ADDRESS BY H.E. JUDGE GILBERT GUILLAUME,
PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE,
TO THE UNITED NATIONS GENERAL ASSEMBLY

26 OCTOBER 2000

Mr. President, Excellencies, Ladies, Gentlemen,

It is an honour for me to address the United Nations General Assembly today on the occasion of its examination of the report of the International Court of Justice for the period 1 August 1999 to 31 July 2000.

I am particularly pleased to address you under the distinguished presidency of Mr. Harri Holkeri, whose political experience, talents as mediator and feeling for consensus will be precious assets for the Assembly. Over the last decades Finland has displayed great wisdom in sometimes sensitive circumstances. It was only recently that we in The Hague witnessed further evidence of this, when, in accordance with our expressed desire, Finland came to a friendly settlement in 1992 of its dispute with Denmark over the construction of a bridge over the Great Belt. It is now the turn of the General Assembly, after the Court, to enjoy the benefit of this wisdom.

Mr. President,

My predecessors on this rostrum, particularly the most recent of them, Presidents Bedjaoui and Schwebel, have offered an annual review of the Court's activities, as well as of the progress achieved, and problems encountered, by international justice. This firmly established tradition is to be commended and I am most honoured to speak in turn to your Assembly.

I will not impose on the Assembly a further reading of the written report already submitted to it. This year, for the first time, the report was preceded by a summary, which, I hope, you will have found useful. I will nevertheless point out that the Court worked at a sustained pace over the past year. First, by a Judgment of 15 December 1999, it ruled in a dispute that had been submitted to it in May 1996 by Botswana and Namibia concerning the island of Kasikili/Sedudu. It held that the island belonged to Botswana but stated that nationals of, and vessels flying the flags of, Botswana and Namibia were to enjoy equal national treatment in the two channels around the island.

Next, by a Judgment of 21 June 2000, the Court held that it lacked jurisdiction to rule on the Application filed in September 1999 by Pakistan against India as a result of the destruction of a Pakistani aircraft. The Court did, however, remind the Parties of their obligation to settle their disputes by peaceful means, in accordance with Article 33 of the Charter.

Acting on a request by the Democratic Republic of the Congo for the indication of provisional measures against Uganda, the Court on 1 July 2000 indicated various measures to be taken by the two Parties, especially in the area of Kisangani. The Court also made ten Orders and heard five weeks of oral argument in the case between Qatar and Bahrain. Finally, it has begun its deliberations in that case, in which it hopes to deliver a Judgment before the end of the year. It has also set a date for hearings in November of this year in the LaGrand case between Germany and the United States of America.

Thus, the Court has been able to consider or commence its consideration of all cases that were ready for hearing. Unfortunately, the coming months promise to be more difficult. Thus, while ten cases appeared on the Court's List in 1994 and 12 in 1998, we saw an increase to 25 at the end of 1999, a new record in the annals of international justice, and 23 remain on the docket today.

These cases cover a very wide range. Four of them concern land or maritime boundary disputes between neighbouring States. They involve: Qatar and Bahrain, Cameroon and Nigeria, Indonesia and Malaysia, and Nicaragua and Honduras. This is a classic, but complex, kind of dispute, calling for detailed examination of numerous geographical and historical factors and requiring a solution to thorny legal problems. But this is also the kind of dispute in which the Court has in the past played, and continues to play, an important role and makes an eminent contribution to maintaining international peace and security.

Another classic sort of dispute involves cases in which a State complains before the Court of the manner in which one of its nationals has been treated in another State. Two cases in this category are now on our List: one between Germany and the United States and the other between Guinea and the Democratic Republic of the Congo. The case concerning the Gabčíkovo-Nagymaros dams (Hungary/Slovakia) involves a dispute over a river, of a kind also familiar to the Court. The Court rendered a Judgment in principle in that case in 1997 and the Parties are now working to agree on the modalities for implementing it.

Other cases relate to events that have also been the subject of discussions, recommendations or decisions of the General Assembly or Security Council. The Libyan Arab Jamahiriya has brought cases before the Court concerning disputes between it and the United States and the United Kingdom relating to the explosion of an American civil aircraft over Lockerbie, Scotland. The Islamic Republic of Iran has brought proceedings before the Court concerning the destruction of oil platforms by the United States in 1987 and 1988. By two separate Applications, Bosnia and Herzegovina and Croatia have sought rulings against Yugoslavia for violating the 1948 Genocide Convention. Yugoslavia itself is proceeding against ten NATO member States, challenging the legality of their actions in Kosovo. Two of those Applications were dismissed *in limine litis* on the basis of a manifest lack of jurisdiction. Eight remain to be considered. Finally, the Democratic Republic of the Congo has claimed before the Court that it has been the victim of armed aggression by Burundi, Uganda and Rwanda.

As we can see, these disputes come from all corners of the world. Ten of them are between European States (concerning the Balkan situation for the most part), one relates to Latin America and two to Asia. Five are intercontinental in nature and five relate solely to African States. The Court is particularly pleased to note that African States are turning ever more frequently to it.

Much attention has been given to the reasons for the International Court's renewed vitality. Various technical factors have been advanced: the establishment of Chambers of the Court; improved procedures; creation by the United Nations Secretary-General of a fund to provide assistance in the judicial settlement of disputes; the Court's development of jurisprudence inspiring greater confidence on the part of States. Each of these factors has played a role, but I believe that the essential reason is to be found elsewhere. History shows that judicial settlement is more easily accepted, and is even in greater demand, when the international arena is calmer. Conversely, in periods of heightened tension, States are less inclined to have recourse to courts. The Permanent Court of International Justice heard many cases during the 1920s, but its courtroom fell silent in the 1930s. The International Court of Justice also saw limited activity in the 1970s; it is called upon more often and is more active today than ever before.

Aware of this development and anxious to adapt to it, the Court has for several years been taking those measures within its power to respond to this situation. First, it set up a committee

responsible for rationalizing the work of the Registry. The committee recommended various reorganizational measures that have been progressively implemented. The Court has also taken giant steps in modernizing its working and communication methods through use of new information technologies, including the launching of a highly successful website receiving an average of nearly 2,000 visits daily.

The Court has also sought increased co-operation from the parties in the functioning of justice. In particular, it has informed them of its desire to see a decrease in the number of memorials exchanged, in the volume of the annexes to the memorials and in the length of the oral arguments. The Court's comments have had the desired effect in some new cases. In the case between Germany and the United States, the Court was thus glad to see the number of written memorials limited to one pleading from each Party and the oral arguments limited to one week. In other cases, however, the case files remain disturbingly voluminous. Thus, the case file in the *Bosnia and Herzegovina* v. *Yugoslavia* case is several thousand pages long and one of the Parties has sought to call hundreds of witnesses. In addition, the proliferation of preliminary objections, counter-claims and requests for the indication of provisional measures has encumbered many cases.

In 1997 the Court adopted various decisions concerning its own deliberations; President Schwebel reported on these to the Assembly at that time. The Court has pursued this course. While the judges ordinarily prepare written Notes setting out their opinions before all deliberations, this procedure has been abandoned on an experimental basis not only for the consideration of urgent requests for provisional measures but also in cases concerning the Court's jurisdiction or the admissibility of Applications. On several occasions the Court has begun the consideration of several cases at the same time. Thus, last June, at the very time when Bahrain and Qatar were presenting their oral arguments, the Court was deliberating on the case between India and Pakistan and the provisional measures sought by the Democratic Republic of the Congo against Uganda.

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These steps will not, however, be enough to cope with the situation in coming years.

The Court's financial and human resources are no longer sufficient for it to fulfil its task properly. If it does not receive the necessary resources, it will find itself obliged, beginning in 2001, to delay passing judgment in a number of cases that will be ready for decision. From 2002, those delays may well last several years in some cases.

This is not an acceptable state of affairs. Justice so delayed is justice denied. What is more, such long delays will impinge not only on the Court's role in resolving disputes but also its function in preventing and resolving international crises and, to be frank, in maintaining peace and security.

The Court is well aware of the financial difficulties encountered by the United Nations. It has taken these into account in the past in limiting its requests and it is sincerely grateful to the Assembly for having granted it four additional posts in 1999. The current growth in litigation will however require much greater increases in staff. Unlike other United Nations organs, the Court cannot adapt its programmes to its available resources. Its resources must be adjusted to meet the legitimate expectations of the States that turn to it.

The Advisory Committee on Administrative and Budgetary Questions (ACABQ) was conscious of this in 1999, for it commended the Court at that time "for action taken to address

increasing workload in the context of budgetary stringency" and recommended "that the resource implications of the dramatic increase in the number of cases before the Court be reviewed in order to ensure that the ability of the Court to discharge its mandate is not adversely affected" (doc. A 54/7). The General Assembly itself noted with concern at the time the Court's most recent budget was adopted:

> "that the resources proposed for the International Court of Justice are not proportionate with the workload envisaged, and request[ed] the Secretary-General to propose adequate resources for this section in the context of the proposed programme budget for the biennium 2002-2003, commensurate with its increased workload and the large backlog of volumes of Court documents" (resolution 54/249, 23 December 1999).

The Court's annual budget is now slightly over 10 million US dollars. That is less than 1 per cent of the Organization's budget, which is lower than the comparable percentage in 1946. The budget should be compared with that of the Criminal Tribunal for the former Yugoslavia, nearly 100 million dollars for the year 2000, or roughly 10 times the Court's budget. The Tribunal's Registry employs some 800 staff members, while the Court's has only 61.

Admittedly, the two courts have different missions, which are not wholly comparable. But these figures provide ample proof that States have the ability to support the work of international courts when they desire to do so.

To meet its needs, the Court will request supplementary credits and a budget increase on the order of 3 million dollars per year for the next biennium, 2002-2003. Its budget would thus increase to slightly more than 26 million dollars and 38 posts would be added to its staff.

Having to deal with case files some of which run to 5,000 to 7,000 pages and to conduct the lengthy hearings that are sometimes unavoidable, the judges will be unable to deliberate on more than two or three cases per year if they do not receive appropriate assistance. Most national supreme courts provide law clerks to assist the judges by *inter alia* conducting the necessary research in the case-law and scholarly literature. The same is true in most international courts: the European Court of Justice (where each judge is assisted by three clerks), the European Court of Human Rights (for which the creation of law clerk positions is provided for in Protocol No. 11 to the Convention), the Criminal Tribunal for the former Yugoslavia (where each judge has a clerk). The same arrangement is needed at the International Court of Justice.

For its part, the Registry will be unable to perform its work without a significant increase in its staff. The Linguistic Department has only six posts (including that of the Head of Department). The Finance Division has only two professional-grade posts, as does the Department of Press and Information Matters. Several Heads of Department do not have secretaries and some judges must share a secretary. Although the President does have a secretary, he does not enjoy any other administrative or legal assistance.

I am thus obliged to sound the alarm before you today. In many countries, the judiciary presides in sumptuous historic monuments but at times lacks the financial resources necessary for its mission. That is the case of the International Court of Justice. It is for you to decide whether the Court, the principal judicial organ of the United Nations, is to die a slow death or whether you will give it the wherewithal to live.

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Mr. President, Ladies, Gentlemen,

I do not however wish to stop there in this examination of the International Court's position.

There is a problem which my predecessors also pointed out and which I must return to today: the problem raised for international law and the international community by the proliferation of international courts.

This phenomenon is in part a response to changes in international relations. It reflects greater confidence in justice and makes it possible for international law to develop in ever more varied spheres.

It does however bring with it problems which I will address in more detail before your Sixth Committee. First, it leads to cases of overlapping jurisdiction, opening the way for applicant States to seek out those courts which they believe, rightly or wrongly, to be more amenable to their arguments. This forum shopping, as it is usually called, may indeed stimulate the judicial imagination, but it can also generate unwanted confusion. Above all, it can distort the operation of justice, which, in my view, should not be made subject to the law of the marketplace.

Overlapping jurisdiction also exacerbates the risk of conflicting judgments, as a given issue may be submitted to two courts at the same time and they may hand down inconsistent judgments. National legal systems have long had to confront these problems. They have resolved them by, for the most part, creating courts of appeal and review. In this regard, the international system is very deficient.

Finally, the proliferation of international courts gives rise to a serious risk of conflicting jurisprudence, as the same rule of law might be given different interpretations in different cases. This is a particularly acute risk, as we are dealing with specialized courts that are inclined to favour their own disciplines. Several examples of this may already be cited. Thus, in ruling on the merits in the Tadic case, the International Criminal Tribunal for the former Yugoslavia recently disregarded case-law formulated by the International Court of Justice in the dispute between Nicaragua and the United States of America. The Court had found that the United States could not be held responsible for acts committed by the *contras* in Nicaragua unless it had had "effective control" over them. After criticizing the view taken by the Court, the Tribunal adopted a less strict standard for Yugoslavia's actions in Bosnia and Herzegovina and replaced the notion of "effective control" with that of "overall control", thereby broadening the range of circumstances in which a State's responsibility may be engaged on account of its actions on foreign territory.

Regardless of what one might think of this solution, the contradiction thus created gives clear evidence of the risks to the cohesiveness of international law raised by the proliferation of courts.

What can be done to ensure that this solution does not give rise to serious uncertainty as to the content of the law in the minds of players on the international stage and does not ultimately restrict the role of international law in inter-State relations?

An initial comment on this point would appear necessary. Before creating a new court, the international legislator should, I think, ask itself whether the functions it intends to entrust to the court could not properly be fulfilled by an existing court.

Judges themselves must realize the danger of fragmentation in the law, and even conflicts of case-law, born of the proliferation of courts. A dialogue among judicial bodies is crucial. The International Court of Justice, the principal judicial organ of the United Nations, stands ready to apply itself to this end if it receives the necessary resources.

Relying exclusively on the wisdom of judges might not be enough however. The relationships among international courts should, in my view, be better structured.

With this in mind, it has at times been suggested that the Court should serve as a court of appeal or review for judgments rendered by all other courts. This would however require a strong political will on the part of States and I am not certain that such a will exists.

Another mechanism was referred to last year by my predecessor, in this very hall, and I believe it appropriate to come back to it today. In order to reduce the risk of differing interpretations of international law, would it not be appropriate to encourage the various courts to seek advisory opinions in some cases from the Court, by way of the Security Council or the General Assembly?

This procedure could be adopted even for those international courts that are not organs of the United Nations, such as the International Tribunal for the Law of the Sea and the future International Criminal Court. The Council of the League of Nations made requests for advisory opinions on behalf of other international organizations and it is difficult to see why the General Assembly could not do the same. Perhaps it could, by means of an appropriate resolution, urge not only the courts it has established but also those outside the United Nations system to turn to the Court through the General Assembly.

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Mr. President, Excellencies, Ladies, Gentlemen,

The international community needs courts. It needs courts which have at their disposal the resources necessary to perform their functions. It needs courts acting in the service of the law.

I assure you that the International Court of Justice will continue in this spirit to perform those duties which it currently bears and stands ready to fulfil such others as may be entrusted to it. It is counting on your assistance to achieve those ends.

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