



STATEMENT BY MR. NIRUPAM SEN, PERMANENT REPRESENTATIVE ON JUSTICE AND THE RULE OF LAW: THE UNITED NATIONS ROLE AT THE SECURITY COUNCIL ON OCTOBER 6, 2004.

Mr. President,

We congratulate you on your assumption of the Presidency of the Council for the month of October. We also felicitate Ambassador [Juan Antonio Yañez-Barnuevo](#) and other members of the Spanish delegation for their able stewardship of the Council in September, 2004.

Mr. President,

My delegation welcomes this opportunity to participate in the open meeting of the Council to discuss the item "Justice and the rule of law: the United Nations Role". The issue is a particularly important and relevant one in view of the increasing instances of UN involvement in post-conflict peace-building exercises. As Paddy Ashdown famously said in October, 2002, "In hindsight, we should have put the establishment of the rule of law first, for everything else depends on it." ("What I learnt in Bosnia"). The success of the transition of society from a post-conflict to a normal state is predicated in large measure on establishing the rule of law.

Mr. President,

We recall in this context the Millennium Declaration adopted by Heads of State and Government in September 2000 which had proclaimed our resolve to strengthen respect for the rule of law in international as also in national affairs.

We also recall the statement made by the Secretary-General at the commencement of the general debate of the 59th session of the General Assembly on September 21, 2004. The statement of the Secretary-General was devoted almost exclusively to the theme of the rule of law.

We have perused with interest the report of the Secretary-General contained in document S/2004/616 on "The rule of law and transitional justice in conflict and post-

conflict societies". We cannot but agree with many of the primary recommendations emanating from the report.

We commend the Secretary-General for emphasising the need for eschewing a one-size-fits-all formula and the importation of foreign models, and for stressing the importance of basing our work on national assessments, national participation and national needs and aspirations.

We agree on the need for a common understanding of the terms such as justice, the rule of law and transitional justice so as to enable member States and the UN system to work together in a coherent fashion and with the required unity of purpose.

The temptation to impose external models without the required sensitivity to cultural and other factors is too strong on the part of many. The emphasis on 'international norms and standards' often leads some member States, international organisations and civil society organisations down this path. Even as we underscore the importance of respecting international standards, the assistance rendered to a particular society recovering from conflict must necessarily take into account its socio-cultural specificities and particularities so that the support rendered by the international community becomes durable and sustainable. If the gulf between the legal structure and social norms in that society is too wide, giving effect to legal prescriptions could carry far too high a socio-political cost.

To our mind, the specific function of the legal system is crucial. Many conflicts arise from clan, ethnic, economic and other group-grievances. It is important to address these through the process of administration of law itself. Segmental entities can be transformed into healthy political competition that sustains constitutional order. The constitutional expert Granville Austin has rightly said: "This is messy but it is democracy and social revolution in action." Traditional liberal Western models, therefore, may not be adequate. A multi-cultural, socially activist legal arrangement is far more appropriate.

We agree with the Secretary-General that any support by the international community and the UN system should be preceded by a careful assessment of the national needs and capacities and identification of areas that need strengthening. Often there is a tendency to render assistance in these areas in a piecemeal fashion. Some immediate action is needed but this has to be combined with a long-term strategy. Giving short-term training to judges and investigating officials might be helpful in itself. However, for long-term impact, such activities should form part of a broader package of programmes and projects that include a careful assessment of the legal, administrative and judicial framework, machinery for law enforcement, institutions imparting education and training in civil and criminal law, system of courts and tribunals, legislation and drafting of rules and procedures under subordinate legislation.

We agree with the Secretary-General that the careful sequencing of activities relating to rule of law reforms and transitional justice with post-conflict elections is vital, not only to ensure their success and legitimacy but also to preserve the fragile peace processes in societies emerging from conflict. UN peace-keeping operations are envisaged as short-term interventions. While the idea of incorporating components of rule of law reforms and transitional justice activities in a UN peace-keeping operation may be unexceptionable, we ought to remember that building the rule of law and fostering democracy are long-term processes. These are beyond the capability of personnel traditionally involved in peace-keeping operations. But they can lay a vital foundation if they embody, in their outlook and behaviour, a long-standing democratic and multi-cultural tradition.

In the past decade, the UN has resorted increasingly to establishing a wide range of special criminal tribunals, including ad hoc criminal tribunals as subsidiary organs of the Security Council. Their track record has been mixed. In some cases they have succeeded in establishing accountability for perpetrators and in instilling greater public confidence in post-conflict societies that have enabled these societies to move forward. The exact balance between retributive justice and an amnesty should not be determined *a priori* or ideologically, but strictly by pragmatic considerations of enduring peace.

At the same time, direct UN involvement in the dispensation of justice in post-conflict situations has involved colossal expenditure and bequeathed questionable gains. The fallout of such lavish allocation for however worthy a cause could be the disillusionment of the societies involved, which could well draw a line between the requirements of justice and the diversion of scarce resources in its pursuit. The Secretary General is correct in being chary of a dependence on voluntary contributions for the financing of UN tribunals not just because of its ephemeral nature but the undue influence this could give to donors in dealing with vulnerable local institutions normally characteristic of post-conflict societies.

Mr. President,

It must be clear that the UN is mandated to serve the objective of transitional justice. It cannot and should not seek to recreate the pillars of the institutions of justice, other than providing assistance for capacity-building. It should leave the long-term task of institution-building to national authorities. The UN should play a supportive and facilitating role, without seeking to impose an outside optic or values of any particular country or group of countries on the delicate process of establishing the rule of law.

Any meaningful capacity-building is possible only when the society concerned establishes its governing institutions and supreme law and moves into the institution-building phase. By and large, these functions should be left to that society. We do not think this has to be addressed in the context of transitional justice. This needs to be addressed through the legal capacity-building applicable to all developing societies. National stake-holders have to set their reform vision and agenda for this purpose so that they can claim local ownership. This work can also be done on a bilateral basis.

I should also like to refer in this context to the capacity and expertise within the UN system in the area of rule of law and transitional justice. We find that such expertise exists, or is claimed to exist, not only in different parts of the UN secretariat but also in the secretariats of the Funds and Programmes. The need for different parts of the UN secretariat, including those of the Funds and Programmes, to work synergetically and in cooperation with each other, rather than in competition, cannot be over-emphasised. There has been some talk of creating an independent structure dedicated exclusively to this question. We are not yet convinced of the efficacy of such an approach. At this stage, better coordination among existing units and optimal utilisation of the existing resources are called for.

The role of the United Nations in supporting the rule of law and transitional justice in post-conflict societies must involve assistance through a system-wide, coherent needs-based approach which can result in the consolidation of security and peace, social justice and democracy. In all these areas, the United Nations should play a supportive and facilitating role.

Thank you, Mr. President.

[BACK TO TABLE OF CONTENTS](#)