SPEECH OF HIS EXCELLENCY JUDGE ABDULQAWI A. YUSUF,
PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE,
TO THE SIXTH COMMITTEE

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The UN@75: international law and the future we want

Mr. Chairman of the Sixth Committee,
Mr. President of the General Assembly,
Excellencies,
Ladies and Gentlemen,

1. It is a great pleasure for me to be with you, albeit remotely, at this International Law Day. I would like to commend the Sixth Committee for its decision to celebrate the development of international law at this seventy-fifth anniversary of the United Nations. For good reason, I should say. Without the United Nations Charter, and the subsequent practice and work of the United Nations organs, international law, as we know it today, would not have been there. Let me explain.

2. The legal order created under the auspices of the United Nations is the first to be based on the equal rights of peoples and the sovereign equality of all States. It is the first legal order, at the international level, to be endowed with a universal vocation and to make room for the culture, civilization and legal traditions of the peoples of all continents. That is why it is worthwhile to recall, albeit briefly, the situation that prevailed before the United Nations Charter.

3. Let us take as an example the predecessor of our Court, the Permanent Court of International Justice, which was established in 1922 pursuant to Article 14 of the Covenant of the League of Nations. There is no doubt that the Permanent Court of International Justice played, in the inter-war period, an important role in the advancement of the rule of law at the international level. However, its role was hamstrung by the exclusion of more than half of humanity from participating in, or contributing to, the shaping of an international legal order. Thus, claims concerning the territories or the resources of African and Asian countries, for example, were litigated before the Court between colonial powers and other European States, while the peoples and territories most closely affected were excluded from the proceedings, because they were not considered to be subjects of the law which prevailed at the time.

4. Those cases included the *Nationality Decrees in Tunisia and Morocco*, between France and Great Britain; the *Mavrommatis* case, which was between Greece and the United Kingdom; and the *Oscar Chinn* case, which was between the United Kingdom and Belgium. No Moroccans or Tunisians, no Palestinians, no Congolese were there to defend their interests. The very existence of such a situation was averse to the development of international law.

5. This situation changed with the adoption of the United Nations Charter 75 years ago. It changed, among other things, because of the determination expressed in the preamble of the Charter "to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small" (United Nations Charter, preamble, para. 2).

6. It changed because relations among nations would henceforth be based, under Article 1 of the Charter, "on respect for the principle of equal rights and self-determination of peoples". It changed because all Members of the United Nations were required under Article 2 of the Charter to "refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state". These purposes and principles of the United Nations Charter laid down the groundwork for the development of an all-inclusive international law, respectful of human rights and the rights of all peoples and nations, be they large or small, weak or powerful. It took, however, some time for these changes to take hold on the international plane.

7. For example, in the case of our Court, even in 1966, six years after the adoption by the United Nations General Assembly of resolution 1514 (XV) on the basis of the principles of the Charter, the Court failed to acknowledge fully in the *South West Africa* cases the changes brought about in the international legal order by the fundamental principles of the Charter (see *South West Africa (Ethiopia* v. *South Africa; Liberia* v. *South Africa), Second Phase, Judgment, I.C.J. Reports 1966*).

8. I can proudly state today that the Court was able to recover swiftly from this mishap, and to contribute substantially in subsequent years to the progressive development of the law of the Charter. How did it do that?

9. It did so by recognizing in the *Namibia* Advisory Opinion, among others, that in the domain of decolonization, as elsewhere, "the *corpus iuris gentium* has been considerably enriched, and this the Court, if it is faithfully to discharge its functions, may not ignore" (*Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, para. 53). It also observed in the same Advisory Opinion that

> "viewing the institutions of 1919 [that is the League of Nations and its system of mandates], the Court must take into consideration the changes which have occurred in the supervening half-century, and its interpretation cannot remain unaffected by the subsequent development of law, through the Charter of the United Nations and by way of customary law" *(ibid.)*.

10. By recognizing in this Advisory Opinion, and in others such as *Western Sahara* and *Chagos*, the existence in international law of the right of peoples to self-determination, the Court contributed to the realization of this fundamental right, which is a precondition for the existence of all other human rights.

11. Already in the *Barcelona Traction* case, the Judgment on which was delivered in 1970, only four years after the *South West Africa* cases, the Court laid the groundwork for its subsequent pronouncements on human rights, and their primordial importance in the international legal order established by the United Nations Charter, through its famous dictum on *erga omnes* obligations. It described these obligations as obligations derived, in contemporary international law (and this reference to contemporary international law is very important here), from the outlawing of acts of aggression, and of genocide, as also from the principles and rules concerning the basic rights of the human person, including protection from slavery and racial discrimination (*Barcelona Traction, Light and Power Company, Limited, (Belgium* v. *Spain), Second Phase, Judgment, I.C.J. Reports 1970*, paras. 33-34).

12. Thus, apart from its unusual and unfortunate stumbling in the *South West Africa* cases, one can say that the Court has significantly contributed and will continue to contribute to the development of international law in general, and to human rights law in particular, and has strengthened the basis for the future development and protection of human rights.

13. Turning now briefly to the Court and the development of the international law of the environment; the role played by the Court is not extraneous to the fact that this area of international law is usually referred to as a branch of the law developed by the courts. In 1996, in its Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons*, the Court clearly reaffirmed the existence of the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or areas beyond national control, and referred to it as "part of the corpus of international law relating to the environment" (*Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996 (I)*, para. 29). And the Court went even further by specifying the rationale and legal basis of the duty of all States to protect the environment. It explained that "the environment is not an abstraction but represents the living space, the quality of life and the very health of human beings, including generations unborn" (*ibid.*, para. 29). Here, the Court made a link between human rights and the protection of the environment. It insisted on the protection of the rights not only of those human persons who are alive today, but also the rights of generations unborn, thus emphasizing our role as custodians of the environment for future generations.

14. A key principle of international environmental law is the principle of prevention, which the Court described in the *Pulp Mills* case "as a customary rule [that] has its origins in the due diligence that is required of a State in its territory" (*Pulp Mills on the River Uruguay (Argentina* v. *Uruguay), Judgment, I.C.J. Reports 2010 (I)*, para. 101). Also in *Pulp Mills*, the Court significantly underlined that the requirement of an environmental impact assessment in a transboundary context was to be considered as a customary law obligation (*ibid.*, para. 204).

15. Finally, in 2018, in its first case on compensation for environmental damage, namely the *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua)* case, the Court held that "damage to the environment, and the consequent impairment or loss of the ability of the environment to provide good and services, is compensable under international law". It further pointed out that such compensation may include two types of reparation: (1) indemnification for the impairment or loss of environmental goods and services in the period prior to recovery; and (2) payment for the restoration of the damaged environment (*Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica* v. *Nicaragua), Compensation, Judgment, I.C.J. Reports 2018 (I)*, paras. 42-43). The Court therefore laid down, for the first time in a judgment by an international court, the principles and parameters to be applied in cases on compensation for environmental damage.

16. To conclude, Mr. Chairman, let me say the following. As long as there was no rule of law at the international level, almost everything was permitted: world wars, barbarism, widespread atrocities without any accountability, colonization and oppression of peoples, enslavement of human beings, and destruction of the human environment. With the United Nations Charter, humanity has for the first time laid down the basis of a rule of law at the international level, based on the equality of all nations before the law and undergirded by the clear principles of the Charter. That in itself is a major achievement in human civilization.

17. However, for a rule of law to prevail at the international level, as stated in the preamble of the United Nations Charter, conditions must be established "under which justice and respect for

the obligations arising from treaties and other sources of international law can be maintained" (United Nations Charter, preamble, para. 3). One of those conditions is the existence of an international court of universal and general jurisdiction that can act as a guardian of the rule of law and contribute to its progressive development. This is what the ICJ represents and that is the reason why it has played the role I have just described in the development of international law in the past 75 years, in addition to its main mission of the peaceful settlement of disputes among States. I am confident that it will continue to play an even more important and more influential role in the future.

18. I thank you for your kind attention.

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