



### ***The Role of the International Court of Justice in Promoting Peace and Justice***

*It took two world wars and three genocides for the international community to unite into an international legal body, the International Court of Justice, in 1945. The ICJ, with its role of judging between competing claims of states and advising on legal matters, is the guardian of international law. However, both parties in a dispute must consent for their case to be taken to the ICJ. In these conditions, how effective is the International Court of Justice in promoting international peace and justice? SID NL gave the floor to Judge Julia Sebutinde.*

### **Introduction**

The International Court of Justice is located in the heart of the City of Peace, but little is known about its role in the larger scheme of things. Speaking of global peace and justice made Sebutinde wonder why it took the international community two World Wars to come up with the idea of the United Nations. Peace and justice are two of the most cherished aspirations of humankind, and are two inseparable concepts: You cannot have one without the other.

Peace for instance, is not just the absence of violence. To be sustainable and lasting, peace must necessarily entail notions of social justice, equal access to development and the uncompromising respect for human rights and the dignity and worth of every human being. While justice entails the rule of law, accessibility and clarity, constraint of discretion, equality before the law, exercise of power in good faith and enforced by judicial review, respect for human rights, availability of dispute resolution procedures, fair trial and compliance with international law. While easily understood in a domestic setting, these concepts can readily be transposed to the international arena. In this regard, the international community requires that States and institutions alike are committed to fundamental human rights standards, human dignity and equality, as well as to the international rule of law.

### **The ICJ and the international community**

The International Court of Justice has its seat located in the Peace Palace in The Hague. Contrary to its predecessor, the Permanent Court of International Justice, the ICJ was fully integrated into the institutional architecture of the United Nations in

1945. The Court's mission is intimately connected with the UN's broader mission, namely to bring about settlement of international disputes which might lead to a breach of the peace. Secondly, the importance of the Court's mission is reflected in the obligations of Member States. In particular, that States shall settle their disputes by peaceful means in such a manner that international peace, security and justice are not endangered."

Furthermore, while the primary responsibility for the maintenance of international peace and security is vested with the Security Council, it can recommend appropriate procedures of adjustment to State parties to an international dispute. In doing so, it is enjoined to take into consideration that legal disputes should as a general rule be referred by the parties to the International Court of Justice.

The Court always strives to bring about settlement of international disputes or situations which might otherwise lead to a breach of the peace. Thus offering States an alternative to armed conflict. More importantly, this overarching UN objective is inextricably tied to the obligation incumbent upon all UN Member States to settle their international disputes by peaceful means.

### **The Court's adjudicative role**

Where States fail to amicably resolve their differences, judicial settlement is one of the methods available for peaceful resolution of inter-State disputes which potentially endanger the maintenance of international peace and security. Bringing a dispute before the Court usually contributes to defusing tensions between States, especially where diplomatic negotiation has failed. This function comprises 80% of

the Court's workload. Once delivered, the judgments of the Court are binding.

The Court has delivered more judgments in the last 23 years than ever before, an indication that more States are choosing judicial settlement as a mode of dispute resolution. It is noteworthy that the Court's jurisdiction over inter-State disputes is not compulsory; States must be able to determine how to govern their relations, without coercion. Accordingly the Court can only handle disputes on the basis of consent by the disputing States. By signing the UN Charter or otherwise consenting to the jurisdiction of the court, a State undertakes to comply with any decision of the Court in a case to which that State is a party. If not adhered to a State-party may refer the situation to the Security Council, which may, if deemed necessary, take measures or make recommendations to give effect to the judgment.

As a general rule, a State must be a party to the ICJ Statute before it can bring forth a case. UN Member States are automatically parties to the ICJ Statute by virtue of their accession to the UN Charter. Current membership of the UN stands at 193, yet only about 70 States have signed declarations recognising the Court's compulsory jurisdiction.



### The Court's Advisory Role

This function comprises 20% of the Court's workload. Whilst some UN organs may request advisory opinions on any legal question, other UN organs and specialised agencies can only do so after due authorisation by the General Assembly and even then, only regarding legal questions arising within the scope of their respective activities. Advisory Opinions are reasoned but non-binding. Thus a requesting organ, agency or organisation remains free to give effect to an opinion of the Court by any means available to it.

### Complementation to other principal organs

The Security Council is vested with the responsibility to investigate situations with the potential to endanger international peace and security. The Security Council considers that legal disputes should be referred by the parties, to the International Court of Justice.

The General Assembly is vested with the responsibility to consider the general principles of cooperation in the maintenance of international peace and security. It is important to point out that the General Assembly can recommend and adopt resolutions urging immediate compliance with judgments. This was for instance pursued by Nicaragua in 1986 with the case concerning Military and Paramilitary Activities by the US, after its earlier attempts to seize the Security Council of the matter resulted in vetoes. Furthermore, the Court's activities and program of work depends on the involvement of the General Assembly with respect to the Court's budget and the election of its judges.

### Conclusion

The United Nations have constantly striven to give practical meaning to establish conditions under which justice can be maintained, and to develop legal bases for peaceful relations between States, however, in any political situation the importance given to a genuine legal position or claim may vary. The UN has thus seen periods of great advancement in international jurisprudence, and times when its function as guardian of the global legal architecture has seemed more peripheral. The challenges ahead as part of the international community, are formidable to build a society solidly grounded on foundations of peace. The court is not powerless if it is understood that peace is a process; a collective endeavour and a lifelong commitment made up of the sustained efforts of each one of us in our different capacities. In these times of unprecedented interconnectedness, Sebutinde believes that a firm reliance on the international rule of law must underpin any and all future developments on the global stage, if international peace and security are to be maintained.

SID NL and the Humanity House organise monthly Bread & Brains lunch discussions with prominent speakers. Everyone is welcome from 12:00 onwards to take a break, have some lunch and meet new people. The monthly lunch meetings focus on pressing issues in the field of international development.

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