

**SPEECH BY H.E. MR. ABDULQAWI A. YUSUF, PRESIDENT OF THE INTERNATIONAL COURT OF
JUSTICE, ON THE OCCASION OF THE SEVENTY-THIRD SESSION OF THE
UNITED NATIONS GENERAL ASSEMBLY**

25 October 2018

Mr. President,
Excellencies,
Distinguished Delegates,
Ladies and Gentlemen,

It is an honour for me to address the General Assembly for the first time since my election as President in February this year, on the occasion of its examination of the annual report of the International Court of Justice. The Court greatly values this time-honoured tradition which enables us to present a succinct overview of the judicial activities on a regular basis.

I am pleased to have the opportunity to do so at an Assembly meeting under your presidency and the presidency of H.E. Ms María Fernanda Espinosa Garcés. I congratulate her on her election to the presidency of the seventy-third session of this august Assembly and wish her every success in this distinguished office.

Between 1 August 2017 — the starting date of the period covered by the Court's report — and today, the Court's docket has remained extremely full, with 17 contentious cases and one advisory proceeding currently pending before it; a number of other cases having been disposed of in the course of the year. Indeed it has been a particularly busy and productive period.

During this time, the Court has held hearings in six cases. The Court first heard the Parties' oral arguments on the preliminary objections submitted by France in the case concerning *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*. It then held hearings on the merits in the case concerning *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)*. In June and August 2018, the Court heard the Parties' oral arguments on two requests for the indication of provisional measures submitted, in turn, in the case concerning *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)* and 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)*. In September 2018, the Court heard the oral statements of the Participants in the proceedings on the request for an advisory opinion submitted by the General Assembly in respect of the *Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965*. Finally, a few weeks ago, it held hearings on the preliminary objections submitted by the United States of America in the case concerning *Certain Iranian Assets (Islamic Republic of Iran v. United States of America)*.

Since 1 August 2017, the Court has also delivered four Judgments. On 2 February 2018, the Court rendered two Judgments on the merits, the first one on the question of the compensation owed in the case concerning *Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*, and the second one in the joined cases concerning the *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua)* and the *Land Boundary in the Northern Part of Isla Portillos (Costa Rica v. Nicaragua)*. On 6 June 2018, the Court rendered its Judgment on the preliminary objections in the case concerning *Immunities and Criminal Proceedings (Equatorial Guinea v. France)* and on 1 October 2018, it gave its ruling in the case concerning *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)*.

The Court has, in addition, issued 17 Orders, among which an Order on the admissibility of counter-claims in the case concerning *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*, and two Orders indicating provisional measures: first, in the aforementioned case instituted by Qatar against the United Arab Emirates; and secondly, in the recently instituted case between the Islamic Republic of Iran and the United States of America concerning alleged violations of the bilateral Treaty of Amity, Economic Relations, and Consular Rights of 1955.

As is customary, I shall now give a brief analysis of the substance of those decisions.

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I begin by recalling certain elements of the Judgments rendered in the cases opposing Costa Rica and Nicaragua.

On 2 February 2018, the Court rendered its Judgment on the question of compensation in the case concerning *Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua)*. In particular, the Court was called upon to determine the amount of compensation to be awarded to Costa Rica for material damage caused by Nicaragua's unlawful activities on Costa Rican territory, as established in the Court's Judgment of 16 December 2015. In that connection, it is recalled that Costa Rica had claimed compensation for two categories of damage: first, quantifiable environmental damage caused by Nicaragua's excavation of two channels (*caños*) on its territory in 2010 and 2013, and, secondly, costs and expenses incurred as a result of Nicaragua's unlawful activities.

With respect to environmental damage, the Court indicated that compensation could include indemnification for the impairment or loss of environmental goods and services, and payment for the restoration of the damaged environment, when natural recovery might not suffice to return an environment to the state in which it was before the change occurred. The Court found in particular that, in excavating the two *caños*, Nicaragua had removed many trees and cleared vegetation, and that these activities had significantly affected the ability of the two impacted areas to provide certain environmental goods and services — namely, trees, other raw materials (fibre and energy), gas regulation and air quality services, as well as biodiversity. The Court stated that it was appropriate to approach the valuation of environmental damage from the perspective of the ecosystem as a whole and it awarded Costa Rica the sum of US\$120,000 for the impairment or loss of the environmental goods and services of the impacted area in the period prior to recovery. The Court also considered that the payment of compensation for some restoration measures in respect of the wetland was justified, and it awarded Costa Rica the sum of US\$2,708.39 for that purpose.

The Court then dealt with Costa Rica's claims for costs and expenses incurred as a result of Nicaragua's unlawful activities in the northern part of Isla Portillos, ruling that some of these costs and expenses had a sufficiently direct and certain causal nexus with the wrongful conduct of Nicaragua. In particular, the Court considered that part of the costs and expenses incurred by Costa Rica in monitoring that area, and in preventing irreparable prejudice to the environment, including costs relating to the construction in 2015 of a dyke across one of the *caños*, were compensable. Thus, the Court awarded Costa Rica a total of US\$236,032.16 under this heading.

Turning to Costa Rica's claim for interest, the Court held that Costa Rica was not entitled to pre-judgment interest on the amount of compensation for environmental damage since the Court had already taken full account of the impairment or loss of environmental goods and services in the

period before recovery. Costa Rica was, however, awarded pre-judgment interest on the costs and expenses found compensable, in the sum of US\$20,150.04. The Court further decided that, in the event of any delay in payment, post-judgment interest would accrue on the principal sum; that interest would be paid at an annual rate of 6 per cent.

The total amount of compensation awarded to Costa Rica was therefore US\$378,890.59 to be paid by Nicaragua by 2 April 2018. Following this Judgment, Nicaragua, by letter of 22 March 2018, informed the Court that it had transferred to Costa Rica the total amount of compensation awarded.

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The Court handed down a second judgment on the merits on 2 February 2018, in the joined cases concerning *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicaragua)* and *Land Boundary in the Northern Part of Isla Portillos (Costa Rica v. Nicaragua)*. I recall that the proceedings in the *Maritime Delimitation* case were brought by an Application of Costa Rica on 25 February 2014. The proceedings in the *Land Boundary* case were brought by an Application of Costa Rica on 16 January 2017. The two cases were joined by an Order of the Court handed down on 2 February 2017.

The Court observed in its Judgment that the *Land Boundary* case raised issues of territorial sovereignty which were expedient to examine first, because of their possible implications for the maritime delimitation in the Caribbean Sea. The Court first held that the question of sovereignty over the coast of the northern part of Isla Portillos on the Caribbean Sea had not been decided in its Judgment rendered on 16 December 2015. It then recalled that, according to its interpretation of the 1858 Treaty of Limits between Costa Rica and Nicaragua in its 2015 Judgment, “the territory under Costa Rica’s sovereignty extend[ed] to the right bank of the Lower San Juan River as far as its mouth in the Caribbean Sea”. Noting that the report submitted to it by the Court-appointed experts had dispelled all uncertainty about the geography of the area, the Court found that Costa Rica had sovereignty over the whole of Isla Portillos, with the exception of Harbor Head Lagoon and the sandbar separating it from the Caribbean Sea. These latter features were found to be under Nicaragua’s sovereignty.

The Court then held that, by establishing and maintaining a military camp on the beach of Isla Portillos, Nicaragua had violated Costa Rica’s territorial sovereignty as defined in the Judgment, and ruled that the camp had to be removed from Costa Rica’s territory. The Court considered that the declaration of a violation of Costa Rica’s sovereignty and the order addressed to Nicaragua to remove its camp from Costa Rica’s territory constituted appropriate reparation.

The Court next turned to the *Maritime Delimitation* case, beginning with the delimitation in the Caribbean Sea. With respect to the starting-point for the delimitation, the Court considered it preferable, due to the great instability of the coastline in the area, to select a fixed point at sea — two nautical miles from the coast on the median line — and connect it by a mobile line to a point on solid land on Costa Rica’s coast which was closest to the mouth of the San Juan River.

The Court delimited the territorial sea, in accordance with Article 15 of the United Nations Convention on the Law of the Sea and with its own jurisprudence, in two stages: first, it drew a provisional median line; secondly, it considered whether any special circumstances existed which justified an adjustment to that line. As to special circumstances, the Court, in particular, stated that the instability of the sandbar separating Harbor Head Lagoon from the Caribbean Sea and its situation as a small enclave within Costa Rica’s territory also called for a special solution. Noting that, should territorial waters be attributed to the enclave, they would be of little use to Nicaragua,

while breaking the continuity of Costa Rica's territorial sea, the Court decided that the delimitation in the territorial sea between the Parties would not take into account any entitlement which might result from the enclave.

The Court then proceeded to the delimitation of the exclusive economic zone and the continental shelf, using its established three-stage methodology. First, it drew a provisional equidistance line using base points located on the Parties' natural coasts, including some Nicaraguan islands in the Caribbean Sea, among others the Corn Islands. Secondly, the Court considered whether there existed relevant circumstances which were capable of justifying an adjustment of the equidistance line provisionally drawn. It found in particular that, in view of their limited size and significant distance from the mainland coast, the Corn Islands should be given only half effect. Thirdly, the Court assessed the overall equitableness of the boundary resulting from the first two stages by checking whether there existed a marked disproportionality between the length of the Parties' relevant coasts and the maritime areas found to appertain to them. In the circumstances at hand, the Court found that there was no such marked disproportionation.

The Court focused next on the delimitation in the Pacific Ocean. Since Costa Rica and Nicaragua had agreed that the starting-point of the maritime boundary in the Pacific Ocean should be the midpoint of the closing line of the Salinas Bay, the Court fixed the starting-point of its delimitation at that location.

As it did for the Caribbean Sea, the Court proceeded to delimit the boundary for the territorial sea in two stages. Having observed that both Parties selected the same base points, the Court decided to use those points to draw the provisional median line. It considered that there were no special circumstances justifying an adjustment to that line.

For the purpose of delimiting the exclusive economic zone and the continental shelf, the Court again followed the three-stage methodology adopted in its jurisprudence. First, it drew a provisional equidistance line, using the base points selected by the Parties. Secondly, it checked for relevant circumstances justifying an adjustment to that line, deciding to give half effect to the Santa Elena peninsula on Costa Rica's coast in order to avoid a significant cut-off effect on of Nicaragua's coastal projections. Thirdly, the Court assessed the overall equitableness of the boundary resulting from the first two stages by checking whether there existed a marked disproportionality between the length of the Parties' relevant coasts and the maritime areas found to appertain to them. It found that the maritime boundary did not result in gross disproportionality and achieved an equitable solution.

After the Judgment was rendered, Nicaragua informed the Court, by a letter dated 14 February 2018, that it had removed its military camp from Costa Rica's territory, in accordance with point 3 (b) of the operative paragraph of the Judgment.

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Mr. President, I will now continue in French:

The third Judgment of the Court I will discuss was rendered on 6 June 2018 on the preliminary objections raised by France in the case concerning *Immunities and Criminal Proceedings (Equatorial Guinea v. France)*. These proceedings were instituted by Equatorial Guinea on 13 June 2016 with regard to a dispute concerning the immunity from criminal jurisdiction of the Vice-President of the Republic of Equatorial Guinea, Mr. Teodoro Nguema Obiang Mangue, and the legal status of a building located at 42 Avenue Foch in Paris, alleged to be

housing the Embassy of Equatorial Guinea in France. In its Application, Equatorial Guinea sought to found the Court's jurisdiction on Article 35 of the United Nations Convention against Transnational Organized Crime, also known as the "Palermo Convention", and on Article I of the Optional Protocol to the Vienna Convention on Diplomatic Relations concerning the Compulsory Settlement of Disputes.

On 31 March 2017, France raised three preliminary objections. With regard to France's first preliminary objection, relating to the Palermo Convention, the Court concluded in its Judgment that Article 4 of that Convention did not incorporate the customary international rules relating to immunities of States and State officials. Therefore, the aspect of the dispute between the Parties relating to the asserted immunity of the Vice-President of Equatorial Guinea and the immunity claimed for the building at 42 Avenue Foch in Paris from measures of constraint as State property did not concern the interpretation or application of the Palermo Convention. The Court consequently lacked jurisdiction in relation to that aspect of the dispute. The Court then noted that Equatorial Guinea had also made claims based on the Palermo Convention concerning the alleged overextension by France of its criminal jurisdiction over "predicate offences" associated with the crime of money laundering. The Court found that the alleged violations complained of by Equatorial Guinea were not capable of falling within Articles 6 and 15 of the Palermo Convention and that it therefore also lacked jurisdiction to entertain this aspect of the dispute. The Court thus concluded that it lacked jurisdiction under the Palermo Convention and upheld France's first preliminary objection.

The Court then considered France's second preliminary objection, concerning jurisdiction under the Optional Protocol to the Vienna Convention on Diplomatic Relations. Equatorial Guinea's claim based on the Vienna Convention concerned France's alleged failure to respect the inviolability of the building at 42 Avenue Foch in Paris as premises of Equatorial Guinea's diplomatic mission. The Court noted that the Parties disagreed on the question whether the building constituted part of the premises of the mission of Equatorial Guinea in France and was thus entitled to the treatment afforded for such premises under Article 22 of the Vienna Convention. The Court concluded that this aspect of the dispute fell within the scope of that Convention. It therefore found that it had jurisdiction to entertain the dispute relating to the status of the building, including any claims relating to the furnishings and other property present on the premises at 42 Avenue Foch in Paris. Accordingly, it dismissed France's second preliminary objection.

The Court then considered France's third preliminary objection, contending that Equatorial Guinea's conduct was an abuse of rights and that its seisin of the Court was an abuse of process. In the Court's view, this preliminary objection concerned the admissibility of the Application. The Court observed that an abuse of process went to the procedure before a court or tribunal and could be considered at the preliminary phase of the proceedings. However, a claim based on a valid title of jurisdiction should only be rejected for abuse of process in exceptional circumstances. The Court did not consider such circumstances to be present. Concerning abuse of rights, the Court stated that it could not be invoked as a ground of inadmissibility when the establishment of the right in question was properly a matter for the merits. Therefore, it found that any argument in relation to abuse of rights would be considered at the merits stage of the case. The Court thus did not consider Equatorial Guinea's claim inadmissible on grounds of abuse of process or abuse of rights, and dismissed France's third preliminary objection.

Since the Court found in its Judgment that it had jurisdiction, on the basis of the Optional Protocol to the Vienna Convention, the proceedings on the merits have been resumed. By an Order also handed down on 6 June 2018, the Court fixed 6 December 2018 as the time-limit for the filing of a Counter-Memorial by France.

Mr. President,

I now come to the fourth Judgment of the Court in the relevant period, which was rendered on 1 October 2018 and decided the merits of the case concerning *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)*. I recall that these proceedings were instituted on 24 April 2013 by the Plurinational State of Bolivia against the Republic of Chile with regard to a dispute “relating to Chile’s [alleged] obligation to negotiate in good faith and effectively with Bolivia in order to reach an agreement granting Bolivia a fully sovereign access to the Pacific Ocean”.

In its Judgment, the Court having presented a historical context of the dispute, proceeded to a systematic examination of eight different legal bases put forward by Bolivia to support its claim.

The Court began by considering Bolivia’s argument based on bilateral instruments, concluding that none of these instruments established an obligation on Chile to negotiate Bolivia’s sovereign access to the Pacific Ocean. Neither did the Court find persuasive the argument that declarations and other unilateral acts of Chile created an obligation to negotiate Bolivia’s sovereign access to the sea. It noted that these declarations and unilateral acts were expressed not in terms of undertaking a legal obligation but of willingness to enter into negotiations. Turning to Bolivia’s argument based on acquiescence, it noted that Bolivia had not identified any declaration which required a response or reaction on the part of Chile in order to prevent an obligation from arising. Thus, it concluded that acquiescence could not be considered a legal basis of an obligation to negotiate Bolivia’s sovereign access to the sea. The Court then analysed Bolivia’s argument based on estoppel, finding that although there had been repeated representations by Chile of its willingness to negotiate Bolivia’s sovereign access to the sea, such representations did not create an obligation to negotiate because it had not been demonstrated that Bolivia had changed its position to its own detriment, or to Chile’s advantage, based on those representations. With regard to the argument that Chile’s denial of its obligation to negotiate and its refusal to engage in further negotiations frustrated Bolivia’s “legitimate expectations”, the Court found that that while references to legitimate expectations could be found in arbitral awards in investment disputes, it did not follow that there existed in general international law a principle based on legitimate expectations that could give rise to an obligation.

The Court moreover did not accept the argument that an obligation to negotiate Bolivia’s sovereign access to the sea could be based on Article 2, paragraph 3, of the United Nations Charter or Article 3 of the Charter of the Organization of American States, as these provisions only required States to settle their disputes by peaceful means or procedures, but did not impose a specific method of settlement, such as negotiation. The Court also examined Bolivia’s argument that resolutions of the OAS General Assembly confirmed Chile’s commitment to negotiate Bolivia’s sovereign access to the sea. It did not find support for this argument because none of the resolutions indicated that Chile was under an obligation to negotiate and both Parties had acknowledged that the resolutions were not per se binding.

Finally, the Court held that, having concluded that no obligation had been established by the invoked legal bases taken individually, a cumulative consideration of the bases could not change the overall result.

The Court thus found that Chile had not undertaken a legal obligation to negotiate a sovereign access to the Pacific Ocean for Bolivia. The Court added, however — and I wish to stress this — that its finding should not be understood as precluding the Parties from continuing their dialogue and exchanges, in a spirit of good neighbourliness, to address the issues relating to the landlocked situation of Bolivia, the solution to which they have both recognized to be a matter of mutual interest.

Mr. President,

I will now discuss three substantive Orders rendered by the Court in the period under review.

I would first mention the Court's Order on counter-claims issued on 15 November 2017 in the case concerning *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua v. Colombia)*. I recall that, on 26 November 2013, Nicaragua instituted proceedings against Colombia, alleging in particular violations of its sovereign rights and maritime zones as determined by the Court in a Judgment of 19 November 2012. On 19 December 2014, Colombia raised preliminary objections to the jurisdiction of the Court. By a Judgment dated 17 March 2016, the Court found that it had jurisdiction, on the basis of Article XXXI of the Pact of Bogotá, to adjudicate upon the dispute relating to the alleged violations by Colombia of Nicaragua's rights in the maritime zones which, according to Nicaragua, the Court had declared appertained to Nicaragua in its Judgment of 19 November 2012.

In its Counter-Memorial filed on 17 November 2016, Colombia submitted four counter-claims. The first and second were based on Nicaragua's alleged breach of a duty of due diligence to protect and preserve the marine environment of the south-western Caribbean Sea, as well as the right of the inhabitants of the San Andrés Archipelago to benefit from a healthy, sound and sustainable environment; the third concerned Nicaragua's alleged infringement of the customary artisanal fishing rights of the local inhabitants of the San Andrés Archipelago to access and exploit their traditional fishing grounds; the fourth related to Nicaragua's adoption of Decree No. 33-2013 of 19 August 2013, which, according to Colombia, established straight baselines and had the effect of extending Nicaragua's internal waters and maritime zones beyond what international law permits.

In its Order, the Court began by recalling that, under Article 80, paragraph 1, of its Rules, two requirements must be met for it to be able to entertain a counter-claim as such, namely, that the claim in question "comes within the jurisdiction of the Court" and, that it "is directly connected with the subject-matter of the claim of the other party".

The Court took the view that there was no connection, either in fact or in law, between Colombia's first two counter-claims and Nicaragua's principal claims, and it thus found these two counter-claims inadmissible as such.

On the other hand, the Court considered that there was a direct factual and legal connection between Colombia's third and fourth counter-claims, and Nicaragua's principal claims. It observed in this regard that the facts underpinning their respective claims related to the same time period, the same geographical area and were of the same nature in so far as they alleged similar types of conduct. Furthermore, the legal principles relied upon by the Parties were similar and they were pursuing the same legal aim by their respective claims.

The Court then found that Colombia's third and fourth counter-claims met the jurisdiction requirement. In particular, the Court recalled that once it had established jurisdiction to entertain a case, it had jurisdiction to deal with all its phases; a subsequent lapse of the title could not deprive it of its jurisdiction. In the case at hand, the termination of the Pact of Bogotá as between the Parties subsequent to the filing of the Application did not deprive the Court of its jurisdiction to entertain counter-claims filed by Colombia on the same jurisdictional basis.

The Court thus found Colombia's third and fourth counter-claims admissible as such. It further directed Nicaragua to submit a Reply and Colombia to submit a Rejoinder relating to the claims of both Parties and fixed the respective time-limits for the filing of these pleadings.

Mr. President,

As already mentioned, during the reporting period, the Court also issued two Orders for the indication of provisional measures, which I will briefly present in chronological order.

On 23 July 2018, the Court handed down an Order for the indication of provisional measures in the case concerning *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*.

This case was instituted on 11 June 2018 by Qatar against the United Arab Emirates with regard to alleged violations of the International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965 (which I will refer to as “CERD”). Qatar claimed in its Application that the United Arab Emirates had expelled all Qataris within its borders and prohibited them from entering the United Arab Emirates, thereby violating certain rights guaranteed by CERD.

On the same day, Qatar submitted a Request for the indication of provisional measures, in which it stated that it was seeking to protect its rights under CERD pending a decision on the merits.

In its Order, the Court, following its usual methodology, first examined whether the jurisdictional clause contained in Article 22 of CERD conferred upon it *prima facie* jurisdiction to rule on the merits. In the Court’s view, the acts referred to by Qatar were capable of falling within the scope of CERD *ratione materiae*. The Court found that there were sufficient elements at the current juncture to establish that there was a dispute concerning the interpretation or application of CERD. It also found that the procedural preconditions for its *seisin*, contained in Article 22 of CERD, had been complied with. The Court therefore concluded that, *prima facie*, it had jurisdiction pursuant to Article 22 of CERD.

The Court then turned to the rights whose protection was sought and observed that the measures adopted by the United Arab Emirates appeared to have targeted only Qataris, regardless of individual circumstances, and that they could constitute acts of racial discrimination as defined by CERD. It found that at least some of the rights asserted by Qatar under Article 5 of CERD were plausible. This was the case, for example, with respect to the alleged racial discrimination in the enjoyment of rights such as the right to marriage and to choice of spouse, the right to education, as well as the rights to freedom of movement and access to justice. The Court also concluded that a link existed between the rights whose protection was being sought and the provisional measures being requested by Qatar.

The Court further considered that certain rights in question were of such a nature that prejudice to them was capable of causing irreparable harm and that there was therefore urgency.

The Court therefore concluded that the conditions required by its Statute for it to indicate provisional measures had been met. It found that, in order to protect the rights claimed by Qatar on the merits, the United Arab Emirates had to ensure that (i) families that included a Qatari, separated by the measures adopted by the United Arab Emirates on 5 June 2017, were reunited; (ii) Qatari students affected by the measures adopted by the United Arab Emirates on 5 June 2017 were given the opportunity to complete their education in the United Arab Emirates or to obtain their educational records if they wished to continue their studies elsewhere; and (iii) Qataris affected by the measures adopted by the United Arab Emirates on 5 June 2017 were allowed access to tribunals and other judicial organs of the United Arab Emirates. The Court added that both Parties had to refrain from any action which might aggravate or extend the dispute before it or make it more difficult to resolve.

By an Order rendered on 25 July 2018, the Court fixed the time-limits for the filing of a Memorial by the State of Qatar and a Counter-Memorial by the United Arab Emirates.

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Mr. President,

On 3 October 2018, the Court handed down a second Order for the indication of provisional measures 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).

Iran instituted proceedings against the United States on 16 July 2018 with regard to a dispute concerning alleged violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (to which I will refer as the 1955 Treaty). In its Application, Iran stated, in particular, that the dispute related to the decision of the United States, announced on 8 May 2018, to reimpose restrictive measures targeting, directly or indirectly, Iran and Iranian companies and/or nationals, which the United States had previously decided to lift in connection with the 2015 Joint Comprehensive Plan of Action. According to the Applicant, through these measures, the United States has violated certain obligations under the 1955 Treaty, including fair and equitable treatment, prohibition of restrictions on making of payments and freedom of commerce. Iran sought to found the Court's jurisdiction on Article 36, paragraph 1, of the Statute of the Court and on Article XXI, paragraph 2, of the 1955 Treaty. Under this latter compromissory clause, the Parties accepted to refer to the Court any dispute between them as to the interpretation or application of the Treaty, not having been satisfactorily adjusted by diplomacy, unless the Parties had agreed to settlement by some other pacific means.

Iran also submitted on 16 July 2018 a Request for the indication of provisional measures.

The Court, in its Order on the Request, began by ascertaining whether the provisions relied upon by the Applicant appeared, *prima facie*, to afford a basis on which its jurisdiction could be founded. It first verified that a dispute existed between the Parties as to the interpretation or application of the 1955 Treaty. The Court found that there were sufficient elements at the present stage to establish that the measures taken by the United States and complained of by Iran were *prima facie* capable of falling within the material scope of the 1955 Treaty. The clause relied on by the United States, according to which the Parties to the Treaty were not precluded from taking certain measures to protect their essential security interests, was not considered by the Court to constitute a provision excluding the Court's jurisdiction under the Treaty's compromissory clause. Moreover, the Court noted that the dispute had not been satisfactorily adjusted by diplomacy and that the Parties had not agreed to settlement by other pacific means. Therefore, the Court concluded that, *prima facie*, it had jurisdiction under the 1955 Treaty to deal with the case, to the extent that the dispute related to the "interpretation or application" of that Treaty.

The Court then turned to the rights whose protection was being sought. It found that, in so far as the rights asserted by Iran were based on a possible interpretation of the 1955 Treaty and on the *prima facie* evidence of the relevant facts, these rights were plausible and that the measures adopted by the United States appeared to be capable of affecting some of those rights.

At the same time, the Court noted that it had to take account of the essential security interests invoked by the United States under Article XX, paragraph 1, of the 1955 Treaty and observed that such interests might affect at least some of the rights invoked by Iran. On balance, the Court nonetheless found that other rights asserted by Iran under the 1955 Treaty would not be so affected.

In particular, Iran's rights relating to the importation and purchase of goods required for humanitarian needs, such as medicines and medical devices; and foodstuffs and agricultural commodities; as well as goods and services required for the safety of civil aviation, such as spare parts, equipment and associated services necessary for civil aircraft.

Turning to the issue of the link between the rights claimed and the provisional measures requested, the Court concluded that a link existed between some of the rights whose protection was being sought and certain aspects of the provisional measures being requested by Iran. The Court moreover found that there remained a risk that the measures adopted by the United States may entail irreparable consequences and considered that there was urgency.

The Court concluded from the foregoing considerations that the conditions required by its Statute for it to order provisional measures had been met. The Court accordingly indicated the following provisional measures: (1) that the United States remove, by the means of its choosing, any impediments arising from the measures announced on 8 May 2018 to the free exportation to the territory of the Islamic Republic of Iran of (i) medicines and medical devices; (ii) foodstuffs and agricultural commodities; and (iii) spare parts, equipment and associated services (including warranty, maintenance, repair services and inspections) necessary for the safety of civil aviation; (2) that the United States ensure that licences and necessary authorizations were granted and that payments and other transfer of funds were not subject to any restriction in so far as they related to the aforementioned goods and services; (3) that both Parties refrain from any action which might aggravate or extend the dispute before it or make it more difficult to resolve.

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Mr. President,
Distinguished Delegates,
Excellencies,
Ladies and Gentlemen,

I will now turn to the new cases brought before the Court. In addition to the two cases just referred to — between Qatar and the United Arab Emirates, and between the Islamic Republic of Iran and the United States of America — in which the Court issued Orders indicating provisional measures, a further four sets of contentious proceedings have been instituted since 1 August 2017.

On 29 March 2018, the Co-operative Republic of Guyana instituted proceedings against the Bolivarian Republic of Venezuela with regard to a dispute concerning “the legal validity and binding effect of the Award Regarding the Boundary between the Colony of British Guiana and the United States of Venezuela, of 3 October 1899”. In its Application, Guyana claims that the 1899 Award was a full and final settlement of all questions relating to the determination of the boundary line between the colony of British Guiana and Venezuela, but that, for the first time in 1962, Venezuela contested the Award as arbitrary and null and void. According to Guyana, this dispute remains ongoing. Guyana thus requests the Court to confirm the validity of the 1899 Award and to order Venezuela to respect the boundary established pursuant to that Award. From the outset, Venezuela has challenged the jurisdiction of the Court to entertain the case. By an Order dated 19 June 2018, the Court decided that the written pleadings in the case should first address the question of its jurisdiction, and it fixed the respective time-limits for the filing of a Memorial by Guyana and a Counter-Memorial by Venezuela.

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Two further sets of proceedings were brought before the Court on 4 July 2018. First, the Kingdom of Bahrain, the Arab Republic of Egypt, the Kingdom of Saudi Arabia and the United Arab Emirates submitted to the Court a joint Application constituting an appeal against the decision rendered by the Council of the International Civil Aviation Organization on 29 June 2018, in proceedings initiated by the State of Qatar against these four States on 30 October 2017 pursuant to Article 84 of the Convention on International Civil Aviation, also known as the Chicago Convention. Secondly, the Kingdom of Bahrain, the Arab Republic of Egypt and the United Arab Emirates submitted to the Court another joint Application constituting an appeal against the decision rendered by the ICAO Council in proceedings initiated by Qatar against these three States on 30 October 2017 pursuant to Article II, Section 2, of the International Air Services Transit Agreement. The factual background of the two cases is the same. According to the Applications, on 5 June 2017, after Qatar had allegedly failed to abide by its commitments under a series of instruments and undertakings referred to collectively as the Riyadh Agreements, the Applicants adopted measures which included airspace restrictions to aircraft registered in Qatar. On 30 October 2017, Qatar instituted proceedings against the Applicants before the ICAO, alleging that the airspace restrictions violated the Chicago Convention and the International Air Services Transit Agreement. In these ICAO proceedings, the Applicants raised preliminary objections, which were rejected in two decisions of the ICAO Council rendered on 29 June 2018. These are the two decisions which are being appealed before the Court of Justice.

Orders dated 25 July 2018 in the two cases fixed the respective time-limits for the filing of a Memorial by the Applicants and a Counter-Memorial by Qatar.

On 28 September 2018, the State of Palestine instituted proceedings against the United States of America, with respect to a dispute concerning alleged violations of the Vienna Convention on Diplomatic Relations of 18 April 1961. It is recalled that on 5 July 2018, Palestine had filed a declaration pursuant to Security Council Resolution 9 (1946), whereby it accepted the jurisdiction of the Court for the settlement of disputes under Article I of the Optional Protocol to the Vienna Convention on Diplomatic Relations Concerning the Compulsory Settlement of Disputes, to which the State of Palestine acceded on 22 March 2018. In its Application, Palestine contends that it flows from the Vienna Convention that the diplomatic mission of a sending State must be established on the territory of the receiving State.

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Mr. President,
Excellencies,
Distinguished delegates,

This completes my summary of the Court's extensive judicial activities over the last year. I would now like to take the opportunity, in the spirit of transparency, to touch upon the question of extrajudicial activities that Members of the Court occasionally undertake, in particular, in the field of international arbitration. The Court is cognizant of the fact that, while the judicial settlement of disputes offered by the Court is enshrined in the Charter, States may, for several reasons, be interested in settling their disputes by arbitration. In such instances, Members of the Court have sometimes been called upon by States to sit on the arbitral tribunals in question dealing in some cases with inter-State disputes while in others with investor-State disputes — a testament, of course, to the high esteem in which the Court's Judges are held by the international community.

Over the years, the Court has taken the view that, in certain circumstances, its Members may participate in arbitration proceedings. However, in light of its ever-increasing workload, the Court

decided a few months ago to review this practice and to set out clearly defined rules regulating such activities. As a result, Members of the Court have come to the decision, last month, that they will not normally accept to participate in international arbitration. In particular, they will not participate in investor-State arbitration or in commercial arbitration. However, in the event that they are called upon, exceptionally, by one or more States that would prefer to resort to arbitration, instead of judicial settlement, the Court has decided that, in order to render service to those States, it will, if the circumstances so warrant, authorize its Members to participate in inter-State arbitration cases. Even in such exceptional cases, a Member of the Court will only participate, if authorized, in one arbitration procedure at a time. Prior authorization must have been granted, for that purpose, in accordance with the mechanism put in place by the Court. Members of the Court, will, however, decline to be appointed as arbitrators by a State that is a party in a case pending before the Court, even if there is no substantial interference between that case and the case submitted to arbitration. This is essential to place beyond reproach the impartiality and independence of Judges in the exercise of their judicial functions. Finally, I cannot stress enough that any participation of Members of the Court in such inter-State arbitrations is subject to the strict condition that their judicial activities take absolute precedence.

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Just briefly before I come to my closing remarks, I would like, Mr. President, to raise an issue that is of concern to the Court regarding the Peace Palace, which, as you know, houses the principal court room — the Great Hall of Justice — and the offices of the Registry. In 2016, following inspections of the premises, the Peace Palace was found to be contaminated with asbestos. As a result, the Dutch authorities decided that major works should be undertaken to completely decontaminate and, at the same time, renovate the building. The Court understands that it is anticipated that the Peace Palace will have to close and that the Registry of the Court, including the Court's Library and Archives, will have to be temporarily relocated to other premises for perhaps a few years. However, the Court remains somewhat in the dark as to the modalities and timeframe for this large-scale relocation. The Court has been told by the Netherlands' authorities that details of the proposed relocation plans would be provided without delay, so that it may ensure a smooth transition period, with a minimum of disruption to its busy schedule of work. Despite these assurances, to date, the Court does not have at its disposal any further elements of clarification. This creates an atmosphere of uncertainty which is not conducive to the performance of its judicial functions. Therefore, we trust that ample and adequate information will be received in a timely manner in the very near future.

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This brings, Mr. President, an end to my first address before you as President of the International Court of Justice. The Court has made every endeavour to fulfil the noble mission entrusted to it in terms of the advancement of international justice and the peaceful settlement of disputes between States. It has continued to focus its attention on many complex areas of international law raised by the multifaceted disputes brought before it. Often, these thorny legal issues lie at the heart of the international community's current concerns. The Court is acutely aware in this connection that, with its rulings, it has a responsibility to serve all Member States by safeguarding respect for the rule of law in international relations.

Mr. President,
Excellencies,
Ladies and Gentlemen,

I thank you for giving me the opportunity to address you today; and I wish this seventy-third Session of the General Assembly every success.
