases concerning a particular event or a certain territory. Others are limited to disputes arising in the context of specific treaty regimes. In this increasingly complex international justice system, it is sometimes difficult for the non-specialized public, and even for lawyers, to distinguish between these different institutions. In order that you can fully appreciate the contribution of the International Court of Justice to international peace and security in this framework, allow me to start by explaining briefly how the International Court of Justice came into being, and what functions it performs.

As I mentioned earlier, the ICJ was created following the end of World War II. The creation of the United Nations Organization in 1945 meant that states were committed to new standards in their international relations. International law became the new cornerstone of relations between equal sovereign states. The Court was established by the Charter in pursuance of one of the primary purposes of the U.N.: "to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace." The new international society, pursuant to the United Nations Charter, was indeed to rest on two fundamental principles: the obligation to settle disputes by peaceful means, and the prohibition of the threat or use of force against another state. A judicial organ was therefore necessary to help the member states of the organization to peacefully settle their disputes. This judicial organ was the International Court of Justice.

As the principal judicial organ of the United Nations, the ICJ was created on an equal footing with the other principal organs, that is to say the General Assembly, the Security Council, the Economic and Social Council and the Secretariat. Each organ has its own contribution to make to the goals of the United Nations and they work together to maintain international peace and security. The Court, therefore, operates within the institutional framework of the United Nations. In particular, its synergy with the Security Council reinforces its ability to settle disputes peacefully. This complementarity of the ICJ and the Security Council is evident in several

ways. First, the Security Council can recommend that states submit their legal disputes to the Court. Second, the Security Council may take appropriate measures to ensure compliance with the decisions of the Court. As a result, the Court's judgments enjoy the benefit of an enforcement mechanism not available to other international courts and tribunals.

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The ICJ is composed of 15 judges, five of whom are elected every three years for nine-year terms by the General Assembly and the Security Council. Separately but simultaneously, the Statute of the Court indicates that when electing judges, the Security Council and the General Assembly must bear in mind that in the body as a whole the representation of the main forms of civilization and of the principal legal systems of the world should be assured. This is certainly true of today's Court, whose members come from Brazil, China, Egypt, France, Germany, Japan, Jordan, Madagascar, the Netherlands, the Russian Federation, Sierra Leone, Slovakia, the United Kingdom, the United States of America and Venezuela. Currently, the United States is ably represented by Judge Thomas Buergenthal, who has been a member of the Court since March 2, 2000.

If you allow me, I would like to make a small digression on this point. Unlike the Security Council, there are no permanent members at the International Court of Justice. Any country is free to nominate one of its nationals to run for election to the Court. It will interest you to note, therefore, that since its inception in 1946, there has always been an American sitting on the bench of the ICJ. As I mentioned earlier, Judge Hackworth was elected in 1946 and during his tenure served as judge, vice president, and finally as president. The other American judges to have been on the bench are Judges Jessup, Dillard, Baxter and Schwebel. Judge Stephen Schwebel, former Deputy Legal Adviser of the United States Department of state, served on the Court from January 1981 to March 2000. He served as vice president from 1994 to 1997 and was also the second American judge elected by his fellow judges to the presidency of the Court from 1997 until 2000.

So how exactly do the Court and its 15 members carry out their mission within the United Nations framework? They do so by means of two distinct procedures: contentious proceedings, which currently represent the majority of the workload of the Court, and advisory opinions.

A word on contentious proceedings first. Any state can, at any moment, ask the Court to settle any dispute it has with another state. Similarly, two states can agree to jointly submit their dispute to the Court. You will note that I insisted on the expressions "any state" and "any dispute." The Court is indeed the only international judicial institution which is open to all member states of the United Nations. It is also the only Court which possesses general jurisdiction, that is to say a jurisdiction which enables it to deal with any issue and answer any question relating to international law. This makes the Court the ultimate dispute settlement institution.

Although the reach of the Court is broad, there are nevertheless two important limitations concerning the institution of contentious proceedings. First, the possibility of bringing contentious proceedings is only available to states, a fact which distinguishes the International Court of Justice from other tribunals which deal with individuals, such as the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Court. Contentious proceedings are likewise not open to international organizations, or any other non-state bodies. Second, the Court's jurisdiction to consider contentious proceedings is conditioned on the consent of the state parties, and the Court has often referred to the fact that its power to hear and decide a case on the merits depends on the will of states involved.[1] This principle is a corollary of the sovereign equality of states. Clearly, it restricts the ability of the Court to settle international disputes; but this situation reflects the present state of the international community, which is not yet sufficiently integrated to allow compulsory jurisdiction in relation to sovereign states. However, the requirement of consent by states to the jurisdiction of the Court results in a high level of compliance by state parties with the rulings of the Court. In this way, the necessity of state consent increases the efficiency of the

[1] See e.g. *Anglo-Iranian Oil Co. (United Kingdom v. Iran),* ICJ Reports (1952), 102-3; and *Monetary Gold Removed from Rome in 1943 (Italy v. France,* US, UK), ICJ Reports (1954), 66-97.

Court as a mechanism for peaceful settlement of international disputes.

The second procedure in which the ICJ acts as the principal judicial organ of the United Nations consists of the system of advisory opinions, enabling the Court, under certain conditions, to answer any legal question put to it by the General Assembly, the Security Council or any other duly authorized United Nations organ and specialized agencies. In carrying out this second function, one could say that the Court acts as the ultimate legal adviser to the United Nations, clarifying the state of international law on the issue at hand.

An example of this procedure is the Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons,* delivered on the 8 July 1996. Following a request contained in a resolution of the United Nations General Assembly, the Court considered whether customary international law provided a basis for the prohibition of the threat or use of nuclear weapons. The Court noted that members of the international community are profoundly divided on the matter. The Court considered that "the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law." It found, however, that "in view of the ... state of international law, and of the elements of fact at its disposal, the Court [could not] conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defense, in which the very survival of a state would be at stake." In its opinion, the Court also emphasized that "complete nuclear disarmament" is the most appropriate means of ending the "difference of views with regard to the legal status of weapons as deadly as nuclear weapons" and that non-proliferation is "an objective of vital importance to the whole of the international community." The Court thus found that there exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control.

After this theoretical introduction on the ways in which the Court works, let me now move to the heart of the matter: the actual contribution of the Court to international peace and security. That contribution is clear from the Court's record. To date, the Court has rendered 89 judgments and 25 advisory opinions involving 74 different states from all four corners of the globe and from every inhabited continent. A cursory glance at the 19 cases on the current docket of the Court reveals state parties which come from no less than four continents (Asia, Africa, the Americas,Europe), and includes one intercontinental case (Europe and Africa).

As we approach the 60th anniversary of the International Court of Justice in 2006, the popularity of the Court as a dispute resolution mechanism continues to grow. More and more states are beginning to realize how the International Court of Justice can serve them and are trusting it to resolve their disputes with other nations. The issues which states have asked the Court to resolve are likewise many and various. For instance, in the past three years the Court has decided cases relating to matters as diverse as land, fluvial and maritime boundaries, ownership of property seized during World War II, human rights violations, access of foreign nationals to consular assistance, freedom of commerce, and the use of force, to name but a few. It has thus become clear to the international community that the International Court of Justice, as the principal judicial organ of the United Nations, has a crucial and primary role to play in the peaceful settlement of international disputes and the promotion and application of international law.

To further illustrate the exact nature of this contribution I would like to draw your attention to some of the jurisprudence of the Court from cases involving the United States. Many of you may recall the Iran hostage crisis which ensued following the seizure of the U.S. Embassy in Tehran by Muslim student followers of the Imam's policy on November 4 1979. As part of its attempt to settle this crisis peacefully, the United States turned to the Court for assistance. On November 29, the United States instituted contentious proceedings against Iran before the ICJ.

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The Court responded swiftly. Just two weeks after proceedings were instituted, the Court granted the U. S request for provisional measures or temporary injunction until the merits of the case could be decided. The Court ruled that the embassy should immediately be restored to the possession of the U.S., that all U. S hostages should be released, and that the government of the Islamic Republic of Iran afford all diplomatic and consular staff of the USA the diplomatic protection to which they were entitled.

Unfortunately, Iran did not participate in the proceedings, neither did it file pleadings, nor was it represented at the hearings. Therefore, in reaching its decision, the Court was obliged to consider on its own initiative all arguments Iran might have advanced regarding the case. In its judgment of 24 May 1980 on the merits, the Court determined that Iran had violated its international obligations to the United States and ordered the immediate release of U. S nationals held as hostages. The Court also held that Iran was under obligation to make reparation for the injury caused to the United States, the form and amount of reparation to be agreed upon between the parties. After a lengthy political discourse, and with the judgment of the Court establishing the legal background of the dispute, the two states entered into negotiations and on January 20, 1981, the hostages were formally released and the U.S.-Iran Claims Tribunal was established to resolve claims of reparations resulting from the incident. That tribunal still exists and continues to deal with the numerous claims presented by both states.

As the United States has used the Court to settle its disputes with other nations, so too has it happened that other nations have instituted proceedings in the International Court of Justice against the United States. In January 2003, for instance, Mexico asked the Court to rule on alleged violations of the Vienna Convention on Consular Relations by the United States. This Convention provides that foreign nationals must be informed of their right to communicate with their consulate when they are detained or arrested by law enforcement officials and that consular officials have a right of communication and of access to their nationals as well as the right to visit them in detention or in prison and to arrange for their legal representation. Mexico argued that the United States had failed to comply with the Vienna Convention in 54 separate cases involving Mexican nationals who had been convicted and sentenced to death. On March 31, 2004, the Court held that the United States had violated its international obligations under the Vienna Convention in most of the individual cases involved. The Court further found that in those cases where a violation of the Vienna Convention had been found, the United States has the obligation to provide, by means of its own choosing, review and reconsideration of the convictions and sentences of the Mexican nationals.

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Following the decision of the Court, the State Department of the United States urged the governors of all states where Mexican nationals referred in the judgment are inmates on death row to give "careful consideration" to the obligations of the United States under the Vienna Convention. A few weeks later, on May 13, Governor Brad Henry of Oklahoma commuted the death sentence of one Mexican national, Mr. Osvaldo Torres, to a life sentence without the possibility of parole. At the same time, the Oklahoma Court of Criminal Appeals ordered the review of the conviction and sentence pursuant-the ICJ's judgment. Several other Mexican death row inmates concerned by the Court's decision in other states have also had their sentences commuted. On February 28, 2005, President George W. Bush officially declared that the United States would comply with the ruling of the Court and that state courts were obliged to give effect to the principles laid down in the judgment of the ICJ This declaration of President Bush eased once and for all the tensions that had been damaging the relationship between Mexico and the United States since the beginning of the dispute.

I just gave you two examples of the concrete contribution of the Court to the peaceful settlement of international disputes. There are many more and I would need more than a full day to review each and every one of them with you. I hope, however, that this short presentation leaves you with a clearer understanding of the characteristics and functions of the International Court of Justice. The ICJ cannot alone secure international peace and security, but provides states with a forum where they can settle their differences definitively and without recourse to armed force. You will agree that the Court has an important contribution to make to the maintenance of international peace and security. The role the Court plays was highlighted by Kofi Annan in his recent report, *In Larger Freedoms*, in which he described the International Court of Justice as lying "at the centre of the international system for adjudicating disputes among states." With your support, the International Court of Justice will endeavor to continue in its important mission. It remains for me to thank you for your attention, and for your interest in the International Court of Justice. Thank you.

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