DISCOURS DE S. EXC. M. ABDULQAWI AHMED YUSUF, PRESIDENT DE LA COUR INTERNATIONALE DE JUSTICE, A L'OCCASION DE LA SOIXANTE-QUINZIEME SESSION DE L'ASSEMBLEE GENERALE DES NATIONS UNIES

Le 2 novembre 2020

Monsieur le président,
Excellences,
Mesdames et Messieurs les délégués,

C'est pour moi un honneur que de m'adresser à l'Assemblée générale, pour la dernière fois de mon mandat de président, alors que celle-ci procède à l'examen du rapport annuel de la Cour internationale de Justice sur ses activités. La Cour est très reconnaissante à cette auguste Assemblée de l'appui qu'elle prête à ses travaux.

Avant toute chose, je tiens à saisir cette occasion pour féliciter Son Excellence M. Volkan Bozkir de son élection à la présidence de la soixante-quinzième session de cette éminente Assemblée ; tous mes vœux de succès l'accompagnent dans l'exercice de cette noble mission.

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Depuis le 1er août 2019, date du début de la période couverte par le rapport annuel de la Cour, le rôle de cette dernière est demeuré très fourni : 15 affaires contentieuses sont actuellement pendantes, qui font intervenir des Etats de toutes les régions du monde et portent sur un large éventail de sujets, notamment la délimitation maritime, les relations diplomatiques, les réparations pour des violations de l'interdiction du recours à la force, et des violations alléguées de traités bilatéraux et multilatéraux concernant, entre autres, l'élimination de la discrimination raciale, la prévention du génocide et la répression du financement du terrorisme.

Monsieur le président,

En mars 2020, la Cour, comme les autres organes de l'Organisation des Nations Unies, a soudainement dû composer avec les restrictions découlant de la pandémie de COVID-19. Elle a réagi très promptement à cette situation exceptionnelle en adaptant sans délai ses méthodes de travail aux nouvelles circonstances. Elle a commencé à tenir régulièrement des réunions à distance afin de garder le cap dans son action en matière judiciaire. Cette grande réactivité lui a permis de s'acquitter de ses fonctions avec la même efficacité et dynamisme qu'avant la pandémie. De la même manière, la Cour est passée, avec succès, à l'ère des séances publiques hybrides par liaison vidéo, tant aux fins de ses audiences que pour le prononcé de ses arrêts et ordonnances sur des questions de fond. A cet effet, la Cour a apporté des changements spécifiques à son Règlement afin d'inscrire dans un cadre plus clair ce passage à une salle d'audience hybride, qui permet une participation à la fois virtuelle et présentielle. Le 22 juin 2020, elle a ainsi amendé l'article 59 de son Règlement en lui ajoutant un nouveau paragraphe qui précise que, lorsque des raisons sanitaires, des motifs de sécurité ou d'autres motifs impérieux l'exigent, elle peut décider de tenir tout ou partie de ses audiences par liaison vidéo. Pour respecter l'article 46 du Statut et l'article 59 du Règlement de la Cour, ces audiences par liaison vidéo restent accessibles au public puisqu'elles sont diffusées sur Internet.

La Cour a également modifié le paragraphe 2 de l'article 94 de son Règlement afin de se ménager clairement la possibilité de procéder à la lecture de sa décision dans une affaire, par liaison vidéo, lorsque des raisons sanitaires, des motifs de sécurité ou d'autres motifs impérieux l'exigent.

Ce passage à des audiences hybrides constitue une évolution sans précédent dans la manière dont la Cour conduit ses activités judiciaires. Il a été mis en œuvre très rapidement. La Cour a ainsi montré sa faculté d'adaptation face aux situations en rapide évolution. Elle est, de fait, parvenue à maintenir sa productivité judiciaire malgré les restrictions dues à la pandémie. Ainsi, pendant la période considérée, la Cour a tenu des audiences dans cinq affaires, rendu quatre décisions judiciaires, et en est actuellement au stade du délibéré en quatre autres affaires, dans lesquelles elle rendra ses arrêts avant son renouvellement triennal de février 2021.

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Le 8 novembre 2019, la Cour a rendu son arrêt sur les exceptions préliminaires en l'affaire relative à l'*Application de la convention internationale pour la répression du financement du terrorisme et de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Ukraine c. Fédération de Russie)*. Le 14 juillet 2020, elle a rendu deux arrêts dans les affaires de l'*Appel concernant la compétence du Conseil de l'OACI en vertu de l'article 84 de la convention relative à l'aviation civile internationale (Arabie saoudite, Bahreïn, Egypte et Emirats arabes unis c. Qatar)* et de l'*Appel concernant la compétence du Conseil de l'OACI en vertu de l'article II, section 2, de l'accord de 1944 relatif au transit des services aériens internationaux (Bahreïn, Egypte et Emirats arabes unis c. Qatar)*. Enfin, plus tôt cette année, le 23 janvier 2020, la Cour a rendu une ordonnance sur la demande en indication de mesures conservatoires présentée en l'affaire relative à l'*Application de la convention pour la prévention et la répression du crime de génocide (Gambie c. Myanmar)*.

Actuellement, comme je l'ai brièvement dit, quatre affaires sont en délibéré : une sur le fond, l'affaire relative aux *Immunités et procédures pénales (Guinée équatoriale c. France)*, deux dans lesquelles la Cour examine des exceptions préliminaires (à savoir l'affaire relative à l'*Application de la convention internationale sur l'élimination de toutes les formes de discrimination raciale (Qatar c. Emirats arabes unis)* et l'affaire relative à des *Violations alléguées du traité d'amitié, de commerce et de droits consulaires de 1955 (République islamique d'Iran c. Etats-Unis d'Amérique)*), et une dernière sur la compétence qui concerne la *Sentence arbitrale du 3 octobre 1899 (Guyana c. Venezuela)*.

Monsieur le président,

Je poursuis maintenant ma présentation en anglais.

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I will not go into the legal issues addressed by the Court in the four judicial decisions mentioned above, as was customary in the past, in view of the delivery of the speech 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 you may recall, this case concerns alleged breaches by the Respondent of obligations under the International Convention for the Suppression of the Financing

of Terrorism and the International Convention on the Elimination of All Forms of Racial Discrimination. I will refer to these two treaties as the ICSFT and CERD respectively.

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

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The Court also delivered two Judgments in the cases concerning two appeals, which I have just mentioned, relating to the jurisdiction of the ICAO Council.

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 as well as non-Qatar registered aircraft flying to and from Qatar over their territories.

Reacting to these measures, Qatar filed an application with the International Civil Aviation Organization 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 (or "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.

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Mr. President,

The Court also rendered an Order on provisional measures on 23 January 2020 in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (The Gambia* v. *Myanmar)*. As you are 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 thus 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.

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Mr. President,

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.

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Mr President,

The Statute of the Court, which is based on that of the Permanent Court of International Justice, will be one hundred years old on 16 December this year.

It is noteworthy that this Statute has served the two courts, without much change to its provisions, for 100 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.

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Mr. President,

I will now turn to some recent developments on various matters that were mentioned in my previous addresses to the General Assembly.

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First, the Judicial Fellowship Programme of the Court. I indicated last year that the Court was seeking to make its Judicial Fellowship Programme, in view of its success, as widely accessible as possible to talented young law graduates from all over the world. 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 United Nations, 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.

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Mr. President,

As you all know, and this is the second issue that I will address, the Court has always had excellent relations with its host country, the Netherlands, and has regarded with great appreciation having its seat at the Peace Palace in The Hague. I can confirm that those relations are still in good standing. They are, however, being tested by the proposed renovation of the Peace Palace. As I informed you last year, the Court fully understands that the building, which is more than hundred years old, requires such renovation and the removal of asbestos from certain parts.

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 100 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 its judicial work. I have 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. There is no need, in our view,

that the functioning of the Court, in the interest of the peaceful settlement of international disputes, or our long-standing good relations with the Netherlands, be negatively affected by the renovation of the Peace Palace.

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Mr. President,

This is my last appearance before you 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 delegates have reaffirmed the important role that the Court plays in the peace-making and peacebuilding architecture of the United Nations based on the rule of law, as well as the great confidence that this Assembly places in its 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 this 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.

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It is for this reason that, over the last three years, the Court has continued to review its Rules and has made amendments to some of its Rules of Procedure in 2019, as I reported last year to you, as well as 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.

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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 this Assembly in 2018 of the Court's decision that Members of the Court would not participate in investor-State arbitration or in commercial arbitration.

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 been approved and is at the disposal of all judges elected to the Court.

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Mr. President,

The Court stands ready, more than ever before, 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 this 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".

That was resolution 3232 of the General Assembly of the twenty-ninth session (GA resolution 3232 (XXIX), 12 November 1974, para. 2. See also GA resolution 171 (II), 14 November 1947, para. 2)**.**

There is however 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.

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Mr. President,
Excellencies,
Distinguished Delegates,

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 in the *Tehran hostages* case, 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 humanity, due 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 humanity 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: "**U'buntu"**, which translated into English may be expressed as **"I am because of you"**.

I thank you for your attention and wish this seventy-fifth session of the General Assembly every success.

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