



STATEMENT BY MR. NIRUPAM SEN, PERMANENT REPRESENTATIVE, ON
AGENDA ITEM 70: REPORT OF THE INTERNATIONAL COURT OF JUSTICE AT
THE 61ST SESSION OF THE UN GENERAL ASSEMBLY ON OCTOBER 26, 2006

Madam President,

At the outset, I would like to thank the President of the International Court of Justice, Judge Rosalyn Higgins, for her detailed and comprehensive presentation of the report of the Court as contained in document A/61/4.

The International Court of Justice, the principal judicial organ of the United Nations, is an important forum for the peaceful settlement of international disputes. In April, the Court celebrated the sixtieth anniversary of its inaugural sitting. We congratulate the court for its distinctive contribution to the maintenance of international peace and security in all the years of its existence.

Madam President,

The UN was established to save succeeding generations from the scourge of war. The founding fathers of the UN sought to achieve this objective by the twin approach of prohibiting the use of force under Article 2(4) of the Charter and by promoting the peaceful settlement of international disputes under Article 33 of the Charter. As a central element in the promotion of international peaceful settlement, departing from the model of the League of Nations, the UN Charter established, through Article 92, the International Court of Justice as its principal judicial organ. Further, in the case of disputes under consideration of the UN Security Council, Article 36(3) directs the Security Council to recommend to the parties to refer all legal disputes to the International Court of Justice. Finally Article 92 of the Charter makes the Statute of the ICJ an integral part of the Charter.

The above provisions clearly indicate the respect and the central role assigned to the ICJ within the UN Charter system. This is a status which is unique to the ICJ and not enjoyed by any other tribunal established since 1945.

Madam President,

The recent period has witnessed the creation of a number of specialized regional and international courts. The political process connected with the establishment of special international judicial bodies has been, on occasion, perceived as diminishing the role of the ICJ in the field of peaceful settlement of international disputes. Moreover, legitimate questions have been raised about the legal basis underlying the establishment by the Security Council of the *ad hoc* international criminal tribunals established for former Yugoslavia and Rwanda. The Security Council does not have this power under the Charter and while, it can set up subsidiary bodies, it cannot give them powers that it does not have itself: the established legal principle of *nemo dat quod non habet*. The lack of challenge from the general UN membership does not mean acceptance of such exercise in the future, still less any general endorsement of a power that the Charter does not give.

However, despite all these developments, the International Court of Justice still remains the only judicial body with legitimacy derived directly from the Charter, enjoying general jurisdiction and available to all States of the international community on all aspects of international law. All other international judicial institutions, established as they are with competence over specified fields, are confined to their limited areas of jurisdiction, and lack general jurisdiction of a universal nature.

Madam President,

Over the last fifty years, the Court has dealt with a variety of legal issues. Its judgments have covered disputes concerning sovereignty over islands, navigational rights of States, nationality, asylum, expropriation, law of the sea, land and maritime boundaries, enunciation of the principle of good faith, equity and legitimacy of the use of force. The issues presently before it are equally wide ranging, and its judgments have played an important role in the progressive development and codification of international law. Despite the caution it exhibited and the sensibility it showed to the political realities and sentiments of States, the Court has asserted its judicial functions and consistently rejected arguments to deny it jurisdiction on the ground that grave political considerations were involved in a case in which it otherwise found proper jurisdiction for itself. Thereby the Court clearly emphasized the role of international law in regulating inter-state relations which are necessarily political.

In the same vein the Court - or for that matter any other competent judicial body - should not regard itself as precluded from questioning the validity

of a Security Council resolution, insofar as it affects the legal rights of States. The issue was raised very pointedly by Judge Shahabudin and others in the *Lockerbie* case.

Many legal scholars rightly emphasize that the Court should not concede to the Security Council a place above the Charter; it should rather adopt a textual approach to Article 39, the wording of which contains all the necessary elements for a delimitation of the competences of the Security Council under chapter VII. The Court should not hesitate to affirm the rule of law in the international legal order. In the *Lockerbie* and *Namibia* cases the Court showed that it has the power of judicial review but, unfortunately, this is limited to a very few contentious proceedings and a very few advisory opinions that are sought. The power of judicial review is a crucial element in a democratic system of checks and balances. The most practical, and perhaps the only, way of introducing these into the functioning of the Security Council is through an expansion of the permanent and non-permanent membership of the Council and a transformation of its working methods.

Madam President,

The phenomenal docket explosion of the Court stands testimony to the Court's high standing and authority not only in the UN system, but in the international community itself. It also reflects the increased relevance of and respect for due process of law that States exhibit, and is an affirmation of faith in the Court. From being in a situation where, in the early 1970s, it was called the court without a case, it is now faced with the problems of plenty. In fact, it now finds itself in a position of being unable, within its existing resources, to respond effectively and in time to the demands made on it as a result of its increasing workload.

As emphasized in its Report, the Court is taking various measures to rationalize the work of its Registry, making greater use of information technology, improving its working methods and securing greater collaboration from the Parties to reduce the time taken for individual cases. The Report says that the Court's docket increasingly includes fact-intensive cases, which raise new procedural issues for it. The Court's request, therefore, for individualized legal assistance for all its members is reasonable and must be implemented urgently to enable it to efficiently carry out its designated functions as the principal judicial organ of the United Nations.

Thank You, Madam President.

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