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

30 OCTOBER 2001

Mr. President, Excellencies, Ladies, and Gentlemen,

It is an honour for me to address the General Assembly of the United Nations for the second time on the occasion of its examination of the report of the International Court of Justice for the period 1 August 2000 to 31 July 2001.

The fact that your Assembly has, for more than a decade, invited the President of the Court to address it is evidence of the interest it takes in the Court, principal judicial organ of the United Nations, and marks your respect for the role played by the Court in the settlement of disputes between States and in the development of international law. We are extremely grateful to the Assembly for this.

I am particularly pleased to address you today under the distinguished presidency of Mr. Han Seung-soo, Minister for Foreign Affairs and Trade of the Republic of Korea, to whom I offer my warm congratulations on his election. He has my sincerest wishes for every success in his distinguished office.

Mr. President,

The Court has, as usual, transmitted its annual report to the Assembly and this report has been circulated to you. It shows that the Court's docket is still extremely full and that it continues to work at an unflagging pace. At the time of speaking, the Court has 22 cases before it for consideration.

These cases come from every continent and touch on an extremely wide range of issues. Three of them are concerned with territorial disputes between neighbouring States: Cameroon and Nigeria, Indonesia and Malaysia, Nicaragua and Honduras. These are complex disputes in which the Court has played, and will continue to play, a prominent role, thereby contributing to the maintenance of international peace and security.

Another classic type of dispute involves cases between States concerning the treatment of foreign nationals. There are two cases in this category, between Guinea and the Democratic Republic of the Congo and between Liechtenstein and Germany.

There are also other cases linked more directly to events which your Assembly or the Security Council have had to examine, such as the destruction of Iranian oil platforms by the United States in 1987 and 1988, the consequences of the explosion in 1992 of an American civil aircraft over Lockerbie in Scotland, the crises in Bosnia-Herzegovina and Kosovo and the situation in the region of the African Great Lakes.

In the course of the past year the Court has made particular efforts to address this increase in the number of disputes before it. In all it has succeeded in concluding four cases, whilst three new cases were brought to it. On those occasions it delivered important decisions, about which I should now like to speak for a few moments.

In a Judgment rendered on 16 March 2001, the Court began by adjudicating on the merits of a territorial dispute between Qatar and Bahrain. This Judgment brought to a conclusion lengthy proceedings involving the filing by the Parties of more than 6,000 pages of written pleadings, five weeks of oral hearings and a deliberation commensurate with the difficulties which the Court encountered.

The Court found that the State of Bahrain has sovereignty over the Hawar Islands and the island of Qit'at Jaradah. It recognized the sovereignty of the State of Qatar over Zubarah, Janan Island and the low-tide elevation of Fasht al Dibal. In light of these decisions it fixed the boundaries of the different maritime zones appertaining to Bahrain and Qatar and restated the law applicable in this field; it also explained the influence that islands, islets and low-tide elevations may have on maritime delimitations.

The Judgment thus handed down brought an end to a long-standing dispute which had given rise to serious tension between the Parties. Both of them thanked the Court for this contribution to peace in the region and to the restoration of friendly relations between two neighbouring States. The Court took particular pleasure in this and hopes that the wisdom which the two countries displayed in this instance will serve as an example to others.

*

Mr. President, in the judicial year which has just come to a close a second Judgment was handed down, on 27 June 2001, settling the merits of a dispute between Germany and the United States of America following the execution in the United States of two German nationals. In its decision the Court had occasion to clarify certain provisions of the Vienna Convention on Consular Relations of 24 April 1963. Further, for the first time in its history, the Court took the opportunity to give a clear ruling on the effect of the provisional measures which it has the power to indicate to Parties pursuant to Article 41 of its Statute.

This issue, a delicate one, had been the subject of lively controversy in the literature as to whether or not provisional measures are binding.

By a very large majority, the Court answered this question in the affirmative. It held that:

> "The object and purpose of the Statute is to enable the Court to fulfil the functions provided for therein and, in particular, the basic function of judicial settlement of international disputes by binding decisions in accordance with Article 59 of the Statute. The context in which Article 41 has to be seen within the Statute is to prevent the Court from being hampered in the exercise of its functions because the respective rights of the parties to a dispute before the Court are not preserved. It follows from the object and purpose of the Statute, as well as from the terms of Article 41 when read in their context, that the power to indicate provisional measures entails that such measures should be binding."

Thus there is no longer any room for doubt: the provisional measures indicated as a matter of urgency by the Court for the purpose of safeguarding the rights of the parties are binding on them. The Court anticipates that in future these measures will as a result be better executed than when the matter was subject to doubt. We hope that the Court's contribution to the maintenance of international peace and security will thereby be enhanced.

Having analysed the two most important rulings handed down by the Court over the last year, I will not go into detail on the other rulings handed down and, in particular, the 32 Orders, ranging widely in content, which have been issued.

However, I should add that, since the report was drafted, the Court has dealt with three further cases. First, on 23 October, it delivered a ruling rejecting an Application by the Philippines for permission to intervene in a territorial dispute between Malaysia and Indonesia, while at the same time taking formal note of the Philippine position. Second, it commenced consideration of a counter-claim submitted by Uganda against the Democratic Republic of the Congo. Third, it held a

public hearing in a case between the Democratic Republic of the Congo and Belgium concerning the legality of an international arrest warrant issued a year ago by a Belgian investigating judge against the incumbent Minister for Foreign Affairs of the Congo. Finally, at the beginning of next year it will commence consideration of the dispute between Cameroon and Nigeria, devoting five weeks of public hearings to the case.

*

Mr. President,

Despite these efforts, the Court's docket remains over-burdened. Several cases are ready to be heard during 2002, and solutions will have to be found in order to avoid excessive delays in examining these cases.

The Court has attempted to meet this challenge by rationalizing work within the Registry and by modernizing its working and communication methods. Major progress has been made, notably with regard to publications and communications, Intranet and Internet. However, further progress is needed, for example, in modernizing the Court's archives. The Registry has taken this matter in hand.

The Court has also made efforts to improve its procedures. As regards the preparation of cases, it has sought increased co-operation from the parties in the functioning of justice. In particular, it has again informed them of its desire to see a decrease in the number of pleadings exchanged, in the volume of annexes to pleadings and in the length of oral arguments. The Court's comments have had the desired effect in the new cases brought before it. Thus, in the case between the Democratic Republic of the Congo and Belgium, the Parties agreed to exchange only one series of written pleadings and to limit their oral arguments to one week. However, old habits die hard, and it has been necessary in other cases to impose certain restrictions on the parties in their own interest.

Since 1997, the Court has taken several measures, to which I drew your attention last year, with a view to speeding up its deliberations. It has continued these efforts. The days when our

predecessors dealt with cases one at a time are long gone. In the week of 15 October, for example, the Court deliberated on two cases while holding hearings in a third.

Finally, the Court has recently taken various decisions to improve its procedural Rules. By amending Article 79 of its Rules, it has reduced the time-limit within which preliminary objections may be raised. It has revised Article 80 of its Rules in respect of counter-claims and amended Article 52, paragraph 3, concerning the printing of pleadings. It proposes amending Article 56 concerning the production of new documents after the closure of written proceedings. It has carried out a detailed study of the practical issues involved in hearing a large number of witnesses. Finally, it has decided to convert various indications formerly given to parties into true practice directions and has implemented a procedure for reviewing those directions at regular intervals.

However, these various efforts, both administrative and procedural, would not be sufficient in themselves to redress the situation. Accordingly, last year, I appealed to this Assembly to ensure that the Court may in future have the necessary financial and human resources to perform its duties properly.

Being well aware of the financial difficulties of the United Nations, the Court has requested for the coming biennium only a moderate increase in resources. The Advisory Committee on Administrative and Budgetary Questions (ACABQ) has considered our proposals sympathetically. Whilst it has not agreed to all our requests, it has nonetheless recommended to your Assembly a significant increase in our budget from US$20,606,700 for the biennium 2000-2001 to US$22,873,500 for the coming biennium (that is, an increase of 11 per cent). The Court is grateful to the Committee and hopes that these proposals will meet with your agreement.

If that is the case, the staff in the Registry of the International Court of Justice would be increased to 91 persons. This figure, of course, is still modest, but the increase will certainly enable the Court to work under better conditions and achieve improved results in the coming year. In the light of experience, the Court will determine whether these resources, particularly in respect of the translation service and law clerks, are sufficient. In any event, the Assembly can rest assured that, with the new resources at its disposal, the Court will do its utmost to adjudicate the current cases as expeditiously as possible, whilst maintaining the quality of its jurisprudence.

Mr. President, the member States of the United Nations have undertaken, pursuant to Article 33 of the Charter, to seek by peaceful means the solution to any dispute the continuance of which is likely to endanger the maintenance of international peace and security. Article 36, paragraph 3, provides that legal disputes should be referred by the parties to the International Court of Justice in accordance with the provisions of the Statute of the Court. The Court thus has a prominent role to play in the solution of legal disputes and hence in the maintenance of international peace and security.

However, the progress noted in this respect in recent years should not lead us to harbour the illusion that peace between nations can be assured by appropriate methods for the settlement of legal disputes, or even that it is for the Court to prevent and put an end to armed conflicts. Judges cannot be the sole guarantors of peace. That is a task which depends on the action taken by your Assembly and the Security Council. Furthermore, in addition to these various mechanisms, we should always remain conscious of the fact that war is the creation first and foremost of the human spirit and that security can be achieved only through human endeavour.

Nevertheless, the International Court of Justice can play an important role in preventing conflicts, particularly territorial conflicts, as the experience gained by the Court in all continents demonstrates. In this light, I would particularly wish to encourage States which have such disputes to refer those disputes to the Court by way of special agreement. The Court is aware that certain States in Africa, in Europe and in Asia are considering such action at the present time and it welcomes that fact.

In this connection, I would moreover call your attention to the special fund established by the Secretary-General of the United Nations in 1989 to assist States unable to meet the expenses incurred in submitting a dispute to the Court. In addressing you from this very rostrum, my predecessors were concerned to emphasize the importance of such a fund for countries with limited financial resources. They also encouraged those States which are able to make more generous contributions to this fund to do so by increasing the resources at its disposal. With your permission, I should like to add my voice to theirs and to reiterate this appeal to all the member States of the United Nations that you represent here, and to call upon them to support this fund

financially with a view to enabling the poorest States to have easier access to the Court. Access to international justice should not be impeded by financial inequality.

Mr. President,

The nineteenth century was the century which saw the development of international law and of arbitration. International judicial settlement was born in the twentieth century with the Permanent Court of International Justice, which in 1945 became the International Court of Justice. Since then, international tribunals have proliferated.

This phenomenon reflects greater confidence in justice and makes it possible for international law to develop in ever more varied spheres. However, it also raises the risk of parties competing for courts — sometimes referred to as forum shopping — and overlapping jurisdiction. Each year, for the last six years, successive Presidents of the Court have called your attention to these risks which on several occasions have since been realized.

I am bound to do so again. The proliferation of international courts may jeopardize the unity of international law and, as a consequence, its role in inter-State relations.

No new international court should be created without first questioning whether the duties which the international legislator intends to confer on it could not be better performed by an existing court. International judges should be aware of the dangers involved in the fragmentation of the law and take efforts to avoid such dangers. However, those efforts may not be enough, and the International Court of Justice, the only judicial body vested with universal and general jurisdiction, has a role to play in this area. For the purpose of maintaining the unity of the law, the various existing courts or those yet to be created could, in my opinion, be empowered in certain cases — indeed encouraged — to request advisory opinions from the International Court of Justice through the intermediary of the Security Council or through the General Assembly.

The international community needs peace. The international community needs courts. It needs courts which declare the law. You can rest assured that, to this end, the International Court of Justice will continue to perform those duties which it currently bears and, that it is ready to fulfil such others as may be entrusted to it. It thanks you for all the assistance that you can give it.

———————