United Nations A/62/PV.42

General Assembly

Sixty-second session

Official Records

42nd plenary meeting
Thursday, 1 November 2007, 10 a.m.
New York

President: Mr. Kerim . . . . . (The former Yugoslav Republic of Macedonia)

In the absence of the President, Ms. Bethel (Bahamas), Vice-President, took the Chair.

The meeting was called to order at 10.10 a.m.

Agenda item 73

Report of the International Court of Justice

Report of the International Court of Justice (A/62/4)

Report of the Secretary-General (A/62/171)

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

It was so decided.

The Acting President: In connection with this item, the Assembly also has before it the report (A/62/171) of the Secretary-General on the Secretary-General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice.

I call on Judge Rosalyn Higgins, President of the International Court of Justice.

Ms. Higgins: I am very pleased to address the General Assembly on the occasion of its examination of the report of the International Court of Justice (ICJ) for the period 1 August 2006 to 31 July 2007. The opportunity for the President to speak to the General Assembly on the occasion of the Court's report is a tradition which the Court greatly values.

All United Nations Members are ipso facto parties to the Court's Statute. There are thus 192 States currently parties to the Statute, 65 of which have accepted the compulsory jurisdiction of the Court in accordance with article 36, paragraph 2, of the Statute. Furthermore, approximately 300 treaties refer to the Court in relation to the settlement of disputes arising from their application or interpretation.

The Court has been applying the working methods on which I reported last year — that is, always dealing with more than one case at a time, producing judgments in a timely fashion, taking short vacations and working intensely.

I am pleased to state that the Court has had a very productive year. This year it has already delivered three substantive judgments, one of them just three weeks ago and falling outside the period covered by the annual report. Even before 31 July, the Court had already handed down two judgments and one order on a request for the indication of provisional measures.

In addition, the Court has in this period completed hearings in three cases.

First, the Court heard oral argument on preliminary objections in the case concerning *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo*) in November and December 2006, delivering its Judgment a short five months later.

Secondly, the Court also completed hearings on the merits in the case concerning *Maritime Delimitation between Nicaragua and Honduras in the*

07-57552 (E)

Caribbean Sea (Nicaragua v. Honduras) in March 2007, and that Judgment was delivered three weeks ago.

Finally, the Court also heard oral argument on the preliminary objections in the *Territorial and Maritime Dispute (Nicaragua v. Colombia*) case in June 2007, and that Judgment is under preparation.

I wish to emphasize that the judgments of the Court represent a work effort that fully engages its members throughout the year. Cases coming before the Court are never trivial matters. They are of immense importance to the countries concerned, which put in voluminous written pleadings and often ask for two rounds to explain their legal arguments and supporting materials.

In the *Malaysia/Singapore case*, for example, which begins next week, every judge must study some 4,000 pages. The parties are entitled to expect that we will examine every single thing they put before us — and we do. There follow the often lengthy oral arguments that the States concerned wish to make. And our work on the Judgment that will follow is collegial — it is not passed over to a *juge-rapporteur*.

We are, after all, the United Nations principal judicial organ, representing all the leading judicial systems of the world. So we, the judges, draft every word ourselves. All of us deliberate as to what our findings will be. A small drafting committee selected by the Court itself prepares the draft judgment, and every single judge is engaged in the collegial process of polishing and refining the judgment, making sure that no legal points are missed.

During the period under review, one new case was entered on the General List: *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France*). Djibouti filed an Application on 9 January 2006, but the Court took no action in the proceedings until France consented on 9 August 2006 to the Court's jurisdiction, pursuant to article 38, paragraph 5, of the Rules of Court.

The cases we have decided in this period have involved States of Latin America, Europe and Africa. The subject matter that interests the States of those regions has ranged from environmental matters to genocide to diplomatic protection of shareholders to maritime delimitation.

The current number of cases on the docket is 11. There are three cases between European States, three between Latin American States, two between African States and one between Asian States, whilst two are of an intercontinental character. The Court thus manifestly remains the court of the entire United Nations.

Today I plan, as is traditional, to report on the judgments rendered by the Court over the past year. I will deal with them in chronological order.

On 23 January 2007, the Court handed down an Order in the case concerning *Pulp Mills on the River Uruguay (Argentina v. Uruguay*) on a request for the indication of provisional measures submitted by Uruguay.

In May 2006, Argentina initiated proceedings against Uruguay concerning the construction of two pulp mills on the River Uruguay, which constitutes the border between the two States in that region. Argentina alleges that Uruguay unilaterally authorized the construction of the two pulp mills in violation of the obligations of the 1975 Statute of the River Uruguay, a treaty signed by the two States for "the optimum and rational utilization" of the river. Argentina claims that the mills pose a threat to the river and its environment, and are likely to impair the quality of the river's water and cause significant transboundary damage to Argentina.

In an Order dated 13 July 2006, the Court rejected a request by Argentina for the indication of provisional measures, finding that the circumstances at the time did not require it to exercise its power to indicate provisional measures.

On 29 November 2006, Uruguay submitted its own request for the indication of provisional measures, on the ground that since 20 November 2006 organized groups of Argentine citizens had blockaded a vital international bridge over the river, that this was causing great economic damage to Uruguay, and that Argentina had taken no steps to put an end to the blockade.

Uruguay requested the Court to order Argentina, first, to take "all reasonable and appropriate steps to prevent or end the interruption of transit between Uruguay and Argentina"; secondly, to abstain from actions that might aggravate, extend or make more difficult the settlement of the dispute; and, thirdly, to

abstain from any other measure that might prejudice the rights of Uruguay in dispute before the Court.

In its Order of 23 January 2007, the Court found that the circumstances, as they then presented themselves to the Court, were not such as to require the exercise of its power to indicate provisional measures. In this regard, the Court was not convinced that the blockades risked prejudicing irreparably the rights that Uruguay claimed on the basis of the 1975 Statute, nor that, were there such a risk, it was imminent. The Court observed that, despite the blockades, the construction of one of the pulp mills had progressed significantly since the summer of 2006, and that work continued.

Argentina and Uruguay have since elected to have a second round of written pleadings, and the Court has fixed 29 July 2008 as the time limit for the filing of the last of those pleadings.

On 26 February 2007, the Court rendered its Judgment in the case concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro*). This is the first case before any court in which allegations of genocide have been made by one State against another.

The Court had already found that it had jurisdiction, in a previous Judgment rejecting the preliminary objections raised by the then Federal Republic of Yugoslavia. However, the Respondent was permitted to address the Court on renewed issues of jurisdiction said to arise out of its admission as a Member of the United Nations in 2000.

In its Judgment of 26 February 2007, the Court affirmed that it had jurisdiction on the basis of article IX of the Convention on the Prevention and Punishment of the Crime of Genocide. The Court noted that, since its jurisdiction was based solely on the Genocide Convention, it could only rule on genocide and associated violations of that Convention, and could not rule on breaches of other obligations of international law.

The Court initially determined that States parties to the Genocide Convention were bound not to commit genocide or any of the other acts prohibited in the Convention through the actions of their organs or persons or groups whose acts were attributable to them. It also noted that, in order to make a finding of genocide, it was necessary to establish specific intent to destroy the protected group as such, in whole or in part. The Court considered that the protected group in the case was that of the Bosnian Muslims.

In its Judgment, the Court made extensive and detailed findings of fact as to whether alleged atrocities had occurred, and, if so, whether the facts established the specific intent to destroy in whole or in part the group of the Bosnian Muslims. The Court examined the factual allegations according to the categories of prohibited acts set out in the Genocide Convention: killing; causing serious bodily or mental harm; deliberately inflicting conditions of life calculated to bring about the physical destruction of the group; preventing births within the group; and transferring children to another group.

The Court found that there was overwhelming evidence that massive killings and many other atrocities had been perpetrated during the conflict, but it could not find, on the basis of the evidence before it, that those acts were committed with the specific intent to destroy in whole or in part the group of the Bosnian Muslims. However, the Court did find that the killing of more than 7,000 Bosnian Muslim men at Srebrenica by Bosnian Serb forces had been accompanied by the intent to destroy in whole or in part the group of the Bosnian Muslims. Accordingly, it found that those events in Srebrenica constituted genocide.

The Court then turned to the question of whether it could be established that the then Federal Republic of Yugoslavia had been responsible for the genocide committed at Srebrenica. Judging on the basis of the materials put before it, the Court found that the acts of genocide had not been committed by persons or entities that could be considered to be organs of the Federal Republic of Yugoslavia.

The Court further found that it had not been established that the massacres were committed on the instructions or under the direction of the Federal Republic of Yugoslavia, nor that the Federal Republic of Yugoslavia exercised effective control over the operation in question.

Consequently, in the light of the information available to it, the Court found that the acts of those who committed genocide at Srebrenica could not be attributed to the Respondent under the rules of international law on State responsibility.

The Court did, however, find that the Respondent had violated its obligation under article I of the Genocide Convention to prevent the genocide in Srebrenica. The Court noted that, owing to the strength of the political, military and financial links between the Federal Republic of Yugoslavia and the Bosnian Serbs, the Federal Republic of Yugoslavia had been in a position of influence over the Bosnian Serbs who devised and implemented the genocide in Srebrenica.

The Court found that, despite the fact that the Respondent was aware, or should normally have been aware, of the serious risk of genocide in Srebrenica, it had not shown that it employed all means reasonably available to it in order to prevent the atrocities.

The Court further held that the Respondent had violated its obligation under article VI of the Genocide Convention to cooperate fully with the International Criminal Tribunal for the Former Yugoslavia with respect to the arrest and handing over for trial of General Mladić, and thus violated its obligation to punish genocide under article I of the Convention.

Finally, the Court found that the Respondent had breached the Court's earlier Orders, including provisional measures, by failing to take all measures within its power to prevent the commission of genocide and to ensure that any organizations and persons which might be subject to its influence did not commit acts of genocide.

As regards reparations for the Respondent's violation of the obligation to prevent genocide, the Court recalled that the Applicant had in fact suggested that a declaration of the Court would itself be appropriate satisfaction, and it made a declaration to that effect.

As for the obligation to punish acts of genocide, the Court found that a declaration in the operative clause that the Respondent had violated its obligations under the Convention and that it must immediately take effective steps to comply with the obligation to punish acts of genocide, to transfer individuals accused of genocide to the International Criminal Tribunal for the Former Yugoslavia, and fully to cooperate with that Tribunal, would constitute the appropriate satisfaction.

After having considered disputes in South America and Europe, the Court next turned to Africa.

On 24 May 2007, the Court handed down its Judgment on the admissibility of the Application in the case concerning Ahmadou Sadio Diallo brought by the Republic of Guinea against the Democratic Republic of the Congo.

The case raised important issues relating to the diplomatic protection by States of their nationals. It concerned Mr. Diallo, a businessman of Guinean nationality who was resident in the Democratic Republic of the Congo for 32 years and was the *gérant of and associé* — a type of shareholder — in two companies incorporated under Congolese law, named Africom-Zaire and Africontainers-Zaire.

Guinea claimed that Mr. Diallo was unjustly imprisoned by the authorities of the Democratic Republic of the Congo; that he was deprived of his investments, businesses, property and bank accounts; and, finally, that he was expelled from the Democratic Republic of the Congo. Guinea argued that those actions by the Democratic Republic of the Congo violated Mr. Diallo's rights, and that, according to the law of diplomatic protection, the Democratic Republic of the Congo had committed internationally wrongful acts which engaged its responsibility to Guinea.

The Court noted that Guinea sought to exercise diplomatic protection with regard to Mr. Diallo for the violation of the three categories of rights: Mr. Diallo's individual personal rights; his direct rights as an associé in Africom-Zaire and Africontainers-Zaire; and the rights of those companies themselves by "substitution".

With regard to Mr. Diallo's individual rights, the Court found that Guinea had standing to seek to protect those rights, since Mr. Diallo had Guinean nationality. It further found that this part of the Application was admissible, since Mr. Diallo had exhausted all available and effective remedies in the Democratic Republic of the Congo against the violation of his rights.

Turning to Mr. Diallo's direct rights as *associé*, the Court, having considered Congolese company law and the relevant law of diplomatic protection, held that Guinea also had standing to seek to protect those rights. It further held that this part of the Application was admissible, since Mr. Diallo had exhausted all available and effective remedies in the Democratic Republic of the Congo against the violation of his rights as *associé*.

The complicated part of the case was whether Guinea could exercise diplomatic protection of Mr. Diallo with respect to alleged violations of the rights of the two companies of Congolese nationality, Africom-Zaire and Africontainers-Zaire. This is also known as the theory of diplomatic protection "by substitution". It seeks to allow a State to indirectly offer protection to its nationals who are shareholders in a company of a different nationality in situations in which the rights of those shareholders are not protected under a treaty, and no other remedy is available, because the allegedly unlawful acts were committed against the company by the State of its own nationality. This would be an exception to the usual rule in international law that the right of diplomatic protection of the company may only be exercised by the State of nationality of the company.

Having carefully examined the practice of States and the decisions of international courts and tribunals on this question, the Court concluded that, at least at the present time, there was no established exception in international law allowing for diplomatic protection by substitution. Guinea therefore had no standing to seek to protect the rights of the two companies, and this part of the Application was inadmissible.

The Court has now fixed the time limit for the filing of written pleadings on the merits by the Democratic Republic of the Congo.

I turn to what is next on the horizon for the International Court.

Next week we begin public hearings on the merits in the case concerning *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore*).

I am glad to inform the Assembly that the Court has decided to open hearings on 21 January 2008 in the case *Certain Questions of Mutual Assistance in Criminal Matters (Djibouti v. France*).

Later in the year, we will hold hearings in the cases concerning *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Croatia v. Serbia and Montenegro*) and *Maritime Delimitation in the Black Sea (Romania v. Ukraine*).

Last year I informed the Assembly that our aim was to increase further our throughput while retaining the high quality of our judgments. As I believe must be apparent from what I have reported today, we have indeed made much progress.

The Court has always delivered its judgments within a reasonable time after the conclusion of hearings in a case. There has never been a problem with that phase of proceedings. But we have in the past had problems with the scheduling of oral hearings, and a backlog had built up. By "backlog", I mean a State having to wait an unreasonably long time after the deposit of its written pleadings for oral hearings to be scheduled.

At the beginning of 2006, it seemed possible that if we made a prodigious effort we would be able to clear the backlog of cases by 2008. I am extremely happy to report that we have essentially reached that stage now. In planning our schedule for the coming year, we were in a position to hear any cases in which the parties had exchanged a single round of pleadings and were ready to be heard.

In some instances, of course, States prefer to have an extra round of written pleadings, so we will wait until that process is completed before scheduling the oral hearings. Thus, some occasional delay in bringing on the oral hearings is now a product of the choice of the States to ask for a further written round, and not of any backlog in the Court.

The important thing is that States thinking of coming to the International Court can today be confident that as soon as they have finished their written exchanges we will be ready to move to the oral stage in a timely manner.

That goal having been achieved, our push for efficiency continues. Unfortunately, we have had to spend more time than we would have wished this year on a matter not of our choosing. I am referring to the consequences of the adoption of General Assembly resolution 61/262, "Conditions of service and compensation for officials other than Secretariat officials: members of the International Court of Justice and judges and ad litem judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda".

Informed at the last moment of the imminent adoption of that resolution, on which the Court had not been consulted, I sent a letter to the President of the General Assembly, which was circulated to all permanent representatives, expressing the Court's deep concern that the proposed action regarding emoluments under the resolution would create inequality among judges, which is prohibited under the Court's Statute.

That issue will be addressed in the forthcoming report of the Secretary-General on conditions of service and compensation for officials other than Secretariat officials.

A memorandum that the Court produced in July to assist the Office of the Secretary-General in the preparation of that forthcoming report clearly lays out the serious legal consequences arising out of resolution 61/262, including the fact that it establishes a transitional measure that draws a distinction between current judges of the Court and those judges elected after 1 January 2007. That will result in judges elected after 1 January 2007 having an income substantially below the current remuneration. It will be the first time in the history of the United Nations that judicial salary levels have been reduced. And it would be without precedent — this is the key point — for judges on the same Bench to receive different salaries.

Equality between the judges of the International Court is one of the fundamental principles underlying its Statute. It should be recalled that the parties appearing before the Court are sovereign States, not individuals or corporations. Although judges serve as independent members of the judiciary, States are entitled to assume that a judge of their nationality, whose election they have worked hard for, is in a position of full equality with all other judges on the Bench.

No discrepancy in treatment can be allowed to exist, not only among permanent judges, but also between permanent judges and judges ad hoc — that is, judges chosen by States parties to a litigation not having a national on the Bench — or between two judges ad hoc. Indeed, that is what the Statute of the Court requires. The Statute is an integral part of the United Nations Charter, attached to the Charter, and has a central status in United Nations instruments. It is not just to be ignored or put aside.

Let me put this to the Assembly in graphic terms, and ask Member States this: "When you come to the Court with a case and you do not have a judge of your nationality on the Bench, are you going to be pleased that the judge ad hoc to whom you are entitled will be paid less than the rest of us, and perhaps less than the judge ad hoc nominated by the other party, if that other judge ad hoc was appointed before January 2007? Was that really what you thought you were achieving when you adopted resolution 61/262?"

I cannot believe that any State represented in this Hall wishes to put judges of its own nationality in a position of financial inferiority to others. Nor do Member States wish to see the Statute of the Court violated.

The deep irony is that paragraph 7 of resolution 61/262 — the purpose of which was to address certain budgetary matters related to the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda — in fact at the present time has its negative impact only on the International Court of Justice.

No further elections are envisaged for the International Criminal Tribunal for the Former Yugoslavia until 2009, and the Tribunal until then has a sufficiency of judges ad litem for its work. If the term of office of its judges were to be extended in 2009, instead of there being new elections upon the end of their current term, the adverse impact of the provisions of paragraph 7 of resolution 61/262 would even then concern only the International Court of Justice. Moreover, there may well be no new elections for the International Criminal Court for Rwanda.

So the International Court of Justice stands alone at the moment in bearing the negative impact of the resolution and all the problems of principle that it brings with it about the equality of judges under the Court's Statute. We have cases here and now where judges ad hoc are coming, and the Statute clearly requires that they be in a position of full equality with other judges and with each other. Further, the Court will have elections for new judges in autumn 2008.

I do not believe that the Fifth Committee and the Assembly ever meant that the Court alone should be put into a disadvantageous situation. I do not believe that the Fifth Committee and the Assembly ever meant to put the Court in conflict with its Statute. I do not believe that they ever meant to create awkward situations for States appearing in front of the Court.

For our part, we appreciate the understandable objectives behind the resolution, both as regards transparency and as regards putting the International Criminal Tribunal for Rwanda back into a position of real equality with the International Criminal Tribunal for the Former Yugoslavia and the International Court of Justice. I am hopeful that the Secretary-General's forthcoming report on conditions of service and compensation for officials other than Secretariat

officials will provide some solutions that will meet all of our legitimate needs and concerns.

The Assembly will remember that last year I also highlighted one matter in the International Court's budget request for 2008-2009: the request for nine P-2 law clerks, which would enable us to achieve a full complement of one law clerk for each member of the Court — a request first raised nine years ago by President Schwebel. I explained to the Assembly that this form of assistance is routinely provided to every other international court and tribunal, and many senior national courts. Each of the judges of the International Criminal Tribunal for Rwanda, the International Criminal Tribunal for Yugoslavia and indeed the International Criminal Court, just beginning its work, has a law clerk.

Law clerks can do the sort of support work for us, such as researching, analysing and laying out data, that will allow the judges to get on with addressing legal issues, drafting the judgments and maximizing the service we provide to the United Nations membership.

If we are granted a limited number of extra law clerks, of course that will be an appreciated gesture by the United Nations. But it remains the case that we need a law clerk each, in view of the increasing number of fact-intensive cases and the rising importance of researching and evaluating diverse materials.

This year marks the one hundredth anniversary of the 1907 Hague Peace Conference; various events have been held at The Hague to mark this centenary. It was at the Hague Peace Conference that the idea of a standing international court was born. The momentum towards the launching of an international court was interrupted by the First World War, but the founding of the Permanent Court of International Justice in 1922 and its legal continuation as the International Court of Justice in 1946 were clearly inspired by the ideas of 1907.

Dispute settlement has assumed a greater and greater importance in the past century. Provision for judicial settlement is routinely included, in one form or another, in the vast majority of multilateral treaties. The past two decades have seen the burgeoning of international courts and tribunals equipped to deal with disputes that might arise under the growing reach of international law.

The interest of States in the International Court has continued to flourish. The Court has handed down 94 judgments in its 60 years of existence; of those, one third have been delivered in the last decade. I assure the Assembly that the Court will continue to work with dedication and its customary impartiality. Our aim is to meet the expectations of those States that trust us to find a solution for them in a timely fashion, while always maintaining the high standard of our decisions, born of a collegial working method in which every judge is involved in each stage of a case. We have made great progress in that regard, and we will continue our efforts in the year to come.

Mr. van Bohemen (New Zealand): On behalf of Canada, Australia and New Zealand (CANZ), I thank the President of the International Court of Justice, Judge Rosalyn Higgins, for her excellent report on the work of the Court over the past year.

CANZ continues strongly to support the Court in its role as the principal judicial organ of the United Nations.

This year the Court has had a full caseload that is notable not only for the regional diversity of the parties, but also for the increasing diversity of subject matter. We find it encouraging that there is a growing interest of States in using the Court to resolve issues that go beyond "classic" disputes, such as maritime delimitation, to matters such as questions of environmental law and violations of human rights.

That has been illustrated this year by the case concerning the Genocide Convention. As President Higgins has just noted, this is the first case in any court in which allegations of genocide have been made by one State against another. Such cases illustrate the value of the Court's contribution to international peace and security and the development of important issues of international law.

CANZ recognizes that the Court will have a similar caseload in the coming year. As Judge Higgins has reported, however, the Court will have the advantage that it has effectively cleared its backlog of hearings. We commend the Court for this achievement and for the positive steps it has taken for increased efficiency through issuing practice directions and having meetings for strategic planning.

We recognize, nonetheless, that adequate resources are required to enable the Court to handle

cases in a timely fashion. We therefore support consideration of measures that apply in comparable courts to meet this goal.

We listened carefully to President Higgins's concerns relating to the impact of resolution 61/262 on the salaries of the judges of the Court. We understand this matter to be of importance to the judges, and CANZ is ready to discuss these issues further during the sixty-second session.

The launch this year of the improved Court website is a welcome development. With a searchable database of every decision since 1946, the website is an excellent resource that will greatly benefit judges, media, scholars and the general public worldwide.

The International Court plays a vital role in the peaceful settlement of international disputes and in strengthening the international legal order, as mandated by the Charter. Wider acceptance of its compulsory jurisdiction enables the Court to fulfil its role more effectively. Accordingly, we continue to urge Member States that have not done so to deposit with the Secretary-General a declaration of acceptance of the Court's compulsory jurisdiction.

Mr. Kamal (Egypt): I start by expressing Egypt's appreciation for the valuable introduction by Ms. Rosalyn Higgins, President of the International Court of Justice (ICJ), of the Court's report on its work last year.

I wish to emphasize Egypt's belief in the International Court's major role in securing implementation of the provisions of international law, in adjudicating conflicts between States and in providing States and international organizations with advisory opinions to help them perform their role in the best possible manner.

Since its inception, the Court has reinforced important international legal norms and principles through its *Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, the Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* and its most recent decision on the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro*) in respect of the Srebrenica massacre. That last decision, on Bosnia and Herzegovina, put an end to a horrendous stage of conflict in the Balkan region and consecrated the concept of a State's responsibility to take all measures to prevent genocide on its territory based on ethnicity, religion or language.

The Court's experience over the years has shown the need to reinforce the capacity of States, the United Nations and its specialized agencies in requesting the opinion of the Court in matters that are difficult to deal with unilaterally. These are based on the legal and moral value of the judgments and advisory opinions issued by the Court. These judgments and opinions contribute to enriching, developing and codifying the rules of international law, and entrench the principles of justice and equality at the international level, thus reflecting positively in terms of enhancing international peace and security.

Hence, for the United Nations reform process to be comprehensive and inclusive, it must include the International Court of Justice, since this is one of the Organization's major organs; this would guarantee the effectiveness of the United Nations and its ability to keep abreast with the requirements of the times, without confining reform to the Security Council, the General Assembly, the Economic and Social Council and the Secretariat.

The 2005 World Summit Outcome Document decisions tasked Member States with studying means of strengthening the Court. However, the United Nations has yet to witness discussion of any initiative or study in this regard. This makes it incumbent upon us to adopt a clear position and take serious measures in order to activate the role of the Court and harness its legal potential to the optimum extent.

Perhaps this would require the Court itself to project its vision of the development of its role in the judicial and legal realm. There is no doubt that the role of the International Court of Justice should expand to deal with the most contentions cases raised lately at the United Nations.

Therefore, we were pleased to observe the latest Judgment of the Court on the allegations of serious violations of human rights, including the crime of genocide, in Srebrenica. However, we hope that the Court, through its judgments in such cases, will establish clear legal norms to guarantee that the United Nations deals effectively with the most serious of crimes, such as aggression and war crimes.

We also look forward to the Court's dealing with the current contradiction regarding human rights, through which some are trying to suggest that their national standards are more worthy of application on the international level, without taking into account the diversity of cultures, civilizations and religions. This poses an element of increasing danger to all humanity.

With regard to the management of natural resources, we feel that the Court has a more important role to play in enabling developing countries to realize their development aspirations, through consolidating strong legal norms that affirm the sovereignty of States over their natural resources. The era of occupation and exploitation by the occupier of the natural resources of the occupied State is over, and a new international order has been put in place, based on cooperation between countries of the North and those of the South. There is no doubt that such an order will increase the burden on the Court to establish general legal principles to deal effectively with it, in accordance with the rules of international law.

Regarding the question of diplomatic protection, we are very pleased that the Court is dealing with this issue, especially in the light of the attempts by some to shy away from their obligations on the basis of illegal considerations relating to security or to the international war on terrorism.

We affirm the need to revert to the principal rules of international law, above all the 1961 Vienna Convention on Diplomatic Relations, the 1946 Convention on the Privileges and Immunities of the United Nations, and other such conventions that are the mainstay of international relations and that are violated daily by some on ethnic, religious or political grounds.

The delegation of Egypt supports the request of the ICJ to establish nine law clerk posts, as well as the establishment of a senior official post, in the biennial programme budget for 2008-2009, for the reasons contained in paragraph 23 of the report's summary.

At the same time, our delegation affirms that the judgments of the Court should remain the responsibility of the judges themselves, since they represent the living legal conscience of the international system and are the defenders of the implementation of the rulings.

Our delegation will work with others in the Fifth Committee in order to respond to such requests, especially since they come at a time of increasing international efforts to revitalize the Organization in the discharge of its role in the context of international legality, to preserve international public order, in accordance with the principles we agreed on when the United Nations was established.

Finally, the delegation of Egypt expresses its appreciation to all the judges of the Court, its President, Registrar and staff for their efforts during the year under consideration, and we wish them success in discharging the desired role of the Court in the future.

Mr. Voto-Bernales (Peru) (*spoke in Spanish*): I thank the President of the International Court of Justice, Judge Rosalyn Higgins, for her comprehensive and detailed presentation of the annual report on the work of the Court. I would also like to convey to Judge Higgins my Government's recognition of the invaluable work done by all the judges of the International Court.

The number of cases on the docket of the International Court of Justice shows the growing will of States to resolve their judicial disputes by peaceful means, as well as the confidence that the international community has in the impartiality, independence and professionalism of the one universal international tribunal with general jurisdiction.

With regard to the legal proceedings this year, we wish to mention the recent decisions of the Court on cases under its jurisdiction that have led, particularly in the case of our region, to the resolution of disputes and the broadening of spaces of cooperation and friendship between neighbouring countries.

Peru considers it of the utmost importance that the jurisdiction of the Court be universally accepted. We therefore call upon all States that have not yet done so to consider accepting the compulsory jurisdiction of the Court over disputes.

The Court's contribution in its advisory capacity is also very important. Peru urges organs of the United Nations and the relevant international organizations to request of the Court advisory opinions with a view to resolving legal disputes.

The high cost of litigation at the international level means that some countries, especially developing countries, may be deterred from resorting to the Court. In order to make recourse to international justice more

accessible for them, the Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice was created in 1989. Peru is grateful to States that have contributed to the Fund, and joins in the repeated appeal of the Secretary-General to States, intergovernmental organizations, national institutions and non-governmental organizations, as well as legal persons — both individuals and entities — to make financial contributions to it.

The administration of justice should be efficient and timely. The Court has recognized that need, and for that reason constantly improves its working methods. In that regard, we commend the recent changes to its Practice Directions, and encourage it to continue considering such measures.

Similarly, aware of the universal importance of its work, the Court continues to improve its information tools. In particular, I wish to mention its new website, launched last April, which contains very full information on its activities; it is an excellent source of information. We await with interest the improvements which have been announced, with the inclusion of audio and video material from hearings.

It is necessary to preserve and strengthen the valuable support that the International Court of Justice gives to the maintenance of international peace and security, as an ideal setting for the peaceful resolution of legal disputes between States, the development of international law and the operation of the rule of law at the international level.

To shoulder that great responsibility, the Court must have adequate resources. The Advisory Committee on Administrative and Budgetary Questions must consider, bearing in mind the international system as a whole, the Court's request for law clerks for the judges. We should ensure that all members of the Court, permanent and ad hoc, receive the same treatment.

Peru understands the needs of the Court, and supports the requests presented by Judge Rosalyn Higgins.

Mr. Qasuri (Pakistan): I thank Judge Rosalyn Higgins, President of the International Court of Justice, for presenting the latest report of the Court, on its work between August 2006 and July 2007. I also thank her for her detailed and thought-provoking briefing.

Justice and the rule of law are key to an orderly international society. The need for international legal order and justice has never been as acutely felt as it is today. Justice and fairness have become an integral requirement of present-day existence and are critical to the realization of all human rights, peaceful coexistence and cooperation among Member States.

Pakistan recognizes the International Court of Justice as the international court of a universal character with general jurisdiction. All 192 Member States of the United Nations are States parties to its Statute. Pakistan is not only a signatory, but is one of the 65 countries that have deposited a declaration with the Secretary-General accepting the Court's compulsory jurisdiction in accordance with Article 36 of its Statute. That speaks volumes for Pakistan's respect for the rule of law and access to justice.

We have taken note of the fact that about 300 bilateral and multilateral treaties provide for the Court to have jurisdiction in the resolution of disputes arising out of their interpretation and implementation. We also recognize the Court's jurisdiction in the situations of *forum prorogatum* arising from the implementation of article 38 of the Rules of Court.

We support the recommendation in the report that the Court may be consulted by the General Assembly, the Security Council, and other organs of the United Nations and specialized agencies authorized by the General Assembly, on legal questions arising in the scope of their activities. That could facilitate the peaceful settlement of disputes, as annunciated in the Charter. The rule of law is a much better option than the rule of thumb for world peace and security.

The Charter, in Chapter VI, offers vast possibilities for the United Nations and its organs to play an important role in the pacific settlement of disputes and conflict prevention. Article 36, paragraph 3, of the Charter sets out the role of the Court in the settlement of disputes. Article 1, paragraph 1, recognizes that the settlement of international disputes "by peaceful means, and in conformity with the principles of justice and international law" is one of the basic principles of the United Nations. Hence, the Security Council should make the maximum possible use of its powers under Articles 36 and 37 to recommend that legal disputes be referred to the Court as a general rule. That would bring a desirable balance

to an otherwise unfavourable political tilt so visible at the United Nations level.

Those provisions offer a wide range of options to Member States and the United Nations for the settlement of disputes. It is up to them to make the best possible use of the facilities.

The Court has uniquely contributed to the interpretation and development of customary international law. Its work and decisions are closely monitored by Member States, the international legal fraternity and others, as the Court plays an important role in the implementation and promotion of the rule of law at the international level.

We have studied the Court's five decisions delivered during the period under consideration. The recent decisions indicate that the Court has adopted a cautious approach.

The Court in January 2007 delivered a Judgment in the *Pulp Mills on the River Uruguay (Argentina v. Uruguay*) case. Uruguay was of the view that an influential group of people in Argentina had blocked a vital international bridge over the Uruguay River, thus causing enormous economic damage to Uruguay. Uruguay further pleaded to the Court that Argentina should take all reasonable and appropriate steps to prevent the damage.

The Court, on the basis of the circumstances presented to it at the time of the decision, declined to use its power under Article 41 of its Statute. The factual evidence, not other limitations, provided the basis for the decision.

The Court's decision in February 2007 in the genocide case, *Bosnia and Herzegovina v. Serbia and Montenegro*, was very important. It was the first legal case in which allegations of genocide had been made by one State against another.

On the jurisdictional part of the case, it was clarified that the Court had jurisdiction to give a judgment, as that issue had been decided in an earlier case. The new basis of challenge to the Court's jurisdiction was also rejected. The Court found that

> "the killings in Srebrenica in July 1995 were committed with the specific intent to destroy in part the group of the Muslims of Bosnia and Herzegovina in that area and … what happened there was indeed genocide." (*A/62/4, para. 15*)

The Court found that Serbia had violated its obligations contained in article 1 of the Genocide Convention.

On the point of State responsibility, some new questions emerged. Draft article 4 of the International Law Commission's draft articles on State responsibility states that a State is responsible for an act if an organ of the State is involved. The Court found that some members of the army of the Republika Srpska Main Staff were involved in the genocide. To some this amounted to the involvement of a State organ, as involvement of a State organ in an act could be proved through the involvement of its personnel, especially Main Staff. The Court remained shy of accepting this.

In May 2007, in the *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo*) Judgment, on the point of diplomatic protection by substitution, the Court upheld Ahmadou's rights as an individual and direct shareholder. However, due to the lack of exceptions in customary international law on allowing protection on the basis of substitution, the Court did not allow protection by substitution.

We have noted the Court's request to the United Nations for additional staff, including nine law clerk posts and one additional post of a senior official in the Department of Legal Matters. In recent years the Court's work has gradually expanded. The judges have few clerks at their disposal; hence, they are compelled to share these human resources.

Although the Court was established in 1946, one third of its judgments and half of its orders have been rendered in the last 10 years. Therefore, the request for expansion of the cadre is justified, and my delegation supports the addition of those new posts in the Court's Department of Legal Matters.

The rule of law and access to justice are the sine qua non of democracy and good governance. That, in turn, is the surest guarantee of world peace, human dignity and the sovereign equality of States.

Mr. El Hadj Ali (Algeria) (*spoke in French*): First, I thank Judge Rosalyn Higgins for her introduction of the annual report of the International Court of Justice. She has given a detailed picture of the accomplishments and exceptional role still played by that supreme institution of international justice.

For more than 60 years now, the International Court of Justice has spared no effort in fully playing the role assigned to it by the Charter: the promotion of the ideals of law through the peaceful settlement of disputes, the non-use of force and the advancement of international law, and thus of the primacy of the rule of law in international relations.

Our heads of State and Government, it must be remembered, strongly reaffirmed at the 2005 World Summit the obligation upon States to settle disputes by peaceful means, pursuant to Chapter VI of the Charter, including, if necessary, by referring them to the International Court of Justice.

The judgments of the Court in the past 60 years have dealt with disputes over matters of various kinds, including States' navigation rights, nationality, asylum, expropriation, law of the sea and land and maritime borders. Its judgments, as well as its advisory opinions, have considerably helped in the gradual codification of international law.

Last year, the Court handed down two judgments and one order on a request for the indication of provisional measures. Yet the number of cases on the Court's docket still remains high, as the report emphasizes.

The diversity, complexity and growing number of cases submitted to the Court demonstrate the increased confidence of the various parties in the competence, impartiality and independence of that institution. Such a trend should be not just welcomed, but encouraged, particularly among developing countries.

That noteworthy expansion is taking place in parallel with the growth of new international, regional and specialized judicial bodies, a phenomenon that in part responds to a real need felt at the international level. The results seem to be of additional usefulness to international justice.

The International Court, for example, has had to address the jurisdiction of the International Criminal Tribunal for the Former Yugoslavia in the case of *Bosnia and Herzegovina v. Serbia and Montenegro*. Such an approach — rightly positive — will foster more harmonization and reduce possible conflicts between existing international jurisdictions.

Algeria welcomes the Judgments of the Court in 2006-2007 in the case pertaining to the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro*), and that concerning the admissibility of the application made by the Republic of Guinea in the *Ahmadou Sadio Diallo* case, as well as the recent *Judgment on Maritime Delimitation between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras*). Such results are the fruit of intense efforts by the judges, in spite of logistic difficulties pointed out for many years by successive Presidents of the Court.

It is unfortunate that the main legal body of the United Nations remains the poor relation of our Organization in budgetary matters. Member States, through the General Assembly, have a duty to follow up on requests by the Court to give it the necessary resources — human and financial — to permit it to effectively carry out the tasks given it by the Charter.

Algeria welcomes the continued efforts by the Court to reconsider its working methods, and especially the changes and adjustments made this year through its new Practice Directions.

Judge Higgins has described the many cases the Court has considered and its judgments and opinions since its creation. Respect for and implementation of the judgments are crucial for the parties concerned and the whole international community. The Charter gave the Security Council a role in that regard.

The same is true of the advisory opinions handed down by that main judicial organ of the United Nations. They are not simply points of view; they reaffirm the principles of international law and contribute to the enrichment and development of that law. They must therefore be respected by all Member States, and above all by the principal organs of the United Nations: the General Assembly and the Security Council.

Alas, too many opinions go unheeded, the latest being the Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*. That Opinion, which enshrines the principle of the inadmissibility of the acquisition of land by force, should be taken into account by the major United Nations organ responsible for the maintenance of international peace and security.

States Members, through the various relevant bodies of the United Nations system, should continue to make use of the Court's jurisdiction by requesting

advisory opinions on subjects of interest or concern to them. That would result in the promotion of the rule of law, peaceful coexistence and the other principles and ideals advocated by those who wrote the Charter in the aftermath of the Second World War.

Mr. Gómez-Robledo (Mexico) (*spoke in Spanish*): At the outset, allow me to express Mexico's gratitude to Judge Rosalyn Higgins, President of the International Court of Justice, for her excellent work in the past year at the helm of the highest international tribunal, and to express our thanks for the report submitted to the Assembly.

I also take this opportunity to reiterate Mexico's solemn commitment to respect international law and promote mechanisms for the peaceful resolution of disputes, including, of course, recourse to the Court. Because of that conviction, Mexico promotes the role of the International Court of Justice in every effort under way to strengthen the United Nations. We are therefore steadfastly committed to expanding the use of the Court's consultative jurisdiction.

Likewise, in the Sixth Committee, in dealing with agenda item 86, "The rule of law at the national and international levels", we have called for the consideration of further ways and means to facilitate the submission of disputes between States to the International Court of Justice, as a way to strengthen the rule of law.

The report of the Court allows us to understand the development of international law through its application to real cases. The report also points to the role of the Court in the maintenance of international peace and security through the exercise of its jurisdiction.

Mexico recognizes the great legal value of the Court's judgments, both for States parties to a dispute and for the international community as a whole. There is no doubt that its judgments chart the course of the development of international law, while contributing to essential preventive work to avoid breaches of international peace and security.

In that regard, Mexico acknowledges the Court's Judgment in the case regarding the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro*), handed down on 26 February 2007. We would like to highlight the fact that the Court's strict interpretation of the Convention, particularly of article II, made it possible to set the threshold of the intentionality to destroy a group as such, in whole or in part, as a fundamental element in determining whether the crime of genocide has been committed. That is of paramount importance in an age when genocide is too often confused with other crimes against humanity.

As that was the first time an international tribunal had ruled on the commission of the crime of genocide from the perspective of adjudicating the international responsibility of a State, as opposed to individual criminal responsibility, the Judgment constitutes a very important step for the suppression of genocide and strengthening the regime established by the Convention.

In addition, Mexico underscores the fact that that Judgment gave us an opportunity to assess the value of cooperation between two international tribunals — in this case, between the International Court and the International Criminal Tribunal for the Former Yugoslavia. That is an excellent example of how cooperation between international jurisdictions does not necessarily pose the threat of fragmentation in international law — quite the contrary.

A year ago President Higgins told us of her optimism with regard to cooperation between international tribunals. The Judgment to which I have referred confirms that such cooperation can benefit international law.

The Government of Mexico is giving special attention to the request by the Court, in paragraph 23 of its report, for the establishment of nine law clerk posts and one additional post for a senior official in the Department of Legal Matters for the next two years. We believe that promoting the submission by States of their legal differences to the Court must be accompanied by the support it needs to carry out its tasks efficiently.

In view of the number of pending cases and potential future disputes, not to mention the extraordinary effort being made to clear the backlog, as well as the great deal of research and investigation required of judges in that connection, it is clear that the Court should have more than five assistants to serve all the judges. Five are clearly not enough. As the President pointed out, the Court's current pace is essential if States want justice to be done without unacceptable delays, but it cannot be maintained if the

members of the Court do not receive more support. Mexico will give its full support on this issue in the debates to be held in the Fifth Committee.

In conclusion, Mexico believes that the rule of law is not possible without efficient jurisdictional mechanisms to peacefully resolve disputes that may arise in the application or interpretation of international law by States. The judgments and advisory opinions of the Court illustrate the validity of international law as well as the Court's relevance as the highest international tribunal of the international system.

Ms. Govindasamy (Malaysia): My delegation thanks Judge Rosalyn Higgins, President of the International Court of Justice, for her eloquent presentation of the report of the Court. The comprehensive report is extremely useful in enabling Member States to understand and appreciate the complexity of the work of the Court and the complex issues that the Court deals with.

Malaysia compliments the Court for its contribution to the peaceful settlement of disputes between States and to the development of international law. It is self-evident that if the international community wishes to resolve and prevent conflicts in a peaceful manner it needs an impartial third party competent to deal with the relevant legal questions.

The Court has undoubtedly played an important and influential role in the promotion of peace and harmony between nations and peoples of the world through observance of the rule of law by helping to resolve disputes between States through legal means and by giving advisory opinions on legal questions referred to it in accordance with international law. Malaysia recognizes that role, and has full confidence in the Court's competence and ability to discharge its role as the principal judicial organ of the United Nations, as stipulated in the Charter and in the Court's Statute.

The Court has been accessible to all States for the peaceful settlement of disputes. Acceptance of its compulsory jurisdiction signifies that a nation is willing to acknowledge the adjudicative powers of the Court in all legal disputes regarding the interpretation of a treaty, in any question of international law and in interpretation of other international obligations.

Malaysia is pleased to note that since 1946 the Court has delivered no fewer than 92 judgments and 40 orders, with one third of those judgments and nearly half of those orders rendered in the last decade. The increased use of the Court is strong evidence that the level of confidence in it is extremely high, because it can be trusted to be impartial and effective. We are pleased that the Court has handed down very high-quality judgments and advisory opinions.

Malaysia's belief that the Court is the most appropriate avenue for the peaceful and final resolution of disputes, when all efforts in diplomacy have been exhausted, has been further strengthened by the confidence that we and the international community have in the role, function and accomplishments of the Court.

Malaysia itself, in agreement with the other parties concerned, has submitted territorial disputes for adjudication. Malaysia will fully respect the Court's decision in such cases, consistent with its abiding adherence to international law. We strongly believe that respect for the Court's decisions would contribute greatly to enhancing its stature and prestige, and in turn inculcate a culture of respect for the rule of law at the international level.

My delegation believes that the significant increase of cases on the Court's docket augurs well for the progressive development of international law and the role of the Court as a dispute settlement mechanism.

We note the acceptance by 65 States of the Court's compulsory jurisdiction, in accordance with Article 36, paragraph 2, of its Statute, and that some 300 bilateral or multilateral treaties contain provisions for the Court to have jurisdiction in the resolution of disputes arising out of the application or interpretation of those respective treaties. These welcome developments clearly demonstrate the increasing confidence in the Council's decisions and reliance on the settlement of disputes through adjudication rather than by the use of force. This manifestation of confidence in the rule of law is particularly important when the world is facing many daunting threats and challenges.

My delegation takes note of the report of the Secretary-General on the Secretary-General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice. We note the Secretary-General's appeal for all States and other relevant entities to give serious consideration to

making contributions to the Fund, which has had a decreasing level of resources since its inception. We also note the revision in the Fund's terms of reference.

Malaysia commends the Court's efforts — through its publications and lectures by the President, members of the Court, the Registrar and members of the Registry staff — to increase public awareness and understanding of its work in the judicial settlement of international disputes, its advisory functions, case law and working methods, as well as its role within the United Nations. We welcome the Court's distribution of press releases, background notes and its handbook to keep the public informed about its work, functions and jurisdiction.

We concur that the Court's website has been extremely useful and well utilised by diplomats, lawyers, academicians, students and interested members of the public as an important source of access to the Court's judgments, which constitute the most recent developments in international case law.

We hope that the Court will be granted adequate resources to allow it to continue to fulfil its mandate and meet the demands of an increasing workload.

Mr. Krishnaswamy (India): We welcome the opportunity to address the General Assembly on the report of the International Court of Justice and thank the President of the Court, Judge Rosalyn Higgins, for her introduction.

We commend Judge Higgins for her dedicated stewardship of the Court and for the Court's impressive achievements over the period under review. This will no doubt further enhance the international community's confidence in this unique organ of international law, which has made a distinctive contribution to the maintenance of international peace and security.

India continues to believe that no other judicial organ in the world can have the same capacity for dealing with international legal problems as the International Court of Justice, which is the principal judicial organ of the United Nations, entrusted with settling legal disputes between sovereign States and the promotion of the rule of law in international relations.

Over the years, the Court has been engaged in finding just and equitable solutions to legal disputes between States, and there has been a noticeable increase in the number of cases referred to it.

Another significant development is that, unlike in the past, when the jurisdiction phases of cases occupied most of the Court's time, the Court is now frequently called upon to deal directly with a diversity of complex substantive issues of international law from all regions of the world.

During the period under review, the Court rendered three very important decisions involving cases from Latin America, Africa and Europe. Their subject matter covered issues ranging from diplomatic protection of shareholders to environmental protection to genocide. This affirms once again the important role that the Court and international law play in the search for solutions to the problems of an interdependent world, in which economic, social and humanitarian issues have assumed paramount importance.

The recent period has witnessed the creation of a number of specialised regional and international courts. Along with their creation have come concerns about the fragmentation of international law. There is apprehension that similar legal issues or disputes may well be subjected to final and binding interpretations by two different bodies, projecting differing views. There is considerable apprehension that the expansion of the field in this regard could create problems of coherence between different specializations, institutions and norm systems.

The challenge, therefore, is to find a balance between, on the one hand, the need for diversity and specialized regimes and solutions, and, on the other, the importance of maintaining an overall framework or system of international law that offers a sufficient degree of security and coherence. It has been pointed out that the toolbox of international law — especially general international law and the Vienna Convention on the Law of Treaties — is not perfect, but flexible enough to assist negotiators, lawyers and judges in finding this balance.

We welcome the initiative taken by the President of the Court for a regular dialogue between the international courts and tribunals and exchanges of information with a view to improving the unity of international law and addressing the problem of overlapping jurisdictions or the fragmentation of international law.

In order for the Court to respond effectively to the increasing demands on resources made on it and to carry out its mandate efficiently, it must be provided

with adequate resources. It is a matter of concern that the 15 judges have to share and rely on five legal professionals to carry out research on complicated questions of international law and to prepare studies and notes for the judges and the Registrar. We therefore reiterate that the Court's request for individualized legal assistance for all its members is reasonable and should be granted to enable it to efficiently carry out its designated functions as the principal judicial organ of the United Nations.

Finally, I urge a re-examination of resolution 61/262, which has created a discriminatory salary regime among the 15 judges of the International Court of Justice. We hope that that unintended anomaly will be rectified.

Ms. Defensor-Santiago (Philippines): It gives me great pleasure, on behalf of the delegation of the Republic of the Philippines, to address the General Assembly on its consideration of the report of the International Court of Justice.

My delegation commends Judge Rosalyn Higgins, President of the Court, for her dedicated stewardship of the World Court and for the comprehensive report she has just presented.

The growing number of treaties negotiated between and among States underlines the heightened need to regulate the complex web of international relations in our increasingly interdependent world. With that end in mind, our world leaders adopted in 2000 the Millennium Declaration, in which they resolved to, among other things, strengthen respect for the rule of law in international, as in national, affairs and ensure compliance with the decisions of the International Court of Justice.

My delegation notes with profound appreciation the efforts made by the World Court to make its decisions more transparent and widely accessible to the public through effective use of the World Wide Web. We cannot overemphasize the value of having those decisions more widely known in strengthening the foundations for the effective implementation of the rule of law.

New and emerging subjects of specialization in international law demand thorough consideration in order to ensure that rights are not encumbered and that obligations are respected.

The report of President Higgins highlights the diversity of issues brought before the World Court. It underscores the evolution of the body of rights, privileges and obligations that presents the modern-day intricacies of international law.

The Philippines notes the structural flexibility of the World Court, demonstrated by its resort to chambers in considering specialized cases. We support the idea that such a mechanism may be useful in settling disputes involving specialized issues. For example, the Chamber for Environmental Matters is available for resolving issues involving environment-related disputes.

The Philippines reaffirms its support for the work of the International Court of Justice and the invaluable role it plays in promoting an international legal order founded on the primacy of the rule of law and the peaceful settlement of disputes.

We subscribe to the premise that the rule of law is ultimately enforced through the assumption by States of their duties and obligations with regard to treaties negotiated between and among them and their application of the doctrines of sovereign equality, democratic principles and generally accepted norms of international law in their relations with one another. The role and importance of the World Court in guaranteeing the peaceful resolution of international disputes could not be made more obvious.

The increased workload of the International Court of Justice should be seen as a positive expression, not of the inability of States to settle disputes peacefully, but of the increasing trust and confidence in the legal supremacy of our World Court in ensuring respect for the rule of law and its universal jurisdiction.

Mr. Castellón Duarte (Nicaragua) (*spoke in Spanish*): At the outset, my delegation would like to express its gratitude to Judge Rosalyn Higgins, President of the International Court of Justice, for trading the tranquillity of The Hague for the bustle of this city to introduce the Court's report.

The presence of the President at the meetings of the Assembly at which the Court's report is considered and her oral presentation of her thoughts on that body's most relevant recent activities are both extremely useful, ensuring that the annual consideration of the report is not just a mere review of that document. Certainly, the information in the report is

comprehensive, intelligently presented and illustrative of the facts. However, the boost given by the annual presence and statement of the Court's highest official is extremely gratifying and rewarding, as it enlivens consideration of the report and adds solemnity to the event.

No one will be surprised to hear me express my Government's pleasure over the Court's most recent Judgment, which less than a month ago put an end to the dispute that had strained our friendly relations with the brotherly Government and people of Honduras and divided our two countries. Fortunately, that important Judgment was well received by both countries. In effect, it satisfied both parties, since there were two facets to the matter — the insular and the maritime — and on each the Court's decision was favourable to one of the parties.

We have no doubt that the Court's position on each facet was the result of an absolutely objective, complete, conscientious and impartial consideration of the legal norms and relevant facts. We underscore the maturity of both Governments, which, unprecedentedly, pledged support, whatever the outcome, before the Judgment was made public.

We are pleased that, particularly in paragraph 303 of its Judgment, the Court affirmed its own case law, and that it made progress in an area of great interest for the international community as a whole, and especially for countries with Caribbean coast lines. I refer to maritime delimitation, an area in which — through no fewer than eight Judgments, including the most recent — the Court has made a very important and interesting contribution. In that undertaking its work has been complemented by arbitral awards, including the two most recent, in 2006 and 2007, determining delimitations in the Caribbean Sea and agreeing with the Court's jurisprudence in the matter. We of course recognize that the ideal would be conventional delimitation.

In that regard, we would also like to refer to the Managua Declaration: The Gulf of Fonseca, a zone of peace, sustainable development and security (A/62/486), signed by the Presidents of El Salvador, Honduras and Nicaragua on 4 October 2007. The signing of that document was an important step forward in strengthening international peace and security, in line with the Judgment of the International Court of Justice handed down on 11 September 1992.

I would like to highlight, in order to give special recognition to the Court, the difficulties in application that are characteristic of the type of law with which it deals.

With regard to one of the main branches of this body of law — which Article 38 of the Statute of the Court calls "international custom" and which is more commonly known as customary international law — I recall an opinion expressed by a distinguished former President of the Court, from Latin America. In one of his works, that eminent jurist compared customary international law to an amorphous Medusa.

If we consider the other main branch of law applied by the Court, treaty law, we see that that normative area includes texts that are not always of the technical quality that would have been desirable — and, I might add, possible.

To give a more complete idea of the difficulty of the Court's tasks, I should also like to mention something that my country has observed at first hand: problems that can cause political factors to interfere in matters brought before the Court. Because the Court has been largely successful in dealing with those and other difficulties, we warmly congratulate it, through its President.

Finally, very regrettably, I must now turn from the positive to the negative and refer to the difficulty — or, rather, the injustice — created by paragraph 8 of resolution 61/262, adopted on 4 April 2007. Ms. Rosalyn Higgins, President of the Court, spoke of it this morning.

At the meeting at which the resolution was adopted, the concerns expressed by the President of the Court in a letter dated 3 April 2007 to the President of the General Assembly (A/61/837) were noted on behalf of the Group of 77 and China, as recorded at page 5 of A/61/PV.93. It was also stated on behalf of those countries that those concerns would be taken into account at the current session. I believe it is very important to indicate that Nicaragua unreservedly supports the positions taken by the Group of 77 and China.

I wish to add that we believe that paragraph 8 of resolution 61/262 is not in conformity with paragraph 2 of article 23 of the Universal Declaration of Human Rights, which provides that "Everyone, without any

discrimination, has the right to equal pay for equal work".

Mr. Tavares (Portugal): Let me start by expressing the gratitude of the delegation of Portugal to the President of the International Court of Justice, Judge Rosalyn Higgins, for the thorough report on the work of the Court over the past year.

The Court's essential role in the international legal system must be underlined and remembered, as the Court is the principal judicial body of the United Nations and, in that capacity, carries out two of the most important tasks in the international community: the peaceful settlement of disputes between States and the strengthening of the international rule of law.

As stated in the report, the workload of the Court steadily continues to increase. In July 2007, the number of cases on the docket stood at 12. The Court has handed down two Judgments and one Order on a request for the indication of provisional measures. In the meantime, another judgment has been rendered. The Court has also held hearings in four other cases.

It is important to note that the cases before the International Court of Justice come from all over the world and relate to diverse areas of international law, demonstrating not only the universality of the Court, but also the expansion of the scope of its work and its growing specialization. That dramatically strengthens the Court's contribution to the progress of international law, and therefore the Court should be able to count on the full support of all members of the international community.

In that context, it should also be recalled that although the International Court of Justice is a leading player in the international judicial arena, as a truly universal Court in the exercise of general jurisdiction, there are other international courts and tribunals whose existence and importance should be underlined. In that regard, Portugal welcomes the remarks made by President Higgins in her address to the meeting of legal advisers held at the beginning of this week. We view increased contacts and cooperation between international courts and tribunals as a very positive development. It is our strong view that they all work together to enhance the international legal order and that they must complement one another in the furtherance of that goal.

If the Court is to be able to carry out its fundamental tasks, and if a greater number of States are to be engaged in the resolution of their disputes, it is important that Member States acknowledge the Court's need for adequate resources. That is so, for instance, with regard to the Court's request for law clerk posts to assist judges in the increasing number of fact-intensive cases. Having just celebrated its sixtieth anniversary, the Court has indeed been busier than ever before.

As of 31 July 2007, 192 States were parties to the Statute of the Court, and 65 of them had deposited with the Secretary-General a declaration of acceptance of the Court's compulsory jurisdiction, in accordance with paragraph 2 of Article 36 of the Statute. Moreover, approximately 300 bilateral or multilateral treaties provide for the Court to have jurisdiction in the resolution of disputes arising out of their application or interpretation. That highlights the Court's role as the main judicial body in the interpretation and application of international law. In that context, Portugal recalls the recommendation of the 2005 World Summit that States that have not yet done so should consider accepting the Court's jurisdiction, in accordance with the Statute.

In conclusion, while recognizing that in contemporary international law there is an intrinsic and unavoidable paradox — the obligation of States to settle their disputes in a peaceful manner and the need for sovereign consent to put into practice such settlement mechanisms — Portugal holds the firm conviction that the International Court of Justice plays a crucial role in the international legal order, and that that role is more and more accepted by the whole international community.

Mr. Stemmet (South Africa): I take this opportunity to thank the President of the International Court of Justice, Judge Rosalyn Higgins, for her address in presenting the report of the Court for the period from 1 August 2006 to 31 July 2007.

The delegation of South Africa has noted the report, from which it is clear that the Court's caseload has increased considerably over recent years, while the subject matter of the cases before it has become more diverse and the issues dealt with more complex. Those developments, in our view, serve to illustrate the international community's continued confidence in the

Court as an institution able to resolve disputes, as the principal judicial organ of the United Nations.

We have also noted with satisfaction the report's references to increased efficiency in the management and operation of the Court, which have enabled it to cope with its increased caseload. We commend the Court in that regard.

We further wish to point out that in what can be considered to be a somewhat unusual development in a domestic jurisdiction, the Court's finding in the case of *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo*) has resonated before the Supreme Court of Appeal in South Africa as a source of reference in a recent case on diplomatic protection. The use of that case in arguments and judgement in our national courts demonstrates the strong persuasive power of the jurisprudence of the International Court of Justice upon national justice systems.

We have also taken note with great interest of the Court's decision in the case of *Bosnia and Herzegovina v. Serbia and Montenegro*, which we believe will become the seminal case on the issue of the responsibility of States with regard to the commission of international crimes, in particular, in relation to the interpretation of the Convention on the Prevention and Punishment of the Crime of Genocide.

Finally, the growing trend of countries, particularly developing countries, to resolve their disputes by using the International Court of Justice must be encouraged. Hence, the Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice must be maintained and given wider publicity. It is our hope that the Fund will see an increase in its level of resources, and that it will contribute to more States utilizing the Court for the resolution of their disputes.

Mr. Muburi-Muita (Kenya): On behalf of my delegation, Madam Vice-President, I congratulate you on the excellent manner in which you continue to conduct our deliberations.

My delegation commends Judge Rosalyn Higgins, President of the International Court of Justice, for the comprehensive report presented to us, detailing the work accomplished by the Court over the past year.

We wish to underscore the central role played by the Court in the administration of global justice through the peaceful settlement of disputes, as enshrined in the Charter. The adjudication of disputes by the Court, the principal judicial organ of the United Nations, plays a pivotal role in the maintenance of international peace, order and stability, for which we commend the Court.

We note that over the past year the Court has continued to be seized of a number of contentious cases, on which it has handed down two judgments and one order. Even as we acknowledge the complexity of the cases before the Court, we are confident that it and the parties involved will strive to reach an expeditious settlement of the disputes.

We urge States, in the exercise of their sovereignty, to freely submit disputes to the Court. However, we note with concern that only 65 of the 192 States parties to the Statute have declared their acceptance of the Court's compulsory jurisdiction. We encourage States that have not done so to consider accepting the Court's compulsory jurisdiction, in accordance with article 36 of the Statute. As a State party to the Statute, Kenya is among the countries that have accepted the Court's compulsory jurisdiction.

The official visits to the Court by Heads of State and Government and other high-ranking government officials reflect the recognition conferred on the Court, and play an important role in enhancing its image as a central organ for international dispute resolution. We encourage such visits as part of the awareness programmes, and therefore call upon the Court to put in place measures by which officials from Member States can be educated during such visits.

The decisions of the Court contribute to the progressive development of international law, and we encourage the Court to continue disseminating these decisions through publication and distribution to the relevant institutions in Member States.

In closing, I reiterate the importance Kenya attaches to the work of the Court. We urge Member States to make greater use of its advisory powers and, most important, to increase compliance with its decisions.

Mr. Wai (Sudan) (*spoke in Arabic*): We express our appreciation to the International Court of Justice, which celebrated its sixtieth anniversary last year.

Over the years, the Court has met the expectations of States by establishing the rule of law in

international relations. We express our thanks to Ms. Higgins, the President of the International Court of Justice, for presenting the detailed report on its activities.

The report gives us an overview of the important activities carried out by the Court. Once again, it shows that the Court is the major forum and strict guarantor of respect for the principles of international law, the rule of law and the principles of the Charter, especially the non-use of force in inter-State relations, the peaceful settlement of disputes and the equal sovereignty of States.

The efforts referred to in the report show once again that the Court is the major judiciary body of the United Nations and the only tribunal with international jurisdiction and overall competence. It is also the most appropriate mechanism for implementing the principles of the Charter and bringing about the peaceful settlement of disputes between States in an impartial, transparent manner, in accordance with the rules of justice and international law. That is why the Court is essential to the maintenance of international peace and security.

We welcome the fact that 192 States are now parties to the Statute of the International Court of Justice, with 65, including the Sudan, having agreed to the Court's binding jurisdiction. That shows the confidence that the international community has in the role of the Court, which can then settle disputes among States in a peaceful manner, develop international law and strengthen peaceful coexistence among peoples.

The report also refers to the number of cases brought before the Court. Those are more complex in nature. However, the Court has shown its ability to settle those questions effectively, especially since it has recently demonstrated its ability in strategic planning, which strengthens its effectiveness.

My delegation would like to refer to the 2005 World Summit decision emphasizing the need for States to settle their disputes peacefully, pursuant to Chapter VI of the Charter. That includes making use of the International Court of Justice.

States must then comply with the declared principles of international law and friendly relations and cooperation among States, pursuant to the Charter. That is why it is necessary to support the Court, and to recognize the binding competence of its decisions and judgments, so that the rule of law can be enhanced.

Agreeing to the Court's budget proposals, as contained in the report, would help to strengthen its role in the peaceful settlement of disputes, at a lower cost and with more effectiveness. The Court should shed light on the obstacles it faces, and in its future reports make recommendations that States will note and follow.

Next we refer to the report of the Secretary-General on the Secretary-General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice. We agree with the Secretary-General's recommendation that States and other relevant bodies consider making contributions to the Fund in order to help States, especially poor States, to use the services of the Court.

My delegation thanks the Court for the efforts made in issuing its documents, as well as the contents of its orders and decisions, especially those on its new website.

Finally, we reiterate our confidence in the important role played by the International Court of Justice, which is the main judicial body of the United Nations. We also reaffirm our support for the Court in carrying out its responsibilities in the best possible manner.

Mr. Aniokoye (Nigeria): The Nigerian delegation warmly welcomes Judge Rosalyn Higgins, President of the International Court of Justice, and thanks her for the Court's report covering the period 1 August 2006 to 31 July 2007. We are also appreciative of her briefing on 29 October to the legal advisers of Ministries of Foreign Affairs of Member States. We welcome this enlightening annual exchange.

We also thank the Secretary-General for his report.

We are happy that the Court has worked tirelessly and consistently in the discharge of its twofold mandate of adjudicating legal disputes submitted to it by States and giving advisory opinions on legal questions referred to it by duly authorized United Nations organs and specialized agencies.

It is heartening to note that the Court has had a very productive year, with three judgments already rendered, one order on provisional measures made, one

case under preparation and a new case opening shortly. Since the first case was entered in the general list of the court, on 22 May 1947, a total of 136 cases have to date been entered in the list.

What I have described is a positive development, especially since the value of the ICJ is to be judged not only by the number of cases it handles, but, even more, by its contributions to the development of international law. The invaluable nature of the Court's contributions was only slightly revealed when the President addressed legal advisers on 29 October, through her reference to but a few of the cases. Her discussion of the cases threw light on some of the issues currently being deliberated upon by the Sixth Committee, such as diplomatic protection and the question of overlapping jurisdictions between international courts and tribunals.

The Nigerian delegation notes with satisfaction the refreshing interchange and regular dialogue between the Court and the International Criminal Tribunal for the Former Yugoslavia. Issues decided by other international or regional judicial bodies arise in International Court cases, and the judicial work of other international courts and tribunals also has relevance to its findings. This development is highly commendable, especially as it could help in forestalling the fragmentation of international law. In this connection, we commend the Court for putting in place a detailed programme of cooperation between it and other international judicial bodies.

The Nigerian delegation equally supports the call for increased resources for the Court to enable it to effectively bear its ever-increasing caseload and its other responsibilities. We also call upon Member States to ensure that they contribute to the transformation of the World Court.

It was in recognition of the indispensable and dependable nature of the Court's work that my country submitted to its jurisdiction in the dispute between it and a neighbouring country. In the same vein, since the Court's Judgment in 2002 we have painstakingly and in cooperation worked towards its complete implementation.

We urge Member States to take disputes before the Court. This will ensure peaceful resolution of disputes, as well as enlarge the spectrum of the Court's contribution to the further development of international law.

Mr. Romero-Martinez (Honduras) (*spoke in Spanish*): My delegation is grateful for the presentation of the report of the International Court of Justice (ICJ) by its President, Judge Rosalyn Higgins. In thanking her, my country also wishes to thank her and the other judges who make up the Court for their continuous efforts in the application of international law for the peaceful settlement of disputes, which undoubtedly make a positive contribution to strengthening international peace and security.

Just a few weeks ago, the ICJ handed down its judgment on the maritime delimitation between our country and the sister Republic of Nicaragua. Honduras, through the President of the Republic, the Minister for Foreign Affairs and its officials, has always reiterated that it will abide by and accept the compulsory obligation.

Honduras believes in the peaceful settlement of disputes and firmly believes in the effective application of international law. The Presidents of Honduras and Nicaragua met on the day of the decision and embraced in solidarity, peace, harmony, and, above all, in the knowledge that there would be compulsory application of international legal order and compliance with its decisions.

Our countries believe in peace. They believe in international justice. They believe in legal order. And, above all, they are committed to creating an environment of world harmony that can, in some way, send messages that confirm that there can be no dispute that cannot find a legal solution under established international mechanisms.

The International Court of Justice, as the main juridical organ of the United Nations, takes important matters and decisions under its jurisdiction. Its judgments contribute to a world of peace and order. Hence, my delegation, in addition to recognizing its juridical work, will contribute to giving it legitimate support in the various Committees of this Organization. We are sympathetic to the concerns that the President expressed today, and she will have our support in the discussions in the Fifth Committee and the Assembly.

Once again, on behalf of Honduras, I thank the President of the Court, Judge Rosalyn Higgins, for presenting its important report. I also reiterate the commitment of Honduras to support the work of the Court, to continue supporting the application of international law and the peaceful settlement of

disputes, and, fundamentally, to support the compulsory jurisdiction of the International Court.

Mr. Park Hee-kwon (Republic of Korea): At the outset, on behalf of my delegation, I thank Judge Rosalyn Higgins, President of the International Court of Justice, for her lucid introduction of the Court's report. The report convinces us that the Court has diligently fulfilled its noble mission as the principal judicial organ of the United Nations. The increasing number of cases brought before it attests to the level of trust given it by States. In this regard, my delegation commends the judges and all the Court's staff for converting many sceptics into believers in the rule of law.

Notably, the Court rendered two final judgments this year. In both cases, the Court met our high expectations of authoritative language on matters of international law. I would like to touch briefly upon one of the two judgments.

In February this year, the Court delivered its Judgment in the case *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro*). The case marked the first time that one State had brought allegations of genocide against another. In its Judgment, the Court rejected the "overall control" test for determining responsibility for acts committed by paramilitary units — the test adopted by the International Criminal Tribunal for the Former Yugoslavia in the Tadic case — and instead once again applied an "effective control" test. My delegation supports the Court's position, because we believe that the "effective control" test could reasonably set the scope of State responsibility, which is not necessarily determined under the same legal standard as individual criminal responsibility.

The International Court of Justice has not always enjoyed its current level of trust from the international community. Indeed, its case load remained fairly low until the 1970s, when the Court successfully overcame the suspicion among many developing countries that it was biased. Since then, the Court's client base has expanded dramatically. The changing perceptions of the Court's work can be attributed to a number of factors, including the end of the cold war, but most importantly they have resulted from the Court's own successful responses to the challenges facing the world today. The report shows that this continues to be the case as the Court faces the challenge of handling an increased workload with limited resources.

Indeed, there is a kind of virtuous cycle at work: the more successful the Court is in fulfilling its responsibilities, the more cases will be brought to it. Moreover, taking into account the increasing number of States parties to the Court accepting the Court's compulsory jurisdiction, and the number of treaties with provisions that confer jurisdiction upon the Court, it would not surprise us to see a continued increase, or even an acceleration, in the number of cases brought before the Court.

High expectations that the Court will play a more active role are also bound to increase its workload. Thus, the Court, and the international community that supports it, must recognize that the challenge of an increasing workload is likely to stay with us for some time. This is a challenge that we must meet as we strive to achieve the ideal of resolving disputes peacefully by judicial means.

It has been said that one of the necessary conditions for more effective law is to strengthen and improve the institutions and processes for the law's administration. We agree with this sentiment, which is why we support the Court's initiatives to improve its efficiency by streamlining procedures, adopting advanced technologies and asking for more resources. We believe that adequate resources should be allocated to support the Court's efforts to meet its growing workload, and we therefore hope that this request will be considered favourably by the relevant bodies.

By the same token, we emphasize that the challenge of an increased case load requires cooperation among Member States. In many of the recent contentious cases, too many of the Court's limited resources have been wasted during the preliminary stages, rather than being used in the consideration of the merits. While we should respect the right of States to full access to the procedures of the Court, and to be exempt from the Court's jurisdiction unless they have given their due consent, overburdening the Court with unnecessary requests for provisional measures, preliminary objections or applications of cases, as a pure litigation strategy, should be avoided for the common good. Such prudence on the part of States will greatly assist the Court in completing its important work.

The most recent challenge to the Court, however, comes from outside. In this era of proliferating international courts and tribunals, we cannot overstate the importance of the Court's leadership role. As the only universal international court with general jurisdiction, the Court is now obligated to distribute and disseminate its work even more widely.

I conclude by reaffirming the Republic of Korea's steadfast and unwavering support for the untiring efforts of the Court to achieve the ideal of peace under the rule of law.

Mr. Shinyo (Japan): It is my great pleasure and honour to address the Assembly on behalf of the Government of Japan.

My delegation expresses its appreciation to President Rosalyn Higgins for her comprehensive report on the current situation of the International Court of Justice, and would also like to offer its praise and support for the achievements in the Court's work during the past year.

The devoted work and profound legal wisdom of the Court have been gaining the respect and support of the international community. The report states that countries from a broader area of the world have begun to bring cases before the Court to seek the peaceful settlement of conflicts. This clearly demonstrates that in today's international community the Court now enjoys the universal commitment that the principal judicial organ of the United Nations ought to have. From this point of view, we have full confidence that the Court's role will continue to increase in importance in the efforts to promote peace and security and establish the rule of law in the international community.

As regards activities to advance the rule of law, the past year has been a remarkable one for Japan. At the beginning of the year, our Government designated "rule of law" as one of the major pillars of Japanese diplomacy, enabling us to take the initiative in promoting such universal values as democracy, respect for basic human rights, the market economy and the rule of law in the international community.

In addition to its previous activities contributing to the establishment of the rule of law in the world, Japan this year took steps to develop further cooperative relations with international judicial organs in line with this policy. Japan acceded to the Rome Statute of the International Criminal Court and became its 105th party as of 1 October this year. With regard to the International Tribunal for the Law of the Sea, Japan referred two cases to the Tribunal in July, thus contributing to the development of judicial precedents in the area of the law of the sea.

First and foremost, Japan has been placing great importance on its cooperative relationship with the International Court of Justice, the sole international court with general jurisdiction. My Government invited President Higgins to Japan in April, giving the Japanese people an invaluable opportunity to hear an insightful presentation on the work of the Court and on international law, which contributed significantly to promoting the advocacy of the international judicial system in Japan. We fully intend to continue this productive relationship with the Court.

I would like to draw the attention of all members of the international community to the imminent necessity of strengthening the institutional capacity of the Court so that it can continue to discharge its noble responsibility. The Government of Japan hopes that this issue will be favourably discussed in appropriate bodies, giving due consideration to the recommendation of the Advisory Committee on Administrative and Budgetary Questions. At the same time, it expects that the Court will continue its efforts to increase the efficiency of its work.

To conclude, one cannot overstate the importance of the lofty cause and work of the International Court of Justice. I take this occasion to reaffirm that Japan will continue to contribute to its invaluable work.

The Acting President: We have heard the last speaker in the debate on agenda item 73.

May I take it that it is the wish of the General Assembly to conclude its consideration of agenda item 73?

It was so decided.

Agenda item 76 (continued)

Report of the International Criminal Court

Note by the Secretary-General (A/62/314)

The Acting President: I call on Mr. Philippe Kirsch, President of the International Criminal Court.

Mr. Kirsch (*spoke in French*): I am very pleased today to present the third annual report of the International Criminal Court to the United Nations.

Since its establishment, the Court has developed substantially in its activities and in its relationship with the United Nations. Nevertheless, we are still at an early stage in the life of the Court. Much more remains to be done to guarantee the success of this nascent institution.

I would like to give a brief overview of recent developments, elaborate on the Court's contributions to the aims of the United Nations and speak about the importance of continued support and cooperation from the Organization.

Today, the Court stands on the verge of its first trial. In January this year, a chamber of three judges confirmed charges of war crimes against Mr. Thomas Lubanga Dyilo, an alleged militia leader from the Democratic Republic of the Congo. He is accused of enlisting, conscripting and using children under the age of 15 to participate actively in hostilities. A trial chamber composed of another three judges is currently addressing preliminary issues before the trial begins early next year.

In another case regarding the situation in the Democratic Republic of the Congo, Mr. Germain Katanga was surrendered to the Court on 18 October. The crimes alleged in the warrant of arrest for Mr. Katanga include three counts of crimes against humanity and six of war crimes, namely, murder, inhumane acts, sexual slavery, wilful killing, inhuman or cruel treatment, attacking civilians, pillaging and using children under the age of 15 years to participate actively in hostilities. An initial hearing was held last week following his surrender. Pre-trial proceedings will take place over the coming months.

In regard to the situation in Darfur, Sudan, referred to the Court by the Security Council, a chamber of three judges issued warrants of arrest for two individuals in May. Mr. Ahmad Harun and Mr. Ali Kushayb are each wanted on over 40 counts of crimes against humanity and war crimes, including murder, persecution, forcible transfers of populations, attacks against civilians, pillaging and the destruction or seizure of enemy property. The Court has issued to States requests for the arrest and surrender of those two suspects. Neither warrant has been executed yet.

In regard to the situation in Uganda, the Court issued five warrants of arrest in 2005 for members of the group known as the Lord's Resistance Army, including its leader, Joseph Kony. Two of the suspects are wanted on over 30 counts of crimes against humanity and war crimes, including murder, attacking civilians, pillaging, cruel treatment and enslavement. Two others are wanted on ten and seven counts respectively of crimes against humanity and war crimes, also including murder, enslavement, attacking civilians and pillaging. One of the suspects was killed, rendering that warrant without effect. None of the other four warrants have been executed yet.

In May, the Prosecutor opened a fourth investigation; this is into the situation in the Central African Republic. Two weeks ago, the Court opened a field office in the capital, Bangui. It is the fifth field office opened by the Court.

The Office of the Prosecutor is also analysing and assessing information on alleged crimes within the jurisdiction of the Court in other situations on three different continents.

The Court is now fully operational. The Prosecutor is conducting investigations and collecting evidence. Judicial proceedings have taken place at the pre-trial and appeals levels, and are beginning at the trial level. The special regard accorded to victims under the Rome Statute has developed in practice. The Trust Fund for Victims is fully functioning. For the first time in the history of international criminal courts and tribunals, victims are participating in proceedings in their own right.

Bringing to justice those responsible for international crimes is important in itself. But it is also a means to achieve other objectives found in both the Charter of the United Nations and the Statute of the International Criminal Court. Throughout the course of history, genocide, crimes against humanity and other serious international crimes have not arisen spontaneously. Rather, those crimes have occurred — and continue to occur — in the context of complex political conflicts. More often than not, there have been attempts to resolve such conflicts through expedient political compromises; more often than not, those compromises have ignored the need for justice and accountability; and, more often than not, expedient political solutions that ignored the need for justice

unravelled, leading to more crimes, new conflicts and recurring threats to peace and security.

The International Criminal Court was created to break that vicious cycle of crimes, impunity and conflict. It was set up to contribute to justice and the prevention of crimes, and thereby to peace and security.

The Court is contributing to the realization of those objectives. Earlier this year, the Secretary-General noted, "Already the activities of the Court and its Prosecutor have a deterring effect on potential perpetrators of international crimes." {*UN News Centre*, *29 June 2007*) A recently published expert report on the situation in Uganda observed: "The ICC investigation of the LRA" — Lord's Resistance Army — "has been crucial for promoting peace, improving security in northern Uganda and embedding international accountability standards into negotiations." (*Africa Briefing No. 46, p. 8, 14 Sept. 2007, International Crisis Group*)

(*spoke in English*)

The impact of the Court has resulted from its credibility as an independent and impartial institution whose decisions will be enforced. Sustaining that credibility depends on the two pillars of the Rome Statute system.

The Court itself is the judicial pillar. It is the Court's responsibility to continue to maintain its credibility as an independent and impartial judicial institution through strict adherence to the Rome Statute.

The other pillar of the Rome Statute — the enforcement pillar — has been reserved to States and, by extension, international organizations. The Court requires support and cooperation in many areas, in particular, the arrest and surrender of suspects and the protection of victims and witnesses. The primary responsibility for providing cooperation and support rests, of course, with the States parties to the Rome Statute. However, States not party to the Statute and international organizations, in particular, the United Nations, are also in a position to provide valuable assistance to the Court.

Individual States have contributed to the achievements of the Court by responding positively to requests for cooperation or assistance — for example, by providing information, logistics and other support to field operations or to the surrender of individuals to the Court. States have provided diplomatic and public support for the Court through at the bilateral level and in multilateral forums. Several States have entered into agreements to provide additional support, in particular, with respect to the enforcement of sentences or the protection of victims and witnesses.

The United Nations has provided critical cooperation and support to the Court. I would note, in particular, that the Court has received strong support from various United Nations bodies in the field. The Court appreciates the steps taken by the Secretary-General to raise the outstanding warrants of arrest in the situation in Darfur. The General Assembly and the Security Council have provided important public support to the Court in recent years by emphasizing respectively that "justice ... is a fundamental building block of sustainable peace" (resolution 61/15) and that "ending the climate of impunity is essential in a conflict and post-conflict society's efforts to come to terms with past abuses, and in preventing future abuses." (*S/PRST/2004/34*).

Notwithstanding the support and cooperation received to date, certain issues need to be addressed in order to sustain the credibility and effectiveness of the Court.

First, a number of direct requests for cooperation have not yet been fulfilled. Of those requests, the outstanding warrants of arrest are the most significant. Without arrests, there can be no trials; without trials, victims will again be denied justice, and potential perpetrators will be encouraged to commit new crimes with impunity.

Secondly, implementation of the judicial decisions issued by the Court has been uneven. It is clear, of course, that the situations and cases before the Court are linked to broader, complex political issues and developments, as has always been the case in similar situations in the past. Nevertheless, compliance with the decisions of the Court is not just another issue on the negotiating table. It is a legal obligation under the Rome Statute and under relevant Security Council resolutions. Conversely, it is to be clearly understood that the Court is bound to adhere strictly to its judicial mandate and to limit itself to that.

Thirdly, relative silence has been observed in situations in which public support for the Court and for the need for justice more broadly would be expected.

Silence in those situations may send the wrong message to perpetrators and potential perpetrators of serious international crimes. If the very purposes for which the Court was created are to be preserved, it is important that the international community reaffirm its fundamental commitment to the principles of justice and international law enshrined in the Charter of the United Nations and in the Statute of the Court.

The Court has already had opportunities to draw the attention of States parties to the issues I have just mentioned. The reactions of States parties have been encouraging for the future, and indeed have already resulted in concrete, positive developments. As for the United Nations itself — including its Member States, the General Assembly, the Security Council and the Secretariat — it is in a position to take a number of actions to sustain and build upon the early impact of the Court. That support and cooperation can be grouped into three general areas.

First, operational cooperation from the United Nations and its Member States will continue to be critical, especially in the field. In addition to arrests, another area of pressing importance is assisting in the relocation and protection of victims and witnesses. The number of persons seeking protection or being accepted into the Court's protection programme has increased dramatically. The Court invites States that have not yet done so to conclude agreements on the relocation or protection of victims and witnesses.

Secondly, United Nations or other missions that can assist the Court should be empowered to fully support and cooperate with it. The objectives of the United Nations and those of the International Criminal Court are complementary. That is reflected in the Charter of the United Nations, the Rome Statute and the Relationship Agreement between the Court and the United Nations, as well as in the first referral of a situation by the Security Council to the Court.

Thirdly, the public and diplomatic support of the United Nations for the Court, and for international justice more broadly, is vital to ensuring a strong and effective Court. Such support fosters an environment in which States are more likely to comply with their legal obligations and to cooperate with the Court. Public and diplomatic support can also contribute directly to the prevention of crimes by reinforcing expectations, including among potential perpetrators, that the Court's decisions will be carried out and that the international community's commitment to justice will be upheld.

The Court did not create itself. The Court was set up by States to achieve the objectives that they expressed in the preamble to the Rome Statute: to put an end to impunity for genocide, crimes against humanity and war crimes; to contribute to the prevention of those crimes, which threaten peace and security; and to guarantee lasting respect for, and the enforcement of, international justice. Those aims are universal. They are reflected in the Charter and in the statements and practice of the Member States and of the Organization.

Ten years ago, the General Assembly decided to convene the Rome Conference, which adopted the Rome Statute. On 17 July next year, the world will celebrate the tenth anniversary of the Rome Statute and will ask what has been achieved.

It is our collective responsibility to ensure that the momentum created in 1998 continues and that international justice prevails. I assure the Assembly that the Court will continue to do its part to ensure its effectiveness and credibility through independence and impartiality in strict accordance with the Rome Statute. The Court is confident that it can count on the strong support and cooperation of States, the United Nations, other international and regional organizations and civil society, now and in the future.

The meeting rose at 1.05 p.m.