

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

The internal working practice of the International Court of Justice

28 October 2005

Mr. Chairman, distinguished delegates,

It is with great pleasure that, under your honourable chairmanship, I find myself today addressing the Sixth Committee of the United Nations for the third time in my capacity as President of the International Court of Justice. I am most grateful for your invitation and hope that I shall be able to fulfil the expectations that you have been kind enough to place in me.

Yesterday, I presented the Court's Annual Report to the General Assembly. This was the occasion for me to explain that the principal judicial organ of the United Nations has known yet another year of high judicial efficiency. Indeed, over the last year, 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). The Court has also held oral hearings in three cases. As a result of the Court's intensive work, the total number of 21 cases on the docket of the Court, which I reported to you a year ago, had fallen to just 11 at the end of the period under review. Since the Report of the Court was finalized, one new case has been filed with the Court, a sure sign of the vitality of the Court and of the continuing trust of States in the Court. The total number of cases on the docket of the Court now stands at 12, a perfectly reasonable number for an international Court.

Mr. Chairman,

The Annual Report of the Court to the General Assembly contains many figures and numbers like those I just mentioned to you. They are, however, only figures and are not sufficient as such, to translate accurately the reality of the work of the Court. Much has been said, written and speculated about our work. More often than not, such speculations have been far away from the reality. It is true that, throughout its history, the Court has been careful to maintain a veil of discretion over its work. This is not because the Court is afraid of transparency but rather because, like every judicial institution, it has a duty to maintain its independence and the confidentiality of its deliberations. Since the parties appearing before the Court are sovereign States and the legal questions submitted to it often arise in the midst of complex political situations, it is all the more important to maintain that independence and confidentiality.

In times when the Court's popularity is thriving and its role in peacefully settling international disputes is acclaimed, it is crucial to ensure that the exact nature of the Court's work and its contribution are fully understood by all. Today, I would like to take you on a journey to the very heart of the Court, and to draw your attention to the work that takes place every day behind the iron fences and the high walls of the Peace Palace in The Hague. I hope that by presenting to you the internal functioning of the Court, its organization and its working methods, you may gain a better understanding of the very special nature of the International Court of Justice and its decisions.

*

* *

I shall begin by describing the Court in a little more detail than usual.

To understand the Court, the first thing to bear in mind is that the Court is a very small institution in terms of size and budget. As you know, the Court is not only the main judicial organ of the United Nations, but is also one of the five principal organs thereof. However, the budget of the Court for the 2004-2005 biennium was only around 35 million dollars (revised appropriation). This represents barely one percent of the total budget of the United Nations for the same period which was about three and a half billion dollars (revised appropriation). An even more telling comparison can be struck with the International Criminal Tribunal for the former Yugoslavia. For the same period, the budget of the Tribunal amounted to 330 million dollars after recosting. That is nearly ten times the budget of the Court. My point here is not that the Court should have a budget similar to that of the Tribunal. Indeed, the Court has made very modest budgetary requests for the 2006-2007 biennium and it hopes that they will meet with the agreement of the General Assembly. What I would like to emphasize, however, is that, when evaluating the work of the Court, it is important to bear in mind the constraints on its resources.

As you may recall, the Court is the only principal organ of the United Nations to have its own independent administration. The Registry is the permanent administrative organ of the Court. It has a unique status within the United Nations since it is placed under the authority of the Registrar and the Court, rather than under that of the Secretary-General. The Registry of the Court is proportionate to its budget. The staff of the Registry is accordingly limited to 98 members. These 98 employees are spread between the various departments and technical divisions of the Registry: Department of Legal Matters, Department of Linguistic Matters, Department of Press and Information Matters, Finance Division, Publications, Library, Text Processing and Reproduction, Computerization, Archives, to name but a few. As far as the legal activities of the Court are concerned, it is important to note that the Legal Department is staffed by only 12 lawyers, five of whom work as a pool of clerks for the judges. This means, among other things, that judges of the Court do not enjoy the support of one or several personal law clerk(s) each, contrary to the current practice in other international courts and tribunals and even in higher national courts. In fact, the only permanent institutional support that judges receive is that of their secretaries.

Despite its limited size and resources, the Court has established work procedures and methods that allow it to accomplish its work efficiently and in a timely manner. These methods have been made public and can be found, for the most part, in the Resolution concerning the Internal Judicial Practice of the Court which was adopted pursuant to Article 19 of the Rules of Court. So what are these working methods? As you are aware, three stages can be defined in the progression of a case before the Court. First, the written stage during which the parties to the case

file their pleadings with the Court. Second, the oral stage during which the parties argue the case before the Court. And finally the deliberation stage during which the Court reaches a decision on the case and writes its judgment. As we only have a limited amount of time today, I will focus my remarks on this third phase. It is after all the phase when the most important part of the judge's work is done and when the judgment comes into being. I would, however, like to begin with one comment about the length of the proceedings up to the beginning of the deliberation phase.

In the past, the Court has sometimes been criticized for the length of its procedures. In my opinion, that criticism is not justified. If one examines the entire lifetime of a case, from the day of its filing until the day of the rendering of a final decision by the Court, it quickly becomes clear that most time passes during the written stage of the procedure. That is to say that the greatest part of the time taken to decide a case depends not on the work of the Court but on the work and the will of the parties to that case. Indeed, delays in proceedings are often the result of procedural steps taken by the parties for one reason or another. When States litigate against each other, they do not want to be constrained by procedures that restrict their ability to present their cases as fully and completely as they wish, and, as a matter of principle, sovereign States that bring disputes before the Court cannot be prevented from using all the procedural options open to them. For example, it is difficult for the Court to refuse to extend the time-limits for the filing of certain pleadings or documents if all the parties to the case agree and request that extension. Similarly, once the written pleadings have been filed and a case is ready for hearing, it is not uncommon for parties to jointly request that the Court "sit on" that case for a certain time, while they engage in negotiations in order to try to settle the case out of court. While the Court's function is to decide disputes through the application of international law, its principal objective is the peaceful settlement of disputes. Therefore the Court welcomes any attempt by States to settle their dispute by peaceful means even if that settlement takes place outside the Court. If the negotiations fail, the Court naturally regains its role of ultimate legal arbitrator. Even the simple fact that a case is on the docket of the Court can act as an incentive for parties to negotiate a settlement to their dispute in accordance with international law. For instance, in the two cases concerning *Questions of Interpretation and Application of the 1971 Montreal Convention Arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom)* (*Libyan Arab Jamahiriya v. United States of America*), the Parties agreed, after several years of discussion, to a negotiated solution and requested the Court to discontinue the cases. The Court did so by two Orders of 10 September 2003, recording the discontinuance with prejudice, by agreement of the Parties, of the proceedings and directing that the cases be removed from the Court's List.

This is not to say that the Court is complacent regarding the efficiency of its operations and the control of its proceedings. In recent years, the Court has promulgated several Practice Directions aimed at accelerating contentious proceedings. For instance, the Court now requests the parties to reduce the number and the length of their written pleadings and annexed documents. The Court has also fixed standard time-limits for the submission of documents in incidental proceedings, and laid down strict rules regarding the filing of new documents after the closure of the written proceedings. While these measures have already started to have an effect, the fact remains that the parties have an important role to play in ensuring a timely settlement of their case. When the parties seek a swift settlement and co-operate fully with the Court, experience shows that the Court can act quickly, whether the proceedings have been instituted by unilateral application or by special agreement. For example, in the case concerning *Avena and Other Mexican Nationals (Mexico v. United States of America)*, the final judgment was delivered just over 14 months from the date of the institution of the proceedings by the Applicant. In the case concerning the *Arrest Warrant of 11 April 2000 (Democratic Republic of the Congo v. Belgium)* the final judgment was similarly delivered within 16 months of the Application. In this latest case, the Belgian Government had agreed to present its preliminary objections and its arguments on the merits jointly, thereby allowing the Court to hear the whole case at once without a separate phase dealing only with the questions of jurisdiction and admissibility.

Having made this initial remark, let me now deal with that part of the proceedings which is entirely the responsibility of Members of the Court, that is to say, the deliberations. A case is under deliberation from the very moment that the oral proceedings end. If time allows, the very first deliberations of the Court are held directly after the President has declared the sitting of the Court closed. This meeting, called an Article 3 deliberation, is relatively formal and its purpose is essentially to allow the President to distribute to the Members of the Court a list of questions which he has established during the proceedings and which outlines the issues which the Court will, in his view, need to discuss and decide. This list is not definitive and is only intended to guide Members of the Court in their personal reflections about the case. Judges are thus free to discuss the list and suggest amendments or additions to it during the meeting. However, Members of the Court tend to avoid discussing the subject-matter of the questions at this stage, preferring to first collect and organize their thoughts.

After that initial meeting, Members of the Court then retire in the privacy of their office for a period of up to several weeks during which they will write their Note, that is to say, a complete exposé of their preliminary views on the case and on the way it should be decided. Notes are written in all cases except in incidental proceedings where the Court can dispense with the writing of Notes in order to accelerate the deliberation process. You will have noticed that I have said that this period is dedicated to writing, and I want to elaborate for a minute on this. One of my predecessors, Judge Bedjaoui, commented in a scholarly article, that the functions of a judge at the Court could be resumed in four verbs: to read, to listen, to deliberate and to decide. I would add a fifth verb to this list: to write. Indeed, the writing of the Note is an essential part of the deliberation process. It allows each judge to analyse, filter and reorganize, the vast amounts of information that he or she has read and heard during the previous two phases of the proceedings. This period also allows Members of the Court to research certain points of law which appear to them to be fundamental. Although judges write their Notes entirely on their own, they receive the help of the Legal Department for specific legal research that they might require. Once a case becomes ready for hearing, it is assigned to a team of lawyers from the Legal Department. This team first assists the plenary and then the drafting committee in drafting research papers, editing texts and also producing under the supervision of the President a number of documents intended to accompany and facilitate the work of the judges.

The fact that judges write their Notes entirely on their own does not prevent them from having informal discussions with each other about specific issues. In the end, each Note is unique in content and style as much as it is in length. Some Notes are drafted as a number of answers to the list of questions initially distributed by the President. Others are presented like judgments. Some tell a story, others are more technical and dry. Some run for up to more than a hundred pages, others are shorter.

At the end of the period attributed for the writing of the Notes, the texts are collected by the Registry and sent to the Linguistic Department for translation into the other of the Court's official languages.

Allow me to make an important digression at this stage on the use of languages at the Court. As you know, the Court has two official languages. Article 39 of the Statue of the Court stipulates that "the official languages of the Court shall be French and English". One feature of the Court, and a guarantee of the quality of its work, is that the work of the Court is done at every single stage in both of these languages. There is thus not one but two permanent working languages. This means that the Court can only move to a new stage of its work once everything that has been produced at the previous stage has been translated. This means that during the drafting of a decision, both the French and English versions are treated as original versions and thus both versions receive the highest level of care in their drafting. The comparison of the two versions during the drafting stage also leads to a finer and more accurate phrasing of the Court's thought

process. The bilingual nature of the Court thus offers a guarantee of quality which is probably unattained in any other institution. The work of the Registry is in this sense absolutely vital, and I can assure you that it carries out some of the finest translation that can be found within the United Nations.

Returning to the deliberation process, once the Notes have been completed and translated, they are then distributed, all at the same time, by the Registry to Members of the Court who then acquaint themselves with the thinking of their colleagues. Depending on the case, one or two weeks are given to Members of the Court for that exercise, before the full deliberations begin.

For those who have had the chance to participate in them, the proper deliberations of the Court, or Article 5 deliberations, are a very special and unique experience. Imagine, 15 judges, sometimes up to 17 including the judges *ad hoc*, coming from the four corners of the globe and representing all the main forms of civilization and the principal legal systems of the world. Imagine 15 people, all distinguished international lawyers, but with very diverse professional experience. Some were Legal Advisers to the Ministry of Foreign Affairs, some Cabinet Ministers, some judges at the highest court of their country or even in another international court, some professors, some diplomats, . . . Now take those 15 judges and imagine them in a grand circular room not dissimilar to that of the Security Council discussing and debating a case for the first time. This is the essence of the deliberations. For a period lasting from one or two days in the more straightforward cases to several weeks in the most complicated, Members of the Court, one by one, in inverse order of precedence, present their views on the case under deliberation. This presentation may reflect the judge's Note but a judge's views might already have changed on the basis of the reading of other judges' Notes. Each exposé will be followed by questions, comments, and requests for clarifications from the other Members. Little by little, presentation after presentation, a majority view, a common thread, begins to appear from the debates. And so the future judgment slowly starts to take shape. At the end of all the presentations, after he has presented his own view, the President of the Court summarizes the debates, recapitulates the points on which there seems to be a majority agreement and those which require further discussion. It is then time for a break and informal discussions outside the deliberation room. The Resolution concerning the Internal Judicial Practice of the Court specifies in its Article 6, paragraph (i), that "[o]n the basis of the views expressed in the deliberations and in the written notes, the Court proceeds to choose a drafting committee by secret ballot and by absolute majority of votes . . .". What Article 6 does not tell you is that, although drafting committees are elected, they are elected, as far as possible, by consensus. In most cases, the President tries to determine which Members of the Court belonging to the majority would be interested in participating in the drafting committee and whether such a choice would satisfy other Members. During the break at the end of the President's summary of the deliberations, the judges discuss the candidates for election to the drafting committee and, when they return to the deliberation room to vote, the President generally proposes two names. A secret ballot is then held and judges are free to follow the President's suggestion or to propose other names. Once the two members of the Drafting Committee have been elected, the President automatically becomes the third member of the Committee unless he belongs to the minority. In that case, the third post will be occupied by the Vice-President unless he too is in the minority. An election for a third member would then take place. In some rare cases, when it is presumed that a decision will be very long, a fourth or even exceptionally a fifth member can be added by election to the drafting committee so as to allow for a better division of the drafting work.

Once the deliberations are over, the work of the drafting committee begins. The task of the committee is to turn days of deliberation into a coherent and complete text that reflects the views of the majority. The drafting committee is assisted in this task by the Registry. The typical method of work of the drafting committee consists in dividing the decision to be written between the members of the committee. Each member is then responsible for the drafting of his or her section. When all the various parts of the future judgment are drafted, they are circulated and discussed by the members of the committee and modified as a result of these discussions. The various parts are then

merged and the coherence of the text is ensured by introducing some stylistic amendments where necessary. The drafting committee then makes sure that a complete and accurate version of the text exists in both French and English. In some cases, different parts of a same draft may have been written originally in different languages. Nevertheless, the drafting committee always produces and revises itself the drafts in both languages and never circulates a draft before it is entirely satisfied with both linguistic versions. In this sense, both versions are considered to be original drafting versions.

The very first draft completed by the drafting committee is called the “preliminary draft judgment”. It is circulated to all Members of the Court who are given a limited amount of time to read it and submit any proposals for amendments. Members of the Court can submit two types of amendments: substantive or stylistic. Each suggested amendment is considered by the drafting committee and either accepted or rejected. To gain time, purely stylistic amendments are sometimes dealt with directly by the Legal Department. This amended draft is called the “draft judgment for first reading” by the Court.

Having taken part in many deliberations and drafting committees, I can guarantee you that the drafting of a Court’s judgment is a complicated, arduous and very meticulous exercise. As I have explained, the drafting committee has to put into writing the majority view emerging from the deliberations. In the best case scenario, when all judges agree on the outcome of the case, that means turning 15 or more individual voices into one coherent decision. In the worst case, that means setting down the views of the majority while at the same time trying to accommodate the views of the minority on the less contentious points. In order to fully understand the difficulty of the task of the drafting committee, it is important to note that even when Members of the Court agree on an outcome, they frequently disagree on the manner of reaching that outcome. It is, however, the very complexity of the task of drafting judgments at the Court that ensures the quality of these judgments. For if the Court is to really represent the international community and the various legal traditions it encompasses, it is essential that the voice of each and every single one of the 15 Members of the Court be heard and be equally taken into account in the drafting of a decision. It is for this reason that every draft of the future judgment is submitted to the plenary of the Court for discussion.

The discussion of the draft judgment for the first reading is the most thorough one. Each paragraph of the draft is read before the full Court, first in one language, then the other, and is subsequently discussed. In this way, the first reading allows for the review of each and every single paragraph of the whole draft. Since the first reading constitutes the first occasion for the Court to collectively discuss a concrete text, it goes without saying that the debates are often as fascinating and passionate as they were during the deliberations themselves. While there is some discussion of stylistic changes, the debates are generally focused on the substance of the decision, for instance on the approach taken by the drafting committee to reach the result to which the Court had agreed during deliberations. The first reading in that sense is almost like a second deliberation. It is the time when major changes may be proposed and the legal and drafting skills of all 15 Members of the Court are put to the test.

At the end of the first reading, the members of the drafting committee meet again and, taking into consideration all the remarks of their colleagues and the decisions taken by the plenary, they produce a new draft called the “draft judgment for second reading”. This draft is again circulated to all Members of the Court who then meet in a plenary session to discuss it. This time, however, the text is not systematically read paragraph by paragraph. Rather, except when a paragraph is either new or substantially amended, the President goes through each page, one at a time, asking if Members of the Court have comments about it. If there are no comments about a particular page, then the Court moves to the next and so on. Since the draft for the second reading is the product of long prior discussions, most of the comments at this stage concern questions of style. For instance, judges pay particular attention to the exact correspondence between the French and English versions of the draft. A slight change in style in one language might require a change in the other

text. I believe you can also imagine that sometimes a proposal of a seemingly stylistic nature may change the meaning of the whole sentence, or even the paragraph. This would invariably open a debate on a certain point of a legal issue. The second reading will normally take a number of days. It is again very careful and attentive work which is done by the Court at this stage. When the Court has finished reviewing the reasoning of the decision, the President asks the Registry to read aloud the *dispositif*. The critical moment of voting has then arrived. One by one, Members of the Court, the most junior ones first and then in inverse order of seniority, are called upon to vote by the President. The vote is registered orally and can only be expressed in a Yes or a No. No abstention is permitted. If the *dispositif* is made of several, separate paragraphs, a vote takes place for each of these paragraphs.

Once the votes have been tallied, the decision of the Court is almost ready. The Court then determines whether the French or English version will be the authentic one. The decision still needs to be finalized by amending the text in order to reflect the remarks made and decisions taken during the second reading. This task is carried out by the Registry, after consultation of the drafting committee, if necessary. A date is then fixed for the public reading of the decision. At this point, the Court has effectively completed its task.

The story I have just told you is that of the drafting of a judgment of the Court. It is a story that unfolds over a period going from three months in some cases to a maximum of eight or nine months in others. The story I have told you is, however, also a slightly simplified one. I have not told you for instance that in very complex cases, there may be one or two additional rounds of readings by the plenary. I have similarly omitted the procedure for the drafting of individual and separate opinions by Members of the Court. What I hope I did through this story, however, is to give you a better idea of the manner in which the decisions of the Court come into being. I don't expect that you will remember every stage of this process. What I do hope you will remember however, and this is the point I wanted to emphasize, is the care with which these decisions are drafted. Indeed, the aim of the whole process I have just described is to ensure that, in each case, the decision reached by the Court is the best decision possible and is drafted in the best possible way. Today, at a time when the Court is preparing to celebrate its 60th birthday and when its popularity with the international community is historically unmatched, I hope you will agree with me when I say that these procedures and working methods have proved efficient.

This is not to say that the Court and its work cannot be improved. The Court has undertaken a thorough review of its working methods in recent years and, as a result, has introduced measures to enhance its internal functioning and encourage greater compliance by parties with previous measures aimed at accelerating the procedure in contentious proceedings. The Court has similarly recently modernized and reorganized its Registry. The reflection of the Court on how to further improve its work is ongoing and the Court is certainly open to suggestions in this domain. But not all depends on the Court itself. If the Court's role as main judicial organ of the United Nations is to be strengthened in the future, the international community also has a significant role to play. The Secretary-General has been quite clear on this point in his latest report entitled "In Larger Freedom". He suggested that, in order to reinforce the Court and make it more efficient, States who have not yet done so should consider filing a declaration recognizing the compulsory jurisdiction of the Court and that the duly authorized United Nations organs and specialized agencies should have greater recourse to the Court's advisory procedure. The Court supports these recommendations wholeheartedly.

Mr. Chairman,

In the Final Outcome document of the 2005 World Summit, the Heads of States and Governments 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”. I can assure you that the Court will continue to perform that role to the best of its ability and that it is ready and willing to fulfil such other duties as may be entrusted to it. It remains for me to thank you for all the assistance and support that you have given and continue to give to the Court.

Thank you, Mr. Chairman.
