**SPEECH BY H.E. JUDGE ROSALYN HIGGINS,**
**PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE,**
**TO THE GENERAL ASSEMBLY OF THE UNITED NATIONS**

**1 November 2007**

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Vice-President,

Excellencies,

Ladies and Gentlemen,

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.

As you know, all United Nations Members are *ipso facto* parties to the Court's Statute. There are thus 192 States currently that are parties to the Statute of the Court, 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 work methods on which I reported to you last year — that is, dealing with always more than one case at a time, producing judgments in a timely fashion, taking short vacations and working intensely.

I am pleased to inform you that the Court has had a very productive year. This year the Court has already delivered three substantive judgments, one of them just three weeks ago and falling outside of the period covered by the Annual Report. Even before 31 July 2007, 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, it 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. Second, the Court also completed hearings on the merits in the case concerning *Territorial and Maritime Dispute between Nicaragua and Honduras in the Caribbean Sea (Nicaragua* v. *Honduras)* in March 2007, and that Judgment has just been delivered three weeks ago. Finally, the Court also heard oral argument on the preliminary objections in the *Territorial and Maritime Dispute (Nicaragua* v. *Colombia)* in June 2007. 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, who 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 follows 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 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 from 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, 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 International Court over the past year. I shall deal with those decisions 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 its obligations under 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, are likely to impair the quality of the river's water and to 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 grounds 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", second, to abstain from action that might aggravate, extend or make more difficult the settlement of the dispute and, third, 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 which 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 summer 2006 and that work continued.

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

On 26 February 2007, the Court rendered its Judgment in the case concerning the *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 had 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 (or FRY). 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 Genocide Convention.

The Court noted that, since its jurisdiction was based solely on the Genocide Convention, it could only rule on genocide and associated violations of the Convention and could not rule on breaches of other obligations in 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 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, namely, 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 were 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 part the group of the Bosnian Muslims. Accordingly, it found that the events in Srebrenica constituted genocide.

The Court then turned to the question of whether it could be established that the then FRY had been responsible for the genocide committed at Srebrenica. Judging on the basis of the materials before it, the Court found that the acts of genocide had not been committed by persons or entities which could be considered to be organs of the FRY. The Court further found that it had not been established that the massacres were committed on the instructions or under the direction of the FRY nor that the FRY exercised effective control over the operations 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 1 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 FRY and the Bosnian Serbs, the FRY 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 co-operate fully with the ICTY with respect to the arrest and handing over for trial of General Ratko 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 indicating 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 may be subject to its influence did not commit any 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 its obligation to punish acts of genocide, to transfer individuals accused of genocide to the ICTY and fully to co-operate with that Tribunal would constitute appropriate satisfaction.

After having considered disputes in South America and Europe, the Court next turned to Africa. On 24 May 2007, it 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 Congo (hereinafter the "DRC").

This case raised important issues relating to the diplomatic protection by States of their nationals. It concerns Mr. Ahmadou Sadio Diallo, a businessman of Guinean nationality who was resident in the DRC 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 DRC, that he was deprived of his investments, businesses, property and bank accounts and finally that he was expelled from the DRC. Guinea argued that those actions by the DRC violated Mr. Diallo's rights and that, according to the law of diplomatic protection, the DRC 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 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 DRC 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 DRC 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 indirectly to offer protection to its nationals who are shareholders in a company of a different nationality in situations where 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 a 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 DRC.

In terms of 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 let you know 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 you that our aim was to increase further our throughput while retaining the high quality of our judgments. As must be apparent from what I have today reported to you, 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 am referring to a State having to wait an unreasonably long time after the deposit of the written pleadings for oral hearings to be scheduled.

At the beginning of 2006 it seemed possible that if we really 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 written 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 complete 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 able to move to the oral stage in a timely manner.

Having achieved this goal, 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 on "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 ICTY and the ICTR". Informed at the last moment of the imminent adoption of this 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 our Statute. This issue will be addressed in the forthcoming Secretary-General's Report on "Conditions of Service and Compensation for Officials other than Secretariat Officials". A memorandum we produced in July to assist the Office of the Secretary-General in the preparation of this 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. This will result in judges elected after 1 January 2007 having an income substantially below the current remuneration. It would be the first time in the history of the United Nations that judicial salary levels are *reduced*. And it would be without precedent — and *this* is the key point — that judges on the same Bench would receive different salaries. Equality between the judges of the ICJ is one of the fundamental principles underlying the Statute of the Court. It should be recalled that the parties appearing before the Court are sovereign States, not individuals. 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* chosen by States parties to a litigation not having a national on the Bench, or between two judges *ad hoc*. Indeed, this is what the Statute of the ICJ requires — and this 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 you in graphic terms: 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 which you will be 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 1 January 2007? Was this really what you thought you were achieving when you passed resolution 61/262 in April? I cannot believe that any State represented in this Hall wishes to put judges of their own nationality in a position of financial inferiority to others. Nor do Member States of the United Nations 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 officially to address certain budgetary matters related to the ICTY and ICTR, in fact at the present time has its negative impact *only* on the ICJ. No further elections are envisaged for the ICTY till 2009, and the Tribunal has until then a sufficiency of judges *ad litem* for its work. If the term of office of the ICTY judges were in 2009 to be extended, 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 ICJ. Moreover, there may well be no new elections for ICTR judges. The ICJ stands alone at the moment in bearing the negative impact of this 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 equality with other judges and 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 in a disadvantageous situation and 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 they ever meant to create awkward situations for States appearing in front of the Court. For our part, we do appreciate the understandable objectives behind the resolution, both as regards transparency and as

regards putting the ICTR back into a position of real equality with the ICTY and the ICJ. 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.

You 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 you that this form of assistance is routinely provided to every other international court and tribunal, and many senior national courts. The judges of the ICTY, ICTR — and indeed the ICC, just beginning its work — each have 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 judges to get on with addressing legal issues, drafting the judgments, and maximising 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 do need a law clerk *each* in view of the increasing number of fact-intensive cases and the rising importance of researching, analysing and evaluating diverse materials.

Vice-President,

Excellencies,

Ladies and Gentlemen,

This year marks the 100-year anniversary of the 1907 Hague Peace Conference and various events have been held in 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. And the past two decades has 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 you that the Court will continue to work with dedication and its customary impartiality. Our aim is to meet the expectations of those States who entrust us to find a solution for them in a timely fashion whilst 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 will continue our efforts in the year to come.

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