

**SPEECH BY H.E. JUDGE JOAN E. DONOGHUE, PRESIDENT OF THE INTERNATIONAL COURT
OF JUSTICE, ON THE OCCASION OF THE SEVENTY-SIXTH SESSION
OF THE UNITED NATIONS GENERAL ASSEMBLY**

AS DELIVERED

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Mr. President,

Excellencies,
Distinguished Delegates,

It is an honour for me to address the General Assembly today, for the first time since commencing my mandate as President of the International Court of Justice, on the occasion of your examination of the Court's annual report. The Court greatly values this long-standing tradition, which allows it each year to keep members of the General Assembly informed of its activities.

Last year, the restrictions arising from the COVID-19 pandemic compelled my predecessor, Judge Abdulqawi Yusuf, to speak to this Assembly remotely from The Hague. I am grateful that I am able, this year, to address the General Assembly in person in New York.

At the outset, I would like to take this opportunity to congratulate His Excellency Mr. Abdulla Shahid, on his election as President of the seventy-sixth session of this eminent Assembly and to wish him every success in carrying out this distinguished role.

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Mr. President,

Before I begin my overview of the Court's recent activities, I would like to pay tribute, on behalf of the Court, to Judge James Crawford, our esteemed friend and fellow Member of the Court, who passed away on 31 May this year. Judge Crawford was a warm and generous-spirited colleague who will be greatly missed. At every stage of his incredibly full life, be that as a gifted young barrister and academic in his native Australia, as an inspirational professor at Cambridge University, as a leading figure in the International Law Commission, as renowned counsel pleading before the Court or as an outstanding Member of the Court, Judge Crawford contributed inestimably to the field of public international law. He is sorely missed.

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Mr. President,

Since 1 August 2020 — 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 territorial and

maritime delimitation, the status of international watercourses, reparations for internationally wrongful acts, and alleged violations of bilateral and multilateral treaties concerning, among other things, diplomatic relations, the elimination of racial discrimination, the prevention of genocide and the suppression of terrorism financing.

While no new cases were added to the Court's docket in 2020, a period that coincided with the initial phases of the COVID-19 pandemic, the Court has thus far been seised of three new contentious cases in 2021. Proceedings concerning questions of land and maritime delimitation and sovereignty over islands were instituted in March 2021 by way of a Special Agreement between the Gabonese Republic and the Republic of Equatorial Guinea. In September 2021, an Application instituting proceedings was filed by Armenia against Azerbaijan in respect of alleged violations of the International Convention on the Elimination of All Forms of Racial Discrimination. A further Application submitted by Azerbaijan against Armenia earlier this month alleges violations of the same Convention.

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Mr. President,

Excellencies,

The entire period covered in the Court's latest annual report took place during the COVID-19 pandemic. Nonetheless, during that period, the Court has held hybrid hearings in six cases, with three further sets of hearings held in the fall of 2021, and it has delivered five judgments. I shall describe these judgments shortly. Before doing so, I also note that the Court is currently deliberating four cases: one on the question of reparations in the case concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*; one on the merits in the case concerning *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*; and two relating to the requests for the indication of provisional measures in the recently-filed cases concerning *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Armenia v. Azerbaijan)* and *(Azerbaijan v. Armenia)*.

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Mr. President,

As is customary, I shall now give a brief account of the substance of the decisions delivered by the Court in the period under review, beginning with the Judgment of 11 December 2020 on the merits in the case concerning *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*. These proceedings were instituted by Equatorial Guinea on 13 June 2016. The Judgment of 11 December 2020 addressed the merits of a dispute concerning the legal status of a building located at 42 Avenue Foch in Paris. The Applicant alleged that the building in question housed the premises of its embassy and was thus entitled to inviolability and other protections set out in Article 22 of the Vienna Convention on Diplomatic Relations of 1961. French authorities had taken certain measures with respect to the property in question in the context of a criminal investigation, including searches of the building and seizure of certain items. According to Equatorial Guinea, these measures violated the receiving State's obligations under the Vienna Convention. In its Judgment, the Court concluded that the Convention could not be interpreted so as to allow a sending State unilaterally to impose its

choice of mission premises upon the receiving State where the latter has objected to this choice, provided that the objection is communicated in a timely manner and is neither arbitrary nor discriminatory in character. The Court found that the building on Avenue Foch had never acquired the status of premises of the mission and thus that France had not violated its obligations under Article 22 of that Convention.

The issues presented in this case arose under the Vienna Convention on Diplomatic Relations which, as you all know, sets out rules relating to diplomatic missions and their personnel that have been described as being among “the oldest established and the most fundamental rules of international law”. In its recent Judgment in the case between Equatorial Guinea and France, the Court carefully balanced the respective rights and obligations of sending and receiving States under that Convention, consistent with its prior jurisprudence.

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On 18 December 2020, the Court delivered its Judgment on jurisdiction in the case concerning the *Arbitral Award of 3 October 1899 (Guyana v. Venezuela)*. In that case, Guyana had instituted proceedings against Venezuela, requesting the Court, *inter alia*, to confirm the validity of the Arbitral Award issued on 3 October 1899, as well as of the boundary established pursuant to that award. Guyana invoked, as the basis of the jurisdiction of the Court, a provision in the bilateral Agreement signed in Geneva in 1966 for the settlement of the dispute concerning the frontier between Venezuela and Guyana. Pursuant to that agreement, Guyana argued, the Parties “mutually conferred upon the Secretary-General of the United Nations the authority to choose the means of settlement of the controversy”. Venezuela responded, in a Memorandum submitted to the Court, that it considered that the Court manifestly lacked jurisdiction and announced that it would not participate in the proceedings. On 30 June 2020, the Court held a hearing in which only Guyana participated.

An aspect of this case of particular note is the role played by the Secretary-General in the decades-long process that led to the submission of this case to the Court. Following attempts to resolve the dispute through negotiations and other means of peaceful settlement set out in the Geneva Agreement, the matter was referred by the Parties to the Secretary-General in 1983. In early 1990, the Secretary-General chose the good offices process as the appropriate means of settlement. This process was led by Personal Representatives appointed by successive Secretaries-General for almost three decades. In January 2018, the Secretary-General announced that, “significant progress not having been made toward arriving at a full agreement for the solution of the controversy”, he had “chosen the International Court of Justice as the means that is now to be used for its solution”.

In its Judgment on jurisdiction of 18 December 2020, the Court found that, by concluding the Geneva Agreement, both Parties had authorized the Secretary-General to choose judicial settlement by the ICJ, the “principal judicial organ of the United Nations” under Article 92 of the Charter, as one of the means for the resolution of the dispute listed in Article 33 of the Charter of the United Nations. The Court’s jurisdiction was thus found to be established. The Court found that it had been validly seised of the dispute by way of the Application of Guyana, and that it had jurisdiction to entertain Guyana’s claims concerning the validity of the 1899 Award and the related question of the definitive settlement of the dispute regarding the land boundary between the territories of the Parties. However, the Court concluded that it did not have jurisdiction over certain other claims of Guyana. The case has now proceeded to the merits stage.

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On 3 February 2021, the Court rendered its Judgment on preliminary objections in 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)*. The case was instituted by the Islamic Republic of Iran against the United States on the basis of the compromissory clause contained in a bilateral treaty, the 1955 Treaty of Amity. Iran's claims centre on the decision of the United States in May of 2018 to reimpose a number of restrictive measures on Iran and Iranian nationals and companies and on further restrictive measures announced by the United States.

The United States raised five preliminary objections in the case. The first two objections related to the jurisdiction of the Court *ratione materiae* to entertain the case on the basis of Article XXI, paragraph 2, of the Treaty of Amity. The United States contended that the true subject-matter of this case was a dispute as to the application of the Joint Comprehensive Plan of Action, an instrument entirely distinct from the Treaty of Amity, and that the vast majority of the measures challenged by Iran concerned trade and transactions between Iran and third countries, or their companies and nationals, and fell thus outside the scope *ratione materiae* of the Treaty of Amity. The third objection presented by the United States contested the admissibility of Iran's Application by reason of alleged abuse of process and on grounds of judicial propriety. The fourth and fifth objections were based on subparagraphs (b) and (d) of Article XX, paragraph 1, of the Treaty of Amity, providing that this treaty does not preclude the application of measures "relating to fissionable materials" or that are necessary to protect a State's "essential security interests".

On 3 February 2021, the Court rendered its Judgment on preliminary objections raised by the United States, rejecting each of the five objections and finding that it had jurisdiction, on the basis of the bilateral treaty, to entertain the Application filed by Iran and that the Application was admissible. The case is now proceeding to the merits phase.

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On 4 February 2021, the Court rendered its Judgment on preliminary objections in the case instituted by Qatar against the United Arab Emirates and concerning the *Application of the International Convention on the Elimination of All Forms of Racial Discrimination* (also known as "CERD"). The case was initiated by Qatar on the basis of the compromissory clause of CERD. Qatar's Application concerned a series of measures taken by the UAE on or after 5 June 2017, including the severance of diplomatic relations with Qatar, the closure of UAE airspace and seaports to "Qataris", certain measures relating to Qatari media and speech in support of Qatar and measures which Qatar characterized as "travel bans" for Qatari nationals and as the "expulsion" of Qatari residents and visitors from the UAE. Qatar contended that these measures violated the UAE's obligations under CERD. The UAE raised preliminary objections to the jurisdiction of the Court and the admissibility of the Application. A central question for the Court was whether the term "national origin" in the definition of racial discrimination in Article 1, paragraph 1, of CERD encompasses current nationality. The Court found that that was not the case and, consequently, that the measures complained of by Qatar that were based on the current nationality of its citizens did not fall within the scope of CERD. The Court further held that CERD only concerns racial discrimination against individuals or groups of individuals and thus that Qatar's claim relating to Qatari media corporations did not fall within the scope of CERD. With respect to Qatar's claim of indirect discrimination, the Court found that the relevant measures did not entail, either by their purpose or by their effect, racial discrimination within the meaning of CERD. The case has thus been removed from the Court's docket.

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Finally, earlier this month, on 12 October 2021, the Court gave its Judgment on the merits in the case concerning *Maritime Delimitation in the Indian Ocean (Somalia v. Kenya)*. The case was initiated in August 2014 by Somalia, which invoked, as jurisdictional basis, the declarations recognizing the Court's jurisdiction as compulsory that had been made by the two States. Somalia asked the Court to delimit the maritime spaces between the two countries, advocating for a maritime boundary that followed an unadjusted equidistance line in all maritime areas. For its part, Kenya argued that there was already an agreed maritime boundary between the Parties, because Somalia had acquiesced in a boundary following a parallel of latitude.

Both Somalia and Kenya submitted two rounds of written pleadings on the merits. In addition, shortly before the opening of the oral proceedings on the merits, Kenya produced "new documentation and evidence", including several volumes of annexes, as well as a document explaining "the nature and relevance of the new and additional evidence". The Court authorized the production of these materials, on the understanding that Somalia would have the opportunity to comment thereon during the hearings. From 15 to 18 March 2021, the Court held hearings in which only Somalia participated.

In its Judgment of October 2021, the Court found, first, that there was no agreed maritime boundary between the two countries. It then proceeded to delimit the territorial sea, the exclusive economic zone and the continental shelf, including the continental shelf beyond 200 nautical miles. In its Judgment, the Court plotted the maritime boundary in the territorial sea using a median line, as provided for in Article 15 of the United Nations Convention on the Law of the Sea. For the exclusive economic zone and the continental shelf up to 200 nautical miles, the Court followed its usual three-step methodology, namely it plotted a provisional equidistance line, examined whether any relevant circumstances existed requiring an adjustment to the line to achieve an equitable result, and indeed found that the line needed adjusting on this basis, and lastly, verified that the resulting boundary line did not produce any marked disproportionality. Finally, in response to an allegation made by Somalia, the Court found that Kenya had not violated its international obligations through its maritime activities in the disputed area.

One noteworthy feature of this case was the fact that both States had asked the Court to delimit the continental shelf beyond 200 nautical miles. The Court noted that both Somalia and Kenya had made submissions to the Commission on the Limits of the Continental Shelf in accordance with Article 76, paragraph 8, of the United Nations Convention on the Law of the Sea. In those submissions, both States had claimed that, in most of the area of overlapping claims beyond 200 nautical miles, their continental shelf extends to a maximum distance of 350 nautical miles. Further, neither of the Parties questioned the existence of the other Party's entitlement to a continental shelf beyond 200 nautical miles or the extent of that claim. The Court decided to proceed to the delimitation of the continental shelf beyond 200 nautical miles, and concluded that the maritime boundary between the two States beyond 200 nautical miles should continue along the same geodetic line as the boundary line within 200 nautical miles until it reaches the outer limits of the Parties' continental shelves, which are to be delineated by Somalia and Kenya on the basis of recommendations to be made by the Commission on the Limits of the Continental Shelf, or until it reaches the area where the rights of third States may be affected.

Mr. President,

Before leaving the topic of judicial activities, I shall briefly offer some observations concerning the Court's approach to preliminary questions of jurisdiction and admissibility. Having now spent eleven years on the Court, I would like to share my own impression that the Court takes great care in assessing the question whether it has jurisdiction in a given case. This is a matter that requires careful attention in many of our cases, as illustrated by those that were active in the period under review.

During that period, as I have noted, the Court delivered three judgments on jurisdiction and admissibility. Two of those cases proceeded to the merits stage, while the third case was removed from the docket after the Court found that it had no jurisdiction to entertain the Application. In each of the two further cases in which the Court delivered judgments on merits, there had been a previous judgment responding to preliminary objections raised by the Respondent. Jurisdictional issues also feature prominently in proceedings concerning requests for the indication of provisional measures, which the Court only orders when it finds that the provisions relied on by the applicant appear *prima facie* to afford a basis on which its jurisdiction could be founded.

In considering questions of jurisdiction, the Court is mindful that its authority hinges, among other things, on the unwavering respect for the boundaries of its jurisdiction, since the ICJ Statute made consent a cornerstone of the jurisdictional framework. Both the Court's procedural framework and its substantive approach to jurisdictional issues reflect this priority. At the same time, the Court pays due attention to applicant States' equities and to their entitlement to take advantage of mechanisms for the peaceful settlement of international disputes, where such mechanisms are available. While respondent States should not be required to litigate international disputes on the merits where there is no valid jurisdictional basis to do so, the Court also owes it to applicant States to hear and adjudicate all cases fully where jurisdiction *does* exist.

It is hoped that the ICJ's attention to these competing and complementary imperatives and to the complex jurisdictional issues that may arise in proceedings before it, together with the high quality of the Court's judgments and the fairness and transparency of its procedures, will contribute to maintaining and enhancing member States' confidence in the Court.

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Mr. President,

Let me now turn to a few important non-judicial matters that I would like to share with the Assembly.

To start, I shall provide a brief overview of the amendments made to the Rules of Court and the Practice Directions in the reporting period.

First, in December 2020, the Court adopted a new Article 11 of the Resolution concerning the Internal Judicial Practice of the Court. This Article provides for the possibility for the Court to establish an *ad hoc* committee, composed of three judges, to assist it in monitoring the implementation of the provisional measures that it indicates. The committee is expected to examine the information supplied by the parties in this regard, to report periodically to the Court, and to recommend potential action to be taken by the Court, if required. While the amendments to Article 11 of the Resolution make the availability of this procedure known to present and potential litigants before the Court, and to the public at large, the establishment and operation of an *ad hoc* committee

remains a matter for the Court's internal procedure, as is the case for the other modalities of its internal deliberations described elsewhere in the Resolution.

The second amendment to the Court's governing instruments addresses the growing tendency of States to append voluminous annexes to their written pleadings. Teams involved in the preparation of a case may believe that the party they represent gains an advantage by providing extensive documentation in support of its pleadings to the Court. As you all know from your work in the General Assembly, however, shorter, more focused materials are often more persuasive and effective than a vast collection of documents of varying degrees of relevance and reliability. Excessive volumes of documentation entail a burden for the judges to identify the central pieces of evidence among those extensive annexes, as well as significant translation, processing and reproduction costs for the Court. Accordingly, in January 2021, the Court strengthened Practice Direction III to provide for a page limit applicable to annexes attached by a party to its written pleadings unless the Court decides, upon request of a party, that the limit can be exceeded in light of the particular circumstances of the case.

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I would also like to offer an update on the progress made with respect to the Trust Fund for the Court's Judicial Fellowship Programme. Each year, through this programme, participating law schools 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 ten months. While at the Court, Judicial Fellows attend public hearings of the Court, research and write memoranda on legal questions and factual aspects of pending cases and are involved in other aspects of the Court's work. To date, participation in this training programme has required financial support from each Judicial Fellow's sponsoring university, which undertakes to fund the stipend, health insurance and travel costs of selected candidates. While participating universities in developed countries do include among their nominees individuals from underrepresented regions, it had become clear to the Court over the years that the funding required from sponsoring institutions has precluded nominations by less-endowed universities, particularly those in developing countries.

The Trust Fund for the Court's Judicial Fellowship Programme, an initiative spearheaded by my predecessor, was motivated by a desire to widen and diversify the pool of participants and to encourage access to the Programme by bright young international lawyers who are nationals of developing countries and study at universities located in developing countries. Under this Programme, the Trust Fund — rather than the relevant nominating university — will provide funding to selected candidates. The Court is delighted that the General Assembly has given its full support to this initiative, adopting resolution 75/129 of 14 December 2020, in which it requested the Secretary-General to establish and administer the Trust Fund. On 16 April 2021, the Trust Fund was formally established by the Secretary-General. The Department of Operational Support was designated as the main administrator of the Fund, with the assistance of the Capacity Development Programme Management Office of the Department of Economic and Social Affairs. It is now open to States, international financial institutions, donor agencies, intergovernmental and non-governmental organizations and natural and juridical persons to make voluntary financial contributions to ensure the success of the scheme. In this regard, I am delighted to inform you that donations have already been made by a few States, and it is hoped that other interested parties will follow suit. Now that resources have begun to be mobilized, the Court is hopeful that, for next year's Programme, starting in the fall of 2022, the cohort of judicial fellows will include one or more talented young law graduates who are eligible to benefit from the Trust Fund.

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Mr. President,

Excellencies,
Distinguished Delegates,

Upon my election as President of the Court in February 2021, I was well aware that the beginning of my Presidency coincided with an historically significant year for our institution. On 19 April 2021, we reached the 75th anniversary of the Court's inaugural sitting, which took place on 18 April 1946 in the Great Hall of Justice. The Court had initially planned to commemorate its 75th anniversary by holding a solemn sitting at the Peace Palace, in the presence of distinguished guests. Regrettably, due to the pandemic, the Court has had to postpone this event until such time as it could be held in a safe and fitting manner.

In the meantime, however, making the most of the virtual platforms available to it, the Court has marked this important milestone in a number of ways. Some of you may have read the article we published to mark the event in the UN Chronicle, the United Nations' flagship online magazine. Also in April, a commemorative video statement was published on our website, which stressed that the motivation driving the original proponents of a standing international court is the same motivation that drives us today — a quest to strengthen and promote the peaceful resolution of disputes. The nature of those disputes and the body of international law applied to resolve them may evolve and change over the years, but, as is shown by the Court's jurisprudence, the international community can rely on the principal judicial organ of the United Nations to deliver authoritative and impartial judgments and advisory opinions, whatever the field of public international law. Another initiative to encourage public interest in the Court's 75th anniversary was the posting on the ICJ website of a virtual tour of the Peace Palace and of a new video on the activities and role of the Court. Last but not least, our Registry has completed a book project on the work and achievements of the "World Court". This new illustrated book, which will be published later this year, has been written for the general public with the aim of fostering a better understanding of the ICJ's role and providing answers to the most frequently asked questions about its procedures and activities.

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Mr. President,

Over the past year, the Court — like the General Assembly and virtually any other national and international institution — has had to deal with the ongoing impact of the COVID-19 pandemic. At the outset of the pandemic, in the spring of 2020, the Court briefly postponed certain hearings, while making adjustments to its working methods in response to this unprecedented public health crisis. As my predecessor explained in last year's speech before this Assembly, the Court quickly adapted to this new reality, such that public sittings, deliberations and other private meetings of the Court have been largely held in a hybrid format. The Rules of Court were also amended in June 2020 to clarify that hearings and readings of the Court's judgments may take place by video link when this is necessary for health, security or other compelling reasons.

To ensure the smooth running of hybrid hearings in the Court's two official languages with participants joining from locations all around the world, comprehensive technical tests are always carried out beforehand with the parties, including tests of the interpretation system and the process

for displaying demonstrative exhibits such as maps. Parties are given an opportunity to have a certain number of representatives physically present in the Great Hall of Justice, with social distancing, as well as being given access to an additional room in the Peace Palace from which other members of the delegation can follow the proceedings via video link.

While States should feel confident that the Court continues to fulfil its mission through all means at its disposal, including through the heightened use of modern technology, it is of course with a great sense of relief that we are beginning to see some steps towards a normalization of the global health situation. The Court looks forward, once the pandemic-related developments will allow, to resuming its work in the traditional manner. Having now spent eleven years on the Court, I cannot over-emphasize the importance associated with the ICJ's hearings being held in the formal and solemn setting of the Great Hall of Justice in the Peace Palace, in the presence of the parties and the public.

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These last observations on the importance of the Great Hall of Justice lead me to my final topic, the status of the renovation plans for the Peace Palace, which have been on the horizon for a few years now. The Government of the Netherlands has determined that this iconic landmark in The Hague, which the Court, as well as its predecessor, the Permanent Court of International Justice, has been lucky to call home for over 100 years, requires extensive repair, including the removal of asbestos from certain parts of the building. Over the past year, the Registrar and the President have continued to engage with the Ministry of Foreign Affairs of the Netherlands in an effort to ascertain what course of action the host country intends to adopt in terms of the renovation, and the consequent relocation, envisaged at least in part, of the Court and its Registry. Throughout these consultations, the Court has made clear that it would need a two-year notice period to prepare for relocation (from the date on which concrete arrangements have been agreed upon), and has similarly emphasized the need for the renovation works to be organized and carried out in a way that would lead to a minimum disruption of its judicial activities. The Court has also stressed the importance of being able to return to the Peace Palace without delay after the renovation, given how closely the Court's history, image and identity are tied to this working monument to peace.

As explained in the Court's annual report, significant uncertainties remain as to the scope and extent of the relocation and its schedule. Accordingly, in compiling its budget proposal for 2022, the Court considered it premature to include specific requirements relating to the expected relocation, and requested instead only the funding of two temporary assistance positions to provide technical support to the Registry of the Court during the preparation phase of this project.

I am grateful to our host country for its willingness to engage in constructive consultations. The Court looks forward to receiving more detailed information from the Dutch authorities regarding the scope, modalities and schedule of the renovation project and its implications for the Court's work. The Court also trusts that appropriate consideration will be given to its concerns before a final decision is made with respect to these matters.

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Mr. President,

Excellencies,
Distinguished Delegates,

I thank you for giving me this opportunity to address you today, and I wish this seventy-sixth session of the General Assembly every success.
