



Security Council

Sixty-seventh year

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Wednesday, 17 October 2012, 10 a.m.

New York

President: Mr. Caballeros (Guatemala)

Members:

Azerbaijan	Mr. Mehdiyev
China	Mr. Li Baodong
Colombia	Mr. Osorio
France	Mr. Araud
Germany	Mr. Wittig
India	Mrs. Kaur
Morocco	Mr. Loulichki
Pakistan	Mr. Masood Khan
Portugal	Mr. Moraes Cabral
Russian Federation	Mr. Churkin
South Africa	Mr. Mashabane
Togo	Mr. Menan
United Kingdom of Great Britain and Northern Ireland	Mr. Parham
United States of America	Ms. Rice

Agenda

The promotion and strengthening of the rule of law in the maintenance of international peace and security

Peace and justice, with a special focus on the role of the International Criminal Court

Letter dated 1 October 2012 from the Permanent Representative of Guatemala to the United Nations addressed to the Secretary-General (S/2012/731)

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12-55207 (E)



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The meeting was called to order at 10.10 a.m.

Adoption of the agenda

The agenda was adopted.

The promotion and strengthening of the rule of law in the maintenance of international peace and security

Peace and justice, with a special focus on the role of the International Criminal Court

Letter dated 1 October 2012 from the Permanent Representative of Guatemala to the United Nations addressed to the Secretary-General (S/2012/731)

The President (*spoke in Spanish*): Under rule 37 of the Council's provisional rules of procedure, I invite the representatives of Argentina, Armenia, Australia, Austria, Bangladesh, Belgium, Botswana, Brazil, Chile, Costa Rica, the Czech Republic, Ecuador, Estonia, Finland, Honduras, Japan, Lesotho, Liechtenstein, Lithuania, Luxembourg, Mexico, the Netherlands, New Zealand, Peru, the Philippines, Slovakia, Slovenia, Solomon Islands, Spain, Sri Lanka, the Sudan, Switzerland, Tunisia, Uganda, the United Republic of Tanzania and Uruguay to participate in this meeting.

Under rule 39 of the Council's provisional rules of procedure, I invite Judge Sang-Hyun Song, President of the International Criminal Court, and Mr. Phakiso Mochochoko of the Office of the Prosecutor of the International Criminal Court to participate in this meeting.

Under rule 39 of the Council's provisional rules of procedure, I invite His Excellency Mr. Thomas Mayr-Harting, Head of the Delegation of the European Union to the United Nations, to participate in this meeting.

The Security Council will now begin its consideration of the item on its agenda.

I wish to draw the attention of Council members to document S/2012/731, which contains a letter dated 1 October 2012 from the Permanent Representative of Guatemala to the United Nations addressed to the Secretary-General, transmitting a concept paper on the item under consideration.

I welcome the presence of the Secretary-General, His Excellency Mr. Ban Ki-moon, and I give him the floor.

The Secretary-General: I thank His Excellency Minister Harold Caballeros for convening this timely discussion.

When it comes to peace and justice, we are living in a new world. Those who contemplate committing horrific acts that shock the conscience of humankind can no longer be confident that their heinous crimes will go unpunished. Rulers and warlords who perpetrate atrocities can no longer trade their power for amnesty and then slip away, unpunished, to some safe haven.

We live in an age of accountability. It is an age in which there is an ever-growing emphasis on the responsibility of States to end impunity and to prosecute those responsible for genocide, crimes against humanity, war crimes and other egregious crimes. It is an age in which United Nations envoys and representatives will not, as they negotiate and mediate peace agreements, promote or condone amnesty for genocide, crimes against humanity, war crimes or gross violations of human rights. It is also an age that Security Council has played a central role in bringing about by establishing the tribunals for the former Yugoslavia, Rwanda and Lebanon, and the Special Court for Sierra Leone.

At the centre of the new system of international criminal justice stands the International Criminal Court (ICC). In that regard, I welcome warmly the participation of The Honourable Judge Sang-Hyun Song, President of the International Criminal Court.

Both the Court and the Council are frequently active in the same situations. The grave crimes that the ICC deals with threaten, in the words of the Rome Statute, the peace, security and well-being of the world, the very peace and security that the Council is charged to maintain.

It is not surprising, then, to find the Court investigating, prosecuting and trying situations that are on the Council's agenda, such as those concerning the Democratic Republic of the Congo, Côte d'Ivoire and the Lord's Resistance Army. Of course, the Security Council has itself referred certain situations on its agenda to the Court's Prosecutor, as we saw in the cases of Darfur and Libya.

However, the Court is not simply an autonomous international organization. It is also a judicial body, independent and impartial. Once set in motion, justice takes its own inexorable course, unswayed by politics. That is its strength, its distinctive virtue.

It also, frankly, presents challenges to those who have to navigate the new environment that is created when justice enters the scene. When the Court takes up a situation, whether because of a Security Council referral or otherwise, the whole landscape changes. It is likely to keep changing, as cases are investigated, arrest warrants are issued, suspects are detained and transferred to The Hague, trials are opened and verdicts and sentences are handed down.

The Court and Council both operate in that fluid setting, and both should explore the many ways in which they can complement and leverage each other's work, from prevention to enforcement. In that regard, the Council, where it has referred a situation to the Prosecutor, can greatly assist the Court by acting to secure the necessary level of cooperation from Member States.

Ten years have passed since the Rome Statute entered into force and the world's first permanent international criminal court became a new part of the global system. A considerable amount of experience has been accumulated since that time. We have seen the value of a Court that pursues justice in all regions. We have seen how the actions and inaction of the Court and the Security Council can have an impact on each other. Most importantly, we have seen how the activities of each one can assist the other.

Only if perpetrators of grave crimes are prosecuted and held to account can there be any hope that future such crimes will be prevented and peace preserved. Justice is crucial for breaking cycles of violence and fragility. Even the possibility of ICC engagement in a given situation can create an incentive to set up local mechanisms to deliver justice.

That gives the Council a critical role to play when mandating peacekeeping or special political missions: to strengthen the national capacity of a country to prosecute serious crimes. In the Democratic Republic of the Congo, for example, the United Nations Organization Stabilization Mission has worked with the national authorities to set up and support prosecution support cells to investigate and prosecute serious crimes in the eastern part of the country.

The Court, for its part, can help to strengthen national responses to serious crimes through the domestic incorporation of provisions of the Rome Statute. In addition, its outreach work is intended to stop cycles of violence from recurring.

The Council and the Court can also support each other in building local justice responses and in strengthening the rule of law.

The Council and the Court frequently operate in the same political space. They share a common interest. The Court can help advance the purposes of the United Nations — above all, to maintain international peace and security. The Council, by understanding and respecting the work of the Court, can advance its own cause and better discharge its responsibilities

In this new age of accountability, in this period of growing demands for justice, let us do our utmost to draw solid lessons from a decade of advances and challenges. Let us do everything we can to see that the Council and the Court work together to deliver both justice and peace. I look forward to a constructive discussion.

The President (*spoke in Spanish*): I thank the Secretary-General for his statement.

I now give the floor to Judge Sang-Hyun Song.

Judge Sang-Hyun Song: It is an honour to have this opportunity to address the Security Council on the occasion of the tenth anniversary year of the International Criminal Court (ICC). This is the first time that a President of the ICC has been invited to do so, and I would like to thank the Guatemalan presidency of the Council for taking this initiative.

Let me apologize in advance if I slightly overstep the conventional time limit allocated to speakers. I am afraid I would not be able to limit my statement to 10 minutes even if I were to speak in Gangnam style.

The ICC, together with the Rome Statute that underpins it, is the realization of a compelling vision that those responsible for the most serious crimes of concern to the international community must face justice. The Rome Statute makes it clear that the primary responsibility for prosecuting such crimes lies with States. The ICC is a court of last resort, called on to act only where States are unable or unwilling to do so.

The ICC was preceded by several temporary courts and tribunals, which made a huge contribution to the development of international criminal law. But the vision behind the Rome Statute was to have a permanent court that would be readily available whenever needed. It would deal with clearly defined crimes, and could develop over time a unified body of jurisprudence that

would enhance legal certainty for those affected by its work.

The Rome Statute establishes a carefully considered institutional balance within the ICC. There is an independent Prosecutor, an independent defence and an independent judiciary. The Prosecutor decides which cases to pursue, but it is the judges who have the final say on whether to issue an arrest warrant or summons to appear, or whether there is sufficient evidence for charges to proceed to a trial.

Ten years from its foundation, the ICC is fully functioning at all levels. Judgment was given in our first trial earlier this year. A second case is close behind, and several others are at earlier stages in the judicial process. Our current cases arise from seven distinct country situations, three of which were referred by the States themselves and two by the Security Council.

The first 10 years have seen a welcome growth in international support for the ICC. From the 60 States parties required to bring the Rome Statute into force a decade ago, the ICC has grown into a community of 121 States. More are joining every year, the most recent of which was Guatemala. Each step the ICC takes towards universality reduces the potential for impunity and strengthens the prospect of justice for the victims of terrible crimes.

Today's discussion is about peace and justice. The relationship between the two has been the subject of debate since ancient times in all the world's cultures, and continues to be so. We have, however, taken a step forward in recognizing that we need to pursue both. One must not override the other.

While the ICC's contribution is through justice, not peacemaking, its mandate is highly relevant to peace as well. The Rome Statute is based on the recognition that the grave crimes with which it deals threaten the peace, security and well-being of the world. The Statute's objective is to ensure their effective prosecution at the national or ICC level, putting an end to impunity and thereby contributing to the prevention of further crimes, as well as laying the foundation for a sustainable peace.

But I must be clear that, as a judicial institution, the ICC can work only on the basis of the law. It can pursue only those cases where it has jurisdiction and where the Prosecutor can obtain the necessary evidence to justify criminal proceedings. In dealing with the cases before them, the parties and the judges make great efforts to understand conditions on the ground, but can take

these into account only insofar as they are relevant to the factual or legal issues under consideration in the proceedings. The role of a criminal court is to establish guilt or innocence in accordance with the law; it is not for a court to take a view on political or other factors extraneous to the proceedings.

In saying this, I fully recognize the challenges that may face the international community over how best to achieve peace and security in situations in which the ICC plays a judicial role. In addressing these challenges, however, it is important to remember that the ICC does not deal with ordinary crimes. The Rome Statute crimes are considered to be the gravest in the eyes of the international community; the victims are often numbered not in the hundreds but in the thousands, and the perpetrators therefore carry an especially heavy burden of personal responsibility for their actions.

That is one of the reasons why the drafters of the Rome Statute included a provision enabling the Security Council, acting under Chapter VII of the United Nations Charter, to refer situations inside or outside the normal limits of the ICC's jurisdiction to the Prosecutor. As we all know, it has done so twice, in relation to Darfur and Libya. Those referrals have been an important sign of the growing confidence of the international community in the ICC. In both instances, however, it is clear that follow-up to the referrals at the international level has sometimes been problematic, and the ICC has needed on occasion to inform the Security Council of specific instances of non-cooperation.

I will not comment further on the specifics of those referrals, as the Prosecutor reports to the Council regularly on them. I would simply like to underline that, once such a referral is made, the Prosecutor and the judiciary are bound to act in accordance with the requirements of the Rome Statute, and to follow the referral wherever it leads them, in accordance with those requirements.

If the Prosecutor decides to launch an investigation and bring charges against individuals, the ICC has to pursue these proceedings as it would any other active case.

The Security Council, on the other hand, does have a potential emergency brake at its disposal if it considers suspension of ICC action necessary in order to maintain or restore international peace and security. Under article 16 of the Rome Statute, the ICC must comply with a request to defer investigation

or prosecution made by the Council in a Chapter VII resolution.

If the ICC is to effectively deal with situations referred by the Council under Chapter VII, it needs to be able to count on the full and continuing cooperation of all United Nations Members, whether they are parties to the Rome Statute or not. This includes cooperation not only in investigations and the gathering of evidence, but also in areas such as the execution of arrest warrants and tracing the assets of suspects. In making any future referrals, it would be very helpful if the Security Council could underline this obligation of full cooperation, without which it is very difficult for the ICC to discharge the mandate the Council has given it.

An area of concern for many ICC States parties has been the financial implications of these referrals. This complex issue is principally for United Nations Members to consider. Clearly, it will be difficult to sustain a system under which a referral is made by the Security Council on behalf of the United Nations, but the costs of any investigation and trial proceedings are met exclusively by the parties to the Rome Statute.

In this context, I welcome the encouragement in General Assembly resolution 66/262 of voluntary contributions by United Nations Members to help meet the costs of ICC investigation and prosecution. The ICC stands ready within the framework of its Relationship Agreement with the United Nations to help with the implementation of any longer-term solution that would be workable on both sides.

The Security Council and the ICC are two highly distinct bodies with very different roles, but we are connected by the shared objectives of peace, justice and respect for international law, enshrined in both the United Nations Charter and the Rome Statute. The worst nightmares of humankind lie at the intersection of our respective mandates. When massive crimes against innocent victims threaten international peace and security, both the Council and the ICC have an important role to play. And in the ICC, the Council may recognize a unique avenue for ensuring justice as a crucial element in wider international efforts.

In adopting the Rome Statute, States created important possibilities for the Security Council to use its Chapter VII powers in the ICC framework. The Council has the unique prerogative to create a specific judicial mandate for the ICC to extend the Court's

jurisdiction where it otherwise would not reach, and to require non-States parties to cooperate with the Court. Furthermore, a referral by the Security Council allows the ICC Prosecutor to open an investigation without waiting for judicial authorization. When the Council exercises these prerogatives, it is important for it to take due account of how the ICC will have to carry out any mandate it is given, and of the cooperation that it will require to do so effectively.

The ICC warmly welcomes the trust that the Security Council has placed in it through its referrals. The ICC hopes that the Council will actively support its ability to act on these referrals by ensuring compliance with the Council's resolutions and by underlining the need for full cooperation by United Nations Members. The ICC is grateful for the support we have received from the Security Council, such as the statement on the ICC staff detained in Libya in June.

The ICC welcomes the concept note (S/2012/731, annex) circulated by the Guatemalan presidency in preparation for today's debate, and looks forward to hearing the reactions of members of the Security Council to the ideas in it. The ICC is keen to maintain a close dialogue with the Security Council in the areas where our mandates intersect, not least with a view to ensuring the effective implementation of the relevant resolutions of the Council.

The International Criminal Court is a young institution by international standards, with plenty of work in progress and much still to learn. As we move forward, I can assure the Security Council that we will hold fast to the principles of prosecutorial and judicial independence and the rule of law.

The President (*spoke in Spanish*): I thank Judge Sang-Hyun Song for his briefing.

I now give the floor to Mr. Mochochoko.

Mr. Mochochoko: Allow me to start by thanking you, Sir, the Guatemalan presidency and the Security Council for convening this very important meeting, the first of its kind. This meeting comes at a very opportune time as the International Criminal Court (ICC) celebrates 10 years of existence. I would also like to convey, on behalf of the Prosecutor, Ms. Fatou Bensouda, her greetings and her apologies for not being here today. The Office of the Prosecutor considers today's exchange with the Council to be crucial, given that both the Council and the Office of the Prosecutor are committed to preventing mass atrocities, which can

constitute a threat to international peace and security. Indeed, this debate offers an opportunity to reflect on issues of mutual concern and interest between our two bodies.

The Office of the Prosecutor welcome the concept note (S/2012/731, annex) circulated by the Guatemalan presidency in preparation for this meeting. The note clearly articulates some of the key principles regarding the relationship between the Security Council and the Court, and raises important points for discussion.

The respective mandates of the two bodies — the pursuit of individual criminal accountability and the pursuit of international peace and security — are at the heart of the relationship.

The significance of today's debate can thus not be overstated. As President Song has already mentioned, the Office of the Prosecutor is currently working on two situations referred by the Security Council to the Office of the Prosecutor — the situations in Darfur and in Libya.

We investigate war crimes, crimes against humanity and genocide in a number of countries that also have the close attention of the Security Council. At the same time, the Security Council is working on many issues that relate to the mandate of the Office of the Prosecutor, including, for instance, efforts to end the use of child soldiers, as was recently taken up by the Security Council in its open debate on children and armed conflict (S/PV.6838) and resolution 2068 (2012) adopted at that meeting, under the auspices of the German presidency. Those efforts coincide with the completion of the first ICC trial and its verdict on the use of child soldiers. Furthermore, the Security Council discusses issues of peace and security and authorizes peacekeeping missions in situations where the Office of the Prosecutor is operating. The Council is also addressing the link between sexual violence and conflict, and is monitoring new situations involving the alleged commission of massive crimes.

It is evident from the foregoing that the relationship between the Office of the Prosecutor and the Council could be nurtured and strengthened by extending our interaction beyond specific situations referred by the Council to the Prosecutor and by creating space for open discussions on thematic issues. Such dialogue is crucial, as both the Security Council and the Office of the Prosecutor are committed to preventing mass

atrocities which constitute a threat to international peace and security.

The evolving relationship between the Council and the Court is not without complexities, given our different mandates and organizational structures. Allow me to highlight three areas, looking at them from the Office of the Prosecutor's perspective.

First, a key difference between our two organs is that the Security Council is a political body within the United Nations system, while the Office of the Prosecutor is an independent organ within an independent judicial institution, which has to adhere to clear legal criteria and jurisdictional boundaries at all times in order to maintain its legitimacy and credibility. We are all too familiar with frequently raised concerns about the politics of case selection as a result of Security Council referrals. Incidentally, the same concerns can be raised with regard to State referrals.

What many forget or overlook is that for both types of referrals, the Rome Statute provides clear guidelines that protect the independence of the judicial process. The Rome Statute provides for a legal process for the preliminary examination, investigation and prosecution of situations referred by States or the Security Council, as well as for judicial review, during which situations may be rejected if they fail to satisfy statutory legal criteria for opening an investigation. Simply put, the Council may unilaterally trigger, but cannot impose acceptance of jurisdiction by the Office of the Prosecutor. Perceived or real political selectivity on the participation of the Council is further constrained because referrals encompass a situation rather than one or several particular suspects or groups.

It is important to underscore the need to respect the Office of the Prosecutor's independence at all times. Once the Security Council decides to refer a situation to the Prosecutor, the judicial process has been triggered and the matter is fully in the hands of the Prosecutor and the Judges. The only way to stop the procedure is by legal means, namely, by invoking article 16 of the Rome Statute. Efforts to interfere with the independent exercise of the Office's mandate would only serve to undermine the legitimacy and credibility of the judicial process, thus giving credence to allegations of politicization of the process.

The second area I would like to highlight involves what we have in common. First, there is the matter of our respective mandates. While the Security Council

has been given the primary responsibility to maintain international peace and security, the mandate of the Office of the Prosecutor is to ensure accountability for the most serious crimes of concern to the international community as a whole. Some might construe that as a source of tension between the two organs. In our view, the respective mandates link us together.

The fight against impunity, to which both organs are committed, is an essential contribution to the quest for world's peace and security. That is also recognized in the Rome Statute's preamble, which notes that "such grave crimes threaten the peace, security and well-being of the world". Indeed, the Security Council was instrumental in ushering in what the Secretary-General has called "the age of accountability".

Next year, we will celebrate the twentieth anniversary of the creation of the International Criminal Tribunal for the Former Yugoslavia by the Council. It was in 1993 that the Council revived the notion of international criminal justice, after a long silence following the Nuremberg and Tokyo trials. The Council was thus a source of inspiration for the establishment of the ICC.

Secondly, both the Council and the Office of the Prosecutor have a role to play in strengthening the complementary relationship between peace and justice. From the Office of the Prosecutor's perspective, there is no dilemma or contradiction between peace and justice. In most situations before the Court, conflict management and, often, specific peace negotiations were under way while investigations and prosecutions were proceeding.

The role of the ICC has never precluded or put an end to such processes; in some cases, it has even encouraged them. The policy of the Office is to pursue its independent mandate to investigate and prosecute those few most responsible and to do so in a manner that respects the mandates of others and seeks to maximize the positive impact of the joint efforts of all. To pursue its judicial mandate and preserve its impartiality, the Office cannot participate in peace initiatives, but it will inform the political actors of its actions in advance so that they can factor investigations into their activities.

Finally, both the Security Council and the Office of the Prosecutor have a clear preventive mandate. Prevention is key to all our efforts. For the Office, the preventive role is foreseen in the Rome Statute preamble and reinforced in the Office's prosecutorial strategies.

In fact, the preamble makes clear that prevention is a shared responsibility in that it provides that States parties are

"determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes".

The Office of the Prosecutor will make public statements referring to its mandate when violence escalates in situations under its jurisdiction. It will visit situation countries to remind leaders of the Court's jurisdiction. It will also use its preliminary examinations activities to encourage genuine national proceedings, and thereby attempt to prevent the recurrence of violence. Given that the commission of massive crimes can threaten international peace and security, the Security Council can complement the Office's preventive efforts.

Let me now briefly look forward to how the relationship between the Security Council and the Office of the Prosecutor can be strengthened.

The Council has already referred two situations involving the commission of massive crimes to the Prosecutor, and the Prosecutor regularly reports back to the Council on those matters. The Council and the Office should together seek more constructive strategies for attaining their mutual goals. We are encouraged by recent efforts of regional organizations, and would like to mention in particular the multilateral efforts to bring to justice the leaders of the Lord's Resistance Army, including Joseph Kony. Those efforts must be replicated in other situations. The failure of States to implement ICC arrest warrants is also reflected in the failure to implement Security Council resolutions relating to cessation of violence, disarming parties to a conflict, ensuring an end to impunity through local initiatives, and other relevant obligations.

The relationship between those two obligations must be explored further. True peace and justice rely on the acceptance of Security Council resolutions as the binding legal obligations that they are. Increasing the political and diplomatic support of the Council for the Court is essential, and the Council can do so through its declaratory statements recalling the need to observe applicable norms of international law and stressing the importance of accountability for those most responsible for serious violations of the rules. Additionally, such tools as avoiding all non-essential contacts with

ICC suspects in order to achieve the arrest of these individuals need to be further explored and deepened.

A new chapter should be added to our relationship. The Office of the Prosecutor can make a substantial contribution by proactively collecting information and monitoring situations under preliminary examination, and by investigating and prosecuting those most responsible for serious crimes. But once its judicial process has resulted in requests for and the issuance of arrest warrants by the Court's judges, it is up to the international community, through the Council, to act.

We must find the necessary consensus to show that we are serious about the threat that these serious crimes pose to international peace and security and that we have and will use the tools necessary to put those crimes to an end.

The President (*spoke in Spanish*): I thank Mr. Mochochoko for his briefing.

I now give the floor to the members of the Security Council.

Ms. Rice (United States of America): We are grateful for the convening of this important debate. I would also like to thank the Secretary-General and President Song and Mr. Mochochoko of the International Criminal Court (ICC) for their briefings.

Strengthening the global system of accountability for the worst atrocities remains an important priority for the United States. President Obama has emphasized that preventing mass atrocities and genocide is a core national security interest and core moral responsibility for our nation. We are committed to bringing pressure to bear against perpetrators of atrocities, to ensuring accountability for crimes committed, and to prioritizing the rule of law and transitional justice in our efforts to respond to conflict.

Accountability and peace begin with Governments taking care of their people. But the international community must continue to support rule of law capacity-building initiatives to advance transitional justice, including the creation of hybrid structures where appropriate. From the Democratic Republic of the Congo to Côte d'Ivoire to Cambodia, the United States is supporting efforts to build fair, impartial and capable national justice systems.

At the same time, more can be done to strengthen accountability mechanisms at the international level. The United States has strongly backed the ad hoc

international criminal tribunals and other judicial institutions in Rwanda, the former Yugoslavia, Sierra Leone and Cambodia. Such tribunals and courts have been critical to ending impunity and helping those countries move forward. As those judicial institutions complete their mandates in the coming years, the International Criminal Court may become an even more important safeguard against impunity.

Although the United States is not a party to the Rome Statute, we recognize that the ICC can be an important tool for accountability. We have actively engaged with the ICC Prosecutor and Registrar to consider how we can support specific prosecutions already under way, and we responded positively to informal requests for assistance. We will continue working with the ICC to identify practical ways to cooperate, particularly in areas such as information-sharing and witness protection on a case-by-case basis, as consistent with United States policy and law.

Last year, the Council made its first unanimous referral to the ICC of the situation in Libya. Resolution 1970 (2011) has kept the principle of accountability central to Libya's transition from authoritarianism to democracy. Moving forward, it is critical that Libya cooperate with the ICC and ensure that the detention of and any domestic proceedings against alleged perpetrators of atrocities are in full compliance with its international obligations. We are exploring ways to assist Libya in pursuing justice sector reform, and we reaffirm that there must be accountability in Libya for violations and abuses on all sides.

The Security Council also acted in response to the atrocities in Darfur, but justice has still not been served, and the lack of accountability continues to fuel resentment, reprisals and conflict in Darfur and beyond. Despite constant calls on all parties to the conflict to cooperate fully with the ICC, the Sudan has failed to meet its obligations under resolution 1593 (2005) and individuals subject to outstanding arrest warrants remain at large. We continue to urge all States to refrain from providing political or financial support to those individuals. We applaud the example Malawi set by refusing to host President Al-Bashir.

The Council should review additional steps that can be undertaken to complete the ICC's work in Darfur. We should take inspiration from the concerted European Union efforts that resulted in the arrest and detention of the final fugitives from the International Criminal Tribunal for the Former Yugoslavia.

We should consider ways to improve cooperation and communication between the Security Council and the Court. For example, the Council should monitor developments in situations it refers to the Courts, since the ICC may face dangers in conducting its work. However, we must also recognize that the ICC is an independent organization. That status raises concerns about proposals to cover its expenses with United Nations assessed funding.

The interests of peace, security and international criminal justice are best served when the Security Council and the ICC operate within their own realms but work in ways that are mutually reinforcing. We should not accept the false choice between the interests of justice and the interests of peace. As we work to strengthen accountability, we support the States parties' decision to delay until 2017 a final decision on the Court's exercise of jurisdiction over the crime of aggression. That delay would allow for consideration of issues about the aggression amendments that require attention and enable the Court to consolidate its progress in the investigation and prosecution of atrocity crimes.

How we act to halt violence against civilian populations and hold accountable those who perpetrate such crimes is a fundamental test of our time. The United States continues to press for accountability in the Syrian Arab Republic, without prejudging the ultimate venue for it. As the independent international commission of inquiry has recognized, the Syrian people should have a leading voice in determining how to deal, in a manner consistent with international law, with those responsible for atrocities. We continue to help Syrians document abuses and collect evidence to ensure that the perpetrators of horrific violence against the Syrian people are ultimately held accountable.

In conclusion, we must rededicate ourselves to preventing atrocities from happening and ensuring accountability in their aftermath. We have made progress on both fronts, but much work remains. The United States will not rest until those responsible for perpetrating mass atrocities face justice and those who would commit such crimes know that they will never enjoy impunity.

Mr. Osorio (Colombia) (*spoke in Spanish*): I would like to thank you, Sir, for having taken the initiative of organizing this debate. It is the first time that the Security Council has devoted a meeting to the International Criminal Court (ICC). The welcome that the proposal has received is directly reflected in the large number

of delegations that have decided to take part in the debate. I also thank the delegation of Guatemala for the very comprehensive concept note (S/2012/731, annex) prepared for the purpose, which raises very interesting ideas on various aspects of the functioning of the ICC. We trust that, on future occasions, the Council will return to the issue, which is of great relevance within the framework of strengthening the rule of law in the maintenance of international peace and security.

I would also like to thank the Secretary-General for introducing today's topic, and Judge Sang-Hyun Song, President of the ICC, and Mr. Phakiso Mochochoko, the representative of the Office of the Prosecutor of the ICC, for their briefings.

Colombia is a State party to the Rome Statute. As such, it has repeatedly expressed its clear support for the International Criminal Court and the cause of international criminal justice.

We have addressed the crimes under the jurisdiction of the Court in our national legislation, adopted specific laws on cooperation with the Court, and were among the first countries of the western hemisphere to reach agreement with the Court on the execution of sentences. We participated actively in the Kampala Review Conference of the Rome Statute, and we are currently studying the amendments adopted there with a view to incorporating them into our legislation. We therefore ascribe the greatest importance to the holding of this debate as we mark the first 10 years of the Court's work, as was noted by the Council during Colombia's presidency in July.

I will focus my statement on some current issues that have arisen with regard to the interaction between the Security Council and the International Criminal Court.

First of all, we believe that the Council should take the greatest care when considering referrals new situations to the Court in application of the provisions of article 13 of the Rome Statute. We must recall that the possibility of triggering the court's jurisdiction through this mechanism was enshrined in the Rome Statute in order to prevent the need to establish new ad hoc jurisdictional bodies. What the Rome Conference participants sought was to provide the Council with a viable alternative to which to turn when it has concluded that criminal trials of certain individuals at the international level would contribute to maintaining international peace and security.

Naturally, my country assigns the greatest importance to the principle of complementarity, which is the very backbone of the international criminal justice system enshrined in the Rome Statute. In this regard, it is worth stressing that complementarity is called on to play a fundamental role in all cases submitted to the Court, including those referred by the Council, as was clearly demonstrated in the case of Libya and the criminal trials resulting from resolution 1970 (2011).

We believe that one of the factors the Council should assess when considering the potential referral of a situation to the ICC is the existence of legal standards and institutions in the country concerned, based on which it would be possible to consider referral to the Court on the basis of complementarity.

The broad powers vested in the Council under article 13 of the Statute are limited in practice because of other provisions of the Statute that seek to put into practice the principle of complementarity, as is the case with norms relating to the admissibility of cases and challenges thereto. An essential component of this mechanism is the premise that relevant decisions of the Council will be rigorously implemented if adopted under Chapter VII and after the Council had determined that there was a threat to international peace and security. Therefore, when the Court issues arrest warrants and they are not carried out, what is at stake is the credibility of the Council's decisions and authority. It may be worth considering alternative formulations for inclusion in the particular resolution referring a given situation to the ICC.

In the cases of Darfur and Libya, the solution adopted consisted of imposing two series of obligations. On the one hand, the main obligation of the stakeholders directly involved — the Government of the Sudan and all other parties to the conflict in Darfur, in the first case, and the Libyan authorities, in the second — is to cooperate with the Court and to provide the offer of the Prosecutor all necessary assistance. On the other hand, all States and regional and international organizations are called on to cooperate with the Court.

Another issue related to Council referrals that has arisen recently is that of the financing of trials. The situation that has arisen on both occasions when the Council has resorted to this mechanism has led to various concerns for States parties to the Statute, which affect the application of the Relationship Agreement between the ICC and the United Nations. We believe that these concerns are valid and should be considered

frankly and openly by both the Security Council and the General Assembly, as well as by the Assembly of States Parties to the Rome Statute.

Furthermore, the alternative mechanism provided for in article 16 of the Rome Statute has been made little use of. Again, given what was decided at the plenipotentiary diplomatic conference that gave rise to the ICC, Chapter VII of the Charter must be invoked and the evaluation by the Council of the potential merit of requests for the application of this provision must involve a decision to apply Article 39 of the Charter. This should be kept in mind by those States approaching the Council to request use of the deferral procedure provided for under article 16.

When a conflict situation threatens international peace and security and the Security Council is called on to act and exercise the responsibilities entrusted to it by the Charter of the United Nations, situations may arise in which accountability has become a necessary measure for overcoming crises and restoring international peace and security. In such situations, the Council can use the instrument of international criminal justice established in the Rome Treaty and already provided an invaluable, not only in pursuit of international justice and the fight against impunity, but also and above all in the search for international peace and security.

Mrs. Kaur (India): At the outset, I would like to welcome you, Mr. President, to the Security Council and to thank you for presiding over this meeting. I would also like to thank the Guatemalan delegation for convening this debate, which is very important and timely. I would also like to thank Secretary-General Ban Ki-moon, Judge Sang-Hyun Song, President of the International Criminal Court (ICC), and Mr. Phakiso Mochochoko for their valuable statements.

Peace and justice are intertwined. There is no peace without justice and there is no justice without peace. To be just implies acting in accordance with the rule of law. A coherent application of the rule of law at all levels of governance is a precondition of avoiding conflicts and ensuring peace and justice. This applies to both international and national affairs.

India believes that the advancement of the rule of law at the national level is essential for the protection of democracy and of human rights and fundamental freedoms, as well as for socioeconomic growth. This should be the primary objective of States. Similarly, the rule of law at the international level is a *sine qua non*

for ensuring peace and justice among States. We recall the wisdom of world leaders who, in the 2005 World Summit Outcome (resolution 60/1), recognized the need for universal adherence to and implementation of the rule of law at the national and international levels.

Since then, this topic has been on the agenda of the Sixth Committee of the General Assembly. The High-level Meeting on the Rule of Law held recently during the sixty-seventh session of the General Assembly reaffirmed the commitment of the international community to implementing the rule of law at the national and international levels with a view to achieving the objectives of the maintenance of international peace and security, peaceful coexistence and development.

The peaceful settlement of disputes is an important tool in the maintenance of international peace and security and in the promotion of the rule of law. The Security Council needs to lay more emphasis on Chapter VI of the Charter of the United Nations so as to promote peaceful settlement of disputes rather than take coercive measures. The International Court of Justice, as the principal judicial organ of the United Nations, also has its role under the Charter and as per its Statute in adjudicating disputes between States.

Since the rule of law serves as a key element of conflict prevention and peacekeeping, as well as of conflict resolution and peacebuilding, India has always supported international cooperation for the development and codification of international criminal law.

India has also been a supporter of international cooperation to suppress and deter heinous crimes of international concern through the relevant judicial instruments.

India firmly opposes impunity for serious violations of international humanitarian and human rights law. Refusing to tolerate impunity is the only way to ensure truth and reconciliation and to establish peace and justice.

At the same time, India firmly believes that international efforts to address the issues of serious crimes of international concern and impunity should be anchored in the Charter of the United Nations and international law. We need to strengthen the rule of law at the international level by avoiding selectivity, partiality and double standards, as well as by freeing the international criminal justice institutions from the clutches of political considerations. The final

agreed definition of the crime of aggression during the Review Conference of the Rome Statute in 2010 and the possibility of States parties opting out of the jurisdiction of the Court for the crime of aggression is a case in point when we talk of double standards.

There is also a need to promote the rule of law as a core value across the United Nations system. For that, we have to reform the architecture of international governance, including the Security Council, so that it may be reflective of contemporary reality.

India's reservations about the Rome Statute and the International Criminal Court are well known. The role given to a political body like the Security Council in its work has prevented the ICC from becoming a universal institution, and three of the five permanent members of the Council are not parties to the ICC. Furthermore, the selectivity with which the Security Council has made referrals under Article 16 of the Rome Statute has raised concerns about political considerations playing a dominant role in such referrals, which also raises questions about the independence of the International Criminal Court. Under such circumstances, the solution to ensuring peace and justice at the national and international levels is not the ICC or the establishment of ad hoc international criminal tribunals. The solution lies in building national institutions through capacity-building efforts so that they can function in a way consistent with the rule of law.

In conclusion, the Council needs to promote the peaceful settlement of disputes. The United Nations system and international judicial institutions have to promote the rule of law in their work and avoid political biases. And the international community has to provide greater resources for empowerment, empowering States to build institutions that promote the rule of law and help their citizens realize their legitimate aspirations. Only that will ensure that the world community is able to meet the challenges that face us today at the national and international levels, including the resolution of conflict situations and post conflict peacebuilding.

Mr. Li Baodong (China) (*spoke in Chinese*): I thank the Minister for Foreign Affairs of Guatemala, Mr. Harold Caballeros, for presiding over today's meeting. I thank Secretary-General Ban Ki-moon, Judge Sang-Hyun Song, President of the International Criminal Court (ICC), and the representative of the Prosecutor, Mr. Phakiso Mochochoko, for their statements. I would like to make the following points on the question of the achievement of peace and justice.

First, peace and justice are two fundamental values of human society. Without justice there cannot be sustainable peace, and without peace there can be no justice to speak of. Peace and justice reinforce and complement each other. However, if handled improperly the two may clash. China believes that justice cannot be pursued at the expense of peaceful processes, nor should it impede the process of national reconciliation.

Secondly, the Charter of the United Nations and its purposes and principles constitute the backbone of the rule of law at the international level. The promotion and strengthening of the rule of law in the maintenance of international peace and security must be guided by the purposes of the Charter and the fundamental principles of respect for national sovereignty and non-interference in the internal affairs of States. The ICC, as an integral part of the international system of the rule of law, must abide by the purposes and principles of the Charter and play a positive role in maintaining international peace and security. It must not be reduced to a tool available to certain countries in pursuing their individual goals and interests. Since the Charter entrusts the Security Council with the primary responsibility for the maintenance of international peace and security, we hope that the ICC will exercise caution in carrying out its functions and avoid impeding the work of the Security Council by seeking political settlements to international and regional conflicts.

Thirdly, States bear the primary responsibility to punish international crimes, eliminate impunity and achieve justice. The ICC can supplement but not replace national jurisdiction. We believe that the ICC should respect the judicial traditions and requirements of the various realities existing in different countries and regions, including their choice of the timing and modality of seeking to enforce justice. China supports the national efforts of countries to build capacities and to exercise jurisdiction in matters of grave international crimes.

China supports all efforts to establish a just and peaceful world. Therefore, we need not only to eliminate impunity but also to establish political processes, facilitate national reconciliation, promote economic and social development and eradicate the root causes of conflicts.

Mr. Massod Khan (Pakistan): We are grateful to the Guatemalan presidency for organizing this debate, and we thank you, Mr. Foreign Minister, for presiding over it. We thank the Secretary-General for

his important statement. We welcome Judge Sang-Hyun Song, President of the International Criminal Court (ICC), as well as Mr. Phakiso Mochochoko, of the Office of the Prosecutor.

The quest for justice and the rule of law has been central to the march of civilization. The rule of law is critical for a just world and international peace and stability. International law contributes directly to world peace. The rule of law is strengthened if there are no exceptions or double standards in the application of international law. The Security Council would promote the rule of law by greater use of the means for the pacific settlement of disputes and more frequent recourse to the International Court of Justice.

There should be no impunity for the most egregious crimes and mass atrocities. Peace and justice go hand in hand. In post-conflict situations, however, there is a time for healing, a time for moving on, a time for closure and a time for reconciliation — reconciliation that is not motivated by political expediencies but that aims to unify hostile and disparate segments of a population.

Every conflict situation has its own dynamics. Durable peace is best pursued through a comprehensive approach that is not restricted to retributive justice. In post-conflict societies it should take into account the long-term imperatives of national reconciliation, ethnic harmony and social stability.

The rule of law needs to be integrated into post-conflict institution-building efforts. The Security Council has done seminal work in that regard.

The tension between demands for justice and peace must be resolved in a balanced and sustainable manner. Threats of prosecution can act as a deterrent, but, at the same time, such threats must not fuel conflicts or complicate peacebuilding efforts. Other strategies, such as truth and reconciliation commissions, have been used effectively in many situations. The views of regional organizations in that regard should be given due weight.

Justice should not be reduced to punishment. It should recognize injury, establish truth, acknowledge victims' dignity and preserve their narrative in collective memory. From that perspective, restorative justice is preferable because it heals wounds and promotes societal reconciliation. Restorative justice is more effective when it is neither externally imposed nor culturally alien.

The principle of complementarity and the need to strengthen domestic judicial systems are important. The ICC is a court of last resort. The primacy of national jurisdiction has to be respected. Where national criminal justice systems are not robust, reforms of judicial systems, prisons and the security apparatus may be undertaken. The objective of ending impunity must be attained by strengthening local courts, enhancing the investigative capacity of national police, establishing forensic laboratories, supporting local prosecutors and improving conditions in prisons.

Pakistan is not a signatory to the Rome Statute. However, we acknowledge the rights and obligations of States parties to the Statute. We are of the view that no action of the Security Council should lead to the use of the ICC for political purposes. It is necessary to maintain the distinction between the Council and the ICC so as to ensure the objectivity, credibility, impartiality and independence of the Court.

Since its inception, only a few situations, mostly from one part of the world, have been referred to the ICC. The 2004 Relationship Agreement between the United Nations and the Court spells out the parameters of the relationship between the ICC and the United Nations. At this stage, more diligent scrutiny of empirical and accumulated evidence is required to assess the contribution of the ICC in relation to the work of the Security Council and the correlation between the Court and the Council.

Today's discussion will deepen our understanding of the role of the ICC and its relationship with the United Nations, especially with the Security Council. We support the role of the Security Council and the international judicial system in fostering a culture of the rule of law in order to promote international peace and security.

Mr. Moraes Cabral (Portugal) (*spoke in Spanish*): I wish to thank you, Mr. Minister, for presiding over this important debate.

(*spoke in English*)

I wish at the outset to thank the Secretary-General, President Sang-Hyun and Mr. Mochochoko for their statements, which were very useful indeed, as is the excellent concept note (S/2012/731, annex) prepared by the Mission of Guatemala.

For many years now, international justice has gone hand in hand with peace and security, with the Security

Council playing a pivotal role in building the legal framework necessary to bring to justice those most responsible for the gravest of international crimes, such as genocide, war crimes and crimes against humanity.

The Tribunals established by the Security Council — either directly, such as the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, or under its oversight, such as the Special Court for Sierra Leone — all have made important and useful contributions, through their practice and jurisprudence, to international criminal justice in general and the International Criminal Court (ICC) in particular.

As we watch those international tribunals discontinuing their activities as they gradually fulfil their mandates, we see the ICC becoming firmly rooted in their important legacy and rising as a permanent global Court to fight impunity for the most serious crimes.

We must remind ourselves that while the ICC is a treaty-based body, its model was clearly influenced by the Security Council, its recent history and its strategic approach to countering impunity and upholding accountability, as reflected in its resolutions. That is why this Security Council debate is fully justified, and we thank you, Mr. President, for your initiative.

The ICC was established as a result of open intergovernmental negotiations. That was also the case with the negotiation of the Statute amendments recently agreed in Kampala on the crime of aggression and article 8 of the Statute. There also, States parties and non-parties both had the opportunity to interact to achieve an outcome which, in our view, managed to successfully fill the gap left open in Rome on the set of crimes covered by the Statute. In Kampala, the Security Council was yet again called to play an important role in the exercise of the jurisdiction of the Court as concerns the crime of aggression.

With such an influential background and with the number of States parties growing — there are now 121, almost two thirds of the United Nations membership — the ICC can claim today to be an instrument of peace and justice representing a broad international convergence. Yet efforts must continue to bring the ICC closer to universality, which is an important goal that we all in the general membership have an interest in pursuing.

First and foremost, States parties have a role to that effect: by preserving the integrity of the Rome Statute, making sure that the ICC has the appropriate resources to work with, and ensuring that justice is served through a widely recognized independent judicial system, with highly qualified judges, prosecutors and staff.

But the Security Council also has a role to play, for instance, through the way in which it exercises its referral powers and how it follows up those decisions in terms of supporting the Court in its functions, in particular in matters related to cooperation, and when cooperation is failing, in full respect, naturally, for the independence of the Court.

Moreover, it is important that the general membership, on behalf of which the referral decision is taken by the Council, be called on to share the financial burden resulting therefrom, not leaving it exclusively to States parties, as if the decision affected only them. Here the Security Council and the General Assembly also have a role to play in ensuring, as is the case with other Council decisions, the distribution of the costs associated with a referral decision that is taken on behalf and in the interest of the general membership.

These matters have been discussed recently in various forums, prompted by the experience of recent Council referrals. Last year we organized, with the International Peace Institute and the Office for the Coordination of Humanitarian Affairs, a workshop where those issues were tackled and recommendations were made to have an indicative checklist to guide the Council's engagement with the ICC at the time of its consideration of referrals. Those were some of the issues identified, and we think that they merit further consideration by the Council. It is not only the credibility of the ICC that is at stake, but also the efficacy of a decision of the Council on a matter of peace and justice.

Finally, I would like to highlight an important aspect concerning the ICC as a privileged preventive tool in conflict situations under the Council's agenda. Indeed, at a time when the Council is increasingly focused on prevention, this is an important aspect that merits special attention.

Indeed, the potential application of the Rome Statute, as has been highlighted in several recent reports of the Secretary-General, can have an important deterrent effect, discouraging potential perpetrators of criminal acts or altering their behaviour because they fear they may be subject to investigation by the Court,

because they know that once they are caught in the net of justice, justice will proceed until it is done, either through the ICC or through national courts under the complementarity mechanisms of the Statute.

There is a huge potential for the ICC, as an instrument of prevention, as was mentioned earlier today by the representative of the Prosecutor, to complement Council action in its pursuance of peace. Successful prevention, in these particular situations, means lives effectively saved. That is the most important reason for the Council, States parties and the international community to join hands in strengthening the ICC and supporting it on its path to universality.

Portugal remains fully committed to the following objectives: strengthening the rule of law in the international sphere and fighting impunity and bringing all those responsible for the gravest international crimes to justice, independent of any political consideration. That is an indispensable path on the way to strengthening peace and security in the world.

Mr. Mehdiyev (Azerbaijan): At the outset, I would like to thank the Guatemalan presidency and you personally, Mr. Minister, for convening this important open debate on peace and justice and for submitting a concept note on the topic (S/2012/731, annex). We also thank Secretary-General Ban Ki-moon, President of the International Criminal Court (ICC) Judge Sang-Hyun Song and Mr. Phasiko Mochochoko of the Office of the Prosecutor of the ICC for their briefings.

It is obvious, but perhaps it should be reiterated, that there can be no peace without justice. Such an approach provides that no peace settlement can be reached that is inconsistent with international law, particularly where peremptory norms are concerned, such as the prohibition of aggression, genocide and racial discrimination and the obligation to respect the territorial integrity and sovereignty of States. Suffice it to say that the need to establish the truth concerning the egregious violation of international law, including the violation of human rights and international humanitarian law, the provision of effective and adequate reparation to victims and the need for institutional action to prevent the recurrence of such violations are all a necessary adjunct to true conflict resolution.

In recent years, international attention to the importance of the rule of law has significantly increased. International law has moved towards concretizing the need for justice, and the question of impunity has

rightly assumed great prominence. Important steps have been taken at the national and international levels on the prevention and punishment of wrongs, including the development of international jurisprudence. Today, it is incontrovertible that no official or political status cloaks the person concerned with immunity for the most serious crimes of concern to the international community.

Azerbaijan is not party to the Rome Statute of the International Criminal Court. Nevertheless, we proceed from the strong understanding that the protection and vindication of rights, as well as insistence on international accountability, contribute to the maintenance of international peace and security and that they are therefore the responsibility of the international community as a whole. We welcome the consensus decision to amend the Rome Statute to include a definition of the crime of aggression, as well as the condition for the Court's exercise of jurisdiction over that crime. The crime of aggression is the most serious and dangerous form of the illegal use of force between States, which is usually committed together with other crimes.

We believe that the competence of the International Criminal Court to investigate and prosecute those suspected of the crime of aggression will contribute to the efforts of the Security Council and the broader international community to ensure the accountability of States and individuals acting in breach of international law, undermining the sovereignty and territorial integrity of States and ignoring the Security Council resolutions that explicitly condemn such behaviour.

The activity and jurisprudence of ad hoc and mixed tribunals have helped to develop international law, particularly the law on war crimes and crimes against humanity, and, in certain well-known cases, have contributed to advancing the rule of law and to restoring peace. Their practice, as appropriate, can obviously benefit other national efforts to pursue post-conflict justice, especially in those situations where the prevailing culture of impunity for serious crimes represents a considerable obstacle to peace and reconciliation.

Indeed, serious challenges remain. Unfortunately, the violation of international humanitarian and human rights law in some situations of armed conflict, including those of a protracted nature, have not received due attention and a response at the international and

regional levels. More resolute and targeted measures are required to end impunity for such violations.

As the concept note emphasizes, there are strong indications that past wrongs left unpunished and unrecognized have played a key role in the eruption of new conflicts and the commission of new crimes. In addition, it should be taken into account that combating impunity is important not only for the purpose of prosecuting crimes and bringing those responsible to justice but also to ensure sustainable peace, truth and reconciliation. In any event, the conflict resolution initiatives considered by the Security Council and regional arrangements must ensure that peace and justice work together effectively.

In conclusion, I would like to reiterate that, in order to achieve the goal of the rule of law, we should uphold fundamental principles, adhere to the uniform application of international law and promote the democratization of international relations.

Mr. Mashabane (South Africa): I thank you and your delegation, Mr. President, for convening this debate on peace and justice and the roles of the International Criminal Court and the Security Council. I also thank you for your presence here today, which is an indication of the importance that your country attaches to the rule of law.

I thank Secretary-General Ban Ki-moon, President of the International Criminal Court (ICC) Judge Sang-Hyun Song and Mr. Phasiko Mochochoko, who was speaking on behalf of the ICC Prosecutor, for their briefings this morning.

This debate comes at a time when the United Nations is focusing on the rule of law. Less than a month ago, heads of State and Government gathered at the United Nations for the High-level Meeting on the Rule of Law at the National and International Levels, where they adopted a declaration on the matter (General Assembly Resolution 67/1). In January, during the South African presidency, the Security Council held an open debate on the rule of law in the maintenance of international peace and security (see S/PV.6705) and adopted a presidential statement (S/PRST/2012/1). This debate is therefore timely.

I also thank you, Mr. President, for the comprehensive concept note (S/2012/731, annex), which touches on key elements relating to the fight against impunity. The relationship between the International

Criminal Court and the Security Council needs to be on the agenda. Nonetheless, allow me first to make some observations on the general aspects of peace and justice touched upon in the concept note.

Peace and justice are inextricably connected. One without the other is, at best, short term and, at worst, futile. That empirical statement is normatively validated in both the Charter of the United Nations and the Rome Statute. Article 1, paragraph 1, of the Charter provides that one of the purposes of the United Nations is to take action in conformity with the principles of justice and international law in order to maintain international peace and security.

The relationship between peace and justice is reflected most starkly in article 16 of the Rome Statute, which provides for the Council to defer ICC investigations in the exercise of its primary mandate for the maintenance of international peace and security. Therefore, applying the provisions of the Charter, a deferral should only be granted if the Council determines that the deferral would contribute to the maintenance or restoration of peace in a given situation.

While there is the view that that is a situation of potential conflict between peace and justice, in our view it reflects a dynamic relationship. That is particularly true since, as observed in the concept note, article 16 does not deprive the Council of jurisdiction, nor does it grant any amnesty.

As a State party to the ICC, we recognize the important role that the Court plays in fighting impunity and in promoting the rule of law. That is the primary mandate of the ICC and we trust that, as we head towards the ICC's second decade of existence, the importance of that mandate will become clearer to those that are still on the outside looking in. We are of course also a Member of the United Nations, which has the primary mandate for the maintenance of international peace and security.

The United Nations and the ICC therefore represent opposite sides of the peace and justice coin. The dynamism of the relationship between peace and justice is reflected in the fact that each organization also has a role to play in the mandate of the other. No one could dispute that the search for peace is irrelevant to the ICC, just as it cannot be asserted that justice is not important to the United Nations.

Nonetheless, it is important to emphasize that the United Nations and the ICC, while they are closely

related and both are institutionally normative, are independent organizations with independent mandates. In that respect, it should be recalled that article 2 of the Relationship Agreement between the United Nations and the ICC provides that each organization must respect the other's mandate. Similarly, while, as the concept note explains, article 3 does provide for close cooperation between the two bodies, that cooperation is intended to ensure that their respective responsibilities are discharged effectively and in conformity with the relevant provisions of the Charter and the Statute.

I have emphasized these points to caution against any interpretation of either the peace-and-justice relationship or the cooperative relationship of the ICC and the United Nations as suggesting that one or other organization should sacrifice the pursuit of its own mandate to help achieve the mandate of the other.

The relationship between the Security Council and the ICC must be based on mutual respect for their respective mandates. The Council should therefore avoid undermining the ICC, just as the ICC should not undermine the Council. In that regard, I wish to raise four issues relating to Council practices that could have the effect of undermining the Court.

First, to date, the Security Council's referrals of situations to the ICC have not obliged all Member States, as is the norm with Chapter VII resolutions, to cooperate with the Court. Under resolutions 1593 (2005) and 1970 (2011), the Council obliges only the situation countries to cooperate. As we all know, the reason for this is to exempt some permanent members from their duty to cooperate. Secondly, both resolutions grant exemptions from ICC jurisdiction for nationals of some States for alleged ICC crimes in the situation countries. Thirdly, both resolutions preclude the possibility of United Nations funding for related ICC investigations and prosecutions, notwithstanding the fact that when the Council acts under Chapter VII, it does so on behalf of the United Nations. Finally, when there have been instances of non-cooperation, the Council has not followed up, behaving as if referral was an end in itself.

Collectively, this pattern raises a question about the seriousness with which the Council takes the ICC as a dispenser of justice. How can it appear to be supportive of the ICC if it is unwilling to subject its members to the duty to cooperate, to fund the activities of the Court that flow from referrals, or to act when there is non-cooperation? How can the Council begin to trust the Court and, consequently, expect others to trust it,

when it is unwilling to subject nationals of its member countries to the scrutiny of the ICC?

In a way, the relationship between the ICC and the Security Council embodies the relationship between peace and justice. If the Council behaves in a manner that undermines the ICC, it undermines this relationship, too. We hope this debate will contribute to an honest stocktaking within the Council of how to better manage that relationship.

Mr. Loulichki (Morocco) (*spoke in French*): I would first like to congratulate you, Mr. President, on holding a debate on a subject that is so central to the United Nations peace mission. I would also like to thank the Secretary-General for his introductory remarks and to pay tribute to his personal commitment to strengthening the rule of law in the service of the values of peace and justice. Finally, I welcome the participation of the President of the International Criminal Court (ICC) and of the representative of the Office of the ICC Prosecutor, whom we thank for their briefings.

Maintaining and strengthening peace, achieving sustainable development and promoting human rights are at the heart of the mission of the United Nations. In our common quest for a multilateral response to these fundamental and complex issues, we remain thoroughly convinced of their universality and indivisibility. Nevertheless, faced with the complexity of conflict and post-conflict situations, it is difficult if not delusional to attempt to offer societies affected by conflict prefabricated solutions to finding peace again and satisfying their desire for justice.

Strategies and measures aimed at redressing flagrant violations of human rights and international humanitarian law must take into account the specific context of every situation in order to prevent the recurrence of crises, ensure social cohesion and promote national reconciliation. Experience has shown that only holistic approaches that address realities and are owned by the populations concerned can ensure sustainable peace. Peace and stability are sustainably maintained if the structural causes of the conflict are investigated and then dealt with by, *inter alia*, the establishment of a credible, independent judicial system dedicated to the primacy of the law.

In that context, the Charter of the United Nations and other international legal standards must represent our universal point of reference in our efforts to achieve

our shared goal of peace and justice. The principles of sovereignty, equality and respect for the national unity and territorial integrity of States must continue to guide the activities of the United Nations, including the Security Council and all the institutional mechanisms we have created to help achieve our shared goal of peace and justice.

National judicial systems should continue to be the place of first resort for implementing the principle of responsibility. Primary responsibility for prosecuting the perpetrators of serious crimes affecting the international community devolves on the States, while the international community is there to help strengthen their national capacities to bring those perpetrators to trial. Nevertheless, when national systems are unable or unwilling to prosecute such international criminals, that is where the International Criminal Court comes in. According to its Statute, it is the Court's task to help the international community to fight impunity and to prosecute those responsible for genocide, war crimes, crimes against humanity and crimes of aggression, based on the principle of complementarity.

We cannot forget the valuable contribution of other mechanisms serving our shared cause of peace and justice, particularly the International Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda and the Special Court for Sierra Leone, which continue to play a significant role in strengthening peace and restoring the rule of law. Nor must we forget the contribution of the so-called hybrid mechanisms, which have made justice accessible to the peoples concerned, rehabilitated the legitimacy of State institutions, and strengthened national legal systems. Finally, we cannot ignore the considerable contribution that traditional judicial mechanisms have made to assuring the right to justice, truth and compensation, and to ensuring that crimes committed during a conflict will not go unpunished.

In that context, we commend the Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels (resolution 67/1), held on 24 September, which recognizes that justice is an indispensable factor of sustainable peace in countries in conflict or post-conflict situations. In that regard, we are pleased that transitional justice programmes have been widely integrated into United Nations work in the areas of the rule of law and of strategic planning for post-conflict situations.

In a demonstration of our commitment to the international community in combating impunity for serious crimes, article 23 of Morocco's new Constitution, adopted last year, states that genocide, crimes against humanity, war crimes and all serious and systematic violations of human rights are punishable by law. That commitment is part of the sweeping reforms my country has recently introduced to strengthen the rule of law and the independence of the judiciary, and we will pursue it at the international level by reinforcing our commitment to peacekeeping activities and to maintaining security under the aegis of the United Nations.

Mr. Wittig (Germany) (*spoke in Spanish*): I am very grateful to the presidency of Guatemala for having taken the initiative of convening this very important debate. We welcome your personal presence in the Council today, Mr. Minister.

(*spoke in English*)

I would also like to thank the Secretary-General, as well as the President of the International Criminal Court (ICC), Judge Sang-Hyung Song, and Mr. Mochochoko of the Office of the Prosecutor of the ICC for their briefings.

Germany aligns itself with the statement of the European Union to be delivered later during this debate.

Ten years after the entry into force of the Rome Statute, the Council and the ICC have developed an enduring relationship based on common objectives. Sustainable peace and security must solidly rest on justice, the rule of law and human rights. Justice itself requires accountability. Both are crucial aspects of a comprehensive approach to conflict prevention and conflict resolution. The Council's recognition of that linkage has materialized through its own creation of the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda. Given their largely overlapping constituency, it is only natural that the Council and the ICC should closely collaborate. While the Council exercises its responsibility on behalf of all 193 Members of the United Nations, 121 States have now acceded to the Rome Statute, bringing the ICC ever nearer to the goal of universality. Allow me therefore to congratulate Guatemala for having become the most recent State party to the Rome Statute.

The Rome Statute of the ICC has provided the Security Council with important options to directly

pursue the path of justice. It has expanded the range of action under the Council's mandate. In turn, the Council has repeatedly recognized the important contribution of the ICC and the other international Tribunals to the fight against impunity for the most serious crimes of concern to the international community. That was reiterated most recently when the German Minister for Foreign Affairs, in his capacity as President of the Security Council, addressed the General Assembly during the High-level Meeting on the Rule of Law at the National and International Levels (see A/67/PV.3), on 24 September. At the same time, we need to recognize the respective characteristics and differences of both organs, which define the essence, scope and limits of their mutual relationship. The Council is a political organ and the ICC is an independent court of justice. Therefore, despite their often complimentary functions, any notion of one organ serving the other is misguided.

Furthermore, not all Council members have acceded to the Rome Statute. Some Council members have at times voiced scepticism vis-à-vis the Court. They have even questioned its role regarding the interplay of peace and justice. At the same time, the Council has demonstrated unity on such issues when referring the situations in both Darfur and Libya to the ICC. On other occasions, the Council has been deeply divided and, as a consequence, remained inactive. Syria is a case in point where not only peace and security are at stake, but where victims of daily and well-documented crimes cry out for justice.

In the context of referrals, there are a number of steps that the Council, the United Nations as a whole and the individual Member States concerned can take in support of the ICC in exercising fully the responsibility that stems from interacting with the Court. First, with regard to referrals by the Security Council, by referring the Darfur and Libya situations to the ICC, the Council has proven its readiness to incorporate that option in its tool box of measures. The Council must retain its willingness to use that tool as a last resort, as an act of political responsibility by the Council. A referral does not prejudice the findings of the Court and its organs. At the same time, we look forward to the ratification of the Rome Statute by the greatest possible number of States so that referrals become more and more obsolete.

Secondly, with regard to cooperation, just a few months ago the former ICC Chief Prosecutor expressed in this Chamber his intense frustration at the fact that the four arrest warrants in the Darfur case had not been

implemented (see S/PV.6778). Germany fully shares that frustration, as the lack of cooperation seriously undermines the Court's credibility. But just as much as States must cooperate with the Court, the responsibility of the Security Council does not end with a decision to refer a situation to the Court; rather, the Council needs to carefully watch over all steps and measures taken by the Court and the Prosecutor in following up on the Council's requests to investigate a given situation.

With regard to notifications of non-cooperation, the Council should actively take note of such a breach of States' obligation to cooperate and clearly express its views on the matter. The cooperation of States also encompasses allowing the full application of the Rome Statute, including those provisions that relate to the privileges and immunities of ICC staff in exercise of their functions, as well as to the full application of the Relationship Agreement between the United Nations and the International Criminal Court.

Thirdly, with regard to financing, both as a State party to the Rome Statute and a member of the Security Council, we have the strong view that when the Council, acting on behalf of the international community, refers a situation to the ICC, ensuring the expenses on the ICC side should be borne by the United Nations rather than by the State parties. We do not concur with the position taken by some Council members in that regard that implies that the pursuit of justice should be a free ride. Accordingly, the Security Council should avoid any reference to the apportionment of costs in possible future referrals. Both the Assembly of States Parties to the Rome Statute of the International Criminal Court and the General Assembly have in respective resolutions recently opened the way for the ICC and the United Nations to jointly address that issue. We look forward to a solution that is a clear expression of international support for the practice of referrals.

Finally, I would like to thank again the presidency for having organized this important debate. Germany would support the holding of regular debates on this topic.

Mr. Churkin (Russian Federation) (*spoke in Russian*): We would like to thank Guatemala and its Minister for Foreign Affairs for having taking the initiative to convene this Council meeting on the promotion and strengthening of the rule of law in the maintenance of international peace and security, with a special focus on the interaction between the Security Council and the International Criminal Court (ICC)

in ending impunity. We would also like to thank the Secretary-General, the President of the ICC and the representative of the Office of the Prosecutor for their statements.

Owing to its role and mandate under the Charter, the Security Council has a special part to play in strengthening the legal foundation of international relations. The Council makes an extremely important contribution to developing the system of international relations based on the rule of international law. That means that the Council itself must serve as an example in strengthening the authority of international law. It is extremely important that decisions by the Council rely on the provisions of the Charter and take into account the rules of international humanitarian law and universally recognized human rights standards. The Council cannot afford to take hasty decisions that are not well founded or to manipulate Chapter VII of the Charter. It cannot allow irresponsible actions, dictated by short-sighted interests, to lead to the disintegration of the entire system of international law.

Since the establishment of the International Criminal Court in 2002, issues relating to its work have appeared on the Council's agenda. Today the Council considers those issues on a regular basis, recognizing the great potential of the Court in the area of international justice.

In discharging its mandate for the maintenance of international peace and security the Council must address the fight against impunity. It has acquired solid experience in that area, including its establishment of ad hoc tribunals and its participation in setting up other judicial organs having international elements. With the appearance of the Court, the Council now has a serious new tool with which to achieve that goal. In that sense, the Council and the Court must interact within the framework of their respective mandates and with mutual respect.

Given that interrelationship, when a situation is simultaneously before both the Council and the International Criminal Court, it is particularly important to achieve a harmonious combination of measures to restore peace and steps to ensure accountability for crimes, especially crimes committed during a conflict. It is no easy task to achieve a proper balance between the interests of achieving peace and punishing the guilty. While it is important that the Court independently conduct its functions in the criminal-legal sphere, its

activities must be carried out in the light of common efforts to settle crisis situations.

The accumulated experience shows that the Security Council's referral of a case to the International Criminal Court often gives rise to serious political and legal consequences that do not lead to any straightforward solution.

On the question of issuing warrants, there is a question of States' cooperation with the Court. In particular, resolutions 1593 (2005) and 1970 (2011) did not establish a legal framework for appropriate obligations of States not party to the Rome Statute. The resolutions left out the question of the immunity of high officials. Meanwhile, in the absence of a direct instruction, Security Council resolutions do not abrogate the norms of general international law on the immunity of heads of State in office.

A careful analysis is required on how to choose the time for the Council to refer a case to the Court. Moving either too fast or too slowly in this matter can lead to complex consequences with regard to prospects for finding a peaceful settlement.

It is clear that persons guilty of particularly serious crimes under international law must be brought before the Court. We believe that the primary role in carrying out that task, in the light of the Court's jurisdictional complementarity, is to be played by the national judiciary.

Under the Rome Statute, for a situation to be transferred to the International Criminal Court, and for an investigation to be suspended, a decision by the Council is required under Chapter VII of the Charter. In that context we note that it is inadmissible to dilute the fundamental criteria whereby the Council may exercise its Chapter VII powers only if there is a threat to the peace, breach of the peace, or act of aggression.

An important matter for the International Criminal Court is the question of including in its Statute the crime of aggression. The Kampala compromise is understood in various ways by States and experts. We have concerns about the Court exercising jurisdiction with regard to the crime of aggression in the absence of any definition of the crime of aggression by the Security Council.

The crime of aggression has a clearly pronounced political character. It is always committed not only by individuals, but by political leaders under the power of their Government. Accordingly, the crime of aggression

cannot occur without an act of aggression by the State. Under the Charter of the United Nations, which is the most universal treaty with primacy over all other international treaties, the power for determining the existence of an act of aggression belongs to the Security Council. Unfortunately, the Kampala compromise does not fully take into account the powers of the Council.

The International Criminal Court is young and needs broad support by States. It must live up to the trust placed in it. The extent to which it can work in a mature and balanced way and find its own place in the international system will determine whether it can become a truly universal organ of international criminal justice.

Mr. Menan (Togo) (*spoke in French*): First, I wish to congratulate you, Minister Caballeros, and your country, Guatemala, on having inscribed on the Council's agenda the important issue of peace and justice, with a particular accent on the role of the International Criminal Court (ICC).

I also thank the Secretary-General, the President of the International Criminal Court and the representative of the Office of the Prosecutor of the Court for their introductory remarks on the issue under consideration by the Council today.

Since the International Criminal Court was created 10 years ago, it and the Security Council have both been working in the framework of their respective statutes and mandates to achieve the objectives of international peace and security and promotion of the rule of law. In that regard, we welcome the Council's quick reaction via a press statement following the detention of some ICC officials in Libya (see SC/10674). Both institutions are working towards those objectives through the fight against impunity and promotion of a culture of accountability with respect to violations of humanitarian law and other international instruments when such violations threaten international peace and security.

The Togolese delegation believes that to eliminate impunity and promote accountability in cases of threats to international peace and security, relations between the Security Council and the ICC should not just follow the same principles of rule of law and equitable justice. Those relations should be seen in the application of the rule of complementarity decreed by the Rome

Statute, other relevant regional and international legal instruments and the general principles of law.

The debate on the role of the ICC and its relation with the Security Council in the area of promoting and strengthening the rule of law through the maintenance of international peace and security can be dealt with through various key points. Those points — which in fact are challenges if they are to be well understood and responded to — will enable the two institutions to better achieve the common objectives set for them.

First, there is the relationship between the ICC and the Security Council, which assumes a complementarity between the two institutions. It is true that in the name of the principle of the separation of powers, the International Criminal Court should, in principle, not have relations with the Security Council. It is also true that relations between the Security Council and the ICC are seen as a necessary evil and as an exception to the principle of the separation of powers. As a consequence, and like all exceptions, the rules governing relations between the two institutions must be applied in a restricted manner, so as to preserve the Court's independence.

The proof is that the drafters of the Rome Statute did not desire a very broad intervention by the Security Council in the mandate of the ICC. Nevertheless, a combined reading of articles 13 (b) and 16 of the Statute of the ICC confers on the Security Council a very important power that is not always in accord with international law.

There is therefore reason for concern, hence the need to avoid any extension of relations between the Court and the Council beyond the terms and the spirit of the Rome Statute. For that purpose, the agreement between the ICC and the United Nations can serve as the general framework for thinking to clarify the aspects that particularly concern the Security Council. In that regard, if it is acknowledged that the Security Council can follow up the affairs of the ICC beyond the ICC's periodic reports, it must be determined whether such follow-up will be limited only to those cases referred by the Council, or will also involve those cases with which the ICC is seized or becomes seized of, under its own initiative without the Council's intervention.

Furthermore, concerning the referral of cases to the ICC by the Security Council, it should be noted that, for reasons of their own, there are members of the Council, including Togo, that are not yet States parties to the

Rome Statute. The fact that, as things stand, the Security Council is far from being representative of States parties to the Rome Statute should cause the Council to declare itself not competent to apply articles 13 (b) and 16 of the Rome Statute. For the Security Council to take action under those articles is comparable to a regime's executive and political bodies applying laws to citizens while exempting themselves from those same laws.

Moreover, certain somewhat ambiguous situations strengthen that view. Even if most African situations currently before the ICC were referred by African States themselves, the only two situations referred by the Council to the ICC to date pertain to Africa. The question then arises as to why similar situations that are taking place elsewhere have not provoked the same interest on the part of the Security Council. That is why we believe that, in order to achieve impartiality, consistency and transparency, criteria will have to be established for the Council to use in identifying, among the situations that pose a threat to international peace and security, those that should be referred to the ICC, regardless of where they are taking place.

Another important issue to address is that of funding the ICC. In principle, the fact that the Security Council refers cases to the ICC without participating in financing such procedures runs counter to article 115 (b) of the Rome Statute, which raises the issue of using the financial resources of the United Nations, especially when it comes to referrals to the Court by the Council. Without even knowing the Council's criteria for referring situations to the ICC, we can imagine situations where the Council would decide to do so, whereas the United Nations itself would have created an ad hoc, hybrid, or international jurisdiction had the ICC not existed. Those jurisdictions would of course be financed either fully, as was the case with the International Criminal Tribunals for Rwanda and the Former Yugoslavia, or partially, as was the case with the Special Court for Sierra Leone and the Special Tribunal for Lebanon. In that regard, it would be enough to transfer to the ICC the funds that would have been allocated to such ad hoc jurisdictions.

Finally, when it comes to cooperation between the Security Council and the ICC, it is true that the role of the Security Council could be crucial, since the ICC, like any other international jurisdiction of its kind, cannot carry out its mandate without the active cooperation of States and the international community. However, if the Council wishes to intervene so as to promote

or to trigger such cooperation, relevant modalities must be established, with full respect not only for the relevant international legal instruments, but also for the principle according to which cooperation is at the discretion of States. In that regard, we should think about and decide under what circumstances and with what means States could be encouraged to cooperate, without being coerced, given the gravity of the situation and the obligation to fight impunity in the case of a threat to international peace and security.

The experience of ad hoc jurisdictions shows that Council resolutions have rarely obliged States to cooperate if they themselves do not decide to do so, and that dialogue and diplomacy have been more effective in achieving cooperation than Council resolutions. As proof of that, those jurisdictions have rarely reported States that do not cooperate to the Council, especially since the reporting or the threat of reporting could lead the State concerned to take a more extreme position.

In conclusion, it is possible to imagine mechanisms that would improve relations between the ICC and the Security Council. In doing so, we will have to avoid using informal mechanisms and arrangements that run the risk of bypassing transparency or control and open the way to arbitrariness. We believe that one such mechanism could be the establishment of a committee or working group on the ICC within the Security Council in order to ensure better monitoring of issues having to do with the implementation of the ICC mandate and its relations with the Council. Nevertheless, the mechanism to be established should ensure the equitable application of the Rome Statute in order to avoid negative remarks about the Court.

Mr. Araud (France) (*spoke in French*): I associate myself with the statement that will be made by the observer of the European Union.

I would like to thank Guatemala for having taken the initiative of organizing this debate.

We have heard, in the opening statements, how the International Criminal Court (ICC) has become an increasingly active player in the multilateral system. On 24 September, the General Assembly recognized, in its Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels (General Assembly resolution 67/1), the central role of the ICC for all States. That is of course related to the growing number of States parties to the Rome Statute — 121 to date. It is interesting

to see that the Court's work, which often targets very important persons, has not discouraged that trend towards universalization. The Court represents a guarantor of protection for all those who wish to definitively turn the page on atrocities. We welcome in that respect the announcements by Côte d'Ivoire and Haiti, who will soon be ratifying the Rome Statute. The signing of a partnership agreement between the International Organization of la Francophonie and the ICC will further enable such ratifications.

I would like to address the increasingly close and mature relations between the Security Council and the International Criminal Court. That is no surprise, as the ICC, a permanent court with a potentially global scope, is charged with intervening in times of conflict. In that respect, the agendas of the two bodies overlap, whether on Afghanistan, the Democratic Republic of the Congo, Libya or Côte d'Ivoire.

The facts speak for themselves. The Office of Prosecutor Fatou Bensouda is carrying out preliminary studies, with enormous potential for prevention, in eight countries and on four continents. It is also carrying out investigations in seven countries. Seven of the countries concerned have been discussed by the Council during the past two years.

Nobody expected, however, such a swift evolution in the relationship between the Council and the ICC. It is worth recalling how it happened. Resolution 1593 (2005), on Darfur, contained the first referral by the Council to the Court. That was followed by the memorandum of understanding giving the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo a mandate to support the arrest of persons sought by the ICC upon the request of the Government. Presidential statements increasingly referred to the ICC, as did thematic resolutions, including those on the protection of civilians, children and armed conflict, sexual violence, and the rule of law. There have been increasingly in-depth discussions between the Special Representative of the Secretary-General for Children and Armed Conflict and the ICC. Then there was resolution 1970 (2011), adopted on 26 February 2011 under Chapter VII of the Charter, referring the situation in Libya to the ICC. That was a historic moment — a text adopted unanimously by the 15 members of the Council, including those that had not acceded to the Rome Statute. Lastly, there have been increasing references to the ICC in geographical resolutions, including the self-referral by the Offices of

the Prosecutor in Côte d'Ivoire and Kenya and States' referrals, the most recent being resolution 2071 (2012), on Mali.

Besides those documents, which now represent in themselves a significant body of law, both the Council and its subsidiary organs have effectively dealt with requests for cooperation from the ICC.

I am thinking of the lifting of the travel ban on Thomas Lubanga and, more recently, Laurent Gbagbo by the sanctions committees so that they could be transferred to The Hague.

Of course, there are disagreements and gaps. The first and most obvious is the lack of referral to the Court of a situation like that in Syria. As France declared in March 2012 to the Human Rights Council, the extent and nature of the atrocities committed in Syria and the apparent lack of willingness of the Syrian authorities to prosecute the perpetrators of those crimes warrant a Council referral to the Prosecutor under article 13 (b) of the Statute. Silence has never served peace or justice. The inability of the Council to demonstrate its unity against mass crimes is, rather, an incitement to the Syrian authorities to pursue the path of violence.

I take this opportunity to recall that the French Minister for Foreign Affairs, Mr. Laurent Fabius, has called for the establishment of a code of conduct between the permanent members of the Council by which they would undertake collectively not to use the veto in situations where massive crimes are committed.

The second gap, which is more insidious, is the lack of monitoring by the Council of its own resolutions. It is not right that the Council, when it has made a referral to the Court, should fail to guarantee consistent political support for the Court and to react to instances of non-cooperation to which the Court draws our attention. It is not right for the Council to fail to apply the strict guidelines issued by the office of Ms. Bensouda on contacts with the accused.

Today's debate therefore offers an opportunity to move forward and think about concrete ways to make the interaction between the Council and the Court more efficient. How do we get more consistency and follow-up, in particular with respect to arrests and instances of non-cooperation? How do we get more dialogue?

First of all, we must contribute more to the preventive role of the Court. That is what the Secretary-General is doing when he recalls that justice must follow

its course in all situations that have been referred to the Court and when he asks his representatives not to meet persons indicted by the ICC. That is what his Special Representatives, Ms. Zerrougui and Ms. Bangura, do when they refer to prosecutions against the perpetrators of child recruitment and sexual violence. If we really want to deter criminals and implement prevention, we must be more of a sounding board for the activities of the International Criminal Court.

Secondly, in the context of the sanctions regime, we could consider not only a more automatic listing of individuals who are the subject of an arrest warrant by the International Criminal Court, but also an exemption clause of the travel ban in cases transfer of an accused to The Hague. Let us consider it.

Finally, in the area of cooperation, the subjects are varied and range from requests for the freezing of assets to issues related to the planning of arrests. The Prosecutor and the President of the Assembly of States Parties, Ambassador Intelmann, whose presence in the Chamber I welcome today, have repeatedly called our attention to those issues. The representative of South Africa underscored in his statement the importance of dealing with non-cooperation cases.

We could no doubt better organize our dialogue in the informal working group on the model of what we have done in the past with the ad hoc tribunals. We could consider a change in the mandate of the informal working group on the ad hoc tribunals to give it a broader mandate.

Mr. Parham (United Kingdom): I thank you, Sir, for giving us the opportunity to discuss such an important issue and for underlining its importance by presiding personally over today's debate. The timing is particularly relevant, given the tenth anniversary this year of the International Criminal Court (ICC) and the sad fact that the need to expand peace, justice and accountability is as urgent now as ever before. In that context, we are grateful to the Secretary-General, President Song and Mr. Mochochoko for their briefings and their calls to action.

The rule of law is critical to the preservation of the rights of individuals and the protection of the interests of all States. To borrow the words of the great humanist Erasmus, justice restrains bloodshed, punishes guilt, defends possessions and keeps people safe from oppression. That is why the Government of the United Kingdom is a strong supporter of international justice

in general and of the International Criminal Court in particular. We have learned from history that there cannot be lasting peace without justice, accountability and reconciliation. The Arab Spring has reminded us again that nations cannot maintain long-term stability and prosperity without human rights, political participation and economic freedom for their citizens.

The International Criminal Court has a central role to play in achieving an end to impunity. It is in that context that cooperation with the Court is so essential. We agree with President Song that, in making future referrals, the Council should underline clearly the need for Member States to cooperate fully with the Court.

The Security Council and the Court have a mutually reinforcing relationship. That is evidenced in the Council's resolutions and statements, which have regularly recognized the importance of the Court and the role that it plays in helping to deliver peace and reconciliation. Most obviously there are the resolutions referring the situations in Darfur and Libya to the Court and the briefings that flow from them. But there are also other resolutions that recognize the role of the ICC, and we would highlight resolutions 2053 (2012) on the Democratic Republic of the Congo, 2062 (2012) on Côte d'Ivoire, and 2071 (2012) on Mali as examples from this year, not to mention the various presidential and press statements that refer to the Court's role and work.

The Security Council, however, also needs to be ready to respond to issues that hinder the Court's activities, such as the failure by a State to implement the Court's outstanding arrest warrants, notwithstanding an obligation to do so under either the Rome Statute or a Chapter VII resolution. Those issues are not straightforward; they raise real challenges. But as we work to support the Court we must keep the victims in mind and recognize that in those instances the International Criminal Court may be the only path to justice.

Achieving the universality of the Rome Statute is the key to deepening and broadening the reach of the rule of law. We need all States that have not yet done so to become parties to the Rome Statute, and we need States parties to live up to their responsibilities. Until then, where impunity is unchecked and accountability denied, the Security Council must be prepared to live up to its responsibility and take action. The Council and the Court must continue to send a strong message

to those leaders who would commit atrocities that they will be held to account by the International Criminal Court, if not by their own national courts.

In Syria, the world is calling for a stop to the State-sponsored killing and torture machine that has already claimed thousands of victims and for an end to the vicious cycle of violence. So far, our efforts have not succeeded, but as our Foreign Secretary has made clear, we remain committed to ensuring that those responsible will be held accountable, and we will offer every support to those seeking to ensure that this happens. The path to peace and justice can be long and difficult, but progress is possible as long as we strengthen our commitment to the international rule of law.

The President (*spoke in Spanish*): I will now make a statement in my capacity as Minister for Foreign Affairs of the Republic of Guatemala.

It is very encouraging that the important subject we have selected has attracted such great interest and so many participants. Guatemala, as the latest State party to the Rome Statute of the International Criminal Court, suggested the topic as a contribution to the fight against impunity and to strengthening the rule of law, particularly in the work of the Security Council. By doing so, we are raising to the international level our own domestic struggle against impunity, an effort in which the United Nations and many donor countries — some represented in the Security Council — have contributed through the International Commission against Impunity in Guatemala. We have chosen a topic that seems to some to be philosophical. For our part, we find that it is very practical and relevant in the current state of world affairs.

The Rome Statute recognizes the essential link between peace and justice. Every day the Security Council faces situations that demand justice so that a lasting peace may prevail. The concept note (S/2012/731, annex) that we prepared for the Council attempts to identify links common to both bodies, along with challenges and proposals as to how to address them. Today is the first time the Security Council is addressing the relationship between both bodies in a comprehensive manner, even though they have been formally collaborating with each since 2005. We expect that the debate will initiate a dialogue that would draw the Council and the Court closer together, especially noting that 2012 is the tenth anniversary since the Rome Statute entered into force.

As a tool of preventive diplomacy, the Court is within the reach of the Security Council, and offers its members a powerful option that serves to restore the confidence of Member States in the ability of the United Nations to prevent and resolve conflicts in an efficient manner. It also contributes to reaffirming the primary responsibility of the Security Council in maintaining international peace and security, and it recommitments the Council once again to fulfilling that responsibility in cooperation with its partners.

We also believe that any debate on the use of tools available to the Security Council to fulfil its mandate should not be focus on whether States are or are not parties to the Rome Statute. In our view, the stability of the relationship between the Council and the Court should not depend on what countries take turns sitting at this table every two years. Rather, it needs to be founded upon the universal conviction that some crimes are so heinous that they must not go unpunished.

I would therefore underscore three principles that we believe are in the interests of the Security Council to promote: complementarity, cooperation and universality.

With regard to the first principle, we consider it necessary to support the primacy of national criminal jurisdictions in investigating or prosecuting perpetrators of crimes covered by the Rome Statute. It is not only for reasons of respect for State sovereignty, but also due to the practical constraints of limited resources. The sad reality is that the Court does not have the capacity to take up all the most serious crimes in the world, just as the Security Council cannot remain seized of all crises. It is a Court of last resort, and we should all work to ensure that the situations before it do not arise again.

Considering the second principle, it is essential to take the measures necessary to intensify cooperation at all levels in order to end impunity and ensure that those responsible for the worst atrocities are brought to justice. We consider cooperation critical if the Council is to at least follow through on its own decisions and adequately follow up on its referrals, especially where there is evident reluctance to cooperate. Such cooperation can also serve as a deterrent against the commission of future crimes.

With regard to the third principle, we believe that the Security Council should promote the universality of the Rome Statute. With each State that ratifies the instrument, there will be a diminished need to resort

to referrals, which in turn will also decrease the cases of breach of the Court's decisions. Universality would also serve to further other fundamental principles of the United Nations, including respect for the rule of law, human rights and accountability.

In the light of all this, we call on the entire membership to maximize the advantages the Court offers the Security Council as a tool for preventive diplomacy. We hope that this aspiration will extend beyond this debate. The Council can undoubtedly facilitate the Court's work, but its true effectiveness will depend for the most part on broad ratification, proper financing and independence in its functioning.

I now resume my capacity as President of the Security Council.

I wish to remind all speakers to limit their statements to no more than four minutes in order to enable the Council to carry out its work expeditiously. Delegations with lengthy statements are kindly requested to circulate the texts in writing and to deliver a condensed version when speaking in the Chamber.

I now give the floor to the Vice-Prime Minister and Minister for Foreign Affairs of the Grand Duchy of Luxembourg.

Mr. Asselborn (Luxembourg) (*spoke in French*): I wish to express my appreciation, Mr. President, for the Guatemalan initiative to organize this open debate on the subject of peace and justice, with special focus on the role of the International Criminal Court.

There can be no lasting peace without justice. That statement resonates throughout the world, particularly in post-conflict situations. The pursuit of justice and the quest for peace are not mutually exclusive; they complement each other.

The International Criminal Court plays a crucial role in fighting impunity for the most serious crimes of genocide, crimes against humanity, war crimes and, in future, the crime of aggression. I welcome the presentation made by the President of the International Criminal Court, Mr. Sang-Hyun Song, whom I had the honour of hosting in Luxembourg last week during a celebration of the tenth anniversary of the entry into force of the Rome Statute.

The Rome Statute offers important options to the Security Council, especially in situations in which it is confronted with mass atrocities. The functions of the Council and of the Court are complementary. Both aim to

protect populations at risk. The perpetration of crimes, as defined by the Rome Statute, threaten international peace and security. The prevention of such crimes and insistence on international accountability contribute to the maintenance of international peace and security. The deterrent effect of the very existence of the Court contributes to strengthening conflict prevention.

The cases of Darfur in 2005 and of Libya in 2011 clearly show that appropriate use by the Council of its authority to refer a situation to the International Criminal Court significantly enhances accountability for the most serious crimes. In future, once the Court is able to exercise jurisdiction with respect to the crime of aggression, the fight against impunity will have made further progress. My country has already included the crime of aggression in its criminal code. By early 2013, as we pledged on 27 September at the High-level Meeting on the Rule of Law at the National and International Levels, Luxembourg will have completed ratification of the amendments to the Rome Statute, including the crime of aggression, that were adopted in June 2010 at the Kampala Review Conference on the Rome Statute.

We were invited to make suggestions as to how to strengthen interaction between the Council and the International Criminal Court. I would like to mention two on the basis of the excellent concept note (S/2012/731, annex) made available to us.

First, the Council could better strengthen interaction with the Court if it is sufficiently well-informed about crimes being committed on the ground. In that respect, we welcome the increasingly frequent participation of the United Nations High Commissioner for Human Rights in the deliberations of the Council. We would encourage the Council to continue in that vein and to make full use of other sources of information, such as the reports of commissions of inquiry. The information that the Council has received from those sources on crimes committed in Syria in recent months is overwhelming. We firmly believe that those responsible for such terrifying violence, war crimes, egregious human rights violations and crimes against humanity committed in Syria will one day have to answer for them.

Secondly, it is important to stress the principle of complementarity. The Court is complementary to national criminal jurisdictions, which are the first line of defence against impunity. The Council can play a useful role in that context by ensuring that the

peacekeeping operations it mandates in post-conflict situations have adequate capacities or are able to carry out appropriate measures to effectively support the strengthening of the rule of law and national courts.

Luxembourg is committed to strengthening the principle of complementarity. That is why we started a partnership several years ago with the International Center for Transitional Justice and why we support the Justice Rapid Response initiative, which aims to train national justice professionals to investigate international crimes. It is in the same spirit that we support the strengthening of the justice sector as well as national reconciliation, in the framework of the Peacebuilding Commission.

The President (*spoke in Spanish*): I now give the floor to the Minister for Foreign Affairs of Finland.

Mr. Tuomioja (Finland): I have the honour to address the Council on behalf of the Nordic countries: Denmark, Iceland, Norway, Sweden and Finland. As staunch supporters of the International Criminal Court (ICC), we wish to congratulate you, Sir, and Guatemala for its recent ratification of the Rome Statute and to express our thanks for the convening of this debate. We also wish to thank the Secretary-General, President Song and Mr. Mochochoko of the Office of the Prosecutor for their contributions.

This is a fitting moment to take stock of the relationship between the ICC and the Security Council. We also wish to recognize the increasing number of ICC-related decisions and actions by the Security Council and encourage further interplay between the two institutions.

The ICC has come a long way since its establishment. The number of States parties to the Statute is currently 121 and the number of country situations has grown to seven. The number of judicial proceedings is also rapidly increasing. The Security Council has twice referred a situation to the Court. That confirms that the ICC has become the centrepiece of our international criminal justice efforts and a key actor in fighting impunity for the most serious crimes.

The resolve of the negotiators of the Rome Statute stemmed from the grim reality of the twentieth century, during which millions of children, women and men had been made the victims of unimaginable atrocities. In this century, too, we continue to face such crimes that, in the words of the Statute's preamble, deeply shock the conscience of humanity.

The victims of such crimes are entitled to justice. In situations where effective and genuine national trials are not possible for various reasons, the ICC plays a central role in ensuring accountability. The Rome Statute system, which includes the Trust Fund for Victims, also provides for an important restorative function. Fair administration of justice complemented by a comprehensive transitional justice strategy is an essential element in peace efforts. There will be no lasting peace without justice and due attention to victims.

The goals of preventing conflict and protecting populations who are at risk of mass atrocities unite the Security Council and the ICC. We signed onto the Rome Statute of the ICC — and I quote from the preamble —

“determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes ... [and] recognizing that such grave crimes threaten the peace, security and well-being of the world”.

The Security Council can, through a referral to the ICC, send a strong message that crime does not pay. Justice will be done. Security Council referrals show that, while the ICC is an independent judicial institution, it is not alone on the international scene. It needs to interact with other actors, and it needs support from them. The Statute contains important provisions on the relationship between the Court and the Security Council, ranging from the power of referring situations to the Court to that of temporarily deferring investigation or prosecution by the ICC and addressing instances of non-cooperation. In due course, the provisions on the crime of aggression will also become operational. We urge the Council to approach all of those provisions in a consistent manner and with due regard to their purpose and intent.

We also urge the Council to assist the Court in fulfilling its tasks in situations referred to it by the Council. The mandate of the Court is limited and does not extend to issues such as the execution of arrest warrants or taking action in cases of non-cooperation. Several arrest warrants have been outstanding for a number of years. Non-essential contacts with individuals subject to an arrest warrant issued by the Court should be avoided. Arrest warrants must be executed. In that context, we welcome the Council's action earlier this year, reminding the international community of the obligations stemming from the relevant Council resolutions.

Meeting the budget demands of the Court, including those arising from referred situations, is a real concern. Ensuring the necessary resources should be a shared responsibility for all United Nations Member States.

The Nordic countries have time and again repeated that impunity for the most serious international crimes must not be tolerated. We welcome that the world leaders came together recently to affirm the Declaration adopted at the General Assembly High-level Meeting on the Rule of Law at the national and international levels.

We are horrified by the continuous atrocities in Syria and urge the Council to take decisive steps to secure the accountability of those most responsible in that serious situation.

The High-level Meeting of the General Assembly also recognized the role of the ICC in a multilateral system that seeks to establish the rule of law. The ICC not only plays an important role in ensuring that those who have committed the gravest crimes cannot escape justice; the ICC and the Rome Statute system also have a role to play in the broader framework of fostering the rule of law and thus in building sustainable peace.

That is because the Rome Statute recognizes that States bear the primary responsibility to investigate and prosecute even the most serious international crimes. That is the essence of the principle of complementarity, which governs the Court's jurisdiction. The ICC only steps in when and if a State is unable or unwilling to exercise that responsibility. In order to assist States with their responsibility, other actors — including the Court, the United Nations and regional organizations — can also play an important role. Progress in that area of positive complementarity leads to the strengthening of the rule of law and in turn the prevention of new conflicts.

It is our firm conviction that only a just peace is a lasting peace.

The President (*spoke in Spanish*): I give the floor to the representative of Estonia.

Ms. Intelmann (Estonia): I am speaking in my capacity as President of the Assembly of States Parties to the Rome Statute and as Estonia's Ambassador-at-large.

I would like to join others in thanking Guatemala for having organized this timely and indeed long-awaited debate to look into the relationship between the

Security Council and the International Criminal Court (ICC). In making this statement, Estonia aligns itself with the statement that will be delivered on behalf of the European Union.

In recent years, issues of the rule of law and justice have gained prominence in the Council, becoming part of the mainstream of Council discussions. The fact that the Council has increasingly been able to refer to the Court's work in its resolutions and its presidential and press statements is indeed very welcome. It is evident that the Council has recognized the contribution of the Court to the fight against impunity and to international peace and security.

The Rome Statute system is first and foremost a consent-based arrangement. However, Article 13 (b) of the Statute enables the Council to refer situations to the Court, thereby extending the reach of the Court and making justice and accountability possible in States that are not parties to the Rome Statute.

That represents a great opportunity to bring to justice perpetrators of crimes that would otherwise go unpunished. Resolutions 1593 (2005) and 1970 (2011) took crucial steps in the fight against impunity by referring the situations in Darfur and Libya to the ICC. While recognizing those achievements, we must also be conscious of the challenges faced by the Court with respect to the two referrals, which are a subject of continuous discussion among States parties.

Allow me to share a few thoughts, bearing in mind the possibility of future referrals by the Council. The Security Council receives periodic reports from the Prosecutor concerning both of the situations it has referred to the ICC. Given their complicated nature, the Court, and indeed the Council itself, would greatly benefit from a more efficient and vigorous follow-up of the situations, including using the Council's sanctions mechanisms.

In particular, the Council could consider imposing sanctions against individuals who are sought by the Court, especially when there are already appropriate sanctions committees in place. There should also be coordination between the sanctions committees and the ICC to ensure that frozen assets belonging to individuals can be claimed by the Court to finance the defence of individuals before the Court and, ultimately, reparations to victims.

The Court would greatly benefit from a follow-up by the Council with regard to instances of

non-cooperation. On that subject, I would like to mention that the Assembly of States Parties has in place its own mechanisms to follow up on instances of non-cooperation by States parties.

The referral of situations to the Court by the Security Council creates a financial burden that has been borne entirely by States parties to the Rome Statute. That situation was not foreseen by the Rome Statute, which assumes, in its article 115, that the United Nations will reimburse the Court for the costs incurred as the result of referrals. The ICC is a relatively small court with a relatively limited budget. Budget discussions among States parties at the end of last year, shortly after the adoption of resolution 1970 (2011), showed that the present practice may not be sustainable.

Effective cooperation and assistance by all States and international and regional organizations is essential for the ICC, and it was also essential for the tribunals previously set up by the Security Council. In future referrals, the Security Council might consider imposing an obligation to cooperate with the Court on all States Members of the United Nations.

After 10 years of existence, the Court and the States parties are engaged in a lessons-learned exercise to make the ICC and the whole of the Rome Statute system more efficient. That includes a consistent focus on cooperation with the ICC, including the execution of the more than 10 outstanding arrest warrants. After two referrals, it would be useful for the Security Council to establish a working group or a Rome Statute caucus to examine the practice of past referrals and the effectiveness of investigations stemming from them, and to look into the modalities for future referrals. Given the common goal of the Council and the Rome Statute, namely, the fight against criminal atrocities, I am sure that both the Council and the ICC would benefit from such an exercise.

The States parties stand for the integrity of the Statute. They also advocate for universal ratification of the Rome Statute, since that is the ultimate way to ensure accountability for international crimes. I call on all States that have not yet done so to ratify or accede to the Statute.

Before concluding, allow me to offer some thoughts about victims. Victims are indeed at the very centre of the Rome Statute system. Successful investigations and prosecutions assist in restoring dignity to victims by acknowledging their suffering and help to create

a historical record that protects against those who will seek to deny that atrocities occurred. Let us not fail those who have suffered as the result of criminal atrocities and look to us for help.

The President (*spoke in Spanish*): I now give the floor to the representative of Peru.

Mr. Román-Morey (Peru) (*spoke in Spanish*): It is a great honour to speak in the Council under the presidency of Guatemala.

Let me express the thanks due to Guatemala for its important initiative in focusing the Council's attention for the first time on the relationship between the Council and the International Criminal Court (ICC). The timing is apt, because this year we celebrate the tenth anniversary of the Rome Statute's entry into force. We agree that enough time has now passed for us to take stock and identify pending issues with regard to that relationship, so as to further strengthen the fight against impunity for what the international community agrees are the most serious crimes. The concept note from the presidency (S/2012/731, annex) is very useful in its systematic and detailed focus on the issue.

My delegation believes that four topics need especially to be discussed. First are referrals by the Security Council to the Court under article 13 (b) of the Rome Statute. The conditions for such a referral are set out in the Statute and refer to a situation in which it appears that one or more crimes falling under the Court's jurisdiction have been committed, assuming that the Court's jurisdiction is complementary to national criminal jurisdictions. We therefore need to stress that the referral of a situation to the Court does not relieve the Council of its responsibility for the maintenance of international peace and security. On the contrary, the Court merely contributes to the maintenance of international peace and security in matters within its jurisdiction.

Political considerations must not sway the Council from referring a situation to the Court. That sends a message that impunity is permitted — a message that we would certainly reject if we honoured and adhered to the principles that gave birth to the Organization. That brings us to the matter of reforming the working methods of the Security Council, such that referrals are not perceived as being selective or restricting the Court's proceedings or jurisdiction.

Our second point is about the relationship of the Security Council with the Court and with the States Members of the United Nations. Clearly, a referral by the Council to the Prosecutor does not end the Council's responsibility in the matter. Rather, it is the Council's responsibility to follow up on the actions that the Prosecutor and judges take within their jurisdictions. That means that the Council should always be ready to take concrete actions, if needed by the Court in order to carry out its work in the field, such as in protecting victims and witnesses, discovering and freezing assets, capturing suspects and executing arrest warrants. Such measures are covered under Chapter VII of the Charter of the United Nations, with which all States are required to comply.

Our third point has to do with the financing of referrals made by the Security Council. Until now, the Council's resolutions have not provided for funding on the part of the United Nations. In other words, investigations and judgments of matters referred to the Court by the Council are not provided with sufficient economic means to sustain them. We should further recall that budgetary questions fall properly under the jurisdiction of the General Assembly, and not the Security Council. Moreover, the concept of referrals to the system created by the Rome Statute derives from Chapter VII of the Charter. The Organization is no stranger to that concept, and indeed the United Nations no longer needs to establish ad hoc tribunals. Now is a very appropriate time for us to act on what is provided for in the Statute with regard to relations between the United Nations and the Court.

Our fourth point is about the amendments to the Rome Statute adopted in Kampala, especially on the matter of the crime of aggression and the jurisdiction of the Court in referrals by the Council, given that the conditions set out in article 15 (3) of the Statute have been met.

We must do our utmost to ensure that the amendments are ratified by as many States as possible so as to try to prevent any impunity for crimes falling within the jurisdiction of the Court.

Lastly, allow me to reiterate my country's gratitude to you, Mr. President, for having convened this open debate in the Council. Opportunities such as this will undoubtedly lead to a better understanding of the relationship between peace and security — two indissociable concepts that are not competing but

complementary. We therefore believe that we must consider follow-up mechanisms that are comprehensive, in terms of both substance and participation, with respect to what has been discussed at this meeting.

The President (*spoke in Spanish*): There are a number of speakers remaining on my list. I intend, with the consent of the Council, to suspend the meeting until 3 p.m.

The meeting was suspended at 1 p.m.