THE INTERNATIONAL COURT OF JUSTICE IN 2001[1]

I. SNAPSHOT

- The ICJ Statute has 190 States Party (189 Member States of the United Nations and Switzerland).[2]
- The Court comprises the following judges: Gilbert Guillaume (France), Shi Jiuyong (China), Shigeru Oda (Japan), Mohammed Bedjaoui (Algeria),[3] Raymond Ranjeva (Madagascar), Géza Herczegh (Hungary), Carl-August Fleischhauer (Germany), Abdul G Koroma (Sierra Leone), Vladlen S Vereshchetin (Russian Federation), Rosalyn Higgins (United Kingdom), Gonzalo Parra-Aranguren (Venezuela), Pieter H Kooijmans (Netherlands), Francisco Rezek (Brazil), Awn Shawkat Al-Khasawneh (Jordan), Thomas Buergenthal (United States of America). Gilbert Guillaume (France) is President and Shi Jiuyong is Vice-President. The Registrar is Philippe Couvreur (Belgium).
- On 12 January, as part of the ongoing efforts to significantly increase its activities, the Court amended Articles 79 and 80 of its Rules to shorten the duration of certain incidental proceedings, the proliferation of which had encumbered many cases. The move clarified the rules in force and adapted them to reflect more closely the practice developed by the Court.[4]

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[1] In this Section, the more recent cases (yet to be published) may be found at the website of the International Court of Justice.

[2] International Court of Justice, "The International Court of Justice amends two Articles of its Rules", Press Release 2001/1, 12 January 2001 at <www.icj-cij.org>; United Nations, "List of Member States", UN Press Release ORG/1317, 26 September 2000 (updated 18 December 2000) at <www.un.org/Overview/unmember.html>. It is expected that Switzerland will vote in a referendum on admission to United Nations membership on 3 March 2002: Lomas, "Swiss government launches 'yes' campaign for UN membership", Tax-News.Com, 10 January 2002 at <www.tax-news.com/asp/story/story.asp?storyname=6939>.

[3] The United Nations General Assembly and Security Council elected Nabil Elaraby J (Egypt) in October 2001 to replace Bedjaoui J who resigned: see below.

[4] See generally International Court of Justice, "The International Court of Justice amends two Articles of its Rules", Press Release 2001/1, 12 January 2001. For example, as part of its efficiency drive, in 1998 the Court announced a change in its working methods and stated that it would start considering some cases "back to back". In addition, in the preliminary phases of the proceedings on the merits of the case (such as objections to the Court's jurisdiction or the admissibility of an application) the Court would on an experimental basis and where it was considered

- On 1 February, the above two amendments entered into force.[5] However, the Rules that were adopted on 14 April 1978 continue to apply to all cases (including all their phases) submitted to the Court before 1 February 2001. Article 79 concerns preliminary objections raised by the respondent generally in order to challenge the Court's jurisdiction or the admissibility of the application. Article 80 concerns counter-claims by which the respondent seeks to obtain something other than the mere dismissal of the applicant's submissions. At the same time, the Court modified the Note that was published in April 1998 on recommendations to the parties in new proceedings. This Note is given to the parties at their first meeting with the Registrar of the Court aimed at expediting the proceedings on preliminary objections further.
- In 2001, the Court delivered a three judgments and more than 30 Orders, one of which was *Armed Activities on the Territory of the Congo (Congo v Uganda)*.
- On 2 February, two similar cases concerning the Congo as Applicant were removed from the Court's List following the Congo's request in relation to *Armed Activities on the Territory of the Congo (Congo v Burundi)* and *(Congo v Rwanda)*.
- On 22 February, the Court authorised Cameroon to submit an additional written pleading relating solely to Nigeria's counter-claim in *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v Nigeria) (Equatorial Guinea intervening)*.
- On 23 February, the Court extended by one year the time-limits for Yugoslavia to file its written statements on the preliminary objections made by the respondent States in *Legality of Use of Force (Yugoslavia v Belgium; Canada; France; German; Italy; The Netherlands; Portugal and the United Kingdom)*.
- On 15 March the Philippines filed an Application for permission to intervene in *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*, which the Court denied.

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necessary deliberate without written Notes. Normally, the judges would prepare Notes when the oral proceedings ended for use during the deliberations. The Court also sought to increase co-operation from the parties in the functioning of justice by requesting them to decrease the number of pleadings exchanged, the volume of the annexes to the pleadings and the length of the oral arguments, inter alia. This policy had proved effective in recent cases.

[5] See generally ibid.

- On 16 March, the Court delivered a judgment on the merits of a territorial dispute in *Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v Bahrain).* This ended a long-standing dispute between the parties and eased the serious tension between them, thereby contributing to peace in the region and restoring friendly relations between two sister States.
- On 11 April, the Court extended the time-limits for the parties to file written pleadings in *Arrest Warrant of 11 April 2000 (Congo v Belgium).*
- On 1 June, Liechtenstein instituted proceedings against Germany concerning Germany's decisions to treat certain property belonging to Liechtenstein nationals as German assets, seizing them for the purposes of World War II reparation without the corresponding just compensation in *Certain Property (Liechtenstein v Germany).*
- On 27 June, the Court delivered a judgment settling a dispute between Germany and the United States following the execution in the United States of two German nationals in *LaGrand Case (Germany v United States of America).* The Court clarified certain provisions of the 1963 Vienna Convention on Consular Relations and for the first time in its history ruled clearly on the binding nature of provisional measures, a delicate and controversial issue. By a large majority, it also affirmed that the provisional measures it indicated under Article 41 of the Court's Statute were binding on the parties.
- On 29 June, the Court rejected Belgium's request seeking to derogate from the agreed procedure in *Arrest Warrant of 11 April 2000 (Congo v Belgium).*
- On 29 June, the Court also fixed time limits for the parties to file written pleadings in *Certain Property (Liechtenstein v Germany).*
- On 6 July, the Court announced that Mohammed Bedjaoui J (Algeria), former President of the Court, would resign as a Judge of the Court effective 30 September 2001 although his term was not due to expire until 5 February 2006.
- On 30 August, the Court authorised Iran to submit an additional written pleading that related solely to the United States' counter-claim in *Case concerning Oil Platforms (Iran v United States).*
- On 13 September, the President of the Court recorded Yugoslavia's withdrawal of its counter-claims submitted in *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Yugoslavia).*

- On 12 October, the United Nations General Assembly and Security Council elected Nabil Elaraby J (Egypt) to the Court to complete Bedjaoui's J term serving until 5 February 2006, pursuant to Article 14 of the Court's Statute. On 27 November 2001, Elaraby J made a solemn declaration pursuant to Article 20 of the Statute of the Court to serve the Court.
- On 23 October, the Court rejected the Philippines' application to seek permission to intervene in the territorial dispute between Malaysia and Indonesia in *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia).*
- On 30 October, Guillaume P presented to the United Nations General Assembly the Report of the Court for the period 1 August 2000 to 31 July 2001.[6]
- On 31 October, the Court adopted new Practice Directions to streamline proceedings that were immediately effective. States had to comply with them when appearing before the Court.[7]
- On 6 December, Nicaragua instituted proceedings against Colombia with regard to "legal issues subsisting" between the two States "concerning title to territory and maritime delimitation" in the western Caribbean.

II. RESIGNATION OF BEDJAOUI J

On 12 September 2001, Guillaume P made a speech[8] during Bedjaoui J's leaving ceremony referring to the latter's resignation and early retirement from the Court and paying tribute to him.

In the speech, Guillaume P said that on 30 September 2001, Bedjaoui J (Algeria) would retire early after almost 20 years on the Court. He had been elected Judge of the Court for three terms – in 1982, 1987[9] and 1996. The first, on 19 March 1982, was symbolic because it was also the twentieth anniversary of the Evian Agreements that ended the war in Algeria. During this conflict, Bedjaoui J made his debut in the

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[6] See "Speech by HE Judge Gilbert Guillaume, President of the International Court of Justice, to the General Assembly of the United Nations", 30 October 2001 at the ICJ's website at <www.icj-cij.org>; also refer to Section IV below.

[7] Ibid.

[8] Abstracted from a translated version of the speech at the ICJ's website at <www.icj-cij.org>.

[9] Commencing 6 February 1988.

international legal arena as Legal Adviser to Algeria's Provisional Government. He represented his country in a number of other positions, for example, as Agent in *Western Sahara,*[10] Ambassador to Paris and Permanent Representative to the United Nations. He was also a member of the International Law Commission.

During his judicial career at the Peace Palace, he served as President of the Chamber formed to hear the 1986 case concerning *Frontier Dispute (Burkina Faso/Republic of Mali).*[11] By his Order indicating provisional measures that both parties had implemented immediately, he brought peace to their relationship. Subsequently, he became President of the full Court from 1994-1997. During his presidency, the Court handed down six very important decisions, four judgments[12] and two advisory opinions.[13] He even used his casting vote as President in particularly weighty circumstances when paragraph (2)(E) of the operative part of the advisory opinion in *Legality of the Threat or Use of Nuclear Weapons*[14] was voted upon on 8 July 1996.

Throughout this distinguished and long career, he wrote on a wide range of international law subjects and published more than 200 works. His "activity promoted evolution, or even revolution, in international law"[15] that, according to Boutros Boutros-Ghali, former United Nations Secretary-General, earned him a place amongst *"juristes perturbateurs [jurists who derange]."*[16]

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[10] [1975] International Court of Justice Reports 12.
[11] [1986] International Court of Justice Reports 6.
[12] They were: (1) Maritime Delimitation and Territorial Questions between Qatar and Bahrain, Judgment of 1 July 1994 on Jurisdiction and Admissibility, and Judgment of 15 February 1995 on Jurisdiction and Admissibility; (2) East Timor (Portugal v Australia), Judgment of 30 June 1995 on Jurisdiction of the Court and Admissibility of the Application; (3) Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v Yugoslavia), Judgment of 11 July 1996 on Preliminary Objections; and (4) Oil Platforms (Iran v United States), Judgment of 12 December 1996 on Preliminary Objection.
[13] They were: (1) Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion of 8 July 1996; and (2) Legality of the Use by a State of Nuclear Weapons in Armed Conflict, Advisory Opinion of 8 July 1996.
[14] [1996] International Court of Justice Reports; (1997) International Legal Materials 809.
[15] See note 7 above.
[16] Ibid.

The current Secretary-General, Kofi Annan, also paid tribute to Bedjaoui J[17] stating that his contribution to the Court clearly figured among those most recognised by the international legal community, which had labelled him "the finest diplomat of all jurists" and "the finest jurist of all diplomats".[18] As a Judge and former President of the Court, he participated in a very important way in the Court's work and revitalisation during the past ten years. As a leading figure of the Third World, he successfully applied his skills as a jurist in the interest of international justice while simultaneously promoting the establishment of a dialogue between rich and developing countries.

III. ELECTION OF ELARABY J[19]

On 12 October 2001, the United Nations General Assembly and Security Council elected Elaraby J (Egypt) to the Court for the rest of Bedjaoui J's term following the latter's resignation and early retirement. When Elaraby J was elected, he was a current Member of the International Law Commission (since 1994). *Inter alia,* he had been President of the Security Council (June 1996); Vice-President of the General Assembly (1993, 1994, 1997); Judge of the Judicial Tribunal of the Organisation of Arab Petroleum Exporting Countries (1990); and Commissioner, United Nations Compensation Commission in Geneva (1999-). He wrote many publications and lectured at several academic institutions, including the Hague Academy of International Law.

IV. PRESIDENT'S REPORT TO THE UNITED NATIONS GENERAL ASSEMBLY[20]

On 30 October, Guillaume P presented his Report on the Court to the United Nations General Assembly for the period 1 August 2000 to 31 July 2001. During this period, the Court issued 32 Orders and finalised many cases. The cases came from every continent and dealt with a wide range of issues including those linked more directly to events that the General Assembly or the Security Council had to examine. Other

[17] Letter dated 19 June 2001 from Kofi Annan to Bedjaoui J, ibid.

[18] Ibid.

[19] See International Court of Justice, "United Nations General Assembly and Security Council elect Mr Nabil Elaraby as Member of the Court", Press Release 2001/25, 12 October 2001.

[20] Refer note 6 above.

cases are either being considered by the Court[21] or ready for hearing in 2002.[22] Furthermore, solutions are being sought to avoid excessive delays in examining the cases.

Inter alia, the Report referred to the Court's over-burdened docket necessitating rationalisation in the Registry and modernisation of the Court's working and communication methods. Major progress was being made, notably in its publications, communications, the Intranet and the Internet. However, further improvement was needed, such as the modernisation of the Court's archives. The Court also made efforts to improve its procedures. It sought increased co-operation from the parties in the preparation of cases, particularly decreasing the number of pleadings exchanged, the volume of annexes to pleadings and the length of oral arguments.[23]

The Court also amended its procedural Rules. It amended Article 79 of its Rules to lessen the time-limit within which preliminary objections may be raised. It revised Article 80 regarding counter-claims and amended Article 52(3) on the printing of pleadings. It proposed amending Article 56 on the production of new documents after the closure of written proceedings. It conducted a detailed study on the practical issues generated by large numbers of witnesses. Finally, it also converted various indications formerly given to parties into true practice directions and implemented a procedure for reviewing such directions at regular intervals.

However, the above efforts, both administrative and procedural, are not sufficient in themselves and appropriate levels of financial and human resources are required for the Court to perform its duties properly. The Court therefore sought a moderate increase in resources for the forthcoming biennium and the Advisory Committee on Administrative and Budgetary Questions (ACABQ) recommended an increase of 11%

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[21] For example, the Court has started to consider Uganda's counter-claim against the Congo and held a public hearing in a case between the Congo and Belgium. This case concerns the legality of an international arrest warrant issued a year ago by a Belgian investigating judge against the Congo's incumbent Minister for Foreign Affairs.

[22] For example, the Court will begin to consider the dispute between Cameroon and Nigeria when 2002 commences, devoting five weeks of public hearings to this case.

[23] For example, in the case between the Congo and Belgium, the parties exchanged only one series of written pleadings and limited their oral arguments to one week.

in the Court's budget from approximately US$20.6 million to US$22.9 million. This would allow the Court's Registry to increase its staffing level to 91 persons. This figure, albeit modest, would permit the Court to work under better conditions, achieve improved results in the coming year, permit the current cases to be adjudicated as quickly as possible, and maintain the quality of the Court's jurisprudence.

Guillaume P cautioned that in spite of the Court's recent progress, there should be no illusion that peace between nations can be assured by using appropriate methods for the settlement of legal disputes, or even that it is for the Court to prevent and put an end to armed conflicts. In his opinion, "Judges cannot be the sole guarantors of peace", a task that depends on action by the General Assembly and Security Council. Furthermore, it should be remembered that war is the creation, first and foremost, of the human spirit and security is achievable only through human endeavour.

Guillaume P also cautioned that no new international court should be created without first questioning whether an existing court could not better perform the proposed court's duties. International judges should be aware of the dangers involved in the fragmentation of the law and should take efforts to avoid such dangers. However, their efforts may not be enough, and the International Court of Justice, the only judicial body vested with universal and general jurisdiction, has a role to play in this regard. In Guillaume P's opinion, to maintain the unity of the law, the various existing courts or those yet to be created could be empowered in certain cases, and indeed encouraged, to request advisory opinions from the International Court of Justice. This is done through the Security Council or the General Assembly acting as intermediary.

Nevertheless, Guillaume P acknowledged that the Court had an important role in preventing conflicts, particularly territorial conflicts, as shown by the Court's past experience in all continents. As a result, States were encouraged to refer their disputes to the Court by way of special agreement. Guillaume P observed that certain States in Africa, Europe and Asia were considering such action presently and the Court welcomed this fact. He referred to the important special fund the United Nations Secretary-General had established in 1989 to assist States unable to meet the expenses incurred in submitting a dispute to

the Court, especially States with limited financial resources. A special plea was therefore made to the Members of the United Nations to contribute to this fund to enable the poorest States to access the Court more easily, bringing about access to international justice by removing the impediment of financial inequality.

Guillaume P stated that it was the nineteenth century that saw international law and arbitration develop. During the next century, international judicial settlement was born and the Permanent Court of International Justice was created, which in 1945 became the International Court of Justice. Since then, international tribunals have proliferated and this phenomenon reflects a greater confidence in justice, making it possible for international law to develop in ever more varied spheres. However, it also raises the risk of overlapping jurisdictions and parties "forum shopping". For the last six years, successive Presidents of the Court have drawn attention to these risks, including the proliferation of international courts jeopardising the unity of international law and, consequently, its role in inter-State relations.

Guillaume P ended his Report by stating that the international community needed peace. It also needed courts, courts that declared the law. He assured that, to this end, the Court would continue to perform its duties including such others as may be entrusted to it.

V. COURT ADOPTS NEW PRACTICE DIRECTIONS

On 31 October, the Court adopted new Practice Directions for use by States appearing before it, effective immediately. The Directions added to the Rules of Court but did not alter them. They resulted from the Court's ongoing review of its working methods, a step justified by its congested List and budgetary constraints. As a consequence, the Court reissued and amended the "Note containing recommendations to the parties to new cases" of 6 April 1998.[24]

(a) Summary

According to the Practice Directions, parties in proceedings have to append to their written pleadings only strictly selected documents and

[24] Refer International Court of Justice, Press Release No 98/14, 6 April 1998.

provide the Court with any available translation (even partially) of their pleadings into the Court's other official language. Oral arguments must also be succinct. The practice of simultaneously filing pleadings in cases brought by Special Agreement (namely, by two States jointly) is discouraged. To expedite the consideration of preliminary objections on grounds of lack of jurisdiction or inadmissibility, the time-limit for the other party to present its written observations shall generally not exceed four months.

(b) Full Text of "Note containing important information for parties to new cases"[25]

1. The International Court of Justice recently carried out a re-examination of its working methods and took various decisions in this respect, bearing in mind both the congested state of the List and the budgetary constraints it has to face.
2. Some of these decisions concern the working methods of the Court itself. In outline, these measures, directed towards accelerating the Court's work, were brought to the attention of the United Nations General Assembly by the President of the Court at the Assembly's Fifty-second Session on 27 October 1997 (A/52/PV36, pp 1-5). The Court took a further series of decisions, also directed towards accelerating its work, in regard to various administrative matters.
3. The parties are informed that the Court has adopted the following Practice Directions that it wishes the parties to follow in proceedings before the Court:

(i) Practice Direction I

The Court wishes to discourage the practice of simultaneous deposit of pleadings in cases brought by Special Agreement.

The Court expects future special agreements to contain provisions on the number and order of pleadings under Article 46(1) of the Rules of Court. Such provisions shall be without prejudice to any issue in the case, including the issue of burden of proof. If the agreement does not have such provisions, the Court will expect the parties to reach agreement to that effect under Article 46(2) of the Rules of Court.

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[25] International Court of Justice, Annex to Press Communiqué No 2001/32.

(ii) Practice Direction II

Each of the parties is, in drawing up its written pleadings, to bear in mind the fact that these pleadings are intended not only to reply to the submissions and arguments of the other party, but also, and above all, to present clearly the submissions and arguments of the party which is filing the proceedings.

In the light of this, at the conclusion of the written pleadings of each party, there is to appear a short summary of its reasoning.

(iii) Practice Direction III

Noticing an excessive tendency towards the prolific and protracted use of annexes to written pleadings, the Court strongly urges the parties to append only strictly selective documents to their pleadings.

(iv) Practice Direction IV

Where one of the parties has a full or partial translation of its own pleadings or of those of the other party in the other official language of the Court, these translations should, as a matter of course, be passed to the Registry of the Court. The same applies to the annexes. These translations will be examined by the Registry and communicated to the other party. The latter will also be informed of the manner in which they were prepared.

(v) Practice Direction V

With the aim of accelerating proceedings on preliminary objections made by one party under Article 79(1) of the Rules of Court, the time-limit for the presentation by the other party of a written statement of its observations and submissions under Article 79(5) shall generally not exceed four months.

(vi) Practice Direction VI

Article 60(1) of the Rules provides:

> The oral statements made on behalf of each party shall be as succinct as possible within the limits of what is requisite for the

adequate presentation of that party's contentions at the hearing. Accordingly, they shall be directed to the issues that still divide the parties, and shall not go over the whole ground covered by the pleadings, or merely repeat the facts and arguments these contain.

The Court requires full compliance with these provisions and observation of the requisite degree of brevity. Where objections of lack of jurisdiction or of inadmissibility are being considered, oral proceedings are to be limited to statements on the objections.