

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

4 November 2004

Mr. President, Excellencies, Ladies and Gentlemen,

It is a great privilege and an honour for me, in my capacity as President of the International Court of Justice, to address the General Assembly of the United Nations on the occasion of its examination of the Report of the Court for the period 1 August 2003 to 31 July 2004.

For more than a decade now, this eminent Assembly has invited the President of the International Court of Justice to present an annual review of the Court's activities and achievements. Before I summarize the events of the preceding year, I should like to express my gratitude for this opportunity, which I believe demonstrates the Assembly's ongoing interest in and support for the Court in its role as the principal judicial organ of the United Nations.

It is also a particular pleasure to address you today under the distinguished presidency of Mr. Jean Ping, Minister of State, Minister for Foreign Affairs, Co-operation and la Francophonie of Gabon, and the tenth African President of the Assembly. I congratulate him on his election to the presidency of the fifty-ninth session of the General Assembly, and applaud the commitment made by him and his country to the United Nations mission to build a more caring world in which future generations are freed from the ravages of war and underdevelopment. I should like to wish him all success in office, and in particular with his initiative to pursue broadened consultations with the international community aimed at revitalizing and reforming the Organization.

Mr. President,

The Court has transmitted its annual Report to the Assembly, along with an introductory summary. As the Report is somewhat lengthy, I trust that the following résumé will provide a useful overview of its essential elements.

As I reported last year, 191 States are parties to the Statute of the Court, and 65 of them have accepted the compulsory jurisdiction of the Court in accordance with Article 36, paragraph 2, of the Statute. In addition approximately 300 treaties make reference to the Court in respect of the settlement of disputes arising from their application or interpretation.

Since I addressed you in October 2003, the Court has held five sets of oral hearings relating to no less than 12 cases (the hearings in all eight cases concerning the *Legality of Use of Force* having been held simultaneously). In addition, the Court has rendered a final judgment in three cases and has delivered one Advisory Opinion. This level of activity is unprecedented in the history of the Court, and, as a result of such efforts, the number of cases on the Court's docket had been reduced from 25 a year ago to 20 at the end of the review period. Today there are, in fact, 21 cases in the General List, following the institution of proceedings by Romania against Ukraine 16 September 2004. Given that in the 1970s the Court had very few cases on its docket, and that

from 1990 to 1997 it had between nine and 13, the current number of cases represents a substantial workload.

The contentious cases pending before the Court originate from all over the world: 11 between European States, four between African States, two between Latin American States and one between Asian States; in addition there are two cases of an intercontinental nature.

The Court's international character is also reflected in its composition; it currently has the benefit 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 cases included on the docket over the last year illustrate the variety of international disputes that are customarily referred to the Court. The Court is accustomed to handling territorial disputes between neighbouring States that are seeking the determination of their land and maritime boundaries or a decision in respect of sovereignty over particular areas. Currently, there are four such cases in the General List concerning, respectively, Nicaragua and Honduras, Nicaragua and Colombia, Benin and Niger, and Malaysia and Singapore.

States also regularly submit disputes to the Court concerning the treatment of their nationals by other States: this is the position in the extant cases between Guinea and the Democratic Republic of the Congo, and between the Republic of Congo and France, and also in the recently decided case concerning *Avena and Other Mexican Nationals*.

Another category of cases which is frequently referred to the Court concerns the use of force. Such proceedings often relate to events that have been brought before the General Assembly or the Security Council. At the moment the Court is seised of two cases in which Bosnia and Herzegovina and Croatia, respectively, have sought 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 also dealing with the *Legality of Use of Force* cases, which are being pursued by Serbia and Montenegro against eight member States of NATO. In those eight cases, Serbia and Montenegro is challenging the legality of the military action of NATO member States in Kosovo. Finally, the Court is dealing with two cases against Uganda and Rwanda in which the Democratic Republic of the Congo contends that it has been the victim of armed aggression.

As I mentioned earlier, in the course of the period under review the Court rendered a judgment on the merits in three cases and delivered one Advisory Opinion. I shall now deal with those decisions in chronological order.

On 6 November 2003, the Court handed down its Judgment in the case concerning *Oil Platforms (Islamic Republic of Iran v. United States of America)*.

By way of background, in November 1992 Iran instituted proceedings against the United States of America arising from the attacks on and destruction of three Iranian offshore oil production platforms by warships of the United States Navy in October 1987 and April 1988. In its Application, Iran contended that these acts constituted a "fundamental breach" of certain provisions of the 1955 Treaty of Amity, Economic Relations and Consular Rights between the United States and Iran, and also constituted a violation of international law. Iran sought reparation for the damage caused to its oil platforms.

The United States disputed Iran's claim, and counter-claimed that Iran had violated the 1955 Treaty by attacking vessels in the Gulf and otherwise engaging in military actions that were dangerous and detrimental to commerce and navigation between the two countries. The United States also sought reparation for any injury suffered.

In its judgment on the merits, the Court, having carried out a detailed examination of the evidence provided by the Parties, held firstly that the actions of the United States against the Iranian oil platforms could not be justified as measures necessary to protect the essential security interests of the United States, as envisaged in Article XX, paragraph 1 (*d*), of the 1955 Treaty. The Court concluded that recourse to force under that provision was only permitted if a party was acting in self-defence, that is to say, if it had been the victim of an armed attack, and if the actions taken were necessary and proportionate.

The Court then examined the issue of whether the United States, in destroying the oil platforms, had impeded their normal operation and prevented Iran from enjoying freedom of commerce between the two territories, as guaranteed by Article X, paragraph 1, of the Treaty of Amity. The Court found that there was, in fact, no commerce between Iran and the United States in respect of oil produced by these particular platforms at the time of the attacks. Consequently, the Court held that neither Iran's submission nor its claim for reparation could be upheld.

In respect of the counter-claim of the United States concerning the alleged breach by Iran of the obligations under the Treaty of Amity, the Court concluded, on the evidence before it, that there had not been any impediment to commerce and navigation between the territories of the Parties. Consequently, the Court held that the submissions and the claim for reparation of the United States should also be rejected.

The second of the judgments on the merits, in the case regarding the *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)*, was delivered in December 2003. The Chamber of the Court formed to deal with that case found that El Salvador's Application for revision of the 1992 Judgment was inadmissible. In its Judgment, the Chamber recalled firstly that, under Article 61 of the Statute of the Court, a revision could only be requested by a party upon satisfaction of the conditions contemplated by the Statute, namely that the revision should be "based upon the discovery of [a] fact" which must be "of such a nature as to be a decisive factor", and should have been "unknown to the Court and to the party claiming revision" when the judgment was given.

One section of the boundary determined by the 1992 Judgment followed the course of a river known as the Goascorán. El Salvador claimed that it was in possession of scientific, technical and historical evidence that showed the previous course of the River Goascorán, and its avulsion in the mid-eighteenth century.

The Chamber, however, held that the 1992 Judgment had been based on El Salvador's conduct during the nineteenth century with regard to the course of the boundary at that time, and not on a determination of the original course of the river, so evidence of avulsion could not have been a decisive factor.

Secondly, El Salvador sought to rely on a newly discovered copy of an eighteenth century map and Report, which had been found in the Newberry Library in Chicago, and which differed from the copies presented in evidence by Honduras in the original proceedings. However, the Chamber found that the copies produced by El Salvador varied only slightly from the ones used in 1992, and did not constitute a "decisive factor" as required by Article 61 of the Statute.

Moving on to the judgments delivered this year: on 31 March 2004 the Court delivered its decision in the case concerning *Avena and Other Mexican Nationals (Mexico v. United States of America)*. Mexico had initiated proceedings against the United States of America regarding alleged breaches of Articles 5 and 36 of the Vienna Convention on Consular Relations of 24 April 1963 that arose from the conduct of criminal proceedings against 52 Mexican nationals who had been tried, convicted and sentenced to death in the United States.

The Court's first task was to consider the applicability of paragraph 1 (b) of Article 36 of the Vienna Convention, which sets out the obligations of a receiving State in relation to consular notification. Having found that the United States was subject to those obligations, the Court determined the meaning of the expression "without delay" in the context of the performance of the requirements of paragraph 1 (b). On the basis of that interpretation, the Court held that in 51 of the cases the United States had breached its obligation to inform a foreign national of his rights to consular notification when "arrested, or committed to prison or to custody pending trial or . . . detained in any other manner", and in 49 of the cases the United States had failed to notify a Mexican consular post about the detention of Mexican nationals. Then, noting the interrelated nature of the three subparagraphs (a), (b) and (c) of paragraph 1 of Article 36 of the Vienna Convention, the Court went on to find that in 49 of the cases the United States had breached its obligation (under subparagraph (a)) to enable Mexican consular officers to communicate with, have access to and visit their nationals, and that in 34 cases the United States had violated its obligation (under subparagraph (c)) to enable Mexican consular officers to arrange for legal representation of their nationals.

Mexico had also alleged that the United States had violated its obligation under Article 36, paragraph 2, of the Vienna Convention by failing to provide "meaningful and effective review and reconsideration of convictions and sentences". The Court found that the United States had indeed breached this obligation in three cases, but that the possibility of judicial re-examination was still open in the other 49.

The Court held that the review and reconsideration of the convictions and sentences of the Mexican nationals by United States courts would provide adequate reparation for the violations of Article 36 of the Vienna Convention. Although the Court recognized that the means of effecting the review and reconsideration were a matter for the United States to decide, it expressed its view that it was the judicial process that was suited to such a task.

Finally, on 9 July this year, in response to a request by the General Assembly, the Court rendered its Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*.

Before addressing the question posed by the General Assembly, the Court considered whether it had jurisdiction to respond to the request, and examined the judicial propriety of exercising its jurisdiction in that instance. The Court found, unanimously, that it had jurisdiction to give the Advisory Opinion and decided, by fourteen votes to one, to accede to the request.

Having dealt with those preliminary issues, the Court then addressed the legality of the construction of the wall as a precursor to dealing with the legal consequences of its construction.

The Court found, by fourteen votes to one, that:

"The construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, and its associated régime, are contrary to international law."

With regard to the legal consequences of these violations, the Court distinguished between the consequences for Israel, those for other States, and those for the United Nations. Turning firstly to the consequences for Israel, the Court, by fourteen votes to one, found that: "Israel is under an obligation to terminate its breaches of international law"; and that:

"it is under an obligation to cease forthwith the works of construction of the wall being built in the Occupied Palestinian Territory, including in and around East

Jerusalem, to dismantle forthwith the structure therein situated, and to repeal or render ineffective forthwith all legislative and regulatory acts relating thereto”.

Further, the Court decided, again by fourteen votes to one, that:

“Israel is under an obligation to make reparation for all damage caused by the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem.”

In respect of the consequences for other States, the Court found, by thirteen votes to two, that:

“All States are under an obligation not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assistance in maintaining the situation created by such construction”;

and that, in addition:

“All States parties to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 have the obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention.”

Finally, with regard to the United Nations, the Court found by fourteen votes to one, that:

“The United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall and its associated régime, taking due account of the present Advisory Opinion.”

In the preparation of its Advisory Opinion, the Court examined the international law principles relating to the prohibition of the threat or use of force, and the extant rules governing the acquisition and occupation of territory. It also addressed the principle of self-determination, and considered the applicability of international humanitarian law and human rights law in the Occupied Palestinian Territory.

As well as reviewing these vital elements of international law, which are enshrined in numerous treaties, including the United Nations Charter, and in customary law, and reflected in various resolutions of the General Assembly, the Court also recognized the need for the construction of the wall to be placed in a more general context. In particular, the Court noted that Israel and Palestine are: “under an obligation scrupulously to observe the rules of international humanitarian law” and it expressed the view that the tragic situation in the region can only be brought to an end through the implementation in good faith of all the relevant Security Council resolutions.

The Court also drew the attention of the General Assembly to the:

“need for . . . efforts to be encouraged with a view to achieving as soon as possible, on the basis of international law, a negotiated solution to the outstanding problems and the establishment of a Palestinian State, existing side by side with Israel and its other neighbours, with peace and security for all in the region”.

Mr. President,

As well as delivering these judgments and the Advisory Opinion, the Court has completed the hearings on the preliminary objections of the Respondents in the eight *Legality of Use of Force* cases brought by Serbia and Montenegro against member States of NATO. In addition, hearings

on the preliminary objections of Germany have recently taken place in the *Certain Property (Liechtenstein v. Germany)* case, which concerns Czechoslovakia's treatment of the property of Liechtenstein nationals as German assets following the Second World War. All nine cases are currently under deliberation.

The achievement of the Court during the review period reflects its commitment to dealing with cases as promptly and efficiently as possible, while maintaining the quality of its judgments and respecting the consensual nature of its jurisdiction.

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Mr. President,

It is gratifying to note the increased use of the Court by States over recent years, and in order to meet this growing demand and fulfil its judicial responsibilities, the Court has taken further steps in the review period to improve its judicial efficiency. Since I last reported to you, the Court has undertaken a thorough review of its working methods, and as a result has introduced measures to enhance its internal functioning and encourage greater compliance by parties with previous decisions aimed at accelerating the procedure in contentious proceedings. With these aims in mind, the Court has recently amended existing Practice Direction V and promulgated new Practice Directions X, XI and XII. Amended Practice Direction V clarifies that the four-month period for the presentation by a party of its observations and submissions on preliminary objections runs from the date of the filing of the preliminary objections. Practice Direction X requests the agents of the parties to attend without delay any meeting called by the President of the Court on a procedural issue. Practice Direction XI provides that in oral pleadings on provisional measures parties should limit themselves to dealing with matters that are relevant to the criteria for the indication of such provisional measures; it thereby addresses a problem which I noted in my speech to you last year. Finally, Practice Direction XII sets out the procedure to be followed with regard to written statements and/or documents submitted by international non-governmental organizations in connection with advisory proceedings. These additions to the Court's Practice Directions will supplement its efforts to expedite the examination of cases which have been reported to you in previous years.

I should now like to draw your attention to a few matters concerning the Budget of the Court for the 2004/2005 biennium. The financial support of the General Assembly is greatly appreciated by the Court, and the Court in turn recognizes its responsibility to apply those funds wisely.

The 2004-2005 biennium was agreed in advance of the General Assembly's urgent request for an Advisory Opinion on *the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*. Both the public hearings and the delivery of the Advisory Opinion attracted unprecedented world attention. Meeting the demands of the media and providing adequate security placed a great burden on the Court's resources, and it is now clear that the Court will require additional funds to cover its expenses for the 2004-2005 biennium. I sincerely hope that the allocation of such funds will be authorized as soon as possible, so that the Court can rest assured that it has adequate financial support to perform its role in the year ahead.

In the review period the Court has continued to enhance its use of modern technology, building on the achievements that I outlined in October 2003. However, in order to continue this process and comply with the wishes of the General Assembly in this regard, it is essential for the

Court to have the benefit of a high level professional officer in the Computerization Division. Therefore, the Court will repeat the request made last year for the creation of a post to enable it to recruit a senior IT staff member with extensive experience and appropriate qualifications.

Finally, on behalf of the Court, I should like to express thanks for the approval of a number of specific requests. In particular, five law clerk posts were converted from temporary to established positions, and, on the recommendation of the United Nations Security Co-ordinator, two security posts were created.

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Mr. President, Excellencies, Ladies and Gentlemen,

Since its establishment in 1946, more than half a century ago, the International Court of Justice has contributed to the promotion and development of a unified international legal system, both by the adjudication of contentious disputes between States, and by the exercise of its advisory function.

In the period under review it has demonstrated its ability to deal with a varied and demanding caseload. It has clearly shown that it can react urgently and efficiently to meet the needs of States, as in the case concerning *Avena and Other Mexican Nationals*, and to respond to requests from the General Assembly for an advisory opinion. When performing its role as the principal judicial organ of the United Nations, the Court is always conscious of the purposes and principles of the Organization, and is particularly aware of its responsibility to contribute to the maintenance of peace and security in every region of the world.

In order to achieve these aims and perform its functions, the Court looks to the other principal organs for support and guidance, recognizing that these organs operate on a strictly equal footing, each affording due deference to the authority of the others.

It remains for me to thank you sincerely on behalf of the International Court of Justice for your encouragement and assistance during the review period, and to express my hope that this co-operation and understanding will increase in the years to come, so that the Court can contribute to the vision of a revitalized and effective United Nations.

Thank you, Mr. President.
