THE PLACE OF THE INTERNATIONAL COURT OF JUSTICE IN THE GENERAL SYSTEM FOR THE MAINTENANCE OF PEACE, AS INSTITUTED BY THE CHARTER OF THE UNITED NATIONS

Address by Judge Mohammed Bedjaoui, President of the International Court of Justice, delivered in plenary meeting of the General Assembly at its 49th session on 13 October 1994

Mr. President, Mr. Secretary-General, Distinguished Delegates, Ladies and Gentlemen,

It is for me both a pleasure and an honour to take the floor at a meeting presided by H.E. Mr. Amara Essy. May I offer my warmest congratulations to my friend Amara Essy, on the occasion of his brilliant election, which gives me cause for rejoicing on a great many grounds - in the first place, for the United Nations, in the second place for Africa and, lastly, for himself. His little village in the north-eastern Ivory Coast is not alone in the pride it must take in him; that pride is shared by that other little village which now takes in the whole of our planet, and of which you are all the worthy representatives at this General Assembly.

In keeping with a propitious tradition, now firmly established, the General Assembly is so good as to devote a little of its valuable time to hearing the President of the International Court of Justice on the occasion of its examination of the Court's Annual Report. I am particularly honoured to be addressing you for the first time in this capacity. This privileged contact between the General Assembly and the Court seems to me to be extremely significant on at least two scores. In the first place, the Court, with its headquarters far from New York, needs to maintain with the other principal organs links of consistent and close collaboration, such as to guarantee the successful accomplishment of its and their tasks and, moreover, to ensure the concerted attainment of the aims of the Organization. In addition the Assembly, as the only organ in which all the Member States of the Organization are represented, thereby constitutes a unique forum of expression of the international community that the Court is specifically required to serve.

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As can be seen from the report of the Court for 1993-1994, the past year has seen a confirmation of the tendency towards a *renewed interest* in its jurisdiction that has been evident for some time now. The Court currently has ten contentious cases on its list. A new case was brought in May of this year, and concerns the land and maritime boundary between Cameroon and Nigeria. This is an important matter for the Parties and its submission to the Court once again bears witness to the faith of the African continent in international justice. There is just one request for an advisory opinion on the Court's General list at the moment, i.e., the one filed in September 1993 by the World Health Organization, concerning the legality of the use by a State of nuclear weapons in armed conflict. That request, raising as it does some serious issues, has prompted much concern in the international community judging by the unusual number of States - forty or so - which have submitted written statements to us. What is more, the Court's jurisdiction has been further extended: two new declarations - one from Greece and the other from Cameroon - have been deposited with the Secretary-General and a new multilateral treaty providing for the Court's jurisdiction in contentious cases has been notified to the ICJ while, at the same time, various reservations to compromissory clauses in certain multilateral treaties have been withdrawn.

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These signs, encouraging as they are, must nevertheless not give us a false impression. The real or potential volume of activities of the Court, expressed in quantitative terms of the number of pending cases, of declarations subscribed or of compromissory clauses in international agreements, does not provide a sufficient answer to *the fundamental question - which is not whether or not the Court is extremely busy, but whether it is fully occupying its rightful place in the system for the maintenance of peace, as instituted by the Charter.*

A rapid comparison with the Court's predecessor - the Permanent Court of International Justice - would moreover prove somewhat disappointing if confined to the quantitative aspects I have mentioned. The Permanent Court seems, in some respects, to have been more consistently borne in mind by the States of the time. It may for instance be noted that, of the 48 States parties to the Statute of the Court in January 1939, 36 had made a declaration of acceptance of its compulsory jurisdiction. Despite the progress made in recent years, the proportion is much lower in the case of the present Court since there are, to date, only 58 declarations in force - and, what is more, often subject to substantial reservations - for 186 States parties to the Statute of the Court.

Beyond the specific explanations that might be found for these phenomena, it must be admitted that they look singularly paradoxical in view of the role that each of the two Courts was required to play in its distinctive juridical and institutional context. The Permanent Court, which was not even an organ of the League of Nations, belonged to a system which, in the context of the time, essentially aimed to do no more than to establish peace in order to preserve the status quo. The ambitions of the framers of the Charter, on the other hand, were radically different, as their efforts were directed towards the establishment of an entirely new international society, consistently moving towards progress, more just, more egalitarian, more wont to show solidarity, more universal - all of whose members were to engage in an active and collective endeavour to usher in a full and lasting peace. It was therefore to be expected that the International Court of Justice, which was expressly intended, at San Francisco, to be an institution completely distinct from its predecessor, fully integrated into the new Organization and sharing its original concerns and purposes, would from the outset be associated far more closely and meaningfully with world issues than the Permanent Court had been. Such has unfortunately not been the case. The fiftieth anniversary of the United Nations, to be celebrated next year, and that of the Court the year after, will no doubt provide suitable occasions for stock-taking and for a comprehensive, detailed reflection on this paradox. I should nevertheless like, as of now, to offer to the Assembly and, through it, to each of the States of which it is made up, an outline of my thinking on this matter and thereby to associate myself with the efforts already made in various other settings (Decade of International Law, deliberations of the Special Committee of the Charter, Agenda for Peace) with a view to reinforcing the role of the Court.

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Article 7 of the Charter gives the Court the status of a principal organ of the United Nations; and Article 92 makes it the principal judicial organ. As such, the Court is clearly an essential part not just of the machinery for the peaceful settlement of disputes set up by the Charter, but also of the general system for the maintenance of international peace and security that it introduced. No provision of the Charter or of the Statute of the Court sets any limits to its action in this respect. In particular, no provision along the lines of Article 12 of the Charter would, on the face of it, preclude the Court from finding on a dispute being dealt with by the Security Council or by any other organ or agency. Relations between principal organs are, generally speaking, governed by the principles of speciality, equality, the power of each to determine its own jurisdiction, and co-ordination; the whole architecture of the United Nations is based upon the rule of autonomy for

each principal organ, none of which is subordinate to any other, and upon the requirement of a concerted pursuit of the common objectives set forth in the Charter. In the absence of any other specific restriction, the Court has always considered the referral of a dispute to more than one principal organ as not, in itself, constituting any impediment to its performance of its duty. The Court is the judicial organ of an international community still based upon a *"juxtaposition of sovereignties"*. It suffices, in principle, for two requirements to be met if the Court is to decide a contentious case; on the one hand, the Parties must have conferred upon it jurisdiction to deal with the case and, on the other, the dispute referred to the Court must be of a legal nature. Article 36 of the Charter recognizes, moreover, that legal disputes should as a general rule be submitted to the Court.

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It is precisely this concept of a *"legal dispute"*, as traditionally opposed to that of a *"political dispute"*, which seems to have been misinterpreted and to have constituted one of the reasons for the under-utilization of the Court in contentious cases. Under the influence, no doubt, of considerations inherited from the period prior to the adoption of the Charter, the feeling seems to have long prevailed among States that the Court should only be seised of disputes deemed to be *"exclusively legal"* and ultimately perceived as being relatively marginal or minor disputes. I solemnly appeal to States to review their criteria for the seisin of the Court and at no time to disregard the fact that a referral to the Court of no more than a subsidiary legal aspect of a much broader political dispute may well calm the situation down at once and change the whole face of that dispute.

In reality, when the Court has been seised of legal issues arising in the wider setting of an eminently political dispute, it has never refused for that reason to deal with the case, not even in the event of the use of armed force. Quite on the contrary, its jurisprudence clearly points to the decisive contribution it has made on various occasions to the maintenance or restoration of peace between the Parties.

I need only call to mind the Order for the indication of provisional measures that was made on 10 January 1986 by the Chamber of the Court responsible for dealing with the *Frontier Dispute* between Burkina Faso and Mali. That Order, which was read out in a public sitting on the very day after the Chamber had heard the Parties, at a time when serious incidents had just broken out between their respective armed forces, can serve as an example in many respects. I shall merely note that the Order, which enjoined both Parties strictly to observe the cease-fire,

was acted upon while negotiations were still under way in other, essentially regional settings.

I would also, to take a more recent example, refer at this juncture to the Judgment delivered by the Court on 3 February 1994 in the case concerning the *Territorial Dispute* between Libya and Chad. That Judgment put an end to a conflict which, for over 20 years and despite many unavailing attempts to achieve a political settlement, had seriously threatened peace in the region. I wish to pay a special tribute to the Libyan Government and to the Government of Chad which spared no effort to implement the Court's Judgment without delay, and in a spirit of friendly understanding. As early as 4 April 1994, the Parties signed an Agreement "concerning the practical modalities for the *implementation of the Judgment*" and, on 30 May 1994, they signed a Joint Declaration stating that, under the Agreement, the withdrawal of the Libyan administration and forces from the Aouzou Strip had been effected as of that date.

These two examples suffice to show that the Court is perfectly able, for all the modest material resources at its command, swiftly and effectively to fulfil the function entrusted to it by the Charter as an essential component of the system for the maintenance of peace for which the Charter provides. It suffices, for that purpose, that States refer their disputes to it, thus enabling it to play its rightful role to the full. There is no case with a legal dimension which, *a priori*, lies outside its sphere of competence.

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The Court's credibility as a principal organ and as a pre-eminent means of achieving the peaceful settlement of disputes is thus largely in the hands of States. I am deeply convinced that only when the members of the international community have discarded their long-standing prejudices and are, I would venture to say, psychologically ready to have recourse to the Court as naturally as to the political organs, without seeing such an action as a necessarily any more serious, conflictual or unfriendly, will the Court be able fully to perform its function. Some States may perhaps tend to have misgivings about judicial settlement on the grounds that, unlike a political settlement, it would be completely outside their control and hence, given the reputed rigidity of legal rules, would always be liable to turn out, in the end, less favourable to themselves. I think I can safely say that such fears are largely groundless. The Court, by the nature of the law it applies, by the role it fulfils and by its composition, is - better than any other judicial institution - able to withstand blind applications of the law. While being sufficiently precise to offer those who come before it all the legal security to which they legitimately aspire, international law remains at the same time, in

essence, a flexible and open law. The Court itself, incidentally, has on several occasions explained that the fact of its deciding in law by no means rules out - quite the contrary - due regard for equity *infra legem* or, in other words, *"that form of equity which constitutes a method of interpretation of the law in force, and is one of its attributes"*. Moreover, as we know, there are specific areas of international law, such as the law of the sea, in which reference is constantly made to *"equitable principles"*. As a body integrated into the system for the maintenance of peace that was established under the Charter, the Court never loses sight of that ultimate objective. It follows that the important approach recently made by the Court to the Parties in the case concerning *Maritime Delimitation and Territorial Questions* between Qatar and Bahrain provides indisputable evidence of the dynamic and responsible judicial policy applied by the Court, and prompted by its constant concern to hear and determine cases in the interest of peace. Furthermore, the composition of the Court as a "World Court" which must, according to Article 9 of its Statute, give an equitable representation to the main forms of civilization and the principal legal systems of the world, taken together with its working methods and, in particular, the collegiate nature of the Court, *provide firm guarantees of its perfect understanding of the concerns of all States*. The Court is made up of equal, independent and impartial judges; at the Court there is no right of veto and no political patronage. The Court takes its decisions on the basis of law, following a most meticulous examination of each case, without failing to take account of the meta-juridical factors, the expectations of the Parties and the imperative requirements of justice and peace. Indeed, many a smaller or weaker State has obtained through the Court what it would no doubt have been unable to secure by other means.

There can be no doubt that each method of peaceful settlement has its distinctive virtues, not only from an intrinsic point of view but also in the light of each particular situation. Accordingly, while the Charter makes it obligatory for States to settle their differences by peaceful means, it refrains from laying down a specific mode of settlement. That being so, it could clearly be no part of my intention to advocate the substitution of judicial settlement for any other course of action, but only to remove certain ambiguities surrounding it.

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The considerations I have just advanced with essential reference to the contentious procedure before the Court apply, *mutatis mutandis*, to the advisory procedure, *the importance of which has long been underestimated*. Only of late has there been a real awareness of the potential impact that the Advisory Opinions of the Court can, whether

directly or indirectly, have upon the maintenance of peace. A relevant legal question put in a timely manner to the Court may, by the answer it elicits, or indeed of itself, prove to be an effective tool of *preventive diplomacy* or contribute, even substantially, to the settlement of a dispute that has already arisen. Many an Advisory Opinion has, in the past, had diplomatic and political implications that were by no means inconsiderable. Thus, while we are all profoundly gratified to have sitting with us in this Assembly the representatives of the young State of Namibia, I am particularly happy and proud to be able to tell you that, through its Advisory Opinions in the *South West Africa* cases, the Court made its contribution to the eagerly awaited accession of that State to independence. There have also been a great many Advisory Opinions that have had a decisive influence upon the progress made by international law since the end of the Second World War. One only has to recall, as an example, the Advisory Opinion - which was revolutionary in the legal context of the time - that the Court handed down in 1949 on the objective international personality of the United Nations and its capacity to claim reparation.

However, relatively little use is made of the system of advisory opinions - perhaps even less than the extent to which States avail themselves of the Court's contentious jurisdiction - if at least one takes due account of the benefits it consistently makes available to international organizations, its flexible implementation and its essentially non-binding character. I am gratified to observe in passing that the General Assembly has been by far the readiest of the organs to refer its queries to the Court. It is to be hoped that a keener perception by the international community, both of the nature of the mission entrusted to the Court and of the potential of its advisory procedure, will soon give a fresh impetus to recourse to that advisory function, so fundamental for an international community aspiring to be governed by the primacy of law.

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The essential thing for the immediate future of the Court is therefore, as I see it, that in the seats of government there should be an assertion of the political will to take a fresh look at the Court and to view it more realistically. This is what seems to me to be the very modest price that has to be paid if the Court is to resume the place in world affairs that the framers of the Charter originally intended it to occupy. I do not think I need dwell upon the few criticisms traditionally levelled at the Court, and which may have made some governments more hesitant to approach it, as their groundlessness is nowadays widely acknowledged. One such criticism is the purported slowness of proceedings before the Court. It is true that the settlement

of a case by the Court takes two years on average. There are nevertheless limits to what the Court can do when sovereign States submitting important matters to it seek, quite understandably, to give the best chance to their arguments by asking for permission to submit several written pleadings, or to be given sufficient time in which to put their case, first in writing and later orally. In fact, once the Court begins its deliberation, things generally move very fast since only a few months - or even weeks - elapse between the end of the oral proceedings and the delivery of the Court's Judgment. This Assembly will certainly recall the speed with which the Court took action in response to its request for an Advisory Opinion concerning the *Applicability of the Obligation to Arbitrate under Section 21 of the United Nations Headquarters Agreement of 26 June 1947*. In that case the public hearings ended on 12 April 1988 and the Advisory Opinion of the Court - a somewhat long and complex one - was rendered as early as 26 April 1988, just 14 days later. Expeditiousness, as a prerequisite for the sound administration of justice, is therefore essentially dependent on the will not of the Court but of those that seise it.

The second criticism to which I was referring concerns the financial cost of proceedings before the Court. For the Member States of the United Nations, which contribute to its budget, access to the Court is free of charge. The cornerstone of any judicial proceedings is the cardinal principle of equality of the parties; it is this principle that underlies all the procedural provisions of the Court's Statute and Rules. We nevertheless all understand that this *"formal"* equality, crucial though it is, does not suffice to allay the misgivings of the least privileged States. True justice requires that all should be equal before the Court, not just *de jure* but also *de facto*. For this reason, I must pay tribute to the Secretary-General's noteworthy initiative that resulted in the establishment, in 1989, of a Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice, designed to help those States that cannot afford the expense of referring a dispute to the Court. May the generous contributors to the Fund be warmly thanked in the name of international justice; their exemplary gesture bears a heartening witness to a growing solidarity within the international community. I venture to invite all those who can do so to join forces with them just as eagerly, in order to increase the resources of the Fund; and I venture at the same time to invite all those in need of assistance from the Fund to take full advantage of its resources. Such a system of judicial co-operative action would, if confirmed and extended, be an unquestionable sign of great maturity in the community of States.

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International relations have been marked, in recent years, by upheavals as numerous and significant as they have been unexpected. It is essential for the United Nations, if it wishes to pursue its noble and difficult mission, to show itself capable of adapting swiftly and effectively to new circumstances. Various ideas have already been advanced in this respect. Needless to say, they will have to include the work of the Court. States, traditionally qualified as *"primary"* or *"necessary"* subjects of the international legal order, which are today alone in being able to avail themselves of the Court's contentious jurisdiction, *are no longer*, as in the 1920s, *the only protagonists in international relations* or the only interlocutors where peace-keeping is concerned. International affairs constantly demonstrate that an ever greater allowance has also to be made, at this level, for other entities. Likewise, access to the Court's advisory jurisdiction may henceforth appear unduly restricted if one thinks of the enormous potential of the advisory function and of the demand that exists. One might envisage the possibility that not only other organs of the Organization - in particular, the Secretary-General - might be able to request advisory opinions of the Court, but also, as appropriate, that that option might be extended to third organizations not belonging to the United Nations system but which make an eminent contribution to the maintenance of peace at *regional* level, for instance. These are all questions of great significance for the future of the Court and for world peace; they need to be examined very closely in the near future, and I hope one day to be able to take them up again with you.

I thank you.