SPEECH OF JUDGE JOAN E. DONOGHUE,
PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE,
AT THE 73RD SESSION OF THE INTERNATIONAL LAW COMMISSION

1 June 2022

Mr. Chairman,
Ladies and gentlemen,
Colleagues and friends,

I am honoured to address the International Law Commission on the occasion of its seventy-third session. I welcome this opportunity to meet with members of the Commission for a second time, continuing the long-standing tradition of the annual exchange of views between our two institutions. I regret that I am only able to join you today in a virtual format and I very much hope that I shall have a chance in the future to join you in person.

Before I begin my remarks, allow me to say a few words about Judge Antônio Augusto Cançado Trindade, who passed away in Brasilia only a few days ago. Many of you knew him as a generous friend and colleague, as well as a prolific scholar, legal adviser and international judge. Judge Cançado Trindade joined the International Court of Justice in 2009, having already served as a Judge and President of the Inter-American Court of Human Rights, as Legal Adviser to the Ministry of External Relations of Brazil and as a professor at several universities across four continents. Always faithful to his unique, principled outlook as a judge and educator, Antônio took pride in emphasizing the rich Latin American perspective on public international law, while always mindful of integrating that contribution into the broader framework of international law.

Members of the Commission will be familiar with the many contributions made by Judge Cançado Trindade in his long and distinguished career. One theme among others that was close to his heart was the "humanization" of international law as an increasingly "people-centered" discipline. In the General Course on Public International Law, which he delivered in 2005 at the Hague Academy of International Law, and in his judicial opinions and scholarly writings, Judge Cançado Trindade developed what he called his "*leitmotiv* of identification of a *corpus juris* increasingly oriented to the fulfillment of the needs and aspirations of human beings, of peoples and of humankind as a whole", overcoming "the purely inter-State dimension of international law"[1].

Much more can and will be said about Judge Cançado Trindade. I am grateful that these remarks before the Commission gave me an opportunity to say a few words about a colleague and friend who will be sorely missed by the Court and by international lawyers around the world.

I shall now turn to the remainder of my remarks. Today, I would like to offer a brief update on the decisions rendered by the Court and new cases submitted to it since our meeting last year, before turning to some remarks concerning the role of judges *ad hoc* at the ICJ.

Since our last meeting in July 2021, the Court has held hearings in six cases and issued three judgments and three orders on requests for the indication of provisional measures.

On 12 October 2021, the Court delivered its Judgment on the merits in the case concerning *Maritime Delimitation in the Indian Ocean (Somalia* v. *Kenya)*, in which it was called upon to delimit

[1] A. A. Cançado Trindade, "The Humanization of Consular Law: The Impact of Advisory Opinion No. 16 (1999) of the Inter-American Court of Human Rights on International Case-law and Practice", (2007) 6 (1) *Chinese Journal of International Law* 1, p. 2.

the maritime spaces between these two countries[2]. In its Judgment, the Court first found that there was no agreed maritime boundary between Somalia and Kenya and then proceeded to delimit the territorial sea, the exclusive economic zone and the continental shelf. One noteworthy feature of this case is that the Court delimited the continental shelf beyond 200 nautical miles, as it was requested to do by both Parties.

Also during 2021, the Court held hearings on the question of reparations in the case concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda)*. In its Judgment on the merits delivered in 2005, the Court had found, among other things, that Uganda had violated various international obligations by its conduct in connection with the armed conflict on the territory of the Democratic Republic of the Congo between 1998 and 2003 and that it was under an obligation to make reparation for the injury caused[3]. The Court had also ruled that, failing agreement between the Parties, the question of reparations due would be settled by the Court. The matter remained in the hands of the Parties for many years. Eventually, in view of their failure to settle the question of reparations by agreement, it fell to the Court to decide on reparations.

On 9 February 2022, the Court delivered its Judgment on the question of reparations, awarding the DRC two hundred twenty-five million US dollars for damage to persons, forty million US dollars for damage to property and sixty million US dollars for damage related to natural resources[4]. This recent Judgment sets out the Court's appreciation of the standard of full reparation in a case of large-scale international law violations that occurred as part of a complex international armed conflict. As to the facts, the inevitable evidentiary challenges were compounded by the time that had elapsed since the events. It is also notable that, in the reparations phase of the proceedings, the Court arranged for an expert opinion pursuant to Article 67 of its Rules, regarding certain heads of damage that had been alleged by the Applicant.

In the third Judgment issued in the period under consideration, the Court decided the merits of the case concerning *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia)*[5]. Since Colombia is not a party to the United Nations Convention on the Law of the Sea, the applicable law in this case was customary international law, and the Court was required to consider whether a number of provisions of that convention reflected customary international law. On 21 April 2022, the Court found that Colombia had violated Nicaragua's sovereign rights and jurisdiction in Nicaragua's exclusive economic zone in a number of ways, including by interfering with fishing and marine scientific research activities of Nicaraguan-flagged or Nicaraguan-licensed vessels and with the operations of Nicaraguan naval vessels. The Court further found that the area that Colombia calls its "integral contiguous zone", which it established around Colombian islands in the western Caribbean Sea, was not in conformity with customary international law relevant to contiguous zones. Finally, ruling on a counter-claim of Colombia, the Court found that the straight baselines which Nicaragua had established were not in conformity with customary international law.

When I spoke to the Commission last summer, I mentioned that no cases had been filed during the year 2020, a departure from what we had seen in recent years. I speculated that the pandemic might have been the reason, hoping that this would turn out to be an aberration, not a new trend. Perhaps I should have recalled the admonition, "be careful what you wish for", because between September 2021 and April 2022, four new applications were filed with the Court, each of them

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[2] *Maritime Delimitation in the Indian Ocean (Somalia* v. *Kenya), Judgment,* 12 October 2021.

[3] *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Judgment, I.C.J. Reports 2005*, p. 168.

[4] *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda), Reparations, Judgment,* 9 February 2022.

[5] *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia), Judgment*, 21 April 2022.

accompanied by a request for the indication of provisional measures. Of course, continued resort to the Court is a welcome development, but provisional measures requests, which must always be accorded priority, do place a strain on our schedule and, in particular, on the finite resources of our capable and hard-working Registry.

So now I shall say a few words about each of these new cases.

Proceedings in two cases were instituted by Armenia and Azerbaijan respectively on 16 and 23 September 2021, following the hostilities that had broken out between the two countries in September 2020, in cases that are named *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia* v. *Azerbaijan)* and *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan* v. *Armenia)*. On 7 December 2021, the Court indicated provisional measures in both cases[6]. In the first case, the Court ordered Azerbaijan, *inter alia*, to protect all persons captured in relation to the 2020 hostilities between the two countries who remain in detention, and to ensure their security and equality before the law; to take all necessary measures to prevent the incitement and promotion of racial hatred and discrimination, including by its officials and public institutions, targeted at persons of Armenian national or ethnic origin; and to take all necessary measures to prevent and punish acts of vandalism and desecration affecting Armenian cultural heritage. In the second case, the Court ordered Armenia, *inter alia*, to take all necessary measures to prevent the incitement and promotion of racial hatred, including by organizations and private persons in its territory, targeted at persons of Azerbaijani national or ethnic origin.

On 26 February 2022, Ukraine filed an Application against the Russian Federation in the case concerning *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine* v. *Russian Federation).* The Application was filed two days after the Russian Federation had launched what it called a "special military operation" against Ukraine. The Court held a hearing on the request for the indication of provisional measures at which, regrettably, the Russian Federation declined to appear. In a document received in the Registry shortly after the closure of the hearing, the Russian Federation set out its position that the Application and Request "manifestly fall beyond the scope of the [Genocide] Convention and thus the jurisdiction of the Court". On 23 March 2022, the Court indicated provisional measures, ordering the Russian Federation, *inter alia*, immediately to suspend the military operations that it had commenced on 24 February 2022 in the territory of Ukraine and to ensure that any military or irregular armed units which may be directed or supported by it, as well as any organizations and persons which may be subject to its control or direction, take no steps in furtherance of those military operations[7].

Finally, on 29 April 2022, Germany instituted proceedings against Italy in the case concerning *Questions of Jurisdictional Immunities of the State and Measures of Constraint against State-Owned Property (Germany* v. *Italy)*. In its Application, Germany contends that since the 2012 Judgment of the Court in the earlier case concerning *Jurisdictional Immunities of the State (Germany* v. *Italy: Greece intervening)*[8], Italian domestic courts have entertained a significant number of new claims against Germany in violation of the latter's sovereign immunity. The Application contained a request for the indication of a number of provisional measures. Prior to the opening of the public hearing on the request for the indication of provisional measures, which had been fixed for 9 and 10 May 2022, however, Germany informed the Court that, following the adoption of a decree and certain statements

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[6] *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia* v. *Azerbaijan), Provisional Measures, Order of 7 December 2021*; *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Azerbaijan* v. *Armenia), Provisional Measures, Order of 7 December 2021*.

[7] *Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine* v. *Russian Federation), Provisional Measures, Order of 16 March 2022*.

[8] *Jurisdictional Immunities of the State (Germany* v. *Italy: Greece intervening), Judgment, I.C.J. Reports 2012 (I)*, p. 99.

made by Italy, it had decided to withdraw its request for the indication of provisional measures, and the hearing was not held[9].

Before turning to the topic of judges *ad hoc*, I would like to mention the progress that has been made in the implementation of the Trust Fund for the Judicial Fellowship Programme of the International Court of Justice, which was established in 2020 pursuant to General Assembly resolution 75/129[10].

Since 1999, the Court has operated a training programme, the Judicial Fellowship programme (previously called the "university trainee" programme). Each year, participating universities nominate candidates among their recent graduates, 15 of whom are selected to join the Court as Judicial Fellows assigned to a judge for a period of about 10 months. Prior to the creation of the Trust Fund, participation in the Judicial Fellowship programme required financial support from each sponsoring university. This requirement precluded nominations by less-endowed universities, particularly those in developing countries.

The establishment of the Trust Fund, which is open for contributions by States, international organizations and other entities, was motivated by a desire to increase the participation of aspiring international lawyers who are nationals of developing countries and who are sponsored by universities located in developing countries. Under this initiative, the Trust Fund — rather than the relevant nominating university — will provide funding to a number of selected candidates.

I am delighted to inform you that the Trust Fund is off to a great start. Thanks to significant contributions by several States and one professional organization, three of the 15 Judicial Fellows who will arrive at the Court in the coming fall are young lawyers from universities in developing countries whose fellowships will be funded through awards from the Trust Fund.

I might also mention that interest in this training programme has been steadily growing, and can be said to have exploded in the most recent application period. Last year, when we selected the group of Fellows who are currently at the Court, we were very pleased at what was then a record number of applications from sponsoring institutions — 29. This year, the number of institutions that proposed to fund their candidates grew from 29 to 35, and 71 additional institutions submitted candidates for whom they sought Trust Fund support. In total, 198 young international lawyers were nominated by 106 universities for the 15 positions available in the 2022-2023 cohort. Members of the Court are of course delighted by the increased interest in the ICJ's work by a diverse range of institutions and applicants.

I move now to the last portion of my remarks, which will be focused on the institution of *ad hoc* judges at the ICJ. Members of the Commission will be familiar with Article 31 of the Statute of the Court, which empowers a State party to a case to choose a judge *ad hoc* whenever the Court does not include upon the Bench a judge of that State's nationality. Once appointed, the judge *ad hoc* takes part in the decision in that case on terms of complete equality with the 15 Members of the Court[11].

The Court inherited this institution from its predecessor, the Permanent Court of International Justice, whose Statute also provided for the possibility for States parties to a case to choose a judge where the Bench did not comprise one of their nationals[12]. The inclusion of this provision in the

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[9] *Questions of Jurisdictional Immunities of the State and Measures of Constraint against State-Owned Property (Germany* v. *Italy), Withdrawal of the Request for the indication of provisional measures, Order of 10 May 2022*.

[10] UNGA resolution 75/129, "Trust fund for the Judicial Fellowship Programme of the International Court of Justice" (UN doc. A/RES/75/129), 21 December 2020.

[11] ICJ Statute, Article 31, paragraph 6.

[12] PCIJ Statute, Article 31.

PCIJ Statute was not without controversy, however. The Advisory Committee of Jurists appointed by the League of Nations to draft the Statute in 1920 was sharply divided on the issue.

Proponents put forward a number of objectives that would be achieved by allowing a party to appoint an additional judge, who, at the time, was sometimes referred to as a "national judge", rather than as an "*ad hoc* judge". It was suggested that the possibility of these appointments would serve to maintain equality between the parties to a case in circumstances where only one of them had one of its nationals among sitting judges[13], would assure representation for "small States"[14] and would permit the *ad hoc* judge to "explain" the Court's decisions to his or her fellow countrymen "in a clear and satisfactory manner"[15].

As discussions in the Advisory Committee of Jurists progressed, what emerged as the key rationale of the institution of the *ad hoc* judge was the desire to shore up States' confidence in the Court and its judicial process. In the words of eminent members of the Committee, States would be reassured that "there will be at least one person upon the Court who is able to understand them"[16] and that "their case will be defended as they wish it to be done"[17].

On the other hand, concerns were voiced among the drafters of the PCIJ Statute that the institution of the *ad hoc* judge was a creature of arbitration that had no place in a standing judicial body[18]. Discussions of the proposal also shined a light on more fundamental questions about the ability of all judges to be impartial in relation to States with which they had ties such as nationality or appointment. The idea that a judge *ad hoc* had to be included on the Bench to "balance" the presence of a sitting judge seemed to be premised on an assumption of some degree of partiality, or at least the appearance of partiality, by the sitting judge in favour of his or her state of nationality[19].

While ultimately retaining the institution of the judge *ad hoc*, the Advisory Committee of Jurists sought to dispel concerns about the influence of nationality on judges in its 1920 Report to the League of Nations, stating that "the Court is a body of independent judges elected regardless of their nationality . . . there is no danger that they will fail in their duty by showing any partiality towards the State whose subject they are"[20].

It is instructive to contrast this expression of confidence in judicial impartiality with the views voiced only eight years later by a Committee of Judges of the Permanent Court of International Justice appointed in 1927 to consider proposed revisions to the Rules of that Court. With respect to a proposal concerning the possible participation of so-called national judges in the preparation of advisory opinions, the Committee noted:

> "Of all influences to which men are subject, none is more powerful, more pervasive, or more subtle, than the tie of allegiance that binds them to the land of their homes and kindred and to the great sources of the honors and preferments for which

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[13] Advisory Committee of Jurists, *Procès-verbaux of the Proceedings of the Committee*, 16 June – 24 July 1920, p. 528 (*per* Lord Phillimore).

[14] *Id.*, p. 538 (*per* Descamps).

[15] *Id.*, p. 529 (*per* Adatci).

[16] *Id.*, p. 538 (*per* Root).

[17] *Id.*, pp. 532-533 (*per* Descamps).

[18] *Id.*, p. 531 (*per* Loder).

[19] E. Lauterpacht, "The Role of *Ad Hoc* Judges", in: C. Peck & R. S. Lee (eds.), *Increasing the effectiveness of the International Court of Justice : proceedings of the ICJ/UNITAR Colloquium to Celebrate the 50th Anniversary of the Court* (Martinus Nijhoff Publishers/UNITAR, 1997), 370, p. 375.

[20] Advisory Committee of Jurists, *Procès-verbaux of the Proceedings of the Committee*, 16 June – 24 July 1920, pp. 720-721.

> they are so ready to spend their fortunes and to risk their lives. This fact, known to all the world, the Statute frankly recognizes and deals with"[21].

My own opinion is that each of these perspectives has something to offer. Nationality surely does have an impact on the way in which a judge approaches adjudication, along with other aspects of the judge's background, such as the legal tradition in which the judge was trained, the judge's prior professional experience and areas of particular expertise and interest. To borrow the words of then President Schwebel, we are all, to some extent, "prisoners of our own experience" — and international judges are no exception[22].

The ICJ's Statute and Rules acknowledge the role of nationality. No two elected Members of the Court may be of the same nationality[23]. The President may not exercise the functions of the Presidency in respect of a case to which his or her State of nationality is a party[24]. In addition, during elections of ICJ judges in the Security Council and the General Assembly, my own impression is that the nationality of candidates is the dominant consideration of most Member States.

Of course, even if one takes the view that nationality can have an impact on a judge's approach to adjudication, it does not automatically follow that the institution of the *ad hoc* judge is necessary. Rather than "adding" one or two judges to the bench, the alternative could have been to "subtract" a judge by disqualifying Members of the Court from hearing cases involving their State of nationality. Indeed, this possibility was extensively discussed and ultimately discarded in the process leading to the adoption of the PCIJ Statute.

This idea of "subtraction" of a judge of the nationality of a party is a convincing alternative to the institution of a judge *ad hoc* only if one believes that the primary value of an appointment of a judge *ad hoc* is the potential to balance, or neutralize, the opposing views of a judge of the nationality of the other party. But, as I mentioned earlier, the potential to neutralize another judge's vote was not the key rationale justifying the inclusion of provisions concerning judges *ad hoc* in the PCIJ Statute, nor does it satisfactorily explain the importance and continued relevance of that institution to date. Even assuming that a State can always name as a judge *ad hoc* someone who will slavishly vote in favour of that State, a guarantee of one vote out of 16 or 17 is of very limited value to the appointing State.

As I see it, the real value of the institution of the *ad hoc* judge does not lie in the probability that the judge will vote for the State of appointment.

Judge *ad hoc* Elihu Lauterpacht eloquently explained a very different understanding of the role of a judge *ad hoc* in his separate opinion in the *Bosnian Genocide* case:

> "[C]onsistently with the duty of impartiality, by which the *ad hoc* judge is bound, there is still something specific that distinguishes his role. He has, I believe, the special obligation to endeavour to ensure that, so far as is reasonable, every relevant argument in favour of the party that has appointed him has been fully appreciated in the course of

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[21] Report of the Committee appointed on 2 September 1927 on the revision of the Rules of Court, *P.C.I.J. Rep., Series E, No. 4*, 75.

[22] S. M. Schwebel, "National Judges and Judges Ad Hoc of the International Court of Justice", (1999) 48 (4) *International & Comparative Law Quarterly*, 889, p. 895.

[23] ICJ Statute, Article 3, paragraph 1.

[24] ICJ Rules of Court, Article 32, paragraph 1.

collegial consideration and, ultimately, is reflected — though not necessarily accepted — in any separate or dissenting opinion that he may write"[25].

In Judge Lauterpacht's conception of the role to be played by a judge *ad hoc*, the possibility of such an appointment allows each State party to be reassured that there is somebody in the room during the Court's private deliberations who is especially attentive to the interests and equities of that State. If there is balancing to be had, it is not so much in the final vote, but rather in private exchanges within the Court. The dynamic is easy for you to appreciate, even if you have not been present for the deliberations of this particular court. If the plenary is moving towards the view that exhibit 123 proves State A's point, a judge *ad hoc* may be in a position to remind the plenary of exhibit 456, which leads in the opposite direction. At the same time, judges *ad hoc*, like Members of the Court of the nationality of a party, will lose credibility within the deliberation room if they constantly take the floor to advocate the views of the appointing State. As former President Higgins noted, "the best of the *ad hoc* judges will not be an extra advocate for the team". She observed that "there is a strong feeling in the Court that that is not what the *ad hoc* judge should be doing"[26].

Having examined the appointments of judges *ad hoc* during the life of the Court, my impression is that States, in making these appointments, have increasingly had in mind the role suggested by Judge Lauterpacht and President Higgins. This leads me to mention a notable trend in the appointment of judges *ad hoc*.

In the case in which Judge Lauterpacht made the observation that I have quoted, the Republic of Bosnia and Herzegovina did not choose one of its nationals as *ad hoc* judge. Instead, it chose someone with stature and gravitas on par with the Members of the Court. In the 1920s, by contrast, the working assumption of the Advisory Committee of Jurists responsible for drafting that Court's Statute was that States would invariably choose judges *ad hoc* among their nationals, as is suggested by the Committee's use of the expression "national judge" to describe the *ad hoc* judges. This assumption also found expression in relevant provisions of the 1922 Rules of the Permanent Court of International Justice[27], as well as in the early judgments of that Court[28]. The reference to nationality was subsequently removed from the Rules of Court[29], but, during the era of the PCIJ and the earlier decades of the ICJ, States continued to select their citizens as judges *ad hoc* in the vast majority of cases.

This is no longer the case. To illustrate this point, we can compare the appointments made in cases instituted during the first 10 years of this Court's existence (i.e. 1946-1955) with those made in the proceedings instituted over the last 10 years (i.e. 2012-2021). In the earlier group of cases, over 80 per cent of the judges *ad hoc* appointed were nationals of the appointing State. That proportion has dropped to 18 per cent in the last 10 years.

This trend corresponds, I think, to the growing recognition that a State gains little by simply selecting a judge who has specialized knowledge of its domestic laws and circumstances, nor one whom it regards as a reliable vote in its favour. Instead, States appear to place an increasing focus on identifying persons with extensive knowledge of the Court and its procedures, persons with particular

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[25] *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina* v. *Yugoslavia (Serbia and Montenegro)), Further Requests for the Indication of Provisional Measures, Order of 13 September 1993, I.C.J. Reports 1993*, p. 325, separate opinion of Judge *ad hoc* Lauterpacht, para. 6.

[26] C. Brower, E. Weiss, R. Higgins & T. Meron, "Plenary Keynote: Decision-making in International Courts and Tribunals: A Conversation with Leading Judges and Arbitrators", (2011) 105 *Proceedings of the ASIL Annual Meeting* 220, p. 230 (Higgins).

[27] PCIJ Rules of Court of 30 January 1922, Articles 2, 3 and 4.

[28] See, e.g., *S.S. "Wimbledon", Judgment, 1923, P.C.I.J. Series A, No. 1* (17 August 1923) and *Mavrommatis Palestine Concessions, Judgment (Jurisdiction), 1924, P.C.I.J. Series A, No. 2* (30 August 1924).

[29] PCIJ Rules of Court of 11 March 1936, Articles 2, 3 and 4.

expertise relevant to the subject-matter of a case and persons who are likely to be seen as credible and fair by the Members of the Court[30]. Judge Lauterpacht's reflections, which have been endorsed by several judges *ad hoc* in subsequent cases[31], align with my observations about the ways in which *ad hoc* judges can best contribute to the Court's work. I hasten to add, by the way, that I am not suggesting that a person of the nationality of the appointing State can never have these qualities.

The possibility of naming a judge *ad hoc* is an important feature of the Court's Statute because of its potential to increase the appetite of States to entrust their disputes to the Court. Proponents of the Court can never take for granted the willingness of States to accept the Court's jurisdiction, either generally or in relation to specific treaties or disputes. The Court must always strive to demonstrate through its decisions and its procedures that this is a forum that States can trust to settle their dispute fairly and in accordance with international law. The basic proposition put forward by the drafters of the PCIJ Statute a century ago is still sound: there is real value in an institution that strengthens the confidence of every State that its arguments and equities will be fully appreciated and duly considered as part of the Court's deliberations[32].

My final comment on the institution of the judge *ad hoc* circles back to the suggestion in the 1920s that this institution would help to ensure the representation on the bench of what were called "small States". The Advisory Committee of Jurists operated at a time when a significant part of the world's population lived in colonies or non-self-governing territories. A handful of States were central to the delineation of the international institutional architecture that included the PCIJ and we can imagine that the "small States" of concern to the Advisory Committee were likely smaller European States. By contrast, there are now 193 UN Member States. The contemporary membership of the United Nations is diverse in so many ways, including culture, language, legal traditions, political systems and levels of development. This diversity enriches the field of international law while at the same time complicating the search for common ground in response to the many challenges that the world faces. In this context, the appointment of judges *ad hoc* who are impeccably qualified to serve on the Bench, hail from countries in all regions of the world and are trained in diverse legal traditions can also contribute to strengthening the Court, measured in terms of the quality of its jurisprudence and the received legitimacy of its decisions.

With this, Mr. Chairman, I propose to conclude my remarks. I look forward to a fruitful discussion with the members of the Commission. I am aware that a number of you are involved as counsel before the Court and I am confident that you will be careful not to raise questions about pending matters. With that exception, I am open to a discussion of whatever topics interest the members of the Commission.

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[30] B. Simma & J. Ortgies, "*Ad Hoc* Judge", in: H. Ruiz Fabri (ed.), *MPEPIL* (January 2019), para. 126.

[31] *Sovereignty over Pulau Litigan and Pulau Sipadan (Indonesia/Malaysia), Judgment, I.C.J. Reports 2002*, p. 625, dissenting opinion of Judge *ad hoc* Franck, para. 9; *Request for an Examination of the Situation in Accordance with Paragraph 63 of the Court's Judgment of 20 December 1974 in the* Nuclear Tests (New Zealand *v.* France) *Case, Order, I.C.J. Reports 1995*, p. 288, dissenting opinion of Judge *ad hoc* Sir Palmer, para. 118; *Questions relating to the Obligation to Prosecute or Extradite (Belgium* v. *Senegal), Provisional Measures, Order of 28 May 2009, I.C.J. Reports 2009,* p. 201, separate opinion of Judge *ad hoc* Sur, para. 2; *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo* v. *Belgium), Judgment, I.C.J. Reports 2002*, p. 100, separate opinion of Judge *ad hoc* Bula-Bula, para. 3; *Frontier Dispute (Benin/Niger), Judgment, I.C.J. Reports 2005*, p. 152, dissenting opinion of Judge *ad hoc* Bennouna, para. 3.

[32] H. Thirlway, *The International Court of Justice* (OUP 2016), p. 14; I. Scobbie, "Une hérésie en matière judiciaire — The Role of the Judge *ad hoc* in the International Court", (2005) 4 *Law & Prac Int'l Cts & Tribunals* 421, p. 422; W. Samore, "National Origins *v.* Impartial Decisions: A Study of World Court Holdings", (1956) 34 *Chi-Kent L Rev* 193, p. 210. See also, R. Kolb, *The International Court of Justice* (Hart Publishing 2014), p. 119; B. Simma & J. Ortgies, "*Ad Hoc* Judge", in: H. Ruiz Fabri (ed.), *MPEPIL* (January 2019), para. 118.