UNITED NATIONS

A

General Assembly

PROVISIONAL

A/46/PV.44
12 November 1991

ENGLISH

Forty-sixth session

GENERAL ASSEMBLY

PROVISIONAL VERBATIM RECORD OF THE 44th MEETING

Held at Headquarters, New York,
on Friday, 8 November 1991, at 10 a.m.

President: Mr. SHIHABI (Saudi Arabia)

- Disaster in the Philippines
- Report of the Secretary-General on the work of the Organization [10]
- Report of the International Court of Justice [13]
- Programme of work

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The meeting was called to order at 10.05 a.m.

DISASTER IN THE PHILIPPINES

The PRESIDENT (interpretation from Arabic): I should like, on behalf of the General Assembly, to express to the Government and people of the Philippines our deepest sympathy on the tragic loss of life and material damage caused by the recent floods there.

I should also like to express the hope that the international community will show its solidarity and respond promptly and generously to any request for assistance.

Mr. PADILLA (Philippines): On behalf of the Government and people of the Philippines, I should like to thank the General Assembly for the sentiments you have just expressed, Mr. President.

AGENDA ITEM 10

REPORT OF THE SECRETARY-GENERAL ON THE WORK OF THE ORGANIZATION (A/46/1)

The PRESIDENT (interpretation from Arabic): It is customary for the Assembly to take note of the annual report of the Secretary-General.

If I hear no objection, may I take it that the Assembly wishes to take note of the report of the Secretary-General in document A/46/1?

It was so decided.

The PRESIDENT (interpretation from Arabic): We have thus concluded our consideration of agenda item 10.

AGENDA ITEM 13

REPORT OF THE INTERNATIONAL COURT OF JUSTICE (A/46/4)

The PRESIDENT: The report of the International Court of Justice (A/46/4) covers the period 1 August 1990 to 31 July 1991.

May I take it that the General Assembly takes note of the report of the International Court of Justice?

It was so decided.

The PRESIDENT: I call on Sir Robert Yewdall Jennings, President of the International Court of Justice.

Sir Robert JENNINGS (President of the International Court of Justice): I am most grateful for the permission that has been given to me, as President of the International Court of Justice, to address the General Assembly. I thought it might be useful at this session, when there is the feel of a new beginning, when the international scene is changing with bewildering rapidity, to take a new look at the role of the International Court of Justice.

After decades of underuse, the Court now has a full docket of important cases, with Parties ranging from Scandinavia to Australia and from Central American to the Gulf. Perhaps I might give the Assembly a brief rundown of the present list of cases, in order to give some idea of the topics and of the Parties involved.

First, the Court will give its Judgment early next week in a case between Guinea-Bissau and Senegal on whether an arbitration award of 1989, concerning their dispute over the maritime boundary, is or is not binding.

Second, beginning next week will be the oral proceedings in a case brought by Nauru against Australia regarding the mining of Nauru's phosphate resources during the period of trusteeship.

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Third, progressing at the same time - for gone are the days of taking one case at a time - is the case between El Salvador and Honduras, with Nicaragua as intervener, brought before a Chamber of the Court, concerning six portions of the land frontier, the legal position of the waters of the Gulf of Fonseca, and questions about islands in the Gulf. This dispute, going back a very long time indeed, has at least once led to armed hostilities.

Fourth, a new case introduced by Guinea-Bissau against Senegal seeks to bring the substance of the question of their maritime boundary before the Court.

Fifth, there is the case brought by Finland against Denmark complaining that a suspension bridge that Denmark proposes to build over the Great Belt will, if completed, be in breach of rights of passage for drilling rigs and drilling ships that pass through those waters from Finland to the North Sea. The Court has already adjudged an application for interim measures of protection in this case and will probably be holding hearings on the substance of the matter next year.

Sixth, there is a case between Denmark and Norway over the delimitation of the maritime boundary between Greenland and Jan Mayen in which a very large area of sea and shelf is involved.

Seventh, the Islamic Republic of Iran has brought a case against the United States concerning the shooting down of Iranian Flight 655 in the Gulf on 3 July 1988.

Eighth, the well-known case of territorial dispute between the Libyan Arab Jamahiriya and Chad, which has at times been the cause of armed hostilities, now comes before the Court as a result of action by both Parties.

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Ninth, Portugal has recently brought a case against Australia concerning the continental shelf off East Timor, Portugal complaining of Australian dealings with Indonesia over that maritime area.

Tenth, there is an application by Qatar against Bahrain regarding the maritime boundary in the Gulf.

Eleventh, the case concerning border and transborder armed actions brought by Nicaragua against Honduras remains on the list but proceedings have been suspended at the request of both Parties.

All eleven of these cases are brought under the Court's contentious jurisdiction. But it would be wrong to assume that the influence of the Court is necessarily limited to the cases appearing on the lists and eventually in the reports; there are also cases that are settled diplomatically when the possibility of resort to the Court as an option is brought up in negotiation.

I should mention that the use of the contentious jurisdiction is now much assisted by the Trust Fund for helping to meet the expenses of poorer litigant governments. This important Fund was created on the initiative of our present Secretary-General, and all the Members of the Court are most grateful for this assistance.

There are no advisory opinion cases before the Court at the moment, but there have been some fairly recently, and I would like to mention that recently, for the first time, the Economic and Social Council exercised its power to ask the Court for an advisory opinion.

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This docket of cases is an impressive list compared with, I think, that of any other time in the history of the World Court. Even so, one is very much aware that a list of 11 cases might not immediately strike a judge of a typical domestic court as representing an over-busy court.

On this point, I should like to mention that the International Court and domestic courts are not in a comparable situation. First, there are the dimensions of some of the cases we have to hear and decide. The Honduras-El Salvador case is one in which there is a table full of volumes of documents and volumes of arguments and pleadings, which is in itself a very large task to negotiate. Secondly, in most of the cases - in fact, 10 out of the 11 I have mentioned - the Court does sit as a full court of 15 judges, or if there are ad hoc judges, even 16 or 17, who must, every one of them, be allowed to take a full part in the preparation of notes, in the deliberations and in the formal readings of the draft judgment in the two languages of the Court. They must be allowed to do this because they are elected, in accordance with the Statute, to represent the main forms of civilization and the principal legal systems of the world. To fulfil that requirement, the Court must operate as a college and it takes a good deal of time, as one can imagine, for 15, 16 or 17 judges to take a full part in almost every stage of the decision of a case. Finally, I might perhaps be allowed to mention that every judge does his own research, in every case, into the now vast and complex body of international law materials, for none of us is provided with research assistants, and even secretarial assistance has to be shared. I mention these matters because the Court does feel very busy, and from what happened in the past I think we may say that it is gratifyingly busy by any standard.

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Glancing at this list of cases, we can say one thing with assurance: this is indeed now a world court, exhibiting in its daily work that quality of universality which is also a feature of this General Assembly. I think there is every reason to believe that this new busyness of the Hague Court, which has been developing now for some time, is set to continue. A reason for that belief is that there is perhaps now a greater understanding among Governments of the role that an international court can and should play in their relations with one another. An important and welcome symptom of that change is the steady growth of the number of declarations accepting a measure of compulsory jurisdiction under Article 36.2 of the Court's Statute, the so-called optional clause. This development is also matched by the withdrawal of many reservations against jurisdiction clauses in treaties, which is also an important and welcome tendency, and by the augmentation of the Court's general jurisdiction.

But it is not my intention just to report to the Assembly on the relative health of the World Court at the present time, but rather to try to look to the future and see the direction in which the Court perhaps ought to go during this Decade of International Law, whose programme also includes the strengthening of the role of the International Court of Justice. A major problem for the United Nations as a whole must always be the relationship between, on the one hand, political decision and action on the diplomatic plane and, on the other, adjudication on the basis of law by the Hague Court in its role as the principal judicial organ of the United Nations. What part, for instance, can and should the Court now play in that important new role of the United Nations which has been called preventive diplomacy? These questions raise some other large questions and I can only attempt here to

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sketch the future role of the Court in this respect as I see it in this rapidly changing and evolving United Nations.

The relatively restricted role played by the Court in the past stemmed, at least in part, from seeing the role and function of the Court as being a quite separate one to be performed over there in the Peace Palace at the Hague. I suppose people in general thought, and perhaps still think, of the Court as a quite separate and self-sufficient means of dealing with any dispute and thus, since it was simplistically assumed that wars and threats of wars arise from disputes, ensuring peace among nations. This innocent fallacy was fed by the more sophisticated fallacies of scholars who taught that, since all disputes were indeed capable of being solved by some legal answer, peace could be assured if Governments in dispute could be persuaded always to resort to the Court instead of resorting to force.

The extraordinary thing about this attitude of idealizing and at the same time harmfully isolating the role of the World Court is that none of those commentators would for a moment have expected any domestic court within a State to be able of itself to create order in society by the rule of law when isolated from other organs of government such as an executive or legislative branch. For even in a developed society working within the legal system of a State, it may be found wiser and even compelling on occasion, to change anachronistic or outdated law rather than seek to enforce it through the courts. There are, therefore, some situations and even some disputes between Governments which require a political decision by a political body rather than a decision by a court on the basis of existing law. It is a source of constant wonder that so many good people in the past could so long have supposed that an international court with compulsory jurisdiction was really

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possible without complementary and developed competences vested in other kinds of international governmental bodies.

Fortunately, developments within the United Nations itself have now overtaken this fallacy. Now the General Assembly, working mainly through the International Law Commission and the Sixth Committee but also through other organs, engages actively and continuously not only in the codification of existing international law but also in its progressive development. And the preventive diplomacy of the Secretary-General, the Security Council and indeed the General Assembly is providing the International Court of Justice with that political context in which it should now be able to perform its proper legal function.

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But let us be clear that adjudication of disputes is a process that has certain quite particular characteristics, the nature of which it is important to appreciate if we are to see the proper place of adjudication in the general scheme of the United Nations.

The International Court of Justice, like any court of law set up to adjudicate a dispute, operates by requiring the parties, by a process of written and oral pleadings, to reduce or refine their dispute into a series of specific issues of law or fact, or both law and fact, on which the parties take different views, and upon which accordingly the Court can decide by saying yea or nay, with the decision supported by legal reasoning. This process is easily recognizable by consulting the so-called submissions of the parties in any case and the operative part of a Judgment. In this process of the identification of the essential juridical and factual issues, the dispute is, as it were, refined, reduced and processed so as to make it suitable for judicial settlement, to make it in fact a justiciable dispute.

The issues thus identified and abstracted are decided by the Court by considering them in the light of the applicable law, which is public international law. International law is nowadays a much more elaborated, developed and complete system of law than many people realize, thanks partly to the jurisprudence resulting from the decisions of the International Court of Justice and other legal tribunals, and thanks also to the very important work of the International Law Commission and the Sixth Committee of the General Assembly.

On the other hand, although the process of adjudication means the reduction of a dispute to specific issues of law and fact, it is also necessary to appreciate that there is also in every dispute a more or less

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important political content. Every decision of a court has political consequences, as well as legal ones. The former tendency of commentators to distinguish between legal and political disputes, as if they fell into quite distinct categories, had a dangerous artificiality. A court must indeed apply legal rules and be seen clearly to be doing so, for otherwise it forfeits such authority as it has, for its authority arises not from the pronouncements of judges but from pronouncements of what the law is. Nevertheless, a good and useful court will not be ignorant of the political issues involved or of the political consequences of the decision it takes.

The important distinction, therefore, is not between legal and political disputes so much as between legal and political methods of dealing with disputes and indeed also with situations. One does not go to a court with matters in which a political rather than a legal decision is required; to do that there are other bodies, not least the principal political organs of the United Nations itself.

Nevertheless, there are many situations and disputes even of a highly political kind in which both kinds of process - adjudication and political and diplomatic adjustment - can make a contribution. I can best say what I mean by referring here to the report of the Secretary-General to the General Assembly, where it is said:

> "Another deficiency in the working of the system of collective security is the insufficient use of the principal judicial organ of the United Nations, the International Court of Justice. Many international disputes are justiciable; even those which seem entirely political (as the Iraq-Kuwait dispute prior to invasion) have a clearly legal component. If, for any reason, the parties fail to refer the matter to

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the Court, the process of achieving a fair and objectively commendable settlement and thus defusing an international crisis situation would be facilitated by obtaining the Court's advisory opinion." (A/46/1, p. 8)

I want to emphasize this idea of identifying the "legal component" or components of a larger and perhaps, looked at as a whole, predominantly political dispute or situation. This is where the Court's advisory jurisdiction, whereby it can give a non-binding opinion on the proper law applicable to a legal component of a dispute, could be immensely useful. It may sometimes offer a way of getting things moving. In any case, the clarification of the legal position of a mainly legal component can surely be very helpful. I am not suggesting it would invariably be wise or useful so seek an advisory opinion; that is a matter of juridical and political judgment. But I do believe that to have this option more constantly in mind would have great advantages for the whole process of preventive diplomacy. It is perhaps unfortunate that a superficial reading of Article 33 of the United Nations Charter, which lists all the possible ways for the pacific settlement of disputes, may give the impression that Parties have simply to choose a method from the list, including the possibility of adjudication. In fact, I believe that the Court can usefully play a role, even in highly political matters, complementary to the other methods in that list.

To have the principal judicial organ of the United Nations more often employed with respect to the legal components of situations with which the United Nations is concerned would, quite apart from its possible contribution to solving a dispute or situation, also do immense good for international law. The relevance of international law would thus be brought home to people

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generally. Such a development must be good not only for the Court but also for the United Nations and for the authority and awareness of international law itself.

In short, I see the future of the International Court of Justice as becoming much more clearly seen as the principal judicial organ of the United Nations and much more intimately concerned with what is happening here at United Nations Headquarters in New York. I want to see the judicial organ and the political organs of the United Nations both working in harness much more than hitherto. This, I must make very clear, is not at all to suggest that I want the Court itself to become more political. On the contrary, its mission is to declare and apply the law, and it will range outside that task at its peril and at the peril of international law. Rather, the aim I have in view is that the Court and the law it applies should be seen much more readily and commonly to be relevant to most disputed situations if only to a legal component of those situations, and that it should be much more readily seen that the Court itself could be used for its proper legal purpose by the Security Council and the General Assembly, and by other bodies entitled to employ the Court's advisory jurisdiction, in matters that are not essentially legal in the overall view but perhaps highly political.

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The Court has demonstrated that, where an advisory opinion is wanted urgently, it is able to give an answer remarkably quickly. The Court, in the case of the Palestine Liberation Organization Office in New York, where the General Assembly asked for an advisory opinion on 2 March 1988, was able, after full oral proceedings, to give its opinion in the following month of April. So, where rapidity is thought necessary and wise, we think we can provide it.

Let me emphasize now most strongly that what I am trying to suggest is not what one used to hear about discovering various ways of finding work for the Court to do. There is now no need for that. The Court is busy with important cases and indeed its meagre resources of personnel and premises are already dangerously stretched. It is, rather, a proposal that resort to the Court should be seen, not as a process over there in The Hague which can occasionally be appropriate and useful, but as an integral part of the work of preventive diplomacy in the United Nations here in New York. Such a development must help during this United Nations Decade of International Law to make people generally much more aware that international law is a complete system and that it should be and is regularly applied by the United Nations itself.

Let me now finally turn to an aspect of the Court's competence that stems not only from its own Statute but also from its being the principal judicial organ of the Organization. I refer to the fact that there is no element of the system of international law that is not within the Court's jurisdication to interpret and apply when it is called upon to do so.

The perceived needs of a particular time will dictate emphasis on certain aspects or topics of international law. The needs of our time have meant

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rightly that energy, time, passion and politics are concentrated on such matters as the environment, conservation and distribution of resources, human rights and other topically important parts of international law. It is crucial, however, never for a moment to lose sight of the fact that all these parts of international law depend ultimately on the health and strength of the system of international law as a whole. A right - even human rights - does not amount to much in practice unless it is established and seen to be established as an integral part of the whole system of international law which alone can create effective corresponding obligations in the international community. Some of those special causes are no doubt very important, but the most important special cause of all is international law itself and as a whole.

The International Court or Justice, as the principal judicial organ of the United Nations, is the organ which supremely represents and enshrines this universal system of now well-developed and working law. The Court's jurisdiction is in no way limited as to subject-matter. The environment, conservation, human rights, the law of the sea and the rest are without exception within the ambit of the Court's jurisdiction, and the range of topics involved in our present list of cases illustrates the wide spread.

There is of course room for some more specialized or regional tribunals. But let it not be forgotten that, exactly as in domestic court hierarchies, the principal judicial organ has jurisdiction in all matters; for in the end, the fabric of an effective law must be seen to be one and undivided, and universal in its application.

I am most grateful to have been given this opportunity to report on the state of the International Court of Justice and to make some suggestions about the direction of its future development. In closing, may I just express the

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warm gratitude of all members of the International Court of Justice for the splendid support the Court is now receiving from the General Assembly and its Committees in the form of advice, encouragement and material resources. All that, I can assure the Assembly, is very much appreciated by all members of the Court.

The PRESIDENT (interpretation from Arabic): I now call on the Secretary-General of the United Nations, Mr. Javier Perez de Cuellar.

The SECRETARY-GENERAL: The discussion of the report of the International Court of Justice gives me a welcome opportunity to make some observations on the interplay of the principal organs of the United Nations in the field of peaceful settlement of international disputes. It also affords me an occasion to review certain measures that might lead to the strengthening of the complementarity of the respective roles of the principal organs in this important field. It gives me particular pleasure to make these remarks in the General Assembly in the presence of the President of the International Court of Justice.

The International Court of Justice is one of the six principal organs of the United Nations and forms an integral part thereof. The organic links with the other principal organs of the United Nations are maintained through, inter alia, the annual report on the work of the Court and elections of members of the Court by the General Assembly and the Security Council acting independently but in concert, a unique procedure which underlines the active role of the two main principal organs in deciding the composition of the Court.

That the Court is also the principal judicial organ provides a further bond in the relationship. The General Assembly, the Security Council or other

(The Secretary-General)

organs of the United Nations and specialized agencies so authorized, may request the Court to give an advisory opinion on any legal questions arising within the scope of their activities. In this way, the Court assists the functioning of the Organization and of the system as a whole. Although few in number, the advisory opinions of the Court have been extremely important in the constitutional life of the Organization.

For the purpose of maintaining international peace and security and of promoting the peaceful settlement of disputes, the Charter prescribes complementary roles for the General Assembly, the Security Council, the Court and the Secretariat. The primary responsibility for the maintenance of international peace and security is assigned to the Security Council. It has full executive authority ranging from the competence to investigate disputes and to recommend methods of adjustment or terms of settlement to the power of determining the existence of a threat to the peace and deciding on enforcement measures.

The General Assembly has broad functions in regard to any matter within the scope of the Charter to consider and make recommendations on the principles of cooperation in securing world peace, and has the overarching competence to discuss and, under certain circumstances, make recommendations on questions relating to the maintenance of international peace and security.

As for the Court, the Charter provides that legal disputes should as a general rule be referred by the parties to the International Court of Justice. Thus, the Court, in addition to being the principal judicial organ of the institution itself, is also the principal arm for resolving legal disputes between States. Member States are ipso facto parties to the Court's Statute. Under specific conditions, a State which is not a Member of the United Nations may also have access to the Court.

(The Secretary-General)

Here, the function of the Court is to decide, in accordance with international law, disputes of a legal nature submitted to it by States. The Court helps therefore to achieve the objective of bringing about adjustment or settlement of disputes by "peaceful means and in conformity with the principles of justice and international law".

Pursuant to the Charter, each Member State undertakes to comply with the decision of the Court in any case to which it is a party. Recourse may also be made to the Security Council with a view to giving effect to the judgment. In deciding disputes between States and through its judgments, which represent the most authoritative pronouncements on international law, the Court contributes to the maintenance of international peace and security. The record shows that a high percentage of disputes brought to the Court have been satisfactorily resolved. Let me just mention in this regard the North Sea Continental Shelf cases of 1969, the Gulf of Maine Case of 1984 and the Frontier Dispute case of 1986.

The Secretariat, which is another principal organ, executes decisions and facilitates their implementation for the reduction of international tension and abatement of conflicts. To that end, the Secretariat has indeed provided a wide range of services to the parties in conflicts occurring in different parts of the world. To open channels of communication, to establish facts, to supply professional knowledge or expertise, and to develop draft texts are typical examples of such services - all of which have proved very valuable to the parties in search of a solution to the conflict. Here the activities of the Secretariat complement those of the other principal organs for securing international peace.

(The Secretary-General)

Article 99 of the Charter specifically authorises the Secretary-General to bring to the attention of the Security Council any matter which in his opinion may threaten the maintenance of international peace and security. The intention of the Charter framers was to facilitate the Security Council's tasks under the Charter. This authorisation also provides an important legal basis for the Secretary-General to initiate actions for peace-keeping and peace-making. All these are meant to complement and strengthen the functions and powers of the Security Council for the peaceful settlement of disputes.

Clearly, each of these principal organs is endowed with a distinct role in the maintenance of international peace and security. But these roles are complementary. The independence of Namibia, which was achieved through the engagement of the General Assembly and the Security Council, the use of the Court's advisory jurisdiction, and the effective implementation of policy decisions by the Secretariat, best illustrates such complementary roles performed by the principal organs in bringing about peaceful solutions to international conflicts.

The complementarity in roles of the Court and the Security Council should be better understood and can be further strengthened in the field of settlement of disputes. Even international disputes which are predominantly political in nature often have a legal component. Dispute management can be greatly facilitated if legal components are separated from political issues. Different treatments can thus be applied. A reference to the International Court of Justice of even one legal aspect can produce valuable building blocks which may be useful for packaging the final political solution to the conflict.

(The Secretary-General)

This in no way detracts from the respective functions either of the Council or of the Court. On the contrary, it points to the utility of greater cooperation.

To undertake contentious proceedings before the International Court of Justice, which are by definition adversarial, may not be feasible or even desirable in certain situations. Advisory opinions, however, may offer a viable alternative, since they are given to a third party - that is, the requesting organ - not to the parties themselves. This reduces publicity and insulates the parties from direct confrontation. Moreover, the opinion being advisory and not binding makes it easier for the parties to agree to this approach. Suffice it to mention here that the Court's advisory opinions regarding reservations to the 1948 Genocide Convention, its advisory opinion on Namibia in 1971 and the 1975 opinion on the question of Western Sahara have all assisted the political organs of the United Nations on the settlement of disputes, facilitating an international solution to long-standing problems.

Both the Security Council and the General Assembly have the right to request advisory opinions from the Court, a right which could be exercised with greater frequency. But circumstances may require or the parties may prefer a quiet and discreet procedure which would not involve going through the decision-making process involving the entire General Assembly or the Security Council. This may particularly be the case in instances in which the Secretary-General is entrusted with the exercise of good offices as mediator of a dispute. Therefore, I have on a number of occasions suggested that the General Assembly should consider the possibility of authorizing the

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Secretary-General to request, with the consent of the parties to the dispute, advisory opinions from the Court. The request would come from the Secretary-General and the opinion given by the Court would be for his use. The political contents of the case would be de-emphasized and the parties would be able to detach themselves from the request and from the proceedings. This would leave the Secretary-General the flexibility to find the best way to use the advisory opinion in the search for a solution to the dispute.

Before closing, I should like to turn to the topic of furnishing legal and financial assistance to States wishing to settle their disputes. Such assistance represents, in my view, another example of complementary activities of the principal organs for the purpose of promoting peaceful settlement of disputes.

Legal disputes exist in various parts of the world. The high costs incurred in proceedings often constitute a financial obstacle to seeking a judicial settlement through the Court, even though such a pacific settlement of disputes is in accorddance with Article 33, paragraph 1 of the Charter. This financial constraint is particularly apparent in developing countries where multiple needs compete for very limited funds. There are instances where the parties are prepared to resort to judicial settlement but are in need of funds or legal expertise or both. There have also been cases where the parties were willing but unable, for financial reasons, to implement an International Court of Justice judgment. The availability of external resources in such situations can therefore be extremely helpful to States in their search for peaceful solutions through the International Court of Justice for the settlement of disputes.

(The Secretary-General)

With this in mind, I established a Trust Fund in 1989 to offer limited financial assistance to States to defray their expenditures incurred in court proceedings. My objectives are to encourage States to make better use of the International Court of Justice and also actively to foster the peaceful settlement of disputes.

The Fund has received world-wide support and some 30 States from all regions of the world have made financial contributions. The Fund received its first application earlier this year and an award was subsequently made to a developing country which is seeking a solution to a dispute with a neighbour through the International Court of Justice. A second application is now pending. The present assets of the Fund are, however, very limited. I draw the Assembly's attention to this because I firmly believe that the Trust Fund provides a practical way of assisting States in their endeavours to reach a peaceful solution to their disputes.

Recent events underline that the Organization is capable of being an effective institution not only for the maintenance of international peace and security but also for the making of peace in different parts of the world. Principal organs, including the International Court of Justice, have important and distinct roles to perform in this area. It is through their complementary efforts that the potential of the United Nations will best be used. Member States should realize this and act accordingly.

Mr. MONTAÑO (Mexico) (interpretation from Spanish): At its forty-sixth session, the General Assembly had the opportunity of hearing the comments in the Sixth Commitee of Sir Robert Jennings, President of the International Court of Justice, on the Court's growing activity, a trend which, we are pleased to see, is gaining strength, as is apparent from the lucid statement made this morning by the President of the Court.

The dynamic changes taking place in international society have led to broad discussion of the place the United Nations should occupy in the system of relations that can already be glimpsed, as well as of reforms that might lead to the strengthening of that role. The International Court of Justice, as a principal organ, must also be included in this exercise.

Respect for international law has been and will remain a priority for Mexico and the Latin American countries, as their Heads of State and Government indicated in the Guadalajara Declaration of last July, in which they stressed their commitment to strengthening international law as a priority objective to be attained in the current atmosphere of world détente.

Chapter II of the report, concerning the Court's jurisdiction, both in contentious cases and in advisory proceedings, prompts members to give some thought to these matters for several reasons. The figure of 159 States given as parties to its Statute has increased with the admissio. of new Members to the Organization, which has implications for the Court's future work. Moreover, the report indicates that as at July 1991, 53 States had made declarations recognizing the Court's jurisdiction as compulsory. As early as October 1947, the Government of Mexico, consistent with its foreign policy, formulated its declaration in that regard. In the interest of widening the scope of the Court's jurisdiction, Mexico would welcome initiatives in this

(Mr. Monteño, Mexico)

direction that States that have already made declarations may wish to take, inasmuch as we are aware that the judicial remedy is one among other important forms of recourse for the peaceful settlement of disputes.

In his annual report this year, the Secretary-General once again emphasizes, with the force derived from the experience of events in the past year, an important suggestion with respect to preventive diplomacy, which is reproduced in Chapter II of the Court's report. In it, the Secretary-General - in our view quite rightly - again puts forward for the consideration of the General Assembly, as he has done verbally, the desirability of extending to him the authority to request advisory opinions from the International Court of Justice whenever such opinions would facilitate the process of achieving an objectively just and fitting solution, thus ultimately strengthening the means of defusing possible international crises.

The Mexican delegation wishes to reiterate its strong support for that idea, which would be extremely beneficial to the cause of preventing and resolving international conflicts. Moreover, we wish to draw attention to the favourable attitude towards this suggestion taken by a growing number of States in the course of the debates in the Sixth Committee. The additional information, both legal and political, so clearly provided by the Secretary-General in his statement, prompts the Assembly to act expeditiously.

Mexico deems the Secretary-General's proposal to be consistent with the environment of worldwide change that is inspiring the international community and is gradually leading to a strengthened United Nations role within a pluralistic and democratic framework, in which all States are participating, based essentially on international law and cooperation for development.

(Mr. Montaño, Mexico)

While the broadening of the advisory functions of the International Court of Justice does indeed reflect a current interest, it is not merely a response to a current attitude. Rather, it is backed by years of careful reflection. Now that appropriate conditions exist, we believe this is the time to take measures leading to that objective. The framework for considering the modalities of that decision might well be the present session of the General Assembly or the next session of the Special Committee on the Charter.

Chapter III of the report bears witness to the growing resort to the International Court of Justice in contentious cases. The law of the sea is the main issue in a number of the 11 cases before the Court.

Chapter IV refers to the valuable contribution the Court has made, at the Secretary-General's request, for the celebration of the United Nations Decade of International Law. In this regard, because it is intimately linked to the United Nations Programme of Assistance in the Teaching, Study, Dissemination and Wider Appreciation of International Law, mention should be made of the Court's enthusiastic attitude, as expressed on previous occasions, towards the publication of its Judgments in all the official languages of the United Nations, which, unfortunately, has not been possible as yet, because of budgetary limitations.

Mexico, nevertheless, welcomes the news that it will be possible to translate and publish in all the official languages the summary records of the Court's Judgments and advisory opinions, as a result of which the Court has offered to provide for publication a set of all such summaries dating back to 1949. The availability of this documentation will certainly promote the greater knowledge and dissemination of international law.

(Mr. Montaño, Mexico)

Lastly, my delegation wishes to place on record its appreciation of, and support for the Secretary-General's initiative regarding the trust fund for assistance to States in the settlement of disputes through the Court. This initiative has the merit, inter alia, of reducing economic imbalances between States and of creating a degree of equality among them with regard to the possibility of access to the Court's support services.

Mr. YAÑEZ BARNUEVO (Spain) (interpretation from Spanish): First of all, I would like to thank the Secretary-General and Sir Robert Jennings, the President of the International Court of Justice, for their very interesting words. From them and from the report of the Court on its activities from 1 August 1990 to 31 July 1991, which has been circulated to us, we can see that the situation of the Court is highly encouraging, with an increasing number of cases being submitted to it, irrefutable evidence of the growing confidence of states in this high institution. This situation is a cause of particular satisfaction to my country which fervently believes in the need to settle disputes between states by peaceful means, using all the procedures provided for the purpose by the United Nations Charter and other international instruments.

In these new and very encouraging times in international relations it is, as has just been recalled by the representative of Mexico and was stressed at the recent summit of Ibero-American heads of state and government held in Guadalajara, particularly necessary for international society to be based on respect for the rule of law and therefore, as provided in Article 1 of the Charter, disputes between states should be settled in conformity with the principles of justice and international law. One important means to that end is through recourse to the International Court of Justice, the principal judicial organ of the United Nations.

Use of the Court presupposes the existence of two conditions: political will and the financial means of doing so. Political will is particularly expressed in the acceptance of the jurisdiction of the Court, which may be a general acceptance or on a case-by-case basis. In this regard, may I point out, as indicated in paragraph 14 of the Court's report, that Spain has

(Mr. Yañez Barnuevo, Spain)

accepted this compulsory jurisdiction when it deposited, on 29 October 1990, its optional declaration as provided for in Article 36 of the Statute of the Court. But, in addition to the political will, there must be the economic resources for embarking on proceedings which in most cases are lengthy and costly. Two years ago, the Secetary-General had the excellent idea of establishing a trust fund as a means of assisting less developed states in this regard. Today we can note with satisfaction that the fund has begun to work and I am pleased to say that my country has just made a contribution to it.

I said before that the situation of the International Court is encouraging, but in the pursuit of such an ambitious goal as respect for justice and intenational law in international relations, it is also true that we must never become complacent. We must therefore exert constant efforts towards that goal. We believe that the words we have just heard both from the President of the Court and from the Secretary-General show us the road that we might follow.

The Secretary-General, continuing his thinking in this area, has presented to us in his last two annual reports and in his statement this morning a specific suggestion aimed at refining the existing system on the basis of the Charter. He requests that the General Assembly authorize him, as provided for under Article 96 of the Charter, to request advisory opinions of the Court on legal questions arising within the scope of his activities. In our view, we should give serious consideration to the possibilities of acceding to that request and finding the right ways and means of doing so. The text of Article 96 of the Charter provides ample scope for finding a generally acceptable solution that would enable the Secretary-General to use

(Mr. Yañez Barnuevo, Spain)

the experience and authority of the Court when, in the exercise of his duties, legal questions may arise which require clarification at the highest possible level. We are convinced that we would thereby be serving the ultimate goal of the Organization, which is none other than the maintenance of international peace and security under conditions that may serve the aim of justice and progress for mankind.

Mr. KOROMA (Sierra Leone): The Sierra Leone delegation would like to join in welcoming Sir Robert Jennings, the President of the International Court of Justice, to this fourty-sixth session of the United Nations General Assembly, and to express our gratitude and appreciation to him for his illuminating statement on the ongoing activities of the International Court of Justice and its role in the peaceful settlement of disputes. My delegation would also like to convey through the President to his brother judges its warm felicitations for the outstanding role the Court has continued to play through its judgments, advisory opinions, interim measures and jurisprudence in fulfilment of the objectives and functions of the United Nations and its Charter, in particular in the maintenance of international peace and security.

Much as we all welcome the lessening of tension in international relations it is axiomatic that if the much heralded new world order is to be durable and equitable, it must be predicated on the solid foundation of the rule of law and indeed of international law. In this connection, the International Court of Justice will have to play the role that it has played so eminently in the past, upholding the principles of the Charter in terms of the non-use of force in international relations and in terms of the peaceful

(Mr. Koroma, Sierra Leone)

settlement of disputes. That the International Court of Justice has lately been performing its role as the principal judicial organ of the international community and hence increasingly won the confidence and admiration of the world community, is evidenced by its present list of cases and the increasing willingness of Member States to refer their disputes to the Court. Also in this connection, the delegation of Sierra Leone concurs with the position of the Secretary-General when he states in his report on the work of the Organization that

> "The rule of law in international affairs should .... be promoted by a greater recourse to the International Court of Justice not only in adjudicating disputes of a legal nature but also in rendering advisory opinion in the legal aspects of a dispute". (A/45/1, chap. III, p. 15)

The call by the Secretary-General that this authority be extended to him, with the consent of parties to a dispute, to facilitate the peaceful resolution of conflicts, therefore meets with the approval of my delegation.

(Mr. Koroma, Sierra Leone)

My delegation also welcomes the establishment of the trust fund for assistance to States that are disposed to refer their disputes to the Court but that lack the means, financial and human, to do so. However, my delegation would like to enter a caveat: we propose that, in the exercise of this function, advantage should be taken of the personnel available in the developing countries. This will not only promote the universality of the Court, but will also enable the requisite experience to be gained by personnel from the developing countries.

Given the new climate which exists in international relations today, Member States that have not yet accepted the optional clause of the Statute of the International Court of Justice - Article 36, paragraph 2, to which the President of the Court alluded in his statement - should seriously consider doing so, thereby increasing recourse to the Court in cases of dispute, which allows for judicial settlement, and hence strengthening international relations. We have taken note of the information provided by the President of the Court that Member States have indeed taken action in that connection - that is, in increasingly accepting the optional clause of the Statute of the Court.

The Sierra Leone delegation would like once again to proffer its thanks to the President of the International Court of Justice for taking the time to be present among us this morning.

The PRESIDENT (interpretation from Arabic): We have thus concluded our consideration of agenda item 13.

PROGRAMME OF WORK

The PRESIDENT (interpretation from Arabic): The General Assembly had been scheduled to consider agenda item 30, "Cooperation between the United Nations and the Organization of African Unity", this morning. However, at the request of a number of delegations, consideration of this item is postponed to a later date, to be announced.

I should like to inform members that on Wednesday, 13 November, in the morning, the Assembly will take up agenda item 39, "Question of the Falkland Islands (Malvinas)", and agenda item 14, "Report of the International Atomic Energy Agency", as well as agenda items 18 (h), "Appointment of the members of the Consultative Committee of the United Nations Development Fund for Women", and 18 (i), "Appointment of members of the Committee on Conferences".

In the afternoon of the same day, the Assembly will consider agenda item 142, "Necessity of ending the economic, commercial and financial embargo imposed by the United States of America against Cuba".

Agenda item 18 (g), "Appointment of members of the Joint Inspection Unit", which had been scheduled for consideration on Wednesday, 13 November, will be taken up on Wednesday, 20 November, in the morning.

The meeting rose at 11.25 a.m.