ADDRESS BY THE PRESIDENT OF THE INTERNATIONAL
COURT OF JUSTICE, JUDGE STEPHEN M. SCHWEBEL,
TO THE GENERAL ASSEMBLY OF THE UNITED NATIONS

27 OCTOBER 1998

Mr. President, Excellencies, Ladies and Gentlemen:

It is an honour to speak to the General Assembly under the presidency of the Foreign Minister of Uruguay, Didier Opertti Badán, an international lawyer with a notable record of service to his country, to the Organization of American States and to the United Nations. We in the Court recall with the greatest respect and affection the two distinguished Uruguayan Members of the Court, Enrique Armand-Ugon and, more recently, Eduardo Jiménez de Aréchaga, who, like Dr. Opertti, served as a Minister of Uruguay, and who was President of the Court.

In presenting to the General Assembly the Annual Report of the International Court of Justice, permit me initially to recall that this year the international community took an extraordinary step towards the creation of an International Criminal Court, a court to try individuals for grave, specified international crimes. When that Court is established, it will make its contribution to the development and application of a more effective international law. It will join the family of international judicial bodies created in past decades and more recently, a family whose father is the World Court - the popular name for the Permanent Court of International Justice and the International Court of Justice - which has successfully operated for more than 70 years. This year is notable in the life of international courts for another reason as well, for it marks the first case before the International Tribunal for the Law of the Sea.

A measure of the achievement of the World Court is that today it is taken for granted that permanent international tribunals can function effectively. What was the untested ideal of the peace movement at the dawn of the 20th century has become a reality at its sunset, insofar as it has been demonstrated and accepted that the World Court and other international tribunals can contribute significantly to the peaceful and just settlement of international disputes.

Yet the treasured ideal of the early peace movement - that international judicial settlement would be *the* substitute for war - has been shown to have been unrealistic. International judicial settlement does not produce peace in the large; rather it is peace that is conducive to the settlement of inevitable international disputes by international adjudication. In times of high international tension, States avoid judicial recourse, in times of low international tension, States are more inclined to settle their disputes judicially.

That at any rate may be one important reason why today the International Court of Justice is as busy as it and its predecessor have been since 1922.

In so far as their jurisdiction does not duplicate that of pre-existing courts, the creation of specialized and regional international courts is to be welcomed. It reflects the vitality and complexity of international life. It evidences the understanding that the effectiveness of

international law can be increased by equipping legal obligations with means of their determination and enforcement.

The proliferation of international courts at the same time raises the question of the role of the International Court of Justice, and of problems proliferation may pose.

The Charter of the United Nations provides that the International Court of Justice shall be "the principal judicial organ of the United Nations". The Court has thus been endowed with a special, and the most senior, judicial position within the United Nations system. As domestic legal systems have a supreme court, the international community has its principal judicial organ. But the International Court of Justice is not, or at any rate is not now, a supreme court of appeal from other international judicial bodies, and still less a court of appeal from national courts.

While not acting as a court of appeal, the International Court of Justice has acted as the principal judicial organ of the United Nations in more than one way.

First of all, the Court contributes to the peaceful settlement of international disputes in furtherance of the first Purpose of the United Nations, "to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes which might lead to a breach of the peace".

On occasion the Court may deal with disputes which, if unsettled, might lead to a breach of the peace. Indeed, the Court has dealt with cases which did lead to hostilities. Despite that fact, those disputes were submitted to the Court, sometimes by bilateral agreement, other times by unilateral application; and they were resolved without further hostilities, and remain resolved to this day.

Thus a primary way in which the Court performs as the principal judicial organ of the United Nations is as a factor and actor in the maintenance of international peace and security. Today the Court is integrated into the United Nations system of the peaceful settlement of international disputes. The Court is no longer seen solely as "the last resort" in the resolution of disputes. States rather may have recourse to the Court in parallel with other methods of dispute resolution, appreciating that such recourse may complement the work of the Security Council and the General Assembly as well as bilateral negotiations.

In this combined process of dispute resolution, judicial recourse has helped parties to a dispute to clarify their positions. Parties are led to reduce and transform their sometimes overstated political assertions into factual and legal claims. This process may moderate tensions and lead to a better and fuller understanding of opposing claims. The result is that, in some cases, political negotiations have resumed and succeeded before the Court rendered judgment. In other cases, the Court's decision has provided the parties with legal conclusions which they may use in framing further negotiations and in achieving settlement of the dispute.

There have been a number of examples of political and judicial resolution of disputes working in parallel. A striking instance was that of the *Territorial Dispute* between Libya and Chad, a dispute which over the years had erupted into warfare.

With the assistance of the Organization for African Unity, Libya and Chad ultimately submitted the dispute to the Court. After the filing of massive pleadings and the hearing of extended oral argument, the Court determined the boundaries of these vast disputed

territories. The Court's Judgment was applied by the parties, troops withdrew under the surveillance of the Security Council, and there has been peace on the border ever since.

The most recent such instance is the current case of the *Land and Maritime Boundary between Cameroon and Nigeria*. When armed incidents occurred between Cameroon and Nigeria in 1996 in the Bakassi Peninsula, both the Organization for African Unity and the Security Council were seised with the dispute. At the same time, one of the parties to the dispute brought it before the Court and requested it to indicate provisional measures - to order interim measures of protection or an interim injunction. As a result, both the Security Council - through a statement of its President - and the Court - in an Order indicating provisional measures - called on the parties to respect a cease-fire and to take the necessary steps to return their forces to the positions that they had occupied before the outbreak of fighting. The Court this year rendered a judgment on preliminary objections raised by Nigeria, holding that it has jurisdiction to give a judgment on the merits.

To turn to the second way in which the Court acts as the principal judicial organ of the United Nations - and of the world community as a whole - it is the most authoritative interpreter of the legal obligations of States in disputes between them. This indeed is its paramount function, and it antedates the establishment of the United Nations. This central role of the Court as the adjudicator of contentious differences between States represents over 70 years of achievement in settling international legal disputes.

In the third place, the Court as the Organization's principal judicial organ has acted as the supreme interpreter of the United Nations Charter (and of associated instruments such as the General Convention on Privileges and Immunities of the United Nations, which is the focus of an advisory proceeding now in progress in the Court). It has been the authoritative interpreter of the legal obligations of States under the Charter. This the Court has done in a number of advisory and contentious proceedings.

In furtherance of the Charter's Purposes and Principles, the Court has progressively interpreted the Charter and so strengthened the United Nations and through it the international community as a whole. Thus the Court affirmed the international personality of the United Nations, found that it has implied as well as express powers to accomplish its goals, determined that the assessments of the General Assembly bind Members to pay the apportioned amounts, and attributed to the General Assembly a normative role in the formation of international law. It has interpreted a voluntary abstention by a permanent Member of the Security Council as not debarring adoption of a resolution. These examples are illustrative rather than exhaustive of a number of such important holdings.

Challenging questions of the interpretation of the Charter are currently before the Court, including the boundaries between the powers of principal organs of the United Nations. The cases brought by Libya against the United Kingdom and the United States arising out of the *Lockerbie* atrocity raise issues of the relationship between Security Council resolutions adopted under Chapter VII of the Charter and the judicial role of the Court.

I said earlier that international adjudication is not the substitute for war; that peace conduces to international adjudication rather than that international adjudication produces peace. Largely speaking, that is true. The Permanent Court of International Justice did not prevent, and could not reasonably have been expected to prevent, World War II. But as noted the International Court of Justice does work as a significant element in the peace-promoting machinery of the United Nations.

While the Court and other principal organs of the United Nations may work together, it is vital that the judicial independence of the Court is maintained. That is a matter of some delicacy. The Court is bound to give due weight to the powers, practice and positions of other United Nations organs, and particular weight to decisions of the Security Council taken under Chapter VII of the Charter. But in deciding on the law, the Court is and must remain free of the political influence of the United Nations as it is bound to remain free of the political influence of any of its Members.

Finally, there is another characteristic that distinguishes the International Court of Justice from specialized and regional international tribunals. The Court is the only truly universal judicial body of general jurisdiction. Unlike specialized judicial and arbitral bodies, the Court enjoys comprehensive jurisdiction in inter-State disputes. Unlike bilateral or regional bodies, the Court is available to all States of the international community, on all aspects of international law.

The Court's decisions, large and small, general and particular, may have an influence beyond the parties in dispute and beyond the issues in dispute. The Court has contributed to the growth of international law, to a universal system of international law. Over the years, the Court has interpreted, refined and advanced principles of international law that govern the whole of international society.

It is inevitable that other international tribunals will apply the law whose content has been influenced by the Court, and that the Court will apply the law as it may be influenced by other international tribunals. At the same time, it is possible that various courts may arrive at different interpretations of the law. Proliferation risks conflict.

But the risk should not be exaggerated. While in principle there is a single system of international law, in practice there are various views on issues of the law, and not only between international tribunals and among other authoritative interpreters of the law. There are differences within the International Court of Justice itself. That is marked not only by separate and dissenting opinions, but in adjustments of the holdings of the Court over the years.

In practice international courts may be expected to demonstrate due respect for the opinions of other international courts. The International Court of Justice looks forward to working harmoniously with other international tribunals. But the fabric of international law and life is, it is believed, resilient enough to sustain such occasional differences as may arise.

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Mr. President, permit me to turn now to particular elements of the work of the Court. I do not wish to take the time to set out what is before the General Assembly in the Report of the Court for the period from 1 August 1997 to 31 July 1998. But it should be recalled that, last year, General Assembly resolution 52/161 invited the Court to submit its "comments and observations on the consequences that the increase in the volume of cases before the Court has on its operation . . ."

The Court's response has been circulated as a document of this General Assembly, document number A/53/326. It points out that the entire raison d'être of the Court is to deal with the cases submitted to it by States and with the requests for advisory opinions made by the United Nations and its specialized agencies. These statutory duties mean that the

Court does not have programmes which may be cut or expanded at will, unlike some other United Nations organs.

Since its establishment in 1946, the Court has dealt with 77 contentious cases and 23 requests for advisory opinions. While in the sixties and seventies the Court characteristically had a few cases at a time on its docket, from the early eighties there has been a substantial increase. Today a dozen cases are pending. Moreover, as the Court's response to General Assembly resolution 52/161 explains, in some cases there are "cases within cases": requests for provisional measures, preliminary objections, counterclaims.

There is reason to surmise that this increase in recourse to the Court is likely to endure, at any rate if a state of relative détente in international relations endures. There are signs that States are acquiring a "law habit"; the more they submit their disputes to the Court, the more inclined they may be to do so.

It is noteworthy that, whereas a few decades ago, most of the cases of the Court came from the older States, today Africa ranks high as a source of cases in the Court, and that Eastern Europe, the Middle East and East Asia, as well as the Americas, Europe, and Australasia, have brought cases before it. A diversity in the clientele of the Court that mirrors the diversity of the Court's composition is reassuring.

Moreover, the range of issues of the cases that come to the Court is remarkable. The International Court of Justice is a world court not only in its origins and composition, not only in the diversity of the parties in cases before it, but in the variety of the questions on which it is called to adjudicate and to render advisory opinions.

While the caseload of the Court has so significantly increased, it has not enjoyed a proportional growth in its resources. Today its total budget is of the order of US$11,000,000 a year, a smaller percentage of the budget of the Organization than in 1946. This has resulted in an enlarging gap between the conclusion of the written, and the opening of the oral, phase of a case, a gap caused by the backlog in the work of the Court. It is trite but true to say that justice delayed may be justice denied. Undue delay may also discourage States from resorting to the Court.

At the same time, the Court has responded quickly when the situation demands. Last April, it unanimously adopted an order of provisional measures in the *Case concerning the Vienna Convention on Consular Relations*, brought by Paraguay against the United States, within five working days of the receipt of the Application.

Inadequacy of resources is one cause of delay when there is delay. The pace of the work of the Court is dependent on the pace of the processes of translation between the Court's official languages, French and English. That pace is directly affected by the number of translation staff permanently employed in The Hague - currently the whole language staff consists of just four persons - and the amount of funds in the Court's budget for engaging short-term translation and interpretation services.

The publication of the *Reports* of the Court, and even more of the *Pleadings*, is also constricted by the tiny size of the Court's staff - two persons in all; and funds for publication cannot be used to engage short-term staff to prepare publications for printing, but only for printing itself.

The Members of the Court themselves are understaffed. Several share a secretary; none enjoy the services of a clerk or research assistant, unlike many national and international

courts, including the International Criminal Tribunals for the former Yugoslavia and Rwanda.

The problems of the pace of the work of the Court are not only those of shortage of staff and funds. There are steps that the Court can take within the constraints of its current resources to accelerate and publicize its proceedings. As the response to General Assembly resolution 52/161 shows, it has taken initiatives to that end. For example, it is experimenting with omission of the preparation and translation of Notes of judges in certain cases concerning preliminary objections to jurisdiction and admissibility, a step which saves time and money. It has asked parties to cases to attach only strictly needed annexes to their pleadings and to supply available translations of them. It has set up a remarkably successful website on which the Court's daily work can be followed. The website transmits over the Internet written and oral pleadings and the judgment as soon as it is rendered.

But if this principal organ of the United Nations is to function with full effectiveness and dispatch, if the Court is to fulfil its potential as the Organization's principal judicial organ, then it must be afforded the resources to work as intensively and expeditiously as burgeoning international recourse to the Court demands. Those resources will be effectively employed, "in conformity with the principles of justice and international law", to promote the settlement of international disputes and thus further the first Purpose of the United Nations.

I am grateful for your attention and consideration.

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