

SEPARATE OPINION OF JUDGE LACHS

While concurring in the Court's decision I consider it my duty to place on record certain considerations in respect of the circumstances in which it fell to be taken. Clouded as the circumstances may have been, some legal implications may be ascertained.

In the normal course of events, the request made to the Court in proceedings instituted on the basis of the Montreal Convention would have faced the Court with the necessity of deciding whether a genuine case existed for granting interim measures. However Libya's Application and request were placed before the Court when the Lockerbie catastrophe and the wider problem of international terrorism, which merits condemnation in all its manifestations, were already on the agenda of the Security Council, which had brought them together under the terms of resolution 731 (1992). The Council, by moving onto the terrain of Chapter VII of the Charter, decided certain issues pertaining to the Lockerbie disaster with binding force. Hence problems of jurisdiction and the operation of the *sub judice* principle came into the foreground as never before.

While the Court has the vocation of applying international law as a universal law, operating both within and outside the United Nations, it is bound to respect, as part of that law, the binding decisions of the Security Council. This of course, in the present circumstances, raises issues of concurrent jurisdiction as between the Court and a fellow main organ of the United Nations.

The framers of the Charter, in providing for the existence of several main organs, did not effect a complete separation of powers, nor indeed is one to suppose that such was their aim. Although each organ has been allotted its own Chapter or Chapters, the functions of two of them, namely the General Assembly and the Security Council, also pervade other Chapters than their own. Even the International Court of Justice receives, outside its own Chapter, a number of mentions which tend to confirm its role as the general guardian of legality within the system. In fact the Court is the guardian of legality for the international community as a whole, both within and without the United Nations. One may therefore legitimately suppose that the intention of the founders was not to encourage a blinkered parallelism of functions but a fruitful interaction.

Two of the main organs of the United Nations have the delivery of binding decisions explicitly included in their powers under the Charter: the Security Council and the International Court of Justice. There is no doubt that the Court's task is "to ensure respect for international law . . ." (*I.C.J. Reports 1949*, p. 35). It is its principal guardian. Now, it has become clear that the dividing line between political and legal disputes is blurred, as law becomes ever more frequently an integral element of international controversies. The Court, for reasons well known so frequently shunned in the past, is thus called upon to play an ever greater role. Hence it is important for the purposes and principles of the United Nations that the two main organs with specific powers of binding decision act in harmony — though not, of course, in concert — and that each should perform its functions with respect to a situation or dispute, different aspects of which appear on the agenda of each, without prejudicing the exercise of the other's powers. In the present case the Court was faced with a new situation which allowed no room for further analysis nor the indication of effective interim measures. The Order made should not, therefore, be seen as an abdication of the Court's powers; it is rather a reflection of the system within which the Court is called upon to render justice.

Whether or not the sanctions ordered by resolution 748 (1992) have eventually to be applied, it is in any event to be hoped that the two principal organs concerned will be able to operate with due consideration for their mutual involvement in the preservation of the rule of law.

(Signed) Manfred LACHS.
