

SPEECH OF H.E. MR. ABDULQAWI AHMED YUSUF, PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE, BEFORE THE SECURITY COUNCIL

9 November 2018

Multilateralism and the International Court of Justice

Mr. President,
Mr. Secretary-General,
Excellencies,
Ladies and Gentlemen,

Mr. President,

1. Allow me at the outset to congratulate you and to congratulate the People's Republic of China for assuming the chairmanship of the Council during this month. I thank you also for taking this initiative and for inviting me to participate in it.

2. Some would say that my participation in this debate from The Hague is possible because of technology. Perhaps, but that is not the entire story. They forget about multilateralism. Technology needs multilateral rules to be able to cross borders. The optical fiber technology that carries digital data relies on submarine cables in various maritime jurisdictions. It is only through multilateral rules, such as those set forth in the United Nations Convention on the Law of the Sea, that we can make this viable. Even for the scheduling of this meeting, we all rely automatically on time-zone rules which were established in a multilateral framework, as early as 1884, during the International Meridian Conference.

3. Regulating global issues through a web of bilateral agreements has been tried in the past. It never worked. The spider web simply collapses on itself. It produces no silk. At best, it leads to a fragmented legal order composed of contradictory international legal obligations. Predictability, stability and certainty of the rule of law disappear. That is why your initiative is timely today when we are commemorating the end of the first world war, one hundred years ago, which gave a new impetus to the development of multilateralism.

4. Multilateralism is the result of human experience and civilisation. It is the only path forward in a world in which we have all become neighbours. For our Court, multilateralism is not only the condition of its existence, it is also that of its proper functioning and effectiveness.

5. Bilateral agreements can create arbitral tribunals. But they cannot create judicial institutions composed of an independent and impartial judiciary, representing the principal legal systems of the world, and deciding cases on the basis of law. The Court, therefore, owes its very existence to multilateralism.

6. For the functioning of the Court, multilateral conventions provide a large share of the law applicable to disputes submitted to the Court. On the other hand the Court's decisions remove, uncertainties from international conventions by interpreting and applying the provisions of those conventions.

7. Mr. President, in addition, some multilateral conventions of a regional nature such as the 1948 Pact of Bogota among Latin-American countries and the 1957 European Convention on the

Peaceful Settlement of Disputes between States Parties give jurisdiction to our Court on disputes arising in those regions of the world. Other conventions such as those that were characterized by the Court as instruments of a universal or quasi-universal character in the *Barcelona Traction* case give authority to the Court through their compromissory clauses to protect shared values of the international community. This is the case of the 1951 Genocide Convention and other human rights instruments, as well as all of the 1961 and 1963 Vienna Conventions on diplomatic and consular relations.

8. With regard to its effectiveness, the Court has to rely on multilateral institutions, such as the UN to ensure compliance with its decisions. This may be done by the Security Council under Article 94 of the United Nations Charter. It was also done in the past by the Secretary-General at his own initiative in the *Cameroon v. Nigeria* case.

Mr President,
Excellencies,

9. Decisions of the Court have made notable contributions to multilateralism. Allow me to refer to three of them very briefly.

10. First, the Court has developed and clarified the law of treaties which make multilateralism possible. It is the Court that established the object and purpose test to ascertain the permissibility and validity of reservations to multilateral treaties, allowing a large participation to multilateral conventions without jeopardizing the normative integrity of their core provisions.

11. Secondly, the Court clarified, in the Advisory Opinion on *Reparation for injuries suffered in the service of the United Nations*, that multilateral organizations, such as the United Nations, enjoy an international legal personality separate from that of their Member States. This decision of the Court has strengthened the institutional pillars of multilateral organizations including the United Nations.

12. Thirdly and finally, the Court contributed to the emergence of *erga omnes* obligations in international law, when it distinguished between legal obligations owed to “the international community as a whole” from those owed to particular States. In doing so, the Court enabled all States parties to multilateral conventions containing such obligations to serve as guardians of the compliance with those rules.

Mr. President,

13. To conclude, allow me to refer again to the Advisory Opinion on *Reparation* which I mentioned a moment ago, in which the Court observed that “[t]hroughout its history, the development of international law has been influenced by the requirements of international life, and [that] the progressive increase in the collective activities of States has already given rise to instances of action upon the international plane”.

14. The “requirements of the international life”, Mr. President and “the increase in the collective activities of States” which the Court spoke of reveal the inadequacy of unilateral or bilateral actions to address the challenges facing our increasingly interconnected world. They also dictate the necessity of multilateral co-operation in a diverse and complex range of areas of common concern to humanity. It is this common concern of humanity, recognized in many

multilateral conventions, together with the shared values we all hold dear, which render imperative the strengthening and consolidation of multilateralism as well as the rules and institutions underpinning it.

15. I thank you.
