THE TOPICALITY OF THE FUNDAMENTAL PRINCIPLES CONCERNING THE PEACEFUL SETTLEMENT OF INTERNATIONAL DISPUTES, AS SET OUT IN THE MANILA DECLARATION OF 1982

Speech of H.E. Judge Abdulqawi A. Yusuf, President of the International Court of Justice, at the event organized by the Hague Academy of International Law and the Permanent Missions of Andorra, Brazil, Chile, Gabon, Germany and Ukraine to the United Nations

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Ladies and Gentlemen,

1. It is a great pleasure for me to participate in this side event focused on the topicality of the fundamental principles concerning the peaceful settlement of international disputes enshrined in the Manila Declaration. I thank Professor Thouvenin for his kind words of introduction.

2. Almost four decades ago, on 15 November 1982, the General Assembly adopted the Manila Declaration by consensus. The Declaration was adopted on the basis of the work of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization. To address the Declaration's topicality today, I must begin by considering, first of all, its topicality at the time of its adoption. At that time, the Declaration was the Assembly's latest effort to elaborate on Article 2, paragraph 3, of the Charter, which establishes the general obligation of all States to settle international disputes by peaceful means, as well as on Chapter VI of the Charter. The Assembly's prior attempts had focused on the establishment of dispute settlement mechanisms such as the United Nations Panel for Inquiry and Conciliation in 1949, the United Nations Peace Observation Commission in 1950 and the United Nations Register of Experts for Fact-Finding in 1967.

3. The Manila Declaration formed part of a series of declaratory resolutions adopted by the General Assembly to flesh out the principles enshrined in the Charter. Of these resolutions, the Declaration sits comfortably next to resolution 2625 on principles of international law concerning friendly relations and co-operation among States, as two of the main accomplishments of the Special Committee.

4. Why did the General Assembly feel the need to adopt the Manila Declaration? Three main reasons seem to have prompted this move.

5. *First*, the composition of the international community had changed. Following the wave of independence in the 1960s, newly independent States felt the need to review and update existing rules of international law that were created without their participation. It is thus hardly surprising that the working group negotiated the text of the Declaration based on a draft proposed by Egypt, Indonesia, Mexico, Nigeria, the Philippines, Romania, Sierra Leone and Tunisia. Nor is it surprising that many of the working group's discussions focused on the composition of the Security Council and the use of the veto. *Secondly*, there was a marked increase in the number of international disputes in the late seventies and eighties. As you might recall, this period saw Latin America, Africa and Asia swarming with proxy wars. Finally, *the third reason* related to the perceived limited success of the United Nations and international dispute settlement mechanisms during the sixties, seventies and eighties. For example, during that period, the International Court of Justice had only a very limited

number of cases before it. In fact, between 1961 and 1983, only six cases were submitted to the Court, including two applications for review of UNAT judgments. As the Permanent Court of Arbitration (PCA) was also dormant, the Peace Palace gave the general impression of a sleeping beauty. Many of the international tribunals that we know today — the WTO Appellate Body, the International Tribunal on the Law of the Sea, and the Iran-United States Claims Tribunal, to name but a few — did not exist at that time.

6. The Manila Declaration was the General Assembly's response to this state of affairs. Against this backdrop, the Assembly's Special Committee drafted the Declaration in two parts: the first deals with substantive principles, whereas the second addresses international dispute settlement mechanisms.

7. As far as the substantive principles are concerned, the Declaration reiterates, with some minor nuances, the general obligation for States to settle their international disputes peacefully, through means of their own choosing, using regional arrangements for this purpose before, if necessary, referring their disputes to the Security Council.

8. I believe that, as compared to the Charter and resolution 2625, the first part of the Declaration innovates in at least three ways. *Firstly*, it establishes a general obligation for States "to act in good faith . . . with a view to avoiding disputes among themselves likely to affect friendly relations among States". Unlike Article 2, paragraph 2, of the Charter, it is not limited to the duty of States to fulfil in good faith the "obligations assumed by them in accordance with the . . . Charter". *Secondly*, the Declaration calls on States parties to disputes to continue to observe in their mutual relations the fundamental principles of international law concerning the sovereignty, independence and territorial integrity of States, as well as "other generally recognized principles and rules of contemporary international law". *Thirdly*, similarly to provisional measures indicated in certain cases by the Court, the Declaration requires all States parties to a dispute to "refrain from any action whatsoever which may aggravate this situation". Note that unlike the Court's provisional measures, which are directed only to the parties, the Declaration imposes this obligation on "other States". In doing so, it addresses the problem of proxy wars that was prevalent in the seventies and eighties.

9. Let me turn now to the Declaration's second part, on the means for international dispute settlement. This section elaborates on Chapter VI of the Charter and on the list of settlement mechanisms in Article 33. Accordingly, it reaffirms the role of the General Assembly and the Security Council and their subsidiary organs in the settlement of international disputes, and invites States parties to refer their disputes to the General Assembly and the Security Council. The Declaration also draws attention to "the role of the International Court of Justice" as the principal judicial organ of the United Nations, and "the facilities" it offers for the settlement of legal disputes. It says that it is "desirable" that States consider accepting the jurisdiction of the Court under *compromis* and compromissory clauses, as well as through declarations under Article 36, paragraph 2, of its Statute. One can read this part of the Declaration as a timid expression of faith in the Court by newly independent States, after the backlash generated by the 1966 Judgment of the Court in the *South West Africa* cases.

10. Today, almost four decades after the adoption of the Manila Declaration, two of the concerns that prompted its adoption seem to have disappeared. *First*, the universality of contemporary international law is no longer contested, even if more could of course be done to make international law more responsive to new challenges and the needs of all members of the international community. *Secondly*, the international community enjoys a far richer offer of dispute settlement mechanisms, both at the multilateral and regional level, than it did in 1982. All the courts and

tribunals that I referred to earlier have helped consolidate the institutional pillars of the rule of law at the international level. The Court, which previously had a limited number of cases before it, is now busier than ever. There are currently 16 cases pending before the Court. These cases involve countries from all world regions, including five European countries, six African countries, nine Latin and North American countries, and six Asian countries. Cases are increasingly brought to the Court on the basis of multilateral conventions containing compromissory clauses. The latest evidence of the growing confidence in the Court is the submission this year of the case concerning *Guatemala's Territorial, Insular and Maritime Claim (Guatemala/Belize)*. What is remarkable is that the case was submitted after the populations of both countries agreed in two separate referendums to the submission of their dispute to the Court.

11. Yet, the third reason prompting the adoption of the Manila Declaration — that is, the high number of international disputes — still remains a matter of concern. The cornerstone principles of the Charter and the Manila Declaration — the principles of the peaceful settlement of disputes, the prohibition of the use of force, and respect for territorial integrity — provide an indispensable starting point for addressing this concern. But we need to go further. We need to restore in international dealings between States the general principle of good faith. As the Court has stated on several occasions, the principle of good faith is "one of the basic principles governing the creation and performance of legal obligations" (*Nuclear Tests (Australia* v. *France), Judgment, I.C.J. Reports 1974*, p. 268, para. 46). We also need to be able to tackle the new developments and challenges that have emerged since the adoption of the Manila Declaration. Simply reaffirming and implementing the principles set out in the Declaration is not enough.

12. In the brief time allotted to me I cannot, of course, survey all the new developments and challenges that have surfaced. But let me highlight just two new developments and two new challenges. As far as new developments are concerned, I would like to point first to the changing nature of international disputes. During the last decade of the twentieth century, globalization and the liberalization of the international economy, as well as the development of human rights, have changed the nature of international disputes. As a consequence, the large majority of disputes in international society no longer concern so-called sovereign issues. Instead, they concern commercial, investment or trade issues, and human rights litigation. We have, of course, recently witnessed a surge in inter-State claims for violations of human rights. But otherwise, diplomatic protection has largely been set aside in favour of the direct right of private persons and entities to seek remedies for breaches of their rights through judicial or arbitral mechanisms. This is so in investor-State arbitration, where arbitration without privity has led to a significant increase in case numbers.

13. The second development concerns the growing number of regional courts and tribunals. This development is mainly a corollary of the development of regional economic communities (RECs), which has led to the establishment of the Andean Court of Justice, the NAFTA arbitration panels, the Mercosur Tribunal, the ECOWAS Court of Justice, the SADC Court of Justice and the East African Court of Justice, among others.

14. Moving on to the two new challenges. The first is to ensure that all the dispute settlement mechanisms listed in Article 33 of the Charter — negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, and resort to regional agencies or arrangements — play their role in the settlement of international disputes. We cannot attain the ultimate goal of maintaining international peace and security without the mutual support of these mechanisms. From this perspective, "the judicial settlement of international disputes, with a view to which the Court has been established, is simply an alternative to the direct and friendly settlement of such disputes between the Parties" (*Free Zones of Upper Savoy and the District of Gex, Order of 19 August 1929, P.C.I.J., Series A, No. 22*, p. 13). By the same token, when diplomatic means of dispute settlement

fail, parties must be able to refer to judicial or arbitral settlement. Without mutual support between legal and political means, dispute settlement will become a never-ending process, where actors may engage in dilatory tactics. I am therefore of the view that parties should find mechanisms for negotiations that would allow them to have recourse to arbitration or adjudication if negotiations fail to settle the dispute.

15. The second challenge I would mention here relates to the protection of human rights in the context of inter-State disputes. Disputes between moral persons should not be waged and won by looking at the costs inflicted on ordinary persons. This is the reason why, under the Geneva Conventions and Additional Protocols, it is prohibited to attack civilians and civilian objects during armed conflicts. I believe that, with the development of human rights throughout the world, the time has now come to put forward a principle requiring States parties to disputes to take all measures to avoid the adverse impact of their disputes on the rights of private individuals. For its part, the Court has been increasingly ordering provisional measures aimed at protecting human rights and humanitarian considerations in the context of inter-State disputes (see, for instance, *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran* v. *United States of America)*; *Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the* Temple of Preah Vihear (Cambodia *v.* Thailand) *(Cambodia* v. *Thailand)*; *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria)*; *Frontier Dispute (Burkina Faso/Republic of Mali)*). Nonetheless, we should aim for a greater humanization of international dispute settlement, even when cases are not pending before tribunals and courts. This would extend the scope of application of the "elementary considerations of humanity" which are "even more exacting in peace than in war" (*Corfu Channel (United Kingdom* v. *Albania), Merits, Judgment, I.C.J. Reports 1949*, p. 22).

Ladies and Gentlemen,

16. This brings us back to the question of the topicality of the Manila Declaration: do these changing circumstances regarding international dispute settlement urge a revisit of the Manila Declaration? The two recent developments and two challenges I have just mentioned, as well as the persistence of disputes in the international community, suggest that at least a reflection on this topic, including by the General Assembly, would be warranted. As it will soon be forty years since the Declaration was adopted, it is important to keep it relevant in the face of new developments and efficient in tackling new challenges.

I thank you for your attention.

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