

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

26 October 2006

Madam President,

Excellencies,

Ladies and Gentlemen,

It is an honour for me to address the General Assembly for the first time in my presidency on the occasion of its examination of the Report of the International Court of Justice (ICJ) for the period 1 August 2005 to 31 July 2006. Speaking to the General Assembly on the Court's Report is a tradition which was initiated by Sir Robert Jennings during his presidency, and it is one which I am happy to maintain and which the Court greatly values.

I am pleased to address you today under the presidency of Her Excellency Sheikha Haya Rashed Al Khalifa, Legal Adviser to the Royal Court in the Kingdom of Bahrain. I warmly congratulate you, Madam President, on your election as President of the Sixty-first Session of this Assembly and wish you every success in this distinguished office.

I begin by recalling that there are currently 192 States which are parties to the Statute of the Court, 67 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.

As the Annual Report of the Court transmitted to the General Assembly recounts, in the period from 1 August 2005 to 31 July 2006, the Court made an order with respect to a request for provisional measures in one case, held public hearings in two cases, and rendered judgments in two further cases. It should be understood that the cases of *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)* and the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)* have been exceptionally heavy, legally speaking, and complex in a variety of ways. Several "cases" are contained *within* each head case. The *Bosnia and Herzegovina v. Serbia and Montenegro* case required public hearings that stretched over two and a half months; the Court has sifted through vast amounts of documentary and audiovisual evidence and heard witness testimony in the courtroom for the first time since 1991.

During the period under review, the Court was seised of three new cases: a dispute regarding navigational and related rights between Costa Rica and Nicaragua, a dispute regarding the status of a diplomatic envoy to the United Nations vis-à-vis the Host State between the Commonwealth of Dominica and Switzerland, and a dispute concerning pulp mills on the River Uruguay between Argentina and Uruguay. Following a further request from the Republic of Dominica, the case against Switzerland was however later removed from the Court's List. Today, there are 13 cases in the General List of the Court following the entering in the General List of the Court in August of this year of an Application from the Republic of Djibouti instituting proceedings against France. The Application was made by Djibouti in January of this year and on 10 August, France consented to the Court's jurisdiction for this specific dispute in accordance with Article 38, paragraph 5, of the Rules of Court. This is only the second instance since the adoption

in 1978 of Article 38, paragraph 5, that a State has accepted another State's invitation to recognize the jurisdiction of the International Court to deal with a case against it.

The cases come from all over the world: there are four between European States, four between Latin American States, two between African States, one between Asian States and two of an intercontinental character. The Court's international character is also reflected in its composition. Following the elections held in the autumn of last year by the General Assembly and the Security Council, the Court currently has the benefit of Members from China, France, Germany, Japan, Jordan, Madagascar, Morocco, Mexico, New Zealand, 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 five cases concerning, respectively, Nicaragua and Honduras, Nicaragua and Colombia, Malaysia and Singapore, Romania and Ukraine and Costa Rica and Nicaragua. Another classic type of dispute is where a State complains of the treatment of its nationals by other States. This is the position in the cases of Guinea against the Democratic Republic of the Congo, the Republic of Congo against France, and the Republic of Djibouti against France. These last two cases also raise issues relating to jurisdictional immunities of State officials.

Another category of cases which is frequently referred to the Court concerns the use of force and events which your Assembly or the Security Council have had to address. At the moment the Court is deliberating on a case in which Bosnia and Herzegovina seeks the condemnation of Serbia and Montenegro for violations of the 1948 United Nations Convention on the Prevention and Punishment of the Crime of Genocide. The Court is further seised of a similar claim brought by Croatia against Serbia and Montenegro.

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. I have had the occasion to deal with some of these legal issues in more depth with the Legal Advisers. Should any specific points be of particular interest, you would be able to see them discussed in that speech.

On 19 December 2005, the Court handed down its Judgment in the case concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*. By way of background, on 23 June 1999 the Democratic Republic of the Congo filed an Application instituting proceedings against Uganda for "acts of armed aggression perpetrated in flagrant violation of the United Nations Charter and of the Charter of the OAU". In its Application, the Democratic Republic of the Congo contended that "such armed aggression . . . ha[d] involved *inter alia* violation of the sovereignty and territorial integrity of the [Democratic Republic of the Congo], violations of international humanitarian law and massive human rights violations".

Uganda disputed the Democratic Republic of Congo's claim, and counter-claimed on 21 April 2001 that the DRC had committed acts of aggression against it, had attacked Ugandan diplomatic premises and personnel in Kinshasa as well as other Ugandan nationals, and had violated the Lusaka Agreement. By an Order of 29 November 2001 the Court found that the first two of the counter-claims were admissible, but that the third was not.

In its Judgment on the merits, the Court started by noting that it is aware of the complex and tragic situation which had long prevailed in the Great Lakes region and of the suffering by the local population. It observed that the instability in the DRC in particular had had negative security implications for Uganda and some other neighbouring States. It however stated that its task was to respond, on the basis of international law, to the particular legal dispute brought before it.

The Court treated first the question of the invasion of the DRC by Uganda.

After having examined the materials put before it by the parties, the Court found that in the period preceding August 1998 the DRC had not objected to Uganda's military presence and activities in its eastern border area. The two countries had among other things agreed that their respective armies would "co-operate in order to ensure security and peace along the common border". The Court however drew attention to the fact that the consent that had been given to Uganda to place its forces in the DRC, and to engage in military operations, was not an open-ended consent. It was limited in terms of objectives and geographic location to actions directed at stopping rebels operating across the common border. It did not constitute a consent to all that was to follow.

The Court examined carefully the various treaties directed to achieving and maintaining a ceasefire, the withdrawal of foreign forces and the stabilization of relations. It concluded that none of these instruments (save for the limited exception regarding the border region of the Ruwenzori Mountains contained in the Luanda Agreement) constituted consent by the DRC to the presence of Ugandan troops on its territory.

The Court also rejected Uganda's claim that its use of force, where not covered by consent, was an exercise of self-defence. The preconditions for self-defence did not exist. And indeed, the unlawful military intervention by Uganda was of such magnitude and duration that the Court considered it to be a grave violation of the prohibition on the use of force expressed in Article 2, paragraph 4, of the Charter.

The Court also found that by actively extending military, logistic, economic and financial support to irregular forces having operated on the territory of the DRC, the Republic of Uganda had violated the principle of non-use of force in international relations and the principle of non-intervention.

The Court then moved to the legal issue of occupation and of the violations of human rights and humanitarian law.

It observed first that, under customary international law, as reflected in Article 42 of the Hague Regulations of 1907, territory is considered to be occupied when it is actually placed under the authority of the hostile army, and the occupation extends only to the territory where such authority has been established and can be exercised.

Having concluded that Uganda was the occupying Power in Ituri at the relevant time, the Court stated that, as such, it was under an obligation, according to Article 43 of the Hague Regulations, to take all measures in its power to restore, and ensure, as far as possible, public order and safety in the occupied area, while respecting, unless absolutely prevented, the laws in force in the DRC. This had not been done. The Court also considered that it had credible evidence sufficient to conclude that the Uganda People's Defence Forces (UPDF) troops had generally in the DRC engaged in various violations of international humanitarian law and human rights law. The details are specified in the Judgment. These violations were found to be attributable to Uganda.

The third issue the Court had to deal with was that of the alleged exploitation of natural resources by Uganda.

The Court considered that it had ample, credible and persuasive evidence to conclude that officers and soldiers of the UPDF, including the most high-ranking officers, were involved in the looting, plundering and exploitation of the DRC's natural resources and that the military authorities did not take any measures to put an end to these acts. Uganda was responsible both for the conduct of the UPDF as a whole and for the conduct of individual soldiers and officers of the UPDF in the DRC. This was so even when particular UPDF officers and soldiers acted contrary to instructions

given or exceeded their authority. The Court found that it did not have at its disposal credible evidence to prove that there was a governmental policy on the part of Uganda directed at the exploitation of natural resources of the DRC or that Uganda's military intervention was carried out in order to obtain access to Congolese resources.

In respect of the counter-claims of Uganda, the Court found first that Uganda had not produced sufficient evidence to show that the DRC had provided political and military support to anti-Ugandan rebel groups operating in its territory. The Court added that any military action taken by the DRC against Uganda after the invasion by Uganda in 1998 would be justified as action taken in self-defence under Article 51 of the United Nations Charter.

As for the second counter-claim, the Court found that there was sufficient evidence to prove the attacks against the Embassy and the maltreatment of Ugandan diplomats on Embassy premises and at Ndjili International Airport. It found that the DRC breached its obligations under the Vienna Convention on Diplomatic Relations. The removal of property and archives from the Ugandan Embassy was also in violation of the rules of international law on diplomatic relations.

The Court noted that the nature, form and amount of compensation owed by each party had been reserved and will only be submitted to the Court should the parties be unable to reach agreement on the basis of the Judgment just rendered by the Court.

2005-2006 turned out to be very much an African year for the Court. Less than two months after issuing its decision in the *Congo v. Uganda* case, on 3 February 2006, the Court rendered its Judgment on the preliminary objections to jurisdiction and admissibility raised by Rwanda in the case concerning *Armed Activities on the Territory of the Congo (New Application: 2002) (Democratic Republic of the Congo v. Rwanda)*. It found that it had no jurisdiction to entertain the Application filed by the Democratic Republic of the Congo.

The background was the filing, in 2002, by the Democratic Republic of the Congo of an Application alleging "massive, serious and flagrant violations of human rights and of international humanitarian law" resulting "from acts of armed aggression perpetrated by Rwanda on the territory of the Democratic Republic of the Congo in flagrant violation of the sovereignty and territorial integrity of the Democratic Republic of the Congo, as guaranteed by the United Nations and OAU Charters".

The Court's deliberations mainly turned on the interpretation of particular jurisdictional provisions and on the analysis of requirements contained in these provisions. The Court essentially found that the international instruments invoked by the DRC could not be relied on as either Rwanda was not a party to them, Rwanda had made reservations to them, or other preconditions for seisin of the Court had not been satisfied.

As the Court had no jurisdiction to entertain the Application, it was not required to rule on the admissibility of the Application. The Court was mindful that the subject-matter was very close to *Congo v. Uganda* and that it needed to be carefully explained as to why the Court did not proceed to the merits in *this* case. It explained that it was precluded by its Statute from taking any position on the merits of the claims made by the DRC. However, the Court reiterated

"that there is a fundamental distinction between the acceptance by States of the Court's jurisdiction and the conformity of their acts with international law. Whether or not States have accepted the jurisdiction of the Court, they are required to fulfil their obligations under the United Nations Charter and the other rules of international law, including international humanitarian and human rights law, and they remain responsible for acts attributable to them which are contrary to international law."

Finally, on 13 July of this year, the Court handed down its Order for the indication of provisional measures in the case concerning *Pulp Mills on the River Uruguay (Argentina v. Uruguay)*.

Early in May of this year, Argentina initiated proceedings against Uruguay concerning alleged violations by Uruguay of obligations under the Statute of the River Uruguay, a treaty signed by the two States in 1975. Argentina's Application was accompanied by a request for the indication of provisional measures requiring Uruguay, first, to suspend the authorizations for the construction of the mills and halt building work on them pending a final decision by the Court and, second, to co-operate with Argentina to protect and preserve the aquatic environment of the River Uruguay, to refrain from taking any further unilateral action with respect to construction of the two mills which does not comply with the 1975 Statute and to refrain as well from any other action which might aggravate the dispute or render its settlement more difficult.

In its Order, the Court found that there was nothing in the record to demonstrate that the very decision by Uruguay to authorize the construction of the mills posed an imminent threat of irreparable damage to the aquatic environment or to the economic and social interests of the riparian inhabitants. On the basis of the evidence before it, the Court was not convinced that the rights claimed by Argentina would no longer be capable of protection if the Court were to decide not to indicate at this stage of the proceedings the suspension of the authorizations and of the construction work itself. At the same time, the Court made clear that, by proceeding with the work, Uruguay "necessarily bears all risks relating to any finding on the merits that the Court might later make" and that the construction of the mills at the current site could not be deemed to create a fait accompli. The Order specifically states that the decision in the present proceedings in no way prejudices questions relating to the merits of the case. The parties retain the right to submit arguments in respect of the substance of the case in further stages of the proceedings.

As well as delivering these Judgments and Order, the Court has completed the hearings 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)* and the case is currently under deliberation. In the run up to the case, the Court made preparatory proposals on, *inter alia*, whether witness examination should be preceded with affidavits, how to organize the cross-examination, how to secure the confidentiality of the testimony during the hearings, what type of translation to provide for the witnesses and for the Court, etc. Very particular arrangements had to be made with the Press. This case is heavy and complex in a variety of ways. It includes several "sub-cases" and involves an unprecedented amount of facts and evidence requiring detailed and systematic analysis. Although the hearings were mainly focussed on the merits of the case, a number of jurisdictional issues were discussed by the Parties as a result of various developments since the Court delivered its Judgment on jurisdiction and admissibility in 1996, and particularly the implications of the admission of the then Federal Republic of Yugoslavia to the United Nations in 2000.

In terms of what is next on the horizon for the International Court, next month we begin public hearings on preliminary objections in the case concerning *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*. Next March, the Court will hear a case on the merits: *Maritime Delimitation between Nicaragua and Honduras in the Caribbean Sea (Nicaragua v. Honduras)*. After that, the Court will hear preliminary objections in the *Territorial and Maritime Dispute (Nicaragua v. Colombia)* and arguments on the merits in the case concerning *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge (Malaysia/Singapore)*.

Our aim is to increase further our throughput in the coming year. To this end, the Court has agreed for next year upon a very full schedule of hearings and deliberations, with more than one case being in progress at all times. In this context, I draw your attention to one request in our budget submission. The Court's budgetary requests are always modest and our requests for

2008-2009 will be particularly restrained. But there is one matter that is very important to us: the Court will request nine P-2 law clerks, which would enable us to achieve a full complement of one law clerk for each Member of the Court. This matter was raised by President Schwebel eight long years ago and was the subject of a specific request made six years ago by President Guillaume. At that time, he pointed to the fact that each judge has to examine case files which regularly run to several thousand pages and to conduct hearings that are sometimes unavoidably lengthy. The situation is even more pressing today given the increasing number of fact-intensive cases and the rising importance of researching, analysing and evaluating not only doctrinal materials, but also the applicable jurisprudence of other international tribunals as well as the testimony as to alleged facts. The Court wishes to provide its judgments in a timely fashion, but it is simply impossible for it to do so if the judges have no assistance across this range of work. We can no longer scrape by on a small pool of six shared clerks. At the end of the day, this shortage of assistance is harmful to the client States who use us. The absence of clerks is judicially inefficient and this seems everywhere recognized. It is, in reality, astounding that the International Court is the only senior international court without this form of assistance. Each judge at the European Court of Justice is assisted by three law clerks. Each of the 16 judges at the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda has one law clerk assigned to him or her and there is at least one "floating" law clerk assigned to the Chamber. The International Criminal Court has provided one law clerk for each of its 18 judges. Quite simply, the International Court of Justice can no longer provide the service that Member States bringing cases desire if it, as the principal judicial organ of the United Nations, is denied what is routinely accorded to every other senior court.

The International Court has been continuing to review its procedures and working methods. In September 2005, the Court adopted amendments to Article 43 of its Rules regarding the notifications to be sent by the Court to those not directly involved in a case who are parties to a convention whose construction may be in question in the proceedings. Two paragraphs were added to Article 43 to cover the case of international organizations that are party to such conventions and to establish an appropriate procedural framework for this purpose. Now they, too, have a means for submitting observations on the particular provisions of the convention the construction of which is in question in the case.

The Court noted in recent times the growing interest of States, reflected in its docket, in issues relating to human rights, international humanitarian law, and environmental law. In 1993, a Chamber for Environmental Matters was created by the Court and has been periodically reconstituted. But in its 13 years of existence, no State has yet asked for a case to be heard by this Chamber. Cases such as the *Gabčíkovo-Nagymaros Project (Hungary/Slovakia)* and *Pulp Mills on the River Uruguay (Argentina v. Uruguay)* have been submitted to the plenary Bench. A survey of State practice suggests that States prefer environmental law not to be compartmentalized, but to find its place within international law as a whole. Indeed, environmental law has now become an important part of what we may term the mainstream of international law. Accordingly, this year the Court decided not to hold elections for a Bench for the Chamber for Environmental Matters. At the same time, should parties in future cases request a chamber for a dispute involving environmental law, such a chamber could be constituted under Article 26, paragraph 2, of the Statute of the Court.

Madam President,

Excellencies,

Ladies and Gentlemen,

As you know, the International Court of Justice celebrates its sixtieth anniversary this year. A solemn sitting of the Court, in the presence of the Queen of the Netherlands, of the

Secretary-General of the United Nations and of the President of the General Assembly, was organized in April to mark the occasion.

The anniversary has provided an occasion for the Court to reflect on what it has achieved and where it can improve. Sixty years ago, the International Court stood virtually alone as the forum for the resolution of international disputes. For a variety of reasons, new courts and tribunals have burgeoned, established to deal with a variety of international needs such as the law of the sea, trade, human rights, investment, and the accountability of individuals for international crimes. We are forging cordial relationships with each other. The Court has set up an informal system of exchange whereby judges at the ICTY and ICC receive summaries and/or relevant excerpts of our cases that address legal questions of particular interest, and vice versa.

This growth in the number of new courts and tribunals has generated a certain concern about the potential for a lack of consistency in the enunciation of legal norms and the attendant risk of fragmentation. Yet these concerns have not proved significant. The general picture has been one of these courts seeing the necessity of locating themselves within the embrace of general international law. The authoritative nature of ICJ judgments is widely acknowledged. It has been gratifying for the International Court to see that these newer courts and tribunals have regularly referred, often in a manner essential to their legal reasoning, to judgments of the ICJ with respect to questions of international law and procedure. Just in the past five years, the judgments and advisory opinions of the ICJ have been expressly cited with approval by the International Tribunal for the Law of the Sea, the European Court of Human Rights, the European Court of Justice, the United Nations Commission on Human Rights, the Inter-American Commission on Human Rights, the International Centre for Settlement of Investment Disputes, the International Criminal Tribunal for the former Yugoslavia, and arbitral bodies including the Eritrea-Ethiopia Claims Commission. The International Court, for its part, has been following the work of these other international bodies closely.

The ability of international judges, lawyers, scholars, the media and, indeed, interested members of the general public, to follow the work of the Court will be further enhanced by the new website of the International Court, which will be launched shortly. The new website will contain five times more data than the current website, including every judgment, order and pleading since 1946, as well as other new features.

The International Court is the embodiment of the United Nations, being its principal judicial organ: this authority accorded to the Court has served the United Nations well over the years. The Court is indeed the Court of all the Members, in the sense that it is composed of 15 judges from around the world elected by all the United Nations membership. The decision making process of the Court is such that *all* the judges are engaged in all the cases (save in those occasional circumstances where the parties themselves request a chamber). Our judgments and opinions are written by the judges themselves. It is not the Court of any region, or any personalities. It is the Court of the United Nations.

The International Court welcomes the special efforts the Members of the United Nations have made to strengthen our activities. In particular, we appreciated the recognition of the important role of the International Court in the Outcome Document resulting in the meeting of more than 170 Heads of State and Government at United Nations Headquarters for the 2005 World Summit. The Court for its part will continue to work with dedication and its customary impartiality — and hopes you will allow us the modest additional resources we need to serve you well.

Madam President,

Excellencies,

Ladies and Gentlemen,

I assure you that the International Court will continue to maintain the high quality of our decisions while striving to meet the expectations of those States who entrust us to find a solution for them in a timely fashion. The Court deeply values the trust placed in it by the United Nations and stands ready to work with you towards the fulfilment of the goals enshrined in the Charter.
