

**SPEECH OF HIS EXCELLENCY JUDGE ABDULQAWI AHMED YUSUF, PRESIDENT  
OF THE INTERNATIONAL COURT OF JUSTICE, ON THE OCCASION OF  
THE ONE HUNDREDTH ANNIVERSARY OF THE ADOPTION  
OF THE STATUTE OF THE PERMANENT COURT  
OF INTERNATIONAL JUSTICE**

**The Hague  
10 December 2020**

**The Statute of the Permanent Court of International Justice as  
a foundational instrument of international adjudication**

**Introductory remarks**

Excellencies,  
Dear Colleagues,  
Ladies and Gentlemen,

1. I would like to extend a warm welcome to all of you, whether you are with us in person or joining us by video link to share in this celebration of the 100th anniversary of the Statute of the Permanent Court of International Justice. This is a low-key and circumspect celebration due to the COVID-19 pandemic which has made celebrations difficult throughout this year. However, the organization of this event in the form of a symposium and a dialogue among members of international judicial institutions is very suitable to the celebration of an instrument which has laid the groundwork for international adjudication, both in intellectual and practical terms. It is that unique contribution of the Statute that speakers will address today from different vantage points and perspectives. The Statute, as you all know, was adopted by the Assembly of the League of Nations on 13 December 1920. However, we decided to hold the event today, because 13 December is a Sunday this year.

2. The adoption of the Statute by the League of Nations led to the establishment of the first permanent international judicial institution with universal vocation and general jurisdiction. Although adopted 25 years later at San Francisco, the Statute of our Court is based on the Statute of the PCIJ, with minor modifications. It is, therefore, a great pleasure for us to celebrate today this 100th anniversary, which is a fundamental part of the history of our Court.

3. In my introductory remarks today, I would like to focus on two main features of this first international judicial institution which were reflected in its Statute: independence and permanence. These two features were highlighted by the French jurist and politician Léon Bourgeois in his introduction of the draft Statute at the Assembly of the League of Nations. He stated that “[f]or the first time a simple scheme for a permanent court, for a true court of justice, is laid before the world . . . [A]s a result of our scheme a tribunal, placed above and outside all political influences, truly permanent — that is to say, open at any moment to those who appeal to it — is going to be set up in the world.” (League of Nations, *Documents concerning the action taken by the Council of the League of Nations under Article 14 of the Covenant and the adoption by the Assembly of the Statute of the Permanent Court*, p. 226.)

4. These two characteristics, namely “placed above and outside all political influences” and “truly permanent”, which describe today almost all international judicial institutions, were at the time of their introduction into the Statute both innovative and trend-setting.

5. Let me take the first element: the independence of the international judiciary. As you are all aware, the PCIJ was not the first proposal for the establishment of an international court. At the 1907 Hague Conference, the 45 participating States tried to establish a permanent court of justice and also a Prize Court. However, neither of these courts saw the light of day, due to irreconcilable differences regarding their composition. All participants in the Conference wanted to have a national on the bench of these courts, which would have made the judges some kind of representative of their national government. In addition, the most powerful States sought a longer term of office for their national judge. This could have greatly undermined the independence of the Court. And how many States could, in any case, be accommodated on the bench of such an institution?

6. The drafters of the Statute were able to overcome this obstacle by making three judicious decisions. First, they decided that nationality should not play a role in the election of Members of the Court, but that, instead, competence and high moral character should be the fundamental requirements. Thus, Article 2 of the Statute provides that “[t]he Court shall be composed of a body of independent judges, elected regardless of their nationality from among persons of high moral character, who possess the qualifications required in their respective countries for appointment to the highest judicial offices, or are jurisconsults of recognized competence in international law.” *Independence; competence; and high moral character.*

7. Secondly, the drafters of the Statute devised a “bicameral” election system to take into account States’ attachment to their relative political weight. In accordance with that system, Members of the Court were to be elected both by the Council of the League of Nations, which was composed of “large” States, and by the Assembly, which was composed of a greater number of “smaller” States, to use the terminology of that time. This system is still used by the United Nations for the election of the Members of the International Court of Justice.

8. Finally, the drafters of the Statute were able to counterbalance the role that governments and domestic politics may play in the election of Members of the Court. Thus, on the ingenious proposal of the Dutch jurist, Loder, it was decided that candidates for election to the Court would be proposed by the national groups of the Permanent Court of Arbitration, instead of being proposed by governments. For Loder, this would avoid “the dangers confronting the world which might result from [governments’] incapacity, ill will, intrigues or conspiracies”. One can only express the hope that this is still the case today.

9. The confidence and trust placed in an international court depend to a large extent on the quality of its judges, their moral character and their independence. It is, therefore, my view that the politicization of these finely crafted electoral mechanisms, through such methods as the reciprocal exchange of votes during elections, should be avoided by all means, since they might negatively affect these fundamental qualities of the international judiciary.

10. Another basic feature of the independence of the international judiciary, which is also intimately linked to its permanence, is the ability of an international court to be master of its procedures, including the ability to establish rules of procedure applicable to all cases brought before it, irrespective of their nature or the quality of the parties involved. In this respect, the

drafters of the Statute created a delicate but perfect balance. First, they chose to leave the details of the Court's procedures in the hands of the Court. Article 30 of the Statute, therefore, provides that "[t]he Court shall frame rules for carrying out its functions", including its "rules of procedure". In doing so, the drafters of the Statute enabled the Court to devise a procedural system which draws from all domestic systems, while preserving its unique identity. This freedom also provided the Court with the flexibility necessary to adapt to evolving external situations, such as the current COVID-19 pandemic. As you all know, our Court was able, when faced with this situation, to react quickly by amending its rules of procedure and by putting in place a hybrid system that enabled it to continue its judicial activities during these challenging times.

11. Secondly, the drafters also showed foresight by establishing in Article 36, paragraph 6, of the Statute, that the Court shall decide on its own jurisdiction. This principle of competence-competence reaffirmed the independence of the judicial process from the views of parties to cases and enhanced its authority at a moment when this power of international jurisdictions was still contested.

12. Let me make one final observation with regard to the element of permanence. This was one of the most debated issues both at the 1899 and 1907 Conferences, but the Statute succeeded in putting it to rest. It is thus provided in Article 23 of the Statute that "the Court shall remain permanently in session, except during judicial vacations". It is also noteworthy that the drafters considered it necessary to emphasize in this provision that "Members of the Court shall be bound to hold themselves permanently at the disposal of the Court." This has now become one of the essential features of most international judicial institutions. As a result, becoming an international judge has nowadays turned into a career aspiration for many individuals throughout the world.

13. To conclude, it should perhaps be recalled that the draft Statute of the Permanent Court of Justice was first drawn up by an Advisory Committee composed of ten jurists, who met here in the Hague, at the Peace Palace, between 16 June to 24 July 1920. After a little over five weeks of intense work, they were able to deliver a draft Statute to the Council and Assembly of the League of Nations. The end-result of this collective effort is, in my view, the best text that legal talent could devise for international adjudication. One hundred years after its adoption, the Statute has served as the basis for the evolution of international adjudication and has profoundly influenced the formulation of the statutes of other international and regional courts created in the past 70 years.

14. If time is the ultimate test of quality, the work of the drafters of the Statute was certainly a masterpiece. Even if we were to draft a new Statute today, I do not think that we would find much to change in its provisions. As we celebrate the centenary of this unique instrument, it is therefore appropriate to pay glowing tribute to those ten personalities, some of whom, such as Adatci, Altamira, Fromageot and Loder, later became members or even Presidents of the PCIJ. I thank you for your attention.

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