SPEECH BY H.E. JUDGE SHI JIUYONG,

PRESIDENT OF THE INTERNATIONAL COURT OF JUSTICE,
TO THE GENERAL ASSEMBLY OF THE UNITED NATIONS

27 October 2005

Mr. President, distinguished delegates,

It is a renewed privilege and an honour for me to address for the third time, in my capacity as President of the International Court of Justice, the General Assembly of the United Nations on the occasion of its examination of the Report of the Court for the period 1 August 2004 to 31 July 2005.

Year after year, your eminent Assembly has been demonstrating its interest and support for the Court by inviting its President to present to you a review of the Court's activities and achievements. Members of the Court are very grateful for this opportunity. The Court views indeed the close exchanges between these two principal organs of the United Nations as a guarantee of the successful accomplishment of their respective tasks and of the aims of the Organization.

It is also a particular pleasure to address you today under the distinguished presidency of His Excellency Mr. Jan Eliasson of Sweden to whom I offer my warm congratulations on his election as President of the Sixtieth Session of the General Assembly. He has my sincerest wish for every success in his eminent office. I should like to commend him for his long-standing and active commitment to the goals of the United Nations and applaud his determination to carry the process of reform of the Organization through its 60th anniversary and to ensure the follow-up and implementation of the principles agreed on in the 2005 World Summit Outcome document.

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 66 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 November 2004, the Court has rendered a final judgment in ten cases (the judgments in all of the eight cases concerning the *Legality of Use of Force* having been rendered simultaneously). Over the same period, the Court has also held oral hearings in three cases. As a result of the Court's efforts, the total number of 21 cases on the docket of the Court, which I reported to you a year ago, had dropped to 11 at the end of the period under review. Today, there are, in fact, 12 cases in the General List, following the institution of proceedings by Costa Rica against Nicaragua on 29 September 2005. I cannot but insist on how much has been accomplished since those not so distant times when there was talk of a serious backlog of cases at

the Court. Although it still represents a substantial amount of work, 12 cases is indeed a perfectly reasonable number of cases to have on the Docket of an international court.

The contentious cases pending before the Court originate from all over the world: four between European States, three between African States, three between Latin American States and one between Asian States; in addition there is one case 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 five such cases in the General List concerning, respectively, Nicaragua and Honduras, Nicaragua and Colombia, Malaysia and Singapore, Romania and Ukraine and Costa-Rica and Nicaragua.

States also regularly submit disputes to the Court concerning the treatment of their nationals by other States: this is the position in the present cases between Guinea and the Democratic Republic of the Congo, and between the Republic of Congo and France. This last case also raises issues relating to jurisdictional immunities of State officials.

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 deliberating on two cases against Uganda and Rwanda in which the Democratic Republic of the Congo contends that it has been the victim of armed attack. The Court is also 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.

As I mentioned earlier, in the course of the period under review the Court rendered a judgment in ten cases. I shall now deal with those decisions in chronological order.

On 15 December 2004, the Court handed down its judgments in the eight remaining cases concerning *Legality of Use of Force (Serbia and Montenegro* v. *Belgium)*; *(Serbia and Montenegro* v. *Canada)*; *(Serbia and Montenegro* v. *France)*; *(Serbia and Montenegro* v. *Germany)*; *(Serbia and Montenegro* v. *Italy)*; *(Serbia and Montenegro* v. *Netherlands)*; *(Serbia and Montenegro* v. *Portugal)*; *and (Serbia and Montenegro* v. *United Kingdom)*; in each of the cases it found unanimously that it had no jurisdiction to entertain the claims made by Serbia and Montenegro.

When bringing those cases (a total number of ten) in 1999, Serbia and Montenegro (at the time the "Federal Republic of Yugoslavia") alleged that each of the respondent States had committed acts by which it had "violated its international obligation banning the use of force against another State, the obligation not to intervene in the internal affairs of another State, the obligation not to violate the sovereignty of another State, the obligation to protect the civilian population and civilian objects in wartime, the obligation to protect the environment, the obligation relating to free navigation on international rivers, the obligation regarding fundamental human rights and freedoms, the obligation not to use prohibited weapons, the obligation not to deliberately inflict conditions of life calculated to cause the physical destruction of a national group". In all ten cases it invoked as a basis of the Court's jurisdiction Article IX of the Convention on the Prevention and Punishment of the Crime of Genocide, adopted by the United Nations General Assembly on 9 December 1948 ("the Genocide Convention"). In the six cases against Belgium,

Canada, the Netherlands, Portugal, Spain and the United Kingdom, it also invoked Article 36, paragraph 2, of the Statute of the Court, while in the four cases against France, Germany, Italy and the United States it invoked Article 38, paragraph 5, of the Rules of Court. Besides, in the two cases against Belgium and the Netherlands, Serbia and Montenegro submitted a "Supplement to the Application", invoking as a further basis for the Court's jurisdiction the provisions of a convention on settlement of disputes, concluded with each of those States in the early 1930s.

By Orders of 2 June 1999 concerning requests for provisional measures submitted by Serbia and Montenegro in the cases against Spain and the United States, the Court decided that those cases were to be removed from its List for manifest lack of jurisdiction. By Orders of the same date in the eight remaining cases, the Court stated that it lacked jurisdiction prima facie. Subsequently the respondent States in those cases all submitted preliminary objections relating to the Court's jurisdiction to entertain the case and to the admissibility of the Application.

In its Judgments of 15 December 2004, the Court observed that the question whether the Applicant was or was not a State party to the Statute of the Court at the time of the institution of the proceedings was fundamental; for if it were not such a party, the Court would not be open to it, unless it met the conditions prescribed in Article 35, paragraph 2, of the Statute. The Court therefore had to examine whether the Applicant met the conditions for access to it laid down in Articles 34 and 35 of the Statute before examining the issues relating to the conditions laid down in Articles 36 and 37 of the Statute.

The Court pointed out that there was no doubt that Serbia and Montenegro was a State for the purpose of Article 34, paragraph 1, of the Statute. However, the objection had been raised by certain Respondents that, at the time when the Application was filed, Serbia and Montenegro did not meet the conditions set down in Article 35, paragraph 1, of the Statute, because it was not a Member of the United Nations at the relevant time. After recapitulating the sequence of events relating to the legal position of the applicant State vis-à-vis the United Nations, the Court concluded that the legal situation that obtained within the United Nations during the period 1992-2000 concerning the status of the Federal Republic of Yugoslavia, following the break-up of the Socialist Federal Republic of Yugoslavia, had remained ambiguous and open to different assessments. This situation had come to an end with a new development in 2000. On 27 October of that year, the Federal Republic of Yugoslavia requested admission to membership in the United Nations, and on 1 November, by General Assembly resolution 55/12, it was so admitted. The Applicant thus had the status of membership in the Organization as from 1 November 2000. However, its admission to the United Nations did not have, and could not have had, the effect of dating back to the time when the SFRY broke up and disappeared. The Court therefore concluded that the Applicant thus was not a Member of the United Nations, and in that capacity a State party to the Statute of the International Court of Justice, at the time of filing its Application to institute the proceedings in each of the cases before the Court on 29 April 1999. As it had not become a party to the Statute on any other basis, the Court was not open to it at that time under Article 35, paragraph 1, of the Statute.

The Court then considered whether it might have been open to the Applicant under paragraph 2 of Article 35. It noted that the words "treaties in force" in that paragraph were to be interpreted as referring to treaties which were in force at the time that the Statute itself came into force, and that consequently, even assuming that the Applicant was a party to the Genocide Convention when instituting proceedings, Article 35, paragraph 2, of the Statute did not provide it with a basis for access to the Court under Article IX of that Convention, since the Convention only entered into force on 12 January 1951, after the entry into force of the Statute.

In the cases against Belgium and the Netherlands, the Court finally examined the question whether Serbia and Montenegro was entitled to invoke the dispute settlement convention it had concluded with each of those States in the early 1930s as a basis of jurisdiction in those cases. The question was whether the conventions dating from the early 1930s, which were concluded prior to

the entry into force of the Statute, might rank as a "treaty in force" for purposes of Article 35, paragraph 2, and hence provide a basis of access. The Court first recalled that Article 35 of the Statute of the Court concerns access to the present Court and not to its predecessor, the Permanent Court of International Justice (PCIJ). It then observed that the conditions for transfer of jurisdiction from the PCIJ to the present Court are governed by Article 37 of the Statute. The Court noted that Article 37 applies only as between parties to the Statute under Article 35, paragraph 1. As it had already found that Serbia and Montenegro was not a party to the Statute when instituting proceedings, the Court accordingly found that Article 37 could not give it access to the Court under Article 35, paragraph 2, on the basis of the Conventions dating from the early 1930s, irrespective of whether or not those instruments were in force on 29 April 1999, the date of the filing of the Application.

In each of its Judgments, the Court finally recalled that, irrespective of whether it has jurisdiction over a dispute, the Parties "remain in all cases responsible for acts attributable to them that violate the rights of other States".

Barely a couple of months later, on 10 February 2005 the Court rendered its Judgment on the preliminary objections to jurisdiction and admissibility raised by Germany in the case concerning *Certain Property (Liechtenstein* v. *Germany)*. It found that it had no jurisdiction to entertain the Application filed by Liechtenstein.

When, in 2001, Liechtenstein brought the case before the Court, it based the Court's jurisdiction on Article 1 of the European Convention for the Peaceful Settlement of Disputes. Germany raised six preliminary objections to the jurisdiction of the Court and to the admissibility of Liechtenstein's Application.

The historical context of that case was as follows. In 1945 Czechoslovakia confiscated certain properties belonging to Liechtenstein nationals, including Prince Franz Josef II of Liechtenstein, pursuant to the "Beneš Decrees", which authorized the confiscation of "agricultural property" (including buildings, installations and movable property) of "all persons belonging to the German and Hungarian people, regardless of their nationality". A special régime with regard to German external assets and other property seized in connection with the Second World War was created under the "Convention on the Settlement of Matters Arising out of the War and the Occupation" (Chapter Six), signed in 1952 at Bonn. In 1991, a painting by the Dutch master Pieter van Laer was lent by a museum in Brno (Czechoslovakia) to a museum in Cologne (Germany) for inclusion in an exhibition. This painting had been the property of the family of the Reigning Prince of Liechtenstein since the eighteenth century; it was confiscated in 1945 by Czechoslovakia under the Beneš Decrees. Prince Hans-Adam II of Liechtenstein then filed a lawsuit in the German courts in his personal capacity to have the painting returned to him as his property, but that action was dismissed on the basis that, under Article 3, Chapter Six, of the Settlement Convention (an Article whose paragraphs 1 and 3 are still in force), no claim or action in connection with measures taken against German external assets in the aftermath of the Second World War was admissible in German courts. A claim brought by Prince Hans-Adam II before the European Court of Human Rights concerning the decisions by the German courts was also dismissed.

The Court, rejecting Germany's first objection, found that there existed a legal dispute between the Parties and that it was whether, by applying Article 3, Chapter Six, of the Settlement Convention to Liechtenstein property that had been confiscated by Czechoslovakia in 1945, Germany was in breach of the international obligations it owed to Liechtenstein and, if so, what was Germany's international responsibility.

Germany's second objection required the Court to decide, in the light of the provisions of Article 27 *(a)* of the European Convention for the Peaceful Settlement of Disputes, whether the dispute related to facts or situations that arose before or after 18 February 1980, the date on which

that Convention entered into force between Germany and Liechtenstein. The Court noted in this respect that it was not contested that the dispute was triggered by the decisions of the German courts in the aforementioned case. The critical issue, however, was not the date when the dispute arose, but the date of the facts or situations in relation to which the dispute arose. In the Court's view, the dispute brought before it could only relate to the events that transpired in the 1990s if, as argued by Liechtenstein, in this period, Germany either departed from a previous common position that the Settlement Convention did not apply to Liechtenstein property, or if German courts, by applying their earlier case law under the Settlement Convention for the first time to Liechtenstein property, applied that Convention "to a new situation" after the critical date. Having found that neither was the case, the Court concluded that, although these proceedings were instituted by Liechtenstein as a result of decisions by German courts concerning a painting by Pieter van Laer, these events have their source in specific measures taken by Czechoslovakia in 1945, which led to the confiscation of property owned by some Liechtenstein nationals, including Prince Franz Jozef II of Liechtenstein, as well as in the special régime created by the Settlement Convention; and that the source or real cause of the dispute was accordingly to be found in the Settlement Convention and the Beneš Decrees. In light of the provisions of Article 27 *(a)* of the European Convention for the Peaceful Settlement of Disputes, the Court therefore upheld Germany's second preliminary objection, finding that it could not rule on Liechtenstein's claims on the merits.

Finally, on 12 July 2005, the Chamber of the Court formed to deal with the case concerning the *Frontier Dispute (Benin/Niger)* rendered its judgment. By that Judgment, it first determined the course of the boundary between the two Parties in the sector of the River Niger, decided which of the islands situated in the River Niger belonged to each of the Parties, and fixed the boundary line on two bridges in the River Niger; the Chamber further determined the course of the boundary between the Parties in the sector of the River Mekrou.

After outlining the geographical context and historical background to the dispute between these two former colonies, which were part of French West Africa (AOF) until their accession to independence in August 1960, the Chamber addressed the law applicable to the dispute. It stated that that law includes the principle of the intangibility of the boundaries inherited from colonization or the principle of *uti possidetis juris*, whose "primary aim is . . . securing respect for the territorial boundaries at the moment when independence is achieved". The Chamber found that on the basis of that principle it had to seek to determine, in this case, the boundary that was inherited from the French administration. It noted that "the Parties agreed that the dates to be taken into account for this purpose were those of their respective independence namely 1 and 3 August 1960".

The Chamber then considered the course of the boundary in the River Niger sector. It first examined the various regulative or administrative acts invoked by the Parties in support of their respective claims and concluded that "neither of the Parties has succeeded in providing evidence of title on the basis of [those] acts during the colonial period". In accordance with the principle that, where no legal title exists, the *effectivités* "must invariably be taken into consideration", the Chamber further examined the evidence presented by the Parties regarding the effective exercise of authority on the ground during the colonial period, in order to determine the course of the boundary in the River Niger sector and to indicate to which of the two States each of the islands in the river belongs, and in particular the island of Lété.

On the basis of this evidence in respect of the period 1914 to 1954, the Chamber concluded that there was a *modus vivendi* between the local authorities of Dahomey and Niger in the region concerned, whereby both Parties regarded the main navigable channel of the river as constituting the intercolonial boundary. The Chamber observed that, pursuant to this *modus vivendi*, Niger exercised its administrative authority over the islands located to the left of the main navigable channel (including the island of Lété) and Dahomey over those located to the right of that channel. The Chamber noted that "the entitlement of Niger to administer the island of Lété was sporadically called into question for practical reasons but was neither legally nor factually contested". With

respect to the islands located opposite the town of Gaya (Niger), the Chamber noted that, on the basis of the *modus vivendi*, these islands were considered to fall under the jurisdiction of Dahomey. It therefore followed, in the view of the Chamber, that in this sector of the river the boundary was regarded as passing to the left of these three islands.

The Chamber found that the situation was less clear in the period between 1954 and 1960. However, on the basis of the evidence submitted by the Parties, it could not "conclude that the administration of the island of Lété, which before 1954 was undoubtedly carried out by Niger, was effectively transferred to or taken over by Dahomey".

The Chamber concluded from the foregoing that the boundary between Benin and Niger in this sector follows the main navigable channel of the River Niger as it existed at the dates of independence, it being understood that, in the vicinity of the three islands opposite Gaya, the boundary passes to the left of these islands. Consequently, Benin has title to the islands situated between the boundary thus defined and the right bank of the river and Niger has title to the islands between that boundary and the left bank of the river.

In order to determine the precise location of the boundary line in the main navigable channel, namely the line of deepest soundings, as it existed at the dates of independence, the Chamber based itself on a report prepared in 1970, at the request of the Governments of Dahomey, Mali, Niger and Nigeria, by the firm Netherlands Engineering Consultants (NEDECO). In the Judgment the Chamber specified the co-ordinates of 154 points through which the boundary between Benin and Niger passes in this sector; and determined to which Party each of the 25 islands of the river belongs, on the basis of the boundary line as described above. It stated *inter alia* that Lété Goungou belongs to Niger.

Finally, the Chamber concluded that the Special Agreement also conferred jurisdiction upon it to determine the line of the boundary on the bridges between Gaya and Malanville. It found that the boundary on those structures follows the course of the boundary in the River Niger.

In the second part of its Judgment, dealing with the western section of the boundary between Benin and Niger, in the sector of the River Mekrou, the Chamber examined the various documents relied on by the Parties in support of their respective claims. It concluded that, notwithstanding the existence of a legal title of 1907 relied on by Niger in support of the boundary which it claims, it was clear that, "at least from 1927 onwards, the competent administrative authorities regarded the course of the Mekrou as the intercolonial boundary separating Dahomey from Niger, that those authorities reflected that boundary in the successive instruments promulgated by them after 1927, some of which expressly indicated that boundary, whilst others necessarily implied it, and that this was the state of the law at the dates of independence in August 1960". The Chamber concluded that in the River Mekrou sector the boundary between Benin and Niger is constituted by the median line of that river.

Mr. President,

As well as delivering these judgments, the Court has completed the hearings on the merits in the case concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Uganda)*. In addition, hearings on the preliminary objections of Rwanda have recently taken place in the case concerning *Armed Activities on the Territory of the Congo (Democratic Republic of the Congo* v. *Rwanda)*. Both 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,

A recurrent theme of my interventions before the General Assembly has been the intensity of the work accomplished by the Court. It is not always easy for the public to imagine what is happening behind the walls and gates of the Peace Palace in The Hague. Faced with a continuously growing caseload, the Court has made tremendous efforts in the last decade to increase its judicial efficiency while maintaining its high quality of work. The Court has modernized the organization of its Registry, reviewed and adapted its internal working methods, promulgated Practice Directions for the parties and even modified its Rules where necessary. Far from resting on its laurels, the Court keeps its working methods constantly under review. It is not without satisfaction that I can tell you that these efforts have already begun bearing fruit. The level of activity displayed by the Court over the past years is, simply put, unprecedented in its history. This success story would not have been possible without the help of the General Assembly and the Court is thankful for the support you have given it in the past. The task lying ahead of the Court is however still considerable and it is therefore essential that this support be maintained. In this regard, it is important to remember that the budget of the Court represents less than one percent of the total budget of the United Nations. The Court is fully aware of the difficult budgetary conditions in which the Organization finds itself and recognizes its own responsibility to apply its funds wisely. In its budgetary request for the biennium 2006-2007, which is currently under consideration, the Court has made every effort to restrict 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,

The Court was established by the Charter in pursuance of one of the primary purposes of the United Nations: "to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace". As we approach the 60th anniversary of the International Court of Justice which will take place next year, the popularity of the Court as a dispute resolution mechanism continues to grow. More and more States are beginning to realize how the International Court of Justice can serve them and are trusting it to resolve their disputes with other nations. The issues which States have asked the Court to resolve are likewise many and varied. In the past three years only, the Court has decided cases relating to matters as diverse as land, fluvial and maritime boundaries, ownership of property seized during the Second World War, human rights violations, access of foreign nationals to consular assistance, freedom of commerce and the

use of force, to name but a few. It has thus become clear to the international community that the International Court of Justice, as the principal judicial organ of the United Nations, has a crucial and primary role to play in the peaceful settlement of international disputes and the promotion and application of international law. I would like to stress the point that, as it has been emphasized in the Manila Declaration on the Peaceful Settlement of International Disputes of 1982: "recourse to judicial settlement of legal disputes, particularly referral to the International Court of Justice, should not be considered an unfriendly act between States". To the contrary, experience has shown that recourse to the Court is a pacifying measure. It is important, in this regard, to remember that the Court is the only international judicial body to possess general jurisdiction, which enables it to deal with any issue relating to international law and to take into account developments in international law across the entire spectrum of international relations. The Court is thus ideally equipped to settle quickly and durably, at minimal costs, any type of legal dispute, whatever its nature and the type of solution pursued, and no matter what the status of the relationship between the litigant parties is. The role the Court plays was highlighted by the Secretary-General in his recent report, "In Larger Freedom", in which he described the International Court of Justice as lying "at the centre of the international system for adjudicating disputes among states". The Heads of States and Government gathered for the 2005 World Summit echoed this statement when they recognized "the important role of the International Court of Justice, the principal judicial organ of the United Nations, in adjudicating disputes among States and the value of its work". The Court welcomes these kind words of appreciation. It also wholeheartedly welcomes the suggestion made by the Secretary-General that in order to reinforce the Court and make it more efficient, States which have not yet done so need to consider recognizing the compulsory jurisdiction of the Court and that the recourse to the advisory powers of the Court by the duly authorized United Nations organs and specialized agencies should be increased. With your support, the International Court of Justice will pursue its efforts to prove worthy of the hopes that have been placed on it and to keep on accomplishing the mission that was attributed to it 60 years ago by the drafters of the Charter.

It remains for me to thank you for your attention, and for your interest in the International Court of Justice.

Thank you, Mr. President.

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