

**THE INTERNATIONAL COURT OF JUSTICE  
IN 2003<sup>1</sup>**

**I. NEW MEMBERS**

To fill the five vacancies in the International Court's membership falling due on 6 February 2003, the United Nations General Assembly and the Security Council held independent elections on 21 October 2002<sup>2</sup> pursuant to Article 8 of the Court's Statute. As a result, the Court is now composed as follows:<sup>3</sup>

1. President Shi Jiuyong (China), President
2. Raymond Ranjeva (Madagascar), Vice-President
3. Gilbert Guillaume (France)
4. Abdul G Koroma (Sierra Leone)
5. Vladlen S Vereshchetin (Russian Federation)
6. Rosalyn Higgins (United Kingdom)
7. Gonzalo Parra-Aranguren (Venezuela)
8. Pieter H Kooijmans (Netherlands)
9. Francisco Rezek (Brazil)
10. Awn Shawkat Al-Khasawneh (Jordan)
11. Thomas Buergenthal (United States)
12. Nabil Elaraby (Egypt)
13. Hisashi Owada (Japan)
14. Bruno Simma (Germany)
15. Peter Tomka (Slovakia)

**II. NEW PRESIDENT AND VICE-PRESIDENT**

On 6 February 2003, the Court elected its new President and Vice-President for three-year terms under Article 21 of the Court's Statute.

Judge Shi was elected the new President, replacing Judge Guillaume. Judge Shi had been a member of the Court since 6 February 1994 and Vice-President since 2000. He was born in Zhejiang, China on 9

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<sup>1</sup> For further information see the Court's website at <[www.icj-cij.org/](http://www.icj-cij.org/)>.

<sup>2</sup> International Court of Justice Press Release 2002/27, 22 October 2002.

<sup>3</sup> Article 3 of the Court's Statute provides that the Court shall consist of 15 members.

October 1926.<sup>4</sup> Judge Ranjeva was elected the new Vice-President. Born in Antananarivo, Madagascar on 31 August 1942, he had been a member of the Court since 6 February 1991.<sup>5</sup>

### III. ANNUAL REPORT OF THE COURT<sup>6</sup>

On 31 October 2003, Shi J presented his first annual report as President of the Court to the General Assembly for the period 1 August 2002 - 31 July 2003. The Report included the following update:

1. Represented universally, the Court is composed of members from Brazil, China, Egypt, France, Germany, Japan, Jordan, Madagascar, Netherlands, Russian Federation, Sierra Leone, Slovakia, United Kingdom, United States and Venezuela.
2. There are 191 States party to the Court's Statute.
3. Under Article 36(2) of the Court's Statute, 60 States party have accepted the Court's compulsory jurisdiction.
4. Approximately 300 treaties refer to the Court on the settlement of disputes arising from their application or interpretation.
5. As at 31 August 2003, the Court's List stood at 25 cases from all over the world: Africa (4), Asia (1), Europe (11) and Latin America (3). There were also four cases of an intercontinental character.
6. The subject matter of the cases is very varied and concern the following: (a) land and maritime boundaries or sovereignty over particular areas, (b) treatment of nationals, and (c) events that the United Nation has had to address such as the destruction of oil platforms in the Persian Gulf, breach of the 1948 Genocide Convention and armed aggression.
7. In the period covered by the Annual Report, the Court delivered three judgments on merit and two on preliminary objections.

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<sup>4</sup> For more information see International Court of Justice, Press Release 2003/10, 6 February 2003.

<sup>5</sup> *Ibid.*

<sup>6</sup> Speech by HE Judge Shi Juyong, President of the International Court of Justice, to the General Assembly of the United Nations, 31 October 2003 at <[www.icj-cij.org/](http://www.icj-cij.org/)> (visited January 2004).

#### IV. PROCEEDINGS

In 2003, there were three new contentious proceedings in the Court, a request for an advisory opinion and the finalisation of five cases. Of those finalised, three resulted from the Court's deliberations while the other two were removed from the Court's List pursuant to Orders following requests from the parties. However, more than 20 cases remain pending, making the Court the busiest since its creation in 1945.<sup>7</sup> Of these, two are being heard/under deliberation.<sup>8</sup> The first is Mexico's application against the United States in *Avena and Other Mexican Nationals*.<sup>9</sup> The second is an urgent request for an Advisory Opinion on *Legal Consequences of the Construction of a Wall in the Occupied Palestine Territory*.<sup>10</sup>

##### (a) *New Proceedings*

###### (i) *Avena and Other Mexican Nationals (Mexico v United States)*<sup>11</sup>

On 9 January 2003, Mexico filed an application to institute proceedings against the United States for violating the 1963 Vienna Convention on Consular Relations. Mexico *inter alia* asked the Court to adjudge and declare that the United States' actions that led to 54 Mexican nationals ending on death row were breaches of international legal obligations under Articles 5 and 36 of the Convention. Mexico claimed that when its nationals were denied the right to consular notification under the Convention, this was a breach of human right. As a result, Mexico sought remedies, including *restitutio in integrum*. It also requested for the indication of an interim measure that accompanied the application, which was granted by Order of Court on 5 February 2003.<sup>12</sup>

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<sup>7</sup> For a list of the cases see International Court of Justice, "Current docket of the Court" at <[www.icj-cij.org/icjwww/idockethtm](http://www.icj-cij.org/icjwww/idockethtm)> (visited January 2004).

<sup>8</sup> *Ibid.*

<sup>9</sup> The International Court has since found that the United States had breached its obligations under the 1963 Vienna Convention on Consular Relations to Mr Avena and 50 other Mexican nationals, and to Mexico: International Court of Justice, Press Release 2004/16, 31 March 2004. For a summary of the case refer 257-265 below.

<sup>10</sup> For an opinion on the request refer 199-204 above.

<sup>11</sup> For more information see International Court of Justice, Press Release 2003/9, 5 February 2003; note 10 above.

<sup>12</sup> *Ibid.*

**(iii) Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rock and South Ledge (Malaysia and Singapore)<sup>13</sup>**

On 24 July 2003, Malaysia and Singapore jointly requested the Court to determine which one of them had sovereignty over (a) Pedra Branca/Pulau Batu Puteh, (b) Middle Rock, and (c) South Ledge. On 6 February 2003, they had entered into a Special Agreement signed in Putrajaya, Malaysia that entered into force on 9 May 2003 when the instruments of ratification were exchanged. The Agreement granted the Court jurisdiction to deal with their dispute under Articles 40 and 48 of the Court's Statute and Articles 39, 40, 44 and 46 of the Rules of Court.<sup>14</sup> The parties have yet to file their memorial and counter memorial.

**(iv) Legal Consequences of the Construction of a Wall in the Occupied Palestine Territory<sup>15</sup>**

On 8 December 2003, the United Nations General Assembly adopted resolution A/RES/ES-10/14 (A/ES-10/L.16) at the 23<sup>rd</sup> Meeting of the Resumed Tenth Emergency Special Session. It concerned a request for an urgent Advisory Opinion under Article 96 of the United Nations Charter and Article 65 of the Court's Statute on this question.<sup>16</sup>

What are the legal consequences arising from the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem, as described in the report of the Secretary-General, considering the rules and principles of international law, including the Fourth Geneva Convention of 1949, and relevant Security Council and General Assembly resolutions?

On the same day, Secretary-General Kofi Annan transmitted the request in writing to Judge Shi as President of the Court.<sup>17</sup> Owing to

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<sup>13</sup> International Court of Justice, Press Release 2003/28, 9 September 2003.

<sup>14</sup> The Court has not begun deliberations in this case as the parties have yet to file their written memorials and counter memorials and present oral arguments.

<sup>15</sup> For more information see Request for Advisory Opinion at <[www.icj-cij.org/icjwww/idocket/imwp/imwporder/imwp\\_iapplication\\_20031208.PDF](http://www.icj-cij.org/icjwww/idocket/imwp/imwporder/imwp_iapplication_20031208.PDF)> (visited January 2004). For an opinion refer 199-204 above.

<sup>16</sup> International Court of Justice, Press Release 2003/44, 19 December 2003.

<sup>17</sup> *Ibid.*

the urgency of the request, on 19 December 2003 the Court delivered an Order on “Organising the Proceedings” pursuant to Article 103 of the Rules of Court. The Court stated:<sup>18</sup>

[A]s the General Assembly had requested that the advisory opinion of the Court be rendered ‘urgently’, it is incumbent upon the Court to take all necessary steps to accelerate the procedure, as contemplated by Article 103 of its Rules.

Further, since the General Assembly had granted Palestine a special observer status and Palestine was co-sponsor of the draft resolution requesting the advisory opinion, the Court permitted Palestine to submit a written statement to the Court and take part in the oral hearings due to open on 23 February 2004.<sup>19</sup>

The grave concerns leading to the request for an advisory opinion had resulted from the construction of a wall in the Occupied Palestinian Territory, including in and around Jerusalem. The reasons for the concerns listed in the request were the following:<sup>20</sup>

1. the wall had departed from the 1949 Armistice Line (the Green Line);
2. the construction involved the confiscation and destruction of Palestinian land and resources;
3. the lives of thousands of protected civilians were disrupted;
4. the construction was a *de facto* annexation of large areas of territory;
5. the international community had unanimously opposed the construction;
6. the resulting devastating impact on the Palestinian civilian population and on the prospects for solving the Palestinian-Israeli conflict and establishing peace in the region.

Earlier, on 24 November 2003, the Secretary-General had presented his Report prepared pursuant to General Assembly resolution ES-10/13 of

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<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> General Assembly Draft Resolution on Illegal Israeli Actions in Occupied East Jerusalem and the rest of the Occupied Palestinian Territory, Tenth Emergency Special Session, Agenda Item 5, A/ES-10/L.16, 3 December 2003.

21 October 2003. In summary, the Report concluded that Israel had not complied with the General Assembly's demand that it "stop and reverse the construction of the wall in the Occupied Palestinian Territory".<sup>21</sup> It also included observations on the humanitarian and socio-economic impact that the construction would cause.<sup>22</sup>

**(b) Cases Finalised/Discontinued**

**(i) Case concerning the Application of the Convention on the Prevention and Punishment of the Crime of Genocide; Application for Revision of the Judgment of 11 July 1996 (Yugoslavia v Bosnia and Herzegovina)<sup>23</sup>**

On 3 February 2003, the Court delivered its judgment rejecting, by 10:3 votes,<sup>24</sup> an application by the Federal Republic of Yugoslavia (now Serbia and Montenegro) for revision of the Court's Judgment of 11 July 1996 on preliminary objections that Yugoslavia had raised in that case. The application for revision was based on Article 61 of the Court's Statute, which provides the sole ground for such an application. Article 61 requires certain elements to be satisfied before the application is granted, namely, the application has to be based upon the discovery of some fact that was a decisive factor and unknown to both the Court and the applicant when the judgment was given. It also requires the applicant to be not negligent in its ignorance.

**(ii) Case concerning Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libya v United Kingdom; Libya v United States)**

On 3 March 1992, Libya had instituted separate proceedings against the United Kingdom and the United States in accordance with Article

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<sup>21</sup> General Assembly, Report of the Secretary-General prepared pursuant to General Assembly resolution ES-10/13, Tenth Emergency Special Session, Agenda Item 5, A/ES-10/248, 24 November 2003.

<sup>22</sup> *Ibid* paras 23-27. *Editor*: In early 2004, the Court authorised the League of Arab States and the Organisation of Islamic Conference to participate in the proceedings: see International Court of Justice, Press Release 2004/1, 15 January 2004 and Press Release 2004/2, 22 January 2004 respectively. For an opinion on the legality of the Wall refer 199-204 above.

<sup>23</sup> International Court of Justice, Press Release 2003/8, 3 February 2003; see *Bosnia and Herzegovina v Yugoslavia* [1996] 2 International Court of Justice Reports 595. Refer Case Note at 205-215 above.

<sup>24</sup> Vereshchetin and Rezek JJ and Dimitrijević J ad hoc dissented.

40 (1) of the Court's Statute. The cases had arisen from the same set of facts, namely, the Lockerbie air disaster. On 10 September 2003, the Court ordered that these two cases be removed from the Court's List after it received notice from the parties that they agreed to discontinue the proceedings with prejudice.

**(iii) Case concerning Oil Platforms (Iran v United States)<sup>25</sup>**

On 6 November 2003, the Court delivered the majority judgment in this case that began on 2 November 1992 when Iran instituted proceedings against the United States. Iran had claimed that in 1987 and 1988, United States warships had wrongfully attacked and destroyed three Iranian commercial offshore oil platforms. Iran claimed that the actions of the United States violated freedom of commerce or navigation between their territories in breach of the Treaty of Amity, Economic Relations and Consular Rights that they had entered into in 1955. Iran therefore sought reparation for the breach.

Ruling on Iran's claims, the Court held by 14:2 votes<sup>26</sup> that under the international law on the use of force, the United States had breached Article XX(1)(d) of the Treaty because it could not show that its actions were measures necessary to protect its security interests under that provision. In addition, the United States could not show that: (a) it had acted in self-defence; (b) it was the victim of an armed attack by Iran; and (c) its actions were necessary and proportional to Iran's armed attack against it.

However, the Court also held that the United States' actions did not amount to a breach of its treaty obligations concerning freedom of commerce and navigation under Article X(1). At the time of the attacks, Iran's oil platforms had been under repair and not operational. Since there was no trade between the parties the attacks could not have affected any freedom of commerce and navigation between their territories. As a result, the Court dismissed Iran's claim for reparation.

In relation to the United States counter claim, the Court dismissed Iran's objections to the Court's jurisdiction and to the admissibility of

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<sup>25</sup> International Court of Justice, Press Release 2003/38, 6 November 2003. For a summary of the case refer 273-290 below.

<sup>26</sup> Al-Khasawneh and Elaraby JJ dissented.

the counter claim based on the same Article X(1). The Court also held that the counter claim and request for reparation against Iran should fail.<sup>27</sup> This was because no United States ships alleged to have been damaged by Iranian attacks were engaged in commerce or navigation between the territories of the two states at the time. Further, the United States could not show that Iran's actions had made shipping unsafe in the Persian Gulf or caused any actual impediment to commerce or navigation between their territories.

**(iv) 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)**<sup>28</sup>

On 18 December 2003, the Chamber of the Court delivered its judgment rejecting El Salvador's request for a revision of the judgment delivered ten years earlier<sup>29</sup> on 11 September 1992 in *Case concerning the Land, Island and Maritime Frontier Dispute*. The Court by 4:1 votes<sup>30</sup> held that the application was inadmissible.

On 10 September 2002, El Salvador had requested the Court to revise the judgment under Article 61 of the Court's Statute. The application concerned the sixth sector of the land boundary between El Salvador and Honduras, which boundary had been determined in 1992 by the Court's Chamber hearing the original case. In that case, the Chamber had unanimously upheld the submissions of Honduras.

The Chamber in the present case stressed that all the elements of Article 61 must be met before an application for revision was admissible under this provision, namely:

1. the application must be based upon the discovery of a fact;
2. the fact must be a decisive factor;

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<sup>27</sup> Simma J dissented.

<sup>28</sup> See International Court of Justice Press Release 2003/43, 18 December 2003. For background information see [2002] *Australian International Law Journal* 355-358. For the summary of the case refer 265-272 below.

<sup>29</sup> Article 61(5) of the Rules of Court provides that "[n]o application for revision may be made after the lapse of ten years from the date of the judgment". In fact, the application was made just one day before the 10-year limitation period lapsed.

<sup>30</sup> The Chamber comprised Guillaume J (acting as President); Rezek and Buergenthal JJ; and Torres Bernardez and Paolillo JJ ad hoc.

3. the fact was unknown to the Court and to the party seeking revision when the judgment was given;
4. ignorance of the fact must not be due to the negligence of the applicant; and
5. the application must be made within six months of the discovery of the new fact and within ten years of the delivery of the judgment.

Generally, El Salvador had based its application on the discovery of two “new” sets of facts. However, the Chamber found that the first did not amount to “decisive factors” in respect of the judgment sought for revision. Secondly, although new versions of documents had been discovered after the judgment was delivered in 1992, the Court found that on the contrary they supported its conclusions in that case. As a result, since “decisive factors” in respect of the 1992 judgment could not be shown, the Chamber dismissed El Salvador’s application.

***(c) Orders (Provisional Measures)***

**(i) *Avena and Other Mexican Nationals (Mexico v United States)***<sup>31</sup>

This case concerned Mexican nationals on death row in the United States.

On 5 February 2003, in proceedings on preliminary objections and provisional measures, the Court ordered the United States to take all necessary measures to ensure that three of the Mexicans who were at risk of being executed the following month would not be so executed pending the final judgment in the case. The Court noted also that since Illinois had commuted the death sentences of all convicted individuals awaiting execution, Mexico had withdrawn its request for provisional measures on behalf of three of its 54 nationals on death row (namely, Hernández, Urbán and Romero). However, Mexico’s request for provisional measures would continue to stand for the other 51 Mexican nationals including its application on the merits for all 54 cases.

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<sup>31</sup> International Court of Justice, Press Release 2003/9, 5 February 2003. For the summary of the Order on Preliminary Objection refer 257-264 below.

(ii) **Certain Criminal Proceedings in France (Congo v France)**<sup>32</sup>

The Congo had instituted proceedings against France to obtain an annulment of the investigation and prosecution measures that the French judicial authorities had taken following a complaint on crimes against humanity and torture allegedly committed by Congolese authorities. Various associations had filed the complaint against the President, Minister of the Interior and others from the Congo. At the same time, the Congo had filed a request for the indication of a provisional measure. This concerned the warrant issued by the French investigating judge of the *Meaux Tribunal de grande instance* requiring the President of the Congo to appear as a witness.

Although the Congo had filed this application on 9 December 2002, the case was not entered in the Court's List until April 2003 when France consented to jurisdiction.<sup>33</sup> This was the first time the applicant had founded the Court's jurisdiction on Article 38(5) of the Court's Statute. The provision refers to situations where the applicant intends to found the Court's jurisdiction upon a consent that the respondent is yet to give or manifest. In such a case, the proceedings do not proceed unless and until the respondent consents to such jurisdiction.

On 17 June 2003, the Court delivered its Order on the provisional measure. Finding on the facts that since no risk of irreparable prejudice existed regarding the rights claimed by the Congo, the Court rejected the Congo's request.<sup>34</sup>

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<sup>32</sup> International Court of Justice, Press Release 2003/20, 17 June 2003. For a summary of the case refer 247-256 below.

<sup>33</sup> When France consented to the Court's jurisdiction, the Court entered the new case in the List and set the date for hearings on the request for the indication of the provisional measure: International Court of Justice, Press Release 2003/14, 11 April 2004.

<sup>34</sup> International Court of Justice, Press Release 2003/20, 17 June 2003.