

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

31 October 2003

Mr. President, Excellencies, Ladies and Gentlemen,

It is an honour for me to address the General Assembly of the United Nations for the first time in my presidency on the occasion of its examination of the Report of the International Court of Justice for the period 1 August 2002 to 31 July 2003. This yearly contact which has been established between the Court and the General Assembly since 1968 allows for an invaluable direct interchange between these two sister organs of the United Nations. In particular, I wish to express my sincere thanks to the Assembly for its continued interest in the work of the Court, principal judicial organ of the United Nations, whose vocation is to deal with legal disputes submitted to it by Member States, as well as legal questions put to it by other organs of the United Nations and duly authorized specialized agencies.

I am particularly pleased to address you today under the distinguished presidency of Mr. Julian R. Hunte, Minister for External Affairs, International Trade and Civil Aviation of Saint Lucia, to whom I offer my warm congratulations on his election as President of the fifty-eighth session of the General Assembly. He has my sincerest wishes for every success in his eminent office. I should like particularly to commend him for his unflagging determination to pursue the struggle against the principal sources of conflict, and for his vision of the international community, which encompasses peaceful coexistence between States and equity among nations large and small, as well as a commitment to strengthening civil society and encouraging sustainable development, in particular in the context of Small Island States.

Mr. President,

The Court has, as usual, transmitted its annual report to the Assembly and this report has been circulated to you together with an introductory summary. A corrigendum to the report relating to the case concerning *Avena and Other Mexican Nationals (Mexico v. United States of America)* has further been distributed this week. I will not impose on the General Assembly a complete reading of these documents. I would nevertheless like to summarize and stress some of the essential elements therein reported.

May I begin by recalling that there are currently 191 States which are parties to the Statute of the Court, over 60 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. Since my predecessor, President Guillaume, addressed you in October 2002, the International Court of Justice has been as busy as ever. As of 31 August 2003 the docket of the Court stood at 25 cases. This number now stands at 23 following the removal from the Court's List in early September 2003, at the joint request of the Parties, of two cases brought before the Court in 1992 by Libya, against the United Kingdom and against the United States of America, in respect of disputes concerning the interpretation and application of the 1971 Montreal Convention arising

from the aerial incident at Lockerbie. These cases come from all over the world, four being between African States, one between Asian States, 11 between European States and three between Latin American States, whilst four are of an intercontinental character. This international distribution reflects the universal composition of the Court itself, comprised as it currently is of Members from Brazil, China, Egypt, France, Germany, Japan, Jordan, Madagascar, the Netherlands, the Russian Federation, Sierra Leone, Slovakia, the United Kingdom, the United States of America and Venezuela.

The subject-matter of the cases before the Court is extremely varied. As is frequently the case, the Court's docket contains a number of cases concerning territorial disputes between neighbouring States seeking a determination of their land and maritime boundaries, or a decision as to which of them has sovereignty over particular areas. This is the position for four cases concerning, respectively, Nicaragua and Honduras, Nicaragua and Colombia, Benin and Niger, and Malaysia and Singapore. Another classic type of dispute is where a State complains of the treatment of its nationals in another State. This is the position in the cases of Guinea against the Democratic Republic of the Congo, Liechtenstein against Germany, Mexico against the United States of America, and the Republic of the Congo against France.

Other cases relate to events which your Assembly or the Security Council have had to address. Thus Iran has brought proceedings over the alleged destruction of oil platforms by the United States in 1987 and 1988. Bosnia and Herzegovina and Croatia have, in two separate cases, sought the condemnation of Serbia and Montenegro (formerly the Federal Republic of Yugoslavia) for violation of the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide. Serbia and Montenegro itself has brought proceedings against eight member States of NATO, challenging the legality of their action in Kosovo. Finally, the Democratic Republic of the Congo, in two separate cases, contends that it has been the victim of armed aggression on the part of Uganda and Rwanda, respectively.

The Court's decisions in the course of the period under review include in particular three judgments on merits and two orders on request for provisional measures.

In October 2002, the Court gave a judgment in the case concerning the *Land and Maritime Boundary between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening)*, thereby putting an end to a long-standing territorial and frontier dispute. The Court decided that sovereignty over Bakassi lay with Cameroon. The Court also determined the boundary in the Lake Chad area and defined with extreme precision the course of the land boundary between the two States in 17 other disputed sectors. The Court then went on to determine the maritime boundary between the two States. Drawing upon the consequences of its determination of the land boundary, the Court held that each of the two States is under an obligation expeditiously and without condition to withdraw its administration and military and police forces from areas falling within the sovereignty of the other. In the reasoning of its Judgment the Court also noted that the implementation of the Judgment would provide the parties with a beneficial opportunity for co-operation. It took note of Cameroon's undertaking at the hearings that, "faithful to its traditional policy of hospitality and tolerance", it "will continue to afford protection to Nigerians living in the Bakassi Peninsula and in the Lake Chad area". Finally, the Court rejected each Party's State responsibility claims against the other.

In December 2002 the Court rendered its judgment in the case concerning *Sovereignty over Pulau Ligitan and Pulau Sipadan (Indonesia/Malaysia)*, in which it found that the 1891 Convention between Great Britain and the Netherlands, on which Indonesia based its claim to sovereignty over the islands, could not be taken to establish a title to sovereignty, and that neither of the parties had obtained title to Ligitan and Sipadan by succession. It concluded, on the basis of "effectivités" (activities evidencing an actual, continued exercise of State authority over the islands), that sovereignty over the islands of Ligitan and Sipadan belonged to Malaysia.

The third judgment rendered by the Court in the period in question related to its previous decision on preliminary objections of 11 July 1996 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)*, in which it had found, *inter alia*, that on the basis of Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide, it had jurisdiction to adjudicate upon the dispute. In April 2001, Serbia and Montenegro filed an Application for revision of that decision, subsequent to its admission to the United Nations on 1 November 2000 — a fact which, it contended, proved that it was not a Member of the United Nations, was not a State party to the Statute of the Court, and was not a State party to the Genocide Convention prior to that date. In its Judgment of 3 February 2003, the Court rejected the request for revision, on the grounds that the recent admission of the Applicant to the United Nations could not be regarded as a new fact within the meaning of Article 61 of its Statute, capable of founding a request for revision of the 1996 Judgment. In other words, the Court found that a fact which had occurred several years after a judgment had been given could not be regarded as a new fact for the purposes of the Court's revision procedure.

Also in February 2003, the Court issued an order indicating provisional measures in the case submitted by Mexico on 9 January 2003 concerning a dispute over alleged violations of the Vienna Convention on Consular Relations with respect to 54 Mexican nationals sentenced to death in certain states of the United States of America. The Court stated that the United States “shall take all measures necessary to ensure that [three of the Mexican nationals, who are at risk of execution in the month coming,] are not executed pending final judgment” in the case; and that the United States “shall inform the Court of all measures taken in implementation of the Order”.

In June 2003, the Court issued another order on a request for provisional measures, in the case concerning *Certain Criminal Proceedings in France (Republic of the Congo v. France)*. In its Application of 9 December 2002, the Republic of the Congo had sought to institute proceedings against France with a view to obtaining the annulment of the investigation and prosecution measures taken by the French judicial authorities, further to a complaint for crimes against humanity and torture filed by various associations against the President of the Republic of the Congo, the Congolese Minister of the Interior, and other individuals including the Inspector-General of the Congolese Armed Forces. The Application also stated that, in connection with these proceedings, an investigating judge of the Meaux *Tribunal de grande instance* had issued a warrant for the President of the Republic of the Congo to be examined as witness.

The Republic of the Congo further stated that it sought to found the jurisdiction of the Court, pursuant to Article 38, paragraph 5, of the Rules of Court, “on the consent of the French Republic, which will certainly be given”. This provision in the Rules refers to situations where the applicant State proposes to found the jurisdiction of the Court upon a consent thereto yet to be given or manifested by the State against which such application is made. In such circumstances, the case does not proceed unless and until the defendant State consents to jurisdiction. Following France's consent, given in April 2003, to the jurisdiction of the Court to entertain the Application, the case was entered in the Court's List and the proceedings were opened. The request for the indication of a provisional measure which the Republic of the Congo had submitted on the same day as the Application, was activated also by the acceptance of the Court's jurisdiction by France. In that request, the Republic of the Congo sought “an order for the immediate suspension of the proceedings being conducted by the investigating judge of the Meaux *Tribunal de grande instance*”. In its Order on provisional measures, the Court found, however, on the facts before it, that no risk of irreparable prejudice existed with regard to the rights claimed by the Applicant, and rejected the Congo's request.

The case brought by the Republic of the Congo is the first case of the kind contemplated by Article 38, paragraph 5, of the Rules of Court in which the State named as respondent, on being notified of the application made against it, has in fact agreed to accept jurisdiction. The provision whereby such an application is ineffective until the other State accepts jurisdiction, was introduced

to discourage proceedings from being brought before the Court for purely political reasons, in the absence of any jurisdictional title. Nevertheless it remains open to any State to use this means of extending an invitation to another State to confer jurisdiction on the Court in a specific dispute, and thus to demonstrate its confidence in the Court. Furthermore, since France was free to disregard the application, the fact that it chose to accept jurisdiction, to appear and defend the case, is an encouraging tribute to the value of judicial proceedings as a means of pacific settlement of disputes.

Following hearings earlier this year, the Court has recently completed its deliberations on the *Oil Platforms (Islamic Republic of Iran v. United States of America)* case, concerning the destruction by United States Navy warships, in 1987 and 1988, of three offshore oil production complexes owned and operated by the National Iranian Oil Company. The Court will deliver its Judgment, in this case, in open court shortly after my return to The Hague. Following hearings in September 2003, the Chamber of the Court in the case concerning *Application for Revision of the Judgment of 11 September 1992 in the Case concerning the Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening) (El Salvador v. Honduras)*, is similarly holding deliberations. Hearings are also scheduled for November 2003 in the case concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*; and hearings in the case concerning *Avena and Other Mexican Nationals (Mexico v. United States of America)* are due to open in December 2003.

In addition to the Chamber formed for the above case between El Salvador and Honduras, the Court has, as requested by the parties, also formed a five-Member Chamber to deal with a boundary dispute between Benin and Niger. The Court is thus maintaining its work rate and looks forward to an equally busy schedule next year.

Before concluding this part of my statement, I would like to stress the fact that both judgments and orders indicating provisional measures made by the Court are binding on the parties. For it is indeed this binding nature of its decisions which lies at the heart of the Court's mission to solve legal disputes between States and is the necessary condition for the successful achievement of that mission. Under Article 94, paragraph 1, of the Charter, "[e]ach Member of the United Nations undertakes to comply with the decision of the International Court of Justice in any case to which it is a party." Article 60 of the Statute of the Court adds that judgments of the Court are "final and without appeal". The binding effect of orders indicating provisional measures under Article 41 of the Statute of the Court has recently been confirmed by the judgment rendered by the Court in the *LaGrand* case. The Court has therefore no doubt that parties to litigation before it will continue to implement its decisions, as they have done in the past.

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Mr. President,

As my predecessors have endeavoured to point out, the Court is always aware of its duty to deal with cases as promptly and efficiently as possible. The working methods of the Court are subject to permanent re-examination in an effort to avoid delays in the Court's proceedings. This constant quest to meet the expectations of the parties before the Court is necessary in view of the considerable number of cases on its docket. Furthermore, many cases have been rendered more complex as a result of preliminary objections by respondents to jurisdiction or admissibility, and of counter-claims and applications for permission to intervene, not to mention requests by applicants,

and even sometimes respondents, for the indication of provisional measures, which have to be dealt with as a matter of urgency. In this regard, in order to improve efficiency the internal mechanisms of the Court are under constant review. But we also ask parties before the Court to co-operate in achieving our common goal. For example, the Court has issued a number of Practice Directions, including Practice Direction IX, which is aimed at limiting the late filing of documents in accordance with Article 56 of the Rules of Court. The Court has also noted the increasing tendency of parties to use requests for the indication of provisional measures as an opportunity to provide an early outline of their cases on the merits. It is therefore looking into ways of emphasizing — and indeed requiring — that in hearings on such requests parties should focus on the legal conditions for the indication of provisional measures.

The Court is also aware of the importance of keeping pace with technological developments in order to improve the internal functioning of its Registry. The Court's well-regarded website and its intranet (the Court's internal website) are in the process of being redesigned to make them more dynamic and easier to use. The Court has also set up an electronic document management system (EDMS), which provides immediate access to case files and archive documentation. In particular the ZyImage document retrieval software, which provides an updated bilingual database, enables users quickly to access and consult a wide range of legal and Court-related materials. In its budgetary request for the biennium 2004-2005, the Court has asked for provision to be made for an additional professional officer in the Computerization Division, which currently has only one professional category post. The Court believes that it is absolutely essential to recruit a professional with advanced IT skills in order to be able to meet the General Assembly's request for more enhanced use of modern technology.

Nor can the Court overlook the need for well-qualified young lawyers to assist with research for its 15 Members, and to this end in its latest budgetary proposal it has further requested the conversion of the funds temporarily available for five law clerks into established posts. The Court has also requested the creation of two security posts, as recommended by the United Nations Security Co-ordinator. In making these requests, which are presently under consideration, the Court has restricted itself to proposals which are financially modest but also of the utmost significance for the implementation of key aspects of its work. The Court hopes that these budgetary proposals will meet with your agreement, thereby enabling the principal judicial organ of the United Nations better to serve the international community.

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Mr. President, Excellencies, Ladies and Gentlemen,

While the International Court of Justice carries out its work in the tranquil setting of The Hague, far from the hustle and bustle of New York Headquarters, its activities contribute in a very direct way to the overall aims and objectives of the United Nations. The Court's potential in this regard is apparent in the wide-ranging impact its work already has on the international community. In particular, the role which the Court plays, through the power of justice and international law, in resolving disputes between States is widely recognized and evidenced by the number of cases on the Court's docket. Furthermore, it is not uncommon that these cases deal directly with issues concerning international peace and security. The impartiality of the Court's judicial procedure and the equality of arms which it guarantees to the parties before it — inherent elements in the Court's nature — without doubt contribute to the effective resolution of such disputes. In performing its dispute resolution function, the Court, which embodies the principle of equality of all before the law, acts as guardian of international law, and ensures the maintenance of a coherent international legal order. I can assure you that the Court will pursue its efforts to respond to the hopes placed in it.

The Court thanks you for your help and counts on you for continuing support in years to come, in the interests of justice, peace and law.

Thank you, Mr. President.
