SPEECH BY H.E. JUDGE GILBERT GUILLAUME,
PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE,
TO THE GENERAL ASSEMBLY OF THE UNITED NATIONS
29 OCTOBER 2002

Mr. President, Excellencies, Ladies and Gentlemen,

It is an honour for me once again to address the General Assembly of the United Nations on the occasion of its examination of this latest report of the International Court of Justice for the period 1 August 2001 to 31 July 2002.

It is a particular pleasure to address you today under the presidency of Mr. Jan Kavan, Deputy-Prime Minister and Minister for Foreign Affairs for the Czech Republic. I congratulate him on his well-merited election to the presidency of the 57th session of this Assembly and wish him every success in this distinguished office with which you have entrusted him.

Mr. President,

Every year now, for close on a decade, this Assembly has accorded the President of the Court the opportunity to address it, thereby demonstrating its particular attachment to the Court, the Organization's principal judicial organ. This honour that you do us is one of which we are highly appreciative.

The Court has made its usual annual report to the Assembly, accompanied by a summary, from which it can be seen that our docket remains extremely full and our activity sustained. Addressing you a year ago, I reported a total of 22 cases entered on our List, whereas the figure now is 24.

These cases come from every continent and touch on an extremely wide range of issues.

A classic type of dispute involves proceedings between States concerning the treatment of foreign nationals and property. We have two examples of this kind, one between Guinea and the Democratic Republic of the Congo, the other between Liechtenstein and Germany.

Another fertile source of litigation is territorial and boundary disputes, both land and maritime. We currently have four such disputes before us: Indonesia and Malaysia, Nicaragua and Honduras, Nicaragua and Colombia and Benin and Niger. The last two of these cases are new ones, and I should, in passing, like to take this opportunity to congratulate Benin and Niger on their decision, taken by joint agreement, to submit their frontier dispute to a chamber of the Court.

Others of our cases are linked more directly to events concerning the maintenance of international peace and security which this Assembly or the Security Council have had to address, including the destruction of Iranian oil platforms in 1987 and 1988, the consequences of the explosion of an American civil aircraft over Lockerbie in Scotland, the crises in Bosnia and Herzegovina and Kosovo and the situation in the African Great Lakes region, which has recently been the subject of new proceedings brought by the Democratic Republic of the Congo against Rwanda.

Since August 2001 the Court has thus once again witnessed an increase in the number of cases on its List, despite its intense and sustained judicial activity throughout the past year. In all, while receiving three new cases during this period, the Court has given final decisions on the merits in two difficult cases, as well as ruling on an application for permission to intervene and on the

admissibility of various counter-claims. It has also dealt with a request for the indication of provisional measures. These have been important decisions, about which I should like to say a few words.

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I would first remind the Assembly of the Judgment handed down by the Court on 23 October 2001 in proceedings between Indonesia and Malaysia regarding sovereignty over Pulau Ligitan and Pulau Sipadan. The Philippines had sought to intervene in the case, while at the same time making it clear that it had no claim over the islands in question. Giving a broad interpretation to Article 62 of its Statute, the Court accepted that a State may intervene not only when the operative part of a judgment is capable of affecting its legal interests, but also where those interests relate to the reasoning constituting the necessary underpinning of that operative decision. The Court held, however, that in the particular circumstances of the case the Philippines had not established that it had such an interest and its request to intervene could not therefore be accepted, though the proceedings have enabled the Court to become cognizant of the Philippine position.

The judicial year just ended has been marked by a second Judgment, rendered on 14 February 2002, settling a dispute between the Democratic Republic of the Congo and Belgium concerning an international arrest warrant issued on 11 April 2000 by the Belgian judicial authorities against Mr. Yerodia Ndombasi, who was at the time the Congo's Foreign Minister. In that Judgment the Court held that the issue of the warrant and its international circulation had constituted a violation by Belgium of the immunity from criminal jurisdiction and inviolability enjoyed by Foreign Ministers under customary international law. The Court further decided that, in so acting, Belgium had engaged its international responsibility and must accordingly, by means of its own choosing, cancel the disputed arrest warrant and so inform the authorities to whom that warrant had been circulated.

The Judgment thereby settled an important issue of current interest, one which it was addressing for the first time: namely the question of the immunity from jurisdiction of Ministers for Foreign Affairs. In this regard the Court held that "the functions of the Minister for Foreign Affairs are such that, throughout the duration of his or her office, he or she when abroad enjoys full immunity from criminal jurisdiction and inviolability. That immunity and that inviolability protect the individual concerned against any act of authority of another State which would hinder him or her in the performance of his or her duties", irrespective of the offence with which such individual is charged.

The Court made it clear, however, that immunity does not signify impunity: a Minister in office can of course be tried before the criminal courts of his own country, in accordance with the law of that country. Furthermore, his immunity may in a particular case be waived by his national authorities in favour of a foreign jurisdiction. Immunity may also be lifted in the case of proceedings before international courts or tribunals if their founding statutes so provide. Finally, where a person ceases to hold the office of Foreign Minister, he or she will lose all immunity before competent foreign courts in respect of acts committed prior or subsequent to his or her period of office, as well as in respect of acts committed during that period of office in a private capacity.

Mr. President,

In the domain of international peace and security, the Court also handed down a number of decisions in the course of the year 2001 concerning the African Great Lakes region.

First came an Order made on 20 November 2001 in the dispute between the Democratic Republic of the Congo and Uganda. The respondent State had submitted counter-claims, and the Court had to decide on the admissibility of those claims. It held admissible those claims which were directly connected with the principal claim, dismissing the others.

Subsequently, the Court had to address a request for the indication of provisional measures by the Democratic Republic of the Congo against Rwanda. By Order of 10 July 2002 the Court rejected the request on grounds of lack of prima facie jurisdiction. At the same time it dismissed Rwanda's submissions seeking to have the case removed from the List on grounds of manifest lack of jurisdiction.

The Court took the opportunity to remind the Parties that there is a fundamental distinction between the question of acceptance by a State of the Court's jurisdiction and that of the compatibility of certain acts with international law. Whether or not States accept the jurisdiction of the Court, they are bound to comply with the United Nations Charter and remain responsible for acts attributable to them which are in breach of international law.

These two cases are continuing.

Mr. President,

The Court's most recent Judgment has been in the case of the *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon* v. *Nigeria: Equatorial Guinea intervening)*.

In 1994 Cameroon seised the Court of a dispute with Nigeria in regard to sovereignty over the Bakassi Peninsula. Cameroon subsequently widened the scope of its Application, requesting the Court to determine the land boundary between the two States from Lake Chad to the sea and to delimit their respective maritime areas. It also claimed reparation from Nigeria on account of damage suffered as a result of the occupation of Bakassi and Lake Chad, as well as of various frontier incidents. Nigeria responded by raising eight preliminary objections on grounds of lack of jurisdiction and inadmissibility**,** which were addressed by the Court in a Judgment of 11 June 1998. Nigeria went on to submit a request for interpretation of this initial Judgment, on which the Court ruled on 25 March 1999. Nigeria then submitted counter-claims and Equatorial Guinea an application for permission to intervene, whose admissibility we had to address.

The written pleadings exceeded 6,000 pages, the hearings lasted five weeks and the deliberations seven months. On 10 October 2002 the Court handed down its judgment, which runs to over 150 pages.

The Court held that the boundary between Cameroon and Nigeria had been fixed by treaties concluded during the colonial period, whose validity it confirmed. In consequence the Court decided that, pursuant to the Anglo-German Agreement of 11 March 1913, sovereignty over Bakassi lay with Cameroon. Likewise, the Court determined the boundary in the Lake Chad area in accordance with a Franco-British Exchange of Notes of 9 January 1931 and rejected Nigeria's claims in that area. The Court also defined with extreme precision the course of the land boundary between the two States in 17 other disputed sectors.

The Court then went on to determine the maritime boundary between the two States. It began by confirming the validity of the Yaoundé II and Maroua Declarations, whereby, in 1971 and 1975, the Heads of State of Cameroon and Nigeria had agreed the maritime boundary

separating the territorial seas of the two States. Then, in regard to the maritime boundaries further out to sea, the Court adopted as the delimitation line the equidistance line between Cameroon and Nigeria, which appeared to it in this case to produce equitable results as between the two States.

Drawing the consequences of its determination of the land boundary, the Court held that each of the two States is under an obligation expeditiously and without condition to withdraw its administration and military and police forces from areas falling within the sovereignty of the other.

In the reasoning of its Judgment the Court also noted that the implementation of the Judgment would provide the Parties with a beneficial opportunity for cooperation. It took note of Cameroon's undertaking at the hearings that, "faithful to its traditional policy of hospitality and tolerance", it "will continue to afford protection to Nigerians living in the Bakassi Peninsula and in the Lake Chad area". Finally, the Court rejected each Party's State responsibility claims against the other.

This Judgment brings to a close a difficult frontier dispute. Its implementation, possibly with United Nations assistance, will, we hope, mark the opening of a new era in relations between two neighbour and brother countries.

Having thus analysed the most important of the Court's decisions in the course of the past year, I will not now burden you with details of the other decisions — and in particular the further 15 Orders, of extremely varied content — rendered by us.

I would simply add that we are planning, in the course of the next few weeks, to deliver our Judgment on the merits in the case concerning *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*. And at the beginning of this coming month we shall be holding hearings on the request submitted by the Federal Republic of Yugoslavia for revision of the Court's Judgment of 11 July 1996, in which we had found that we had jurisdiction to hear the Application by Bosnia and Herzegovina based on the Convention on the Prevention and Punishment of the Crime of Genocide. We hope to decide this case also before 6 February 2003, when the new composition of the Court will take effect, pursuant to the vote on 21 October last.

Mr. President,

Despite these efforts, the Court's docket remains over-burdened. Several cases will become ready for hearing in 2003, and we shall have to pursue our search for solutions in order to avoid excessive delays in the examination of those cases.

Over recent years the Court has carried out a number of reviews of its procedures in an endeavour to expedite the treatment of cases, and I feel it would be not unhelpful to summarize the current position in this regard.

First, the Court has sought to reduce the length of written and oral proceedings. To this end it has amended Articles 79 and 80 of its Rules in order to speed up consideration of preliminary objections and to clarify the conditions for dealing with counter-claims. It has decided to apply more strictly Article 45 of those Rules, under which a single exchange of written proceedings must be regarded as the norm in cases initiated by application. Finally, it has taken the view that it should limit the length of oral presentations in accordance with Article 60 of the Rules, in particular as regards the second round of pleadings.

The Court has also circulated to parties a certain number of practice directions, again aimed at reducing the quantity and length of written pleadings and the duration of hearings. Thus it now asks parties who submit a case by special agreement to avoid the simultaneous filing of pleadings, which often unduly prolongs the proceedings and results in an unnecessary proliferation of documents. It asks them to be rigorously selective in the documents which they append to their

pleadings and to provide the Court with any available translations of pleadings and annexes. The Court further considers that, where preliminary objections have been raised by a party under Article 79 of the Rules, the other party should generally be able to file its observations on those objections within a maximum of four months. Finally, the Court asks the parties, save in exceptional cases, not to present new documents after the close of written proceedings.

The Court has also decided, by way of experiment, to simplify its own deliberations. Where it has to address two cases both raising questions of jurisdiction or admissibility, it will be able to hear them in immediate succession, and then consider them concurrently. It has reviewed its prior practice whereby, on the close of the oral proceedings, each Court Member prepares a written Note on the case, which is then circulated to the other judges. From now on, in incidental proceedings or straightforward cases, the Court will deliberate without written Notes. It has also agreed that in other cases Notes will be as concise as possible.

If these new procedural measures are to achieve results, the price to be paid is harder work by both judges and Registry. And this is what we have done, and will continue to do. Thus for example this year the Court decided to go on working until the end of July, to confine its judicial vacation to the month of August and to recommence its deliberations on 3 September.

This increase in work-rate presupposed that the Court and its Registry be accorded additional resources. In this regard I am bound to thank this Assembly for its response to my urgent appeal to you from this same podium one year ago. The Court's budget for the biennium 2002-2003 was increased to 11,436,000 US dollars per year. That increase was not as great as might have been wished, as a result in particular of the across-the-board cuts to support programmes imposed on all United Nations bodies. Nonetheless, it has enabled us to increase staff numbers to 91 posts (of which 77 are permanent) and to recruit additional translators, lawyers and administrative staff. At the same time, the Court has been making efforts to upgrade its IT network and has continued to develop its internet site.

These various measures have already borne fruit in new cases. Thus the *LaGrand* case between Germany and the United States was brought to judgment in 26 months and the Yerodia case *(Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo* v. *Belgium))* in 16 months. The Court was able to rule in the space of seven months on the admissibility of Uganda's counter-claims against the Democratic Republic of the Congo, and again within seven months on the intervention sought by the Philippines in the case concerning *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*. Requests for provisional measures have been dealt with in periods ranging from 24 hours to a few weeks.

We are pursuing these efforts, whilst at the same time seeing to it that the quality of our work is maintained, and we hope that the budgetary authorities will, for their part, continue to make their contribution to this. The Court today plays an important role in the prevention and resolution of international disputes. Peace between Nations cannot be assured by the work of the Court alone, but the Court can make a substantial contribution in this regard, and we are delighted to see more and more States bringing their disputes to us.

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This growth in international litigation does, however, pose a number of problems, which I discussed with you last year, pointing out the risks to international law as a result of the proliferation of international courts. I suggested solutions to this problem. They are just as relevant today, but I will not return to the point this year.

On the other hand, I would once again like to raise with you the question of the special Trust Fund set up by the United Nations Secretary-General in 1989 to provide assistance to States unable to afford the full expense of proceedings before the Court.

Justice must be accessible to all, and in every system there are arrangements, some more satisfactory than others, enabling the poorest citizens to institute legal proceedings, or to defend themselves against such proceedings. The same ought to apply to the International Court.

It's true that access to the Court is free. However, submitting a dispute to the Court still involves various costs: fees for agents, counsel, advocates and experts; preparation and reproduction of pleadings, annexes and maps; expenses in connection with oral hearings; and in certain cases the costs arising out of implementation of a judgment (for example for the demarcation of a boundary fixed by the Court).

Since its creation the Secretary-General's Trust Fund to assist the poorest States to meet such expenditure has undoubtedly played a useful role, but that role has remained a limited one. The Court has therefore asked me to pass on to you its concerns in this regard. These are threefold.

In the first place, the Fund's Statute allows it to be used only in cases submitted by special agreement. There is no such restriction in the case of the funds set up, following the United Nations example, for proceedings before the International Tribunal for the Law of the Sea or the Permanent Court of Arbitration. It would seem desirable that our Fund too could be applied in any type of case, as long as there was no dispute over jurisdiction or the admissibility of applications, or once any preliminary objections had been dismissed. Similarly, the range of costs eligible for financing out of the Fund should be broadened so as to bring the provisions applicable to the Court into line with those for other institutions.

It is, moreover, a matter of some surprise that, since the Fund's creation, only four States have approached it, one of which in fact decided not to draw on the sums promised because of the complexity of the procedures involved. It seemed to the Court that these procedures could be simplified, and we note that the Secretary-General has been kind enough to take action in this regard. The question also arises whether, in certain circumstances, there should not be provision for States to obtain advances.

Finally, if the Fund is to act, it must dispose of sufficient resources. May I say how grateful I am to those States which have contributed, some quite recently, to the financing of the Fund. I note, however, that over the years these contributions have significantly diminished, both in numbers and in amounts, and I now appeal again to those States able to do so to increase the resources available to the Fund.

The Court is not responsible for the management of the Fund. It nonetheless welcomes the operational improvements already adopted and hopes that the Fund will in the future be in a position to carry out its mission in full.

Mr. President, Excellencies, Ladies and Gentlemen,

The international community needs courts. The States composing that community have become increasingly aware of that fact. The International Court of Justice is glad of this, and I can assure you that the Court will pursue its efforts to respond to the hopes placed in it. The Court thanks you for your help and counts on you for continuing support in years to come, in the interests of justice, peace and law.

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