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Report of the International Court of Justice

Note by the President of the General Assembly

I have the honour to circulate the text of the pre-recorded statement delivered by the President of the International Court of Justice, Judge Abdulqawi Ahmed Yusuf (see annex), which was played at the 19th plenary meeting of the seventy-fifth session of the General Assembly, held on 2 November 2020, pursuant to Assembly decision 75/506 of 13 October 2020.

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Annex

Statement by the President of the International Court of Justice, Judge Abdulqawi Ahmed Yusuf

[Original: English and French]

It is an honour for me to address the General Assembly for the last time during my presidency as it considers the annual report on the activities of the International Court of Justice (A/75/4). The Court greatly appreciates the Assembly's support of its work.

At the outset, I would like to take this opportunity to congratulate His Excellency Mr. Volkan Bozkır on his election to preside over the General Assembly at its seventy-fifth session. I wish him every success in carrying out his noble mission.

Since 1 August 2019, the starting date of the period covered by the Court's annual report, the Court's docket has remained full, with 15 contentious cases currently on its list, involving States from all regions of the world and touching on a wide range of issues, including maritime delimitation, diplomatic relations, reparations for breaches of the prohibition on the use of force, and alleged violations of bilateral and multilateral treaties concerning, among other things, the elimination of racial discrimination, the prevention of genocide and the suppression of the financing of terrorism.

In March 2020, the Court, like the other United Nations organs, suddenly found itself having to deal with the restrictions arising from the coronavirus disease (COVID-19) pandemic. It reacted very quickly to this exceptional situation, immediately adapting its methods of work to the new circumstances. It started to hold regular remote meetings to ensure a continued focus on judicial matters. This immediate reaction enabled the Court to carry out its functions with the same efficiency and dynamism as was previously the case. Similarly, the Court was able to switch, in a successful manner, to hybrid remote public sittings — by video link — both for its hearings and for the delivery of its judgments and substantive orders.

For this purpose, the Court made specific changes to its rules in order to clarify further the legal framework governing the holding of hybrid public sittings, allowing for both virtual and in-person participation. Specifically, on 22 June 2020, the Court amended article 59 of its rules to add a new paragraph which makes it clear that for health, security or other compelling reasons, the Court may decide to hold a hearing entirely or in part by video link. In keeping with Article 46 of the Statute and article 59 of the rules of Court, these hearings by video link continue to be accessible to the public by web streaming.

This move towards hybrid hearings has represented an unprecedented development in the manner in which the Court conducts its judicial activities. These changes have been implemented swiftly. The Court has shown its capacity to adapt its activities to a rapidly evolving situation. Indeed, the Court has been able to maintain its judicial output despite the restrictions brought about by the pandemic. Accordingly, during the period under review, the Court held hearings in five cases, delivered four judicial decisions and currently has four other cases under deliberation, in relation to which the Court will render judgment before its triennial renewal in February 2021.

On 8 November 2019, the Court delivered its judgment on the preliminary objections in the case concerning the *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation)*. On 14 July 2020, the Court rendered two judgments in the cases concerning the *Appeal Relating to the Jurisdiction of the ICAO Council under Article 84 of the Convention on International Civil Aviation (Bahrain, Egypt, Saudi Arabia and United Arab Emirates v. Qatar)* and the *Appeal Relating to the Jurisdiction of the ICAO Council under Article II, Section 2, of the 1944 International Air Services Transit Agreement (Bahrain, Egypt and United Arab Emirates v. Qatar)*. Finally, earlier in the year, on 23 January 2020, the Court issued an order on the request for the indication of provisional measures in relation to the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*.

At present, as I briefly mentioned, the Court has four cases under deliberation: one on the merits in the case concerning *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*; two in which it is dealing with preliminary objections, namely, the case concerning the *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)* and the case concerning *Alleged violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)* and, lastly, one case on jurisdiction concerning the *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*.

I will not go into the legal issues addressed by the Court in the four judicial decisions I have just mentioned, as was customary in the past, in view of the delivery of my statement today by video link. I will limit myself to describing them briefly starting with the judgment of the Court on the preliminary objections raised by the Russian Federation in the case brought against it by Ukraine on 16 January 2016. As the Assembly may recall, this case concerns alleged breaches by the respondent of obligations under the International Convention for the Suppression of the Financing of Terrorism (ICSFT) and the International Convention on the Elimination of All Forms of Racial Discrimination (CERD).

In its judgment of 8 November 2019, the Court found that it had jurisdiction, under both the CERD and the ICSFT, to entertain the claims made by Ukraine. The Court also found that the application was admissible in relation to the claims under the CERD. The case will therefore now proceed to the merits stage.

The Court also delivered two judgments in the cases concerning two appeals, which I have just mentioned, relating to the jurisdiction of the Council of the International Civil Aviation Organization (ICAO). Both cases have their origins in certain restrictive measures adopted by the applicant Governments against the State of Qatar in June 2017 with regard to Qatar-registered aircraft and non-Qatar registered aircraft flying to and from Qatar over their territories.

Reacting to these measures, Qatar filed an application with the ICAO Council in which it claimed that, through the adoption of these restrictive measures, Bahrain, Egypt, Saudi Arabia and the United Arab Emirates had violated their obligations under the Chicago Convention, and that Bahrain, Egypt and the United Arab Emirates had violated their obligations under the International Air Services Transit Agreement (IASTA). In both cases, the Governments concerned raised before the ICAO Council

preliminary objections to the jurisdiction of the Council, which the Council rejected, finding that it had jurisdiction to proceed to the merits of the cases. It was against these two decisions of the ICAO Council that the States I mentioned before decided to appeal in two separate cases submitted to the Court on the basis of article 84 of the Chicago Convention and article II of the IASTA Convention. In both cases, the Court found that the ICAO Council had jurisdiction to hear the case and that the applications filed by Qatar before the ICAO Council were admissible.

The Court also rendered an order on provisional measures on 23 January 2020 in the case concerning the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia v. Myanmar)*. As the Assembly is aware, the case involves alleged atrocities perpetrated against the Rohingya minority in Myanmar in violation of the Genocide Convention. In its application instituting proceedings before the Court, the Gambia asked for a series of provisional measures aimed at preserving its rights as a State party to the Genocide Convention, pending the Court's final decision in the case.

One specific issue raised by this high-profile dispute was the question of the standing of the Gambia to bring a case before the Court in relation to Myanmar's alleged violations without being "specially affected" by the alleged acts. In that regard, the Court found that the Gambia has prima facie standing to submit to the Court the dispute with Myanmar with a view to ascertaining the alleged failure of that State to comply with its obligations erga omnes partes under the Convention.

The Court also found that the factual elements in the case file were sufficient for it to conclude that at least some of the rights asserted by the Gambia were plausible. Consequently, the Court unanimously indicated provisional measures and ordered the State of Myanmar to take all measures within its power to prevent all acts of genocide against the members of the Rohingya group in its territory. The Court also called on Myanmar to ensure that its military and any organizations or persons under its control do not commit acts of genocide and to preserve evidence related to the alleged acts in violation of the Genocide Convention. Under the order, Myanmar was also directed to submit a periodical report to the Court on its compliance with the measures indicated until a final decision has been rendered by the Court. The Court therefore chose to adopt a proactive approach in monitoring the situation on the ground to further strengthen the protection afforded by its decision on provisional measures.

I would now like to say a few words about the Court's decision a few weeks ago to arrange for an expert opinion in relation to the question of reparations in the case concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*. In the view of the Court, the estimates submitted by the applicant raise questions of a technical nature for which the Court could benefit from the assistance of experts. Therefore, four independent experts were appointed by order of the Court after hearing the parties. As provided for in article 67 of the rules of Court, both parties will be given the opportunity to comment on the report of the experts and to ask questions to the experts, if they so wish. In this context, the proposed budget of the Court for 2021 contains a request to cover the costs of experts, and it is our hope that this request will meet with the approval of the Assembly.

The Statute of the Court, which is based on that of the Permanent Court of International Justice, will be 100 years old on 16 December this year. It is noteworthy that this Statute has served two courts without much change to its provisions for a hundred years. It is one of the most enduring and well-known international legal

documents in the world. It remains, in my view, the best text that legal talent could devise for international adjudication. It has served as the basis for the evolution of international adjudication and has profoundly influenced the formulation of statutes for other international and regional courts created in the past 70 years. I believe that it still has a lot to offer for the future development of international law and that it will continue to inspire adjudicatory processes and procedures throughout the world.

I will now turn to some recent developments on various matters that were mentioned in my previous statements made to the General Assembly. First, with respect to the Judicial Fellows programme of the Court, I indicated last year that the Court was seeking to make its Judicial Fellows programme, in view of its success, as widely accessible as possible to talented young law graduates from all over the world (see A/74/PV.20). I also referred to the idea of setting up, for this purpose, a trust fund to facilitate the access to the programme of bright students from universities around the world, and not just those from well-endowed universities based in a few developed countries.

It is my understanding now that a number of States, from all regional groups of the United Nations, have shown interest in the establishment of such a trust fund by the Organization, and are actively preparing a draft resolution to be submitted to the General Assembly during its current session. The Court is grateful to them for their initiative and efforts. We hope that many other States or groups of States will join them, and that the resolution will soon be submitted for consideration and approval by the General Assembly.

As the Assembly knows, and this is the second matter that I will address, the Court has always had excellent relations with its host country, the Netherlands, and has welcomed with great appreciation having its seat at the Peace Palace in The Hague. I can confirm that those relations are still in good standing. However, they are being tested by the proposed renovation of the Peace Palace. As I informed the Assembly last year, the Court fully understands that the building, which is more than a hundred years old, requires such renovation and the removal of asbestos from certain of its parts (see A/74/PV.20).

However, the main issue is the lack of concrete and adequate information, as well as appropriate consultations, on the implications that such a renovation and the consequent relocation of the Court announced by the Government of the Netherlands, might have on the functioning of the Court and on its judicial activities. The Peace Palace has been the home of the Court and its predecessor, the Permanent Court of International Justice, for almost a hundred years. As a result, this iconic building has become part and parcel of the Court’s identity and image.

The Court therefore expects that a decision on its relocation, which we have been informed might last eight years, will not be taken by the Government without prior meaningful consultations on the possible impact of such relocation on the Court’s judicial work. I conveyed our concerns in a letter to the Minister for Foreign Affairs of the Netherlands at the end of July this year and have formally requested such consultations. We therefore look forward to a favourable reply and to an appropriate consideration of those concerns by the host Government. In our view, in the interest of the peaceful settlement of international disputes, there is no need for the functioning of the Court, or our long-standing good relations with the Netherlands, to be negatively affected by the renovation of the Peace Palace.

This is my last appearance before the General Assembly as President of the International Court of Justice. I have greatly enjoyed the opportunity to engage in a yearly exchange with the members of the General Assembly on the work and activities of the Court. Each year, the statements of the delegations have reaffirmed the important role that the Court plays in the peacemaking and peacebuilding architecture of the United Nations based on the rule of law, as well as the great confidence that the Assembly places in the Court's work.

The growing trust that States have placed in the Court for the judicial settlement of their disputes in the last few years is a great source of pride for us and, I believe, for the General Assembly and other organs of the United Nations. Yet the strength of the Court is not only based on the trust placed in it by States. It also derives from the Court's tested rules of procedure, its methods of work, the quality of its jurisprudence and the absolute dedication of its judges.

It is for this reason that, over the last three years, the Court has continued to review its rules. It made amendments to some of its rules of procedure in 2019, as I reported to the Assembly last year, and also at the beginning of this year. The purpose of these amendments is to modernize, update and clarify the inner workings of the Court and to make our institution more efficient and transparent. There is no doubt, for example, that the recent shift in the manner in which proceedings are conducted in response to the constraints created by the COVID-19 pandemic have brought the working methods of the Court squarely into the twenty-first century through the expanded use of digital technology.

It is also with this objective in mind that the Court has sought to set out clearly defined rules and guidelines regulating non-judicial activities of Members of the Court with a view to the avoidance of incompatibilities. I already had occasion to inform the General Assembly in 2018 of the Court's decision that Members of the Court would not participate in investor-State arbitration or in commercial arbitration (see A/73/PV.24). In the course of the past two years, the Court has continued to consider and adopt a new framework on the separate but related question of external activities of Members of the Court other than arbitration, particularly academic activities. This framework is meant to strike a balance between allowing occasional participation in academic activities and ensuring that such activities do not impinge on the judicial work of Members of the Court.

Similarly, the Court has adopted guidelines and rules on how judges should deal with invitations from Member States, in an effort to establish a more uniform practice and to avoid any misperception about the nature of such interactions. The Court has clarified that invitations to visit from States that have cases pending before it may not be accepted by any of its Members. As a result, for the first time in its history, a compilation of decisions adopted by the Court on the avoidance of incompatibilities that may arise from extrajudicial activities of its Members has now been approved and is at the disposal of all judges elected to the Court.

More than ever before, the Court stands ready to continue its efforts to contribute, within the bounds of its Statute, to the protection and advancement of the international rule of law and to the peaceful settlement of disputes among States. In this respect, one of the fundamental requirements of the Statute of the Court is for States to consent to the Court's jurisdiction. This consent is most often expressed either through a declaration of acceptance of the compulsory jurisdiction of the Court or through a compromissory clause inserted in a multilateral or a bilateral treaty.

Compromissory clauses in multilateral conventions, some of which were adopted by the General Assembly, provide the basis for the jurisdiction of the Court in a large majority of cases submitted to it. Currently, out of the 15 cases pending before the Court, 9 cases were instituted on the basis of compromissory clauses included in multilateral conventions. The General Assembly had rightly underlined, in 1974, the advantage that there is for States

> "of inserting in treaties, in cases considered possible and 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" (*resolution 3232 (XXIX), para. 2*).

However, there is today a noticeable decline in the number of new treaties that include compromissory clauses providing for recourse to the Court. I would therefore like to take this opportunity to call on the General Assembly to take once again a leadership role in advocating for the continued inclusion, particularly in multilateral treaties, of such compromissory clauses. The insertion of these clauses facilitates the peaceful settlement of disputes and reinforces the centrality of the rule of law within the multilateral system.

I will conclude my address with two personal reflections.

First, let me say that "the edifice of law carefully constructed by mankind over a period of centuries", to which the Court referred to in paragraph 92 of its judgment of the case concerning *United States diplomatic and consular staff in Tehran*, stands solid and strong today. Its pillars will resist occasional voices of discord and will outlive those who might try to shake them.

Secondly, in these challenging times for humankind, owing to the COVID-19 pandemic, I find it relevant to quote from a poem by the poet Saadi of Shiraz, who already in the thirteenth century had beautifully expressed the interconnectedness of humankind in the following verses,

> "Human beings are members of a whole
> In creation of one essence and soul.
> If one member is afflicted with pain,
> Other members uneasy will remain.
> If you have no sympathy for human pain,
> The name of human you cannot retain."

In some African cultures, this interconnectedness of human beings is expressed with one word — *ubuntu* — which translated into English may be expressed as, "I am because of you".

I thank members of the General Assembly for their attention and wish the General Assembly at its seventy-fifth session every success.