



# Security Council

Sixty-seventh year

*Provisional***6849**<sup>th</sup> meeting

Wednesday, 17 October 2012, 3 p.m.

New York

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<i>President:</i>	Mr. Rosenthal . . . . .	(Guatemala)
<i>Members:</i>	Azerbaijan . . . . .	Mr. Sharifov
	China . . . . .	Ms. Guo Xiaomei
	Colombia . . . . .	Mr. Quintana
	France . . . . .	Mrs. Le Fraper du Hellen
	Germany . . . . .	Mr. Eick
	India . . . . .	Mr. Kumar
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	Pakistan . . . . .	Mr. Ahmad
	Portugal . . . . .	Mr. Vaz Patto
	Russian Federation . . . . .	Mr. Panin
	South Africa . . . . .	Mr. Tladi
	Togo . . . . .	Mr. Afande
	United Kingdom of Great Britain and Northern Ireland . . . .	Mr. McKell
	United States of America . . . . .	Mr. Simonoff

## 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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*The meeting resumed at 3.10 p.m.*

**The President** (*spoke in Spanish*): Under rule 37 of the Council's provisional rules of procedure, I invite the representative of Timor-Leste to participate in this meeting.

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.

I now give the floor to the representative of Liechtenstein.

**Mr. Wenaweser** (Liechtenstein): It is a great honour for me to address the Council also on behalf of the Permanent Representative of Jordan, His Excellency Prince Zeid Ra'ad Zeid Al-Hussein, and His Excellency Bruno Stagno Ugarte of Costa Rica. As the three former Presidents of the Assembly of States Parties to the Rome Statute of the International Criminal Court (ICC), we have closely followed the relationship between the Council and the Court in the past 10 years. A generic debate on that relationship is very timely, and we are grateful to you, Mr. President, for initiating it. Like others, we would suggest that the Council discuss the issue at regular intervals.

In the early days of the Court, the debates in the Council revolved largely around the use of article 16 of the Rome Statute, which gives the Council the competence to defer investigations and prosecutions for a period of 12 months. Those debates led to some of the most controversial and questionable resolutions to come out of the Council, namely, resolutions 1422 (2002) and 1487 (2003), which we consider contrary to both the Charter of the United Nations and the Rome Statute. Today, thankfully, that topic belongs to the past, although it would serve the Council's interest to be better prepared for possible deferral requests in the future.

At the heart of today's political debate is the other competence that the Rome Statute gives to the Council, namely, its authority to refer situations to the Court. The Council has used that competence only twice in 10 years — in 2005, on the situation in Darfur and, in 2011, on Libya. However, that is still more frequently than most of us expected when the Statute entered into force. Supporters of the Court have generally welcomed such referrals as breakthroughs for international criminal justice. The 2005 decision on Darfur (see resolution 1593 (2005)) was made in an overall climate that was

difficult for the Court. The Libya referral (see resolution 1970 (2011)) seemed to illustrate the preparedness of the Council to act swiftly to ensure accountability for the most serious crimes and was even by a unanimous vote.

Nevertheless, we believe that today, our assessment must be more calibrated. The referral decisions of the Council have proven to be a mixed blessing for the Court and for international criminal justice as they were driven by political convenience as much as by the desire to establish justice. The referral decisions were significant in the history of international criminal justice but they came at a high cost for the Court. The Court was accused of politicization, of bias against a particular region and of manipulation by powerful countries that chose to stay outside the Rome Statute, and it found itself with very limited support from its constituency. It is therefore paying the price for the decisions of the Council, and sometimes the lack thereof.

Obviously, that is not in the interest of the Court, and more broadly justice, or in the interest of the Security Council. The Council should therefore take several steps to move towards a more symbiotic relationship with the ICC as an independent judicial institution. In order to genuinely advance accountability, several aspects of the Council's practice would have to be addressed in future referrals. Most important, the Council must back up its referral decisions with measures that enforce cooperation. A referred State's obligation to cooperate with the Court is based solely on the Council's powers under Chapter VII. A lack of cooperation by that State is therefore a violation of its obligation under Article 25 of the Charter of the United Nations.

Nevertheless, the Council has been notoriously silent, or even tacitly acquiescent, in most instances where the Court required its backing. The Council does not even have a mechanism to deal with notifications of non-cooperation by the Court — a serious shortcoming that should be urgently addressed. Our colleague from Togo and other speakers mentioned that earlier in today's debate. An important challenge in that respect may face the Council once the Court has decided on the admissibility challenge put forward by the Libyan Government.

Closely linked to that is the question of the financing of judicial Court activity triggered by a referral decision. In referring situations to the ICC, the Council effectively uses the Court as an alternative to

the establishment of an ad hoc tribunal, which is a very cost-efficient alternative, as a comparison with other tribunals illustrates. Both the Relationship Agreement between the Court and the United Nations and the Rome Statute clearly indicate that the costs arising from such referrals should therefore be borne by the United Nations budget, subject to a decision by the General Assembly. We do not think that the independence of ad hoc tribunals has been undermined by the fact that they were financed by the United Nations membership.

Finally, the Council should delete the language exempting certain individuals from the Court's jurisdiction in future referral decisions. Such formulations corroborate the suspicion of selectivity in creating accountability and reflect an ideology that we hope the Council has overcome. Also, they may not withstand the judicial scrutiny of the Court, should the occasion arise.

In addition to subjecting the language that it has used in the past to a fundamental review, the Council should also do what is necessary to address some of the problems that have arisen in connection with referrals. In particular, the rules concerning complementarity should be clearly reflected in such decisions, in accordance with article 19 of the Rome Statute. The Statute always gives primacy to the jurisdiction exercised by the national authorities but it also provides for very clear rules governing such jurisdiction. Finally, referral resolutions should stipulate that the obligation of the referred State to cooperate is of course based on the Rome Statute in its entirety.

In that way, the Council could prevent discussions suggesting that referred States would have to respect only parts of the Rome Statute. Indeed, it is the integrity of the Statute that makes the Court deliver justice in an independent and credible manner, and thereby contributes a fundamental building block to sustainable peace.

The Council has made important advances in the area of accountability. It should now make full use of the potential offered through the Rome Statute system. A genuine commitment to accountability also entails immunity agreements contrary to international law not being endorsed by the Council.

Ultimately, the political challenge for the Security Council will often be to square the principles of peace and justice. That is often not an easy task, and we clearly need more and more inclusive discussions on that

challenge. However, we find it difficult to understand why the Council is unable to make a simple and straightforward statement on accountability concerning the situation in Syria. There is ample evidence that crimes against humanity and other international crimes are being committed by the parties to the conflict. The Council should therefore call for accountability in that situation and ultimately, if there is genuine political will, refer the situation to the Court.

The activation of the Court's jurisdiction over the crime of aggression, hopefully in 2017, will create an additional connection between the Council and the International Criminal Court. The Kampala consensus preserves the competence of the Council under Article 39 of the Charter. At the same time, the Court's exercise of jurisdiction is not ultimately contingent upon the Council's decisions. Therefore, both legally and politically, the Kampala consensus strikes a careful balance.

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

**Mr. Fernandes** (Brazil) (*spoke in Spanish*): I thank the Guatemalan delegation for having organized today's debate. We extend a warm welcome to the country's Minister for Foreign Affairs, whose presence demonstrates the importance of the subject and the commitment of his country to the causes of peace and justice.

(*spoke in English*)

I thank the Secretary-General for his informative briefing. I also thank the President of the International Criminal Court (ICC) and the representative of the Office of the Prosecutor for their insightful remarks. As the quest for peace and justice is a key common purpose of the United Nations and the ICC, it is most relevant that we discuss ways to improve the relationship between them.

As a founder of the International Criminal Court, Brazil remains steadfast in its commitment to the Rome Statute, which we consider to be a remarkable achievement in the development of international law. In Brazil's view, sustainable peace and justice go hand in hand and are mutually supportive. For any society that has suffered the trauma of violent crimes, such as those typified in the Rome Statute, coming to terms with the past and addressing grievances is a very important aspect of true reconciliation.

From that point of view, justice is not only a matter of redressing evil done to individuals, but also a powerful tool to help rebuild societies free from resentment and the ensuing instability. In discharging its primary responsibility for the maintenance of international peace and security, the Security Council must take those elements into consideration.

At the same time, a referral to the ICC by the Security Council should not be the default procedure whenever violations occur. The political circumstances of any given conflict and the likely consequences of resorting to the ICC must be carefully considered by the Council. As we know, balancing the imperative of justice and the search for peace is a challenge that the Council may occasionally be called upon to address.

In order to succeed in that critical effort, the Council should consider that peace and justice will be best served if the involvement of the ICC is very well timed. A referral of a given case to the Court must not negatively impact the political calculations of those on whom war and peace may depend. In some cases, the risk of jeopardizing a peaceful solution that may spare many innocent lives is real and should be duly taken into consideration.

We must also bear in mind that the most immediate and effective means for saving lives is the cessation of all violence. In that regard, we believe that the prerogative of invoking article 13 (b) of the Rome Statute should be used with caution, after other tools have proven to be inadequate or insufficient and after thorough consideration has been given to its repercussions for the prospects of peace.

The power of the Security Council to refer and defer cases is unique. Given the fact that the decision to refer a case to the ICC is based on political considerations, the Council must avoid all risk of double standards and selectivity. When the Council decides to pursue the referral track, it must do so rigorously and consistently, following a principled and coherent approach, so as to promote, first and foremost, peace and international criminal accountability. Brazil believes that the observance by the Council of certain conditions when referring a case may help to ensure that both peace and justice will be strengthened.

First, we reiterate Brazil's commitment to the integrity of the Rome Statute and our firm opposition to any form of exemption from the jurisdiction of the ICC of certain categories of individuals. Initiatives

aimed at establishing such exemptions are not helpful to advancing justice and accountability and do not contribute to strengthening the role of the Court. The notion of selective criminal accountability is foreign to the values we uphold when advocating for the cause of justice.

Working towards universalization of the Rome Statute also stands as a priority. Nearly two-thirds of the United Nations membership has ratified the treaty. We need to ensure further progress towards universal adherence, which will advance the legitimacy and credibility of the Court, thereby allowing it to better serve, as it must, the purpose of promoting peace and justice.

Another crucial aspect regarding referrals of situations to the International Criminal Court is the financial burden of such decisions. Referrals of situations may entail formidable expenses to an institution that already works on a tight budget. If we want to be coherent in the support for the Court expressed by so many speakers today, we must give practical meaning to the provision of the Rome Statute according to which expenses of the Court may be provided by funds of the United Nations, subject to the approval of the General Assembly.

Finally, the issue of cooperation deserves further consideration. In that context, the Security Council is particularly important in following up on its own referrals, making sure that the Court receives enough political support, and fostering the use of relevant regional and subregional organizations to help the fight impunity.

In its 10 years of existence, the International Criminal Court has already demonstrated that it is an essential institution for furthering justice. As such, it can also make an invaluable contribution to peace. In that endeavour, the ICC will continue to count on Brazil's support.

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

**Mr. McLay** (New Zealand): I thank you, Mr. President, for convening today's debate. We know how important the issues we are discussing today are for your country. Guatemala has faced the awful realities of conflict and the difficult challenges of post-conflict accountability, and you personally, have been at the forefront of the fight against impunity.

The Security Council is a political body, charged with maintaining international peace and security. But one of the most important lessons of the past two decades is that peace can neither be achieved in the absence of justice, nor sustained in the absence of justice. When communities, even whole countries, are subjected to horrendous war crimes against innocent civilians, any subsequent peace will be very difficult to sustain unless the perpetrators of those crimes are held accountable.

So it is not sufficient for the Security Council to focus only on politically pragmatic solutions; it must also systematically apply the justice and accountability mechanisms that are now available to it. The International Criminal Court (ICC) is now an important feature of that justice and accountability landscape, so it is very timely indeed to address the relationship between the Council and the International Criminal Court.

During its most recent term on the Security Council, New Zealand played important roles in the establishment of the first two international criminal tribunals, the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda, and we have been a very strong supporter of the ICC since the idea of a permanent tribunal was first mooted. Sadly, we know that, in the future, there will still be cases where the Security Council must again use its power under the Rome Statute to refer a case to the ICC. But we also firmly believe and hold the view that when the Council does make a referral to the ICC, it should do so with a clear commitment to follow through and ensure the Court receives the necessary cooperation. We endorse the statement of the representative of Liechtenstein on behalf of the former presidents of the Assembly of States Parties in that regard.

Moreover, New Zealand believes that, where the Council has referred a matter to the ICC, it should also, and as a matter of course, establish a working group to monitor and follow up on that case.

The Council already has a Working Group on the Tribunals, and it needs to devote at least as much effort to the cases it has initiated with the ICC. Moreover, it should not encroach on the prerogative of the General Assembly to decide on funding for those situations that have been referred to the ICC. The Council already has a working group on the tribunals, and it should devote at least as much effort to those cases it has initiated

with the ICC. Moreover, it should not encroach on the prerogative of the General Assembly to decide on funding for those situations that have been referred to the Court, and it should never refer a case to the ICC simply because of political outrage at an intractable problem, or because it has no other political strategy to deal with it. We join with Brazil and others that say that the Council should not use its powers under the Rome Statute to shield nationals of States that are not party to the Statute.

The credibility of both the Security Council and the ICC will be damaged if referrals are perceived to be politicized or justice is seen to be discriminatory. In that regard, I reiterate New Zealand's call at last month's general debate (see A/67/PV.18) for the permanent members of the Council to agree voluntarily not to use their veto in situations involving mass atrocities.

As I said earlier, New Zealand is a very strong supporter of the Court. However, the ICC is a court of last resort, with jurisdiction only where national courts are unwilling or unable to investigate and prosecute. There will be times when the ICC is not the best mechanism to be applied in a particular case. It is equally clear that even where it is the appropriate mechanism, the timing of its application needs to be very carefully judged, particularly in situations of ongoing conflict.

It seems to us that, in the future, the Council will have to think very seriously about a number of questions, especially in situations where violent conflict is continuing. Issues for possible consideration include whether an ICC referral might be an incentive or a disincentive for a peace settlement, including whether there is a risk of prolonging the violence, resulting in yet more victims; and also the likelihood that any indictees can actually be brought to trial. In particular, it should consider the willingness of the Council itself to ensure that indictees are brought to trial. The extent of cross-regional support for the decision might also be a factor.

Finally, New Zealand also emphasizes that experience in criminal justice jurisdiction, whether national or international, shows that credible restorative justice processes can also help to promote accountability and build sustainable peace in societies emerging from conflict. We have seen this in your own country, Mr. President, with the International Commission against Impunity in Guatemala, in South Africa and Sierra Leone with their truth and reconciliation commissions, in Rwanda with the gacaca

tribunals, and, in places such as Timor-Leste, with even more nuanced individual solutions. The Security Council should respect the fact that conventional judicial mechanisms are not the only credible ways of establishing accountability in post-conflict situations and, where appropriate, it should encourage the use of such mechanisms.

For New Zealand, the establishment of the International Criminal Court was a most welcome development, and it has our strong, ongoing support. In this, the Court's tenth year, it is now clear that it is a hugely valuable resource for the international community in its efforts to deter, to ensure accountability for the most serious crimes, and to end impunity. But, as with all such resources, we must be careful in its application and wise in its use.

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

**Ms. King** (Australia): Australia would like to thank Guatemala for holding this important debate and welcomes Guatemala's accession to the Rome Statute of the International Criminal Court (ICC). We thank the Secretary-General, President Song and Mr. Mochochoko for their briefings today.

Australia has been a steadfast supporter of the Court since its inception. Ensuring accountability for international crimes is a key component of peacebuilding, as well as conflict prevention. Our experience in providing support to States transitioning from peacekeeping to peacebuilding has taught us that peace and justice are both fundamental to establishing sustainable security in all societies.

Australia recognizes that there will be different views on the appropriate time to press for accountability, particularly when delicate political settlements to end conflicts are being negotiated. Nonetheless, combating impunity and acknowledging the wrongs of the past are important factors in establishing lasting peace based on respect for human rights and the rule of law — a point underscored in the World Development Report 2011 of the World Bank.

On that basis, Australia views the ICC as a vital partner for the Security Council. We welcome the evolving relationship between the Court and the Council, particularly the increased attention being given to the ICC in the Council's country-specific and thematic resolutions and statements. Effective coordination between the ICC and the Council is essential in order to

send a clear message that those who commit the most serious international crimes will be held to account. It is important to ensure that the separate efforts of the two bodies, which have, after all, very different mandates, have a multiplying effect and that they are able to work together to end impunity for these serious crimes. As President Song said this morning, there is a clear rationale for the Court's relationship with the Council.

For our part, Australia wishes to offer some suggestions for how the Court and Council can work most effectively together. It is critical for the Security Council to speak with one voice on the question of accountability. As the independent international commission of inquiry has shown, there is a body of alarming evidence to suggest that the most serious international crimes have been committed in Syria. In such circumstances, the Council, as the ultimate guardian of international peace and security, has an important role to play, and we urge it to consider referring the situation in Syria to the International Criminal Court. This would send an important message that there will be no impunity for those who commit the most serious crimes of international concern and that the Syrian people can expect justice for the crimes committed.

Of course, ICC referrals must not be used as a substitute for the Council's exercise of its broader responsibilities. We also urge the Council to be vigilant about referring situations such as that of Syria to the Court without taking complementary action, where appropriate. Indeed, once the Security Council has referred a situation to the ICC, it is crucial for it to give the work of the Court ongoing support. Such support will maximize the prospects of States that cooperate with the ICC and ensure that the objective of the referral is achieved. Such support is most necessary when the Court notifies the Council that a State has failed to meet its obligations to cooperate with the Court. Looking forward, it is also important that any future referrals by the Council be precisely drafted so as to clearly identify States' cooperation obligations.

Of course, cooperation between the Council and the Court should not be limited to situations where the Council has referred a situation to the ICC. In many scenarios, situations before the Court also feature on the Council's agenda and cooperation in such situations is equally important. The decision of the Security Council Committee established pursuant to

resolution 1572 (2004) concerning Côte d'Ivoire to lift the travel ban on Laurent Gbagbo to enable his travel to The Hague is an example of the importance of such cooperation. More generally, sanctions committees covering situations that are before the ICC should give close consideration to the question of whether indictees should also be designated for sanctions purposes.

Finally, Australia recognizes that cooperation is a two-way street. For that reason, we encourage the Court to continue to engage with the Council through regular briefings and the provision of detailed advice on the support it looks to the Council to provide. We welcome this debate as a very important contribution to further exploring how the ICC and the Council can better collaborate to achieve the goal of ending impunity for the most serious crimes, and, in the process, contribute to the maintenance of international peace and security. We should continue this discussion.

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

**Mr. Kodama** (Japan): Japan firmly believes that the rule of law is the basic concept in the maintenance of international peace and security, and that it plays a pivotal role in preventing international disputes and finding peaceful solutions to them. In that regard, Japan continues to attach great importance to the role of the international courts, such as the International Court of Justice, the International Tribunal for the Law of the Sea and the International Criminal Court (ICC).

The ICC in particular plays an important role in the maintenance of international peace and security through punishing and preventing the most serious crimes of concern to the international community as a whole. Since this year marks the tenth anniversary of the entry into force of the Rome Statute, it is very timely that we should review the achievements of the ICC over the past 10 years and consider the future development of the ICC. On this very day, my Government is hosting a symposium in Tokyo on the ICC, with the participation of the ICC Prosecutor, Ms. Fatou Bensouda, in commemoration of its tenth anniversary.

Japan notes with appreciation that the ICC has started its full activities, exemplified in its very first judgment in the case of Thomas Lubanga in March this year. On the other hand, one of the major challenges the ICC has faced in its 10-year history is how to bring justice to war crimes and crimes against humanity committed in the territory of a non-State party to the

Rome Statute. In that regard, the ICC experienced the cases of Darfur and Libya, whose situations were referred to the ICC by Security Council resolutions. Japan appreciates those decisions of the Security Council and its positive collaboration with the ICC.

Acts of violence and oppression against innocent civilians and other serious violations of human rights in Syria must not be tolerated in the context of the rule of law. It is totally with reason that there is a call for a referral of the situation in Syria to the ICC. However, the essential problem lies in the regrettable fact that the Security Council is divided in how to deal with the grave problem of the current situation in Syria and has failed to respond in an effective manner. Japan strongly calls upon the members of the Council to recognize their duty as members of an organ with the primary responsibility of maintaining international peace and security.

The ICC is a body working to bring justice based on the rule of law. But decisions made by the Security Council, whose primary role is to maintain international peace and security, are rather political in essence. Therefore, if the Council refers a situation to the ICC, it is not for purely legal reasons. Still, Japan believes that the Security Council should give due consideration to handing down justice not only from the viewpoint of contributing to a peaceful solution on a particular situation, but also as a deterrent of future crimes.

It is also important that the Security Council continue to be duly engaged even after its referral of a situation to the ICC in order to make the referral truly effective. If a lack of cooperation on the participation of the Security Council results in a failure to indict a perpetrator of serious crimes, it undermines the credibility of both the Council and the ICC. I would like to point out that once the Security Council makes a decision of referral, its members bear the moral responsibility to cooperate with the ICC, even if they are non-States parties to the Rome Statute. Japan expects that the dialogue and cooperation will deepen between the Security Council and the ICC in general and on the financial implications of referral as well.

Japan, as the leading contributor to the ICC, expects that the Court will further contribute to the maintenance of international peace and security as a more effective, efficient and universal organ. Japan therefore calls upon all States parties to fully cooperate with the ICC in accordance with their obligation under the Rome Statute, and also encourages all non-States

parties to accede to the ICC expeditiously. Japan is also determined to continue its efforts to promote accession to the ICC by other countries, in particular those in the Asia-Pacific region, by extending assistance for the development of legal systems and human resources.

**The President** (*spoke in Spanish*): I now give the floor to His Excellency Mr. Thomas Mayr-Harting, Head of the Delegation of the European Union to the United Nations.

**Mr. Mayr-Harting**: I have the honour speak on behalf of the European Union and its member States. The acceding country Croatia; the candidate countries the former Yugoslav Republic of Macedonia, Montenegro, Iceland and Serbia; the countries of the Stabilization and Association Process and potential candidates Albania and Bosnia and Herzegovina; as well as Ukraine, the Republic of Moldova and Georgia, align themselves with this statement.

I would like to thank Guatemala for this timely initiative. On 3 April, the High Representative for Foreign Affairs and Security Policy of the European Union, Catherine Ashton, welcomed Guatemala's accession to the Rome Statute. At present, 121 States are parties to the Rome Statute. We welcome the announcement made by Haiti during the recent High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels concerning its intention to ratify it, and we praise the decision of the Government of Côte d'Ivoire to commit to ratifying the same treaty following the reform of its constitutional framework.

The European Union and its member States are firm supporters of the International Criminal Court (ICC), which is critical to the international community in bringing to justice those individuals bearing criminal responsibility for genocide, war crimes and crimes against humanity when national courts are unwilling or unable to prosecute them. The year 2012 represents a milestone for the ICC as the Court delivered its first verdict against Thomas Lubanga, who was convicted for recruiting and using child soldiers.

In that context, the European Union and its member States underline the important relationship that already exists between the ICC and the Security Council. Resolution 67/1 of the General Assembly recalled the role of the ICC in a multilateral system that seeks to end impunity and establish the rule of law. The Security Council acknowledged the role of the ICC, in particular

in its resolutions 2053 (2012) on the Democratic Republic of Congo, 2062 (2012) on Côte d'Ivoire, and 2071 (2012) on Mali. It also did so with regard to sexual violence in conflict in resolution 1960 (2010) and concerning children and armed conflict in resolution 2068 (2012).

The Security Council is also connected to the ICC by its ability to take action, as foreseen in the Rome Statute. We commend the Security Council for its decisiveness in referring the situations in Darfur and Libya to the ICC. Follow-up by the Security Council on the situations which it has referred, inter alia with regard to instances of non-cooperation, remains important, as does sufficient support for the actions of the Court.

Efforts to combat impunity will not be effective unless there is greater collective and individual cooperation with the ICC. Without State cooperation, the ICC cannot fulfil its mandate. That also applies to all States parties to the Rome Statute when the Security Council has referred a situation to the Court in accordance with Chapter VII of the Charter of the United Nations.

Out of 23 individuals against whom the ICC currently has open cases, 12 are currently absconding from justice and some have done so for several years. That stifles the ICC's capacity to deliver justice. Non-cooperation with the Court in regard to the execution of arrest warrants constitutes a violation of international obligations; in certain circumstances related to referrals by the Security Council, it also constitutes a breach of obligations under the Charter. The European Union and its member States underline the importance of consistent action to encourage full cooperation of States with the ICC, including the prompt execution of arrest warrants.

In March, High Representative Catherine Ashton firmly recalled, in the context of resolution 1593 (2005) referring the situation in Darfur to the ICC, the importance of all States Members of the United Nations abiding by and implementing the resolutions adopted by the Security Council under Chapter VII of the Charter. She recalled the fundamental principle contained in the Rome Statute of the ICC, namely, that the most serious crimes of concern to the international community as a whole must not go unpunished. Putting an end to impunity for the perpetrators of those crimes contributes to the prevention of such crimes.



Justice and peace, indeed, constitute intertwined goals, and it is both logical and necessary that the ICC and the Security Council collaborate for that purpose. We have already seen the deterrent effect of the Court's action and are convinced of its positive contribution to the maintenance of international peace and security. We call upon all States to cooperate with the Court.

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

**Mr. Momen** (Bangladesh): I thank Guatemala for scheduling this very important open debate on peace and justice, with a special focus on the role of the International Criminal Court, under the agenda item entitled "The promotion and strengthening of the rule of law in the maintenance of international peace and security".

Allow me to express our appreciation to Foreign Minister Harold Caballeros of Guatemala for his participation in today's debate. I also thank the Secretary-General, the President of the International Criminal Court (ICC) and the representative of the Office of the Prosecutor of the ICC for their comprehensive briefings this morning.

Peace and justice are complementary to each other. Peace processes that take justice into account are more sustainable and lasting than those that do not. In negotiating peace processes, taking into account the views of victims is critical. Victims want peace at the beginning, and once peace is obtained they demand justice. If justice is not achieved, that leaves room for a relapse into conflict.

The establishment of the International Criminal Court, a permanent court to help fight impunity for the crimes of highest concern to the international community, is considered a milestone. The ICC was given jurisdiction over genocide, war crimes, crimes against humanity and aggression. As of September 2012, 121 States had ratified the Rome Statute, which came into force on 1 July 2002, and were subject to its jurisdiction. Bangladesh is a State party to the ICC. We have signed and ratified the Statute.

The Rome Statute granted the Security Council unique powers to refer situations and place them under the jurisdiction of the Court, even in a case concerning a non-State party. Article 13 (b) of the Statute allows the ICC to exercise its jurisdiction regarding the aforementioned crimes when the Council, acting under

Chapter VII of the Charter, refers a situation to the Prosecutor of the Court. Article 16 allows the Council, in exceptional circumstances, to adopt a resolution under Chapter VII to defer an ICC investigation or prosecution for a renewable period of 12 months.

The Security Council is a political organ of the United Nations. On 26 February 2011, the Council unanimously adopted resolution 1970 (2011), referring the situation in Libya to the ICC, imposing an arms embargo and targeted sanctions and establishing a sanctions committee. Resolution 1970 (2011) also invited the Prosecutor to address the Council within two months, and every six months thereafter, on actions taken pursuant to the resolution.

However, it also appears that the Council could not actively cooperate with the ICC on that referral. In fact, the few instances of Council cooperation with the ICC are related to situations that were initiated by the situation countries themselves, or by the Prosecutor, under articles 13 (a), 14, 13 (c) and 15 of the Statute, respectively, and therefore independently of the Council.

Another worrying factor is that the pertinent resolutions contain provisions that are contrary to the integrity of the Rome Statute. In its referral on Libya, the Council excluded nationals of non-State parties to the ICC from the jurisdiction of the Court, or a domestic court in another country, even for crimes committed within Libya. The resolutions also recused the United Nations from any financial obligation regarding the referrals, notwithstanding article 115 (b) of the Rome Statute, which provides for United Nations funding for Council referrals, subject to approval by the General Assembly.

It is our understanding that those elements are undermining the rule of law by infringing on the work of the ICC and are undermining the perception of the Court as an independent legal body free of political considerations. Therefore we hope that the ICC will be better equipped to function as a tool of preventive diplomacy so that it is able to assist the Security Council in carrying out its mandate to uphold the rule of law objectively and fairly, maintain peace and security and combat impunity, while ensuring accountability.

We call on all concerned to translate their commitment into action, in particular, through executing arrest warrants and helping to reinforce the fair rule of law across the globe, but also by building

new institutions, social and economic, to achieve, in the long term, justice in a broader sense.

Victims want justice, no matter how much time has elapsed since the perpetration of mass atrocities. Here I would like to draw the Council's attention to the case of Bangladesh. In order to bring the perpetrators to justice, we set up, in March 2010, an international crimes tribunal to try and punish any individual or group of individuals, or any member of any armed, defence or auxiliary forces, who committed crimes against humanity, or genocide, war crimes, premeditated murder, rape, arson, ethnic cleansing or looting of people's property and assets, during the 1971 war of liberation.

Our ongoing effort is a natural expression of our intention to end the culture of impunity for crimes against humanity. That emanates from our firm belief that peace and justice are mutually reinforcing and that full enjoyment of peace is not possible without a mechanism to ensure sound justice.

We have been taking every step to ensure that our national process conforms to international standards. That is why leading judicial personnel of the tribunal that we set up in Bangladesh have visited The Hague. They followed the work of the Court, including evidence collection, the process of assessing veracity, investigations of gender crimes and other war crimes. We hope that our tribunal will be exemplary in ending impunity while also cementing national reconciliation.

The trials are important not only for us, but their outcome is equally important to the international community and to our future generations. The process will send a strong message to others who would commit such crimes anywhere in the world. It will show that it is possible for a national system of a developing country to bring to justice those who are responsible for war crimes, even long after the event.

Let me conclude by saying that Bangladesh is a responsible, peace-loving nation and the Government is a strong proponent of democracy, rule of law, human rights and secularism. Bangladesh also expresses its unequivocal commitment to the International Criminal Court and the evolving system of international criminal justice.

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

**Ms. Leskovar** (Slovenia): At the outset let me thank you, Sir, for organizing this timely and useful open debate on peace and justice, with a special focus on the role of the International Criminal Court.

Slovenia is a strong supporter of the International Criminal Court (ICC). We were actively involved in the promotion of the Court and its work from Rome to Kampala and will remain committed in the future.

Slovenia fully aligns itself with the statement delivered earlier by the representative of the European Union. In addition, we would like to make three more remarks.

First, let me encourage the Security Council to hold open debates with a special focus on the ICC on a regular basis. We welcome the first judgment of the ICC and the first decision on reparations for victims. It is a clear sign that we have in place an effective judicial institution that can deliver impartial justice to victims and show perpetrators of the most serious crimes of international concern that there will be no impunity for their atrocities. Having achieved this, the ICC is an important element in maintaining international peace and justice. We encourage all States to become parties to the ICC in order to achieve its universality.

Secondly, I would like to place special emphasis on the Court's preventive function. It is now well established that grave crimes represent a threat to international peace and security. An effective international criminal justice system plays a key role in prevention. It is the prevention of grave atrocities that is our final goal. Individuals should be aware that there is no impunity for committing such crimes, and everything possible should be done in order to prevent them in the future.

Slovenia also sees this aspect of shared responsibility in the light of a concept known as the responsibility to protect. Our leaders have committed all States to the responsibility to protect, and we must now enhance our dialogue to find a viable strategy for implementing it in practice.

Let me draw the Council's attention to the initiative that my Prime Minister presented during the general debate, entitled "A world free from genocide" (see A/67/PV.12). Member States, regional and subregional organizations and the United Nations system should form an intergovernmental forum of like-minded countries that would provide the concept of the

responsibility to protect with new tools to enforce prevention and develop a mechanism to enable a more rapid and effective response to acts of genocide and mass atrocities. Slovenia stands ready to start a dialogue on this.

Lastly, let me express our deep concern about the escalation of the situation in Syria. In our view, the Security Council should refer the situation to the ICC, at least for the sake of the innocent victims. The atrocities committed should be investigated and their perpetrators brought to justice. At the same time, we also encourage the Security Council to follow up on the cases already referred and to address the questions of States' cooperation with the Court and their compliance with Council resolutions with all due attention.

It is our obligation to make the world of the twenty-first century free from genocide and mass atrocities.

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

**Mr. Estreme** (Argentina) (*spoke in Spanish*): Argentina thanks the Guatemalan presidency of the Security Council for convening this open debate on peace and justice, with a focus on the International Criminal Court (ICC). We welcome the presence of President Song and Mr. Mochochoko of the Office of the Prosecutor.

The Rome Statute of the International Criminal Court is one of the most notable achievements of multilateral diplomacy, and its contribution to the fight against impunity for crimes against humanity, genocide and war crimes is obvious. Little more than a decade after the adoption of the Rome Statute, the Court is today a fully functioning permanent tribunal of international justice.

We now must recognize that, with time and experience, the international community has left the peace-versus-justice paradigm to embrace "peace and justice". According to this paradigm, justice and peace are conceived not as competing but as complementary objectives.

The Assembly of States Parties to the Rome Statute recognized the need to address this issue, and did so for the first time in the international criminal justice stocktaking exercise at the 2010 Review Conference of the Rome Statute, held in Kampala. The exercise, for which Argentina was a joint focal point along with Switzerland and the Democratic Republic of the Congo,

arrived at important conclusions that we should take into account. The need for peace and justice to be complementary objectives is confirmed by reality.

I would also like to refer to other important aspects of the relationship between the International Criminal Court and the Security Council. The Rome Statute provides for a role for the Security Council and a cooperative relationship with the United Nations. This cooperative relationship is also referred to in the Relationship Agreement between the Organization and the Court. Over the years since the entry into force of the Statute, that relationship has become more fluid, and the Council itself has included the need for accountability for Rome Statute crimes and for the Court itself into its consideration of concrete situations.

There are a few elements of that relationship that my delegation would like to point out. Cooperation between the United Nations and the Court is crucial, and must always respect the judicial independence of the Court. The question of non-essential contacts with persons for whom the Court has issued arrest warrants must be part of the cooperation provided for in the Relationship Agreement.

But the element that is the most crucial for the ability of the International Criminal Court to fulfil its mandate is cooperation by States. A permanent international justice system requires the cooperation of all United Nations Member States. All Member States must cooperate with the Court, whether or not they are parties to the Rome Statute. That obligation is particularly relevant with regard to arrest warrants.

The obligation to cooperate with the Court leads to the question of the follow-up that we believe the Council must engage in with respect to referrals. The fact is that when the Council makes a referral, it receives reports of the Prosecutor of the Court with a certain frequency, as well as information from the Court in cases of non-cooperation. We are of the view that the Council cannot merely take note of such reports without ensuring follow-up of — for example — the status of cooperation with the Court or situations on the ground, such as in the case of the detention of Court staff some months ago. Argentina believes that the establishment of a follow-up mechanism for situations referred to the Court would contribute greatly to responsible collaboration between the Council and the ICC.

I should like to highlight two issues of concern for my delegation. One is the clause that, in the two referrals already made, seeks to exempt nationals of non-State parties to the Rome Statute from the jurisdiction of the Court for acts or omissions arising from operations established or authorized by the Security Council or related to them. This could lead to the Court being constrained in its ability to enforce justice in an independent and impartial manner through the action of a political organ that seeks to create an exception not provided for in the Rome Statute. It could also affect the credibility of the Security Council and of the ICC itself.

The other concern, which also applies to both referrals, is an issue that could have a serious impact on the Court. In establishing that the expenses derived from both referrals will be defrayed not by the United Nations but by the States parties to the Rome Statute, the Council is ignoring the provisions of article 115 (b) of the Rome Statute and article 13 of the Relationship Agreement. With the increasing number of cases, the pressure on the resources available to the Court has intensified. In practical terms, failure to address the financing of referrals could threaten the long-term viability of the Court.

Argentina wishes to emphasize in this respect that the fight against impunity is an objective of States parties to the Rome Statute and of the United Nations. This debate is evidence of that. But that objective must also be accompanied by the commitment to providing the Court the necessary means to fulfil its mandate. It is not a commitment alien to the Council or the United Nations; it has been addressed with regard to the ad hoc tribunals established by the Security Council. We must now address it with regard to the ICC.

The entry into force and activation of the jurisdiction of the Court over the crime of aggression will add a new element to the relationship between the Council and the ICC. In the evolution of the international community towards a permanent international criminal justice system based on the Court, the crime of aggression is nothing but the corollary of the prohibition of the threat or the use of force, as provided for in Article 2.4. of the Charter of the United Nations. Argentina is actively engaged in the internal process for the ratification of all the Kampala amendments.

In conclusion, this year marks the tenth anniversary since the Rome Statute entered into force. Argentina reiterates once again that the Court represents one

of the most notable contributions to the fight against impunity. I would like to remind the Council of the words from the Kampala Declaration,

“recognizing the noble mission and the role of the International Criminal Court in a multilateral system that aims to end impunity, establish the rule of law, promote and encourage respect for human rights and achieve sustainable peace, in accordance with international law and the purposes and principles of the Charter of the United Nations”.

Argentina reiterates its firm commitment to the International Criminal Court.

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

**Ms. Flores** (Honduras) (*spoke in Spanish*): We are honoured as Central Americans to participate in this open debate under Guatemala’s presidency of the Security Council on the promotion and strengthening of the rule of law in the maintenance of international peace and security. We value the full content of the report of the Secretary-General (A/66/749), which provides updates and makes important recommendations on the matter, and in particular proposes mechanisms to strengthen the rule of law at the national and international levels through actions aimed at building a fair, secure and peaceful world.

We recall the commitment we made as States through 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), by adopting a series of measures that will allow us to complement our agendas with a view to ensuring the prevalence of the law, justice, full respect for human rights, and the fight against impunity.

To the extent that all nations within the system, big or small, can secure our ability to guarantee our citizens their individual and collective rights and freedoms in an inclusive context of tolerance and participation, in conformity with international law, we will undoubtedly help sustain the delicate responsibility of the Security Council in seeking to provide global peace and security.

Since their inception, in addition to the regional instances for conflict resolution, Honduras has accepted the jurisdictions of the International Court of Justice and the International Criminal Court. We urge other nations that have yet not done so to adhere to these bodies without reservation. Those responsible for

the most serious violations must be held accountable so as to achieve peace and reconciliation in societies that have suffered internal conflicts.

We appreciate the difficult task of the Security Council in promoting and implementing the rule of law in domestic jurisdictions in the context of the powers and limitations of the Charter of the United Nations and of the Organization itself. It is from that legal framework that the Council derives its authority to require Member States to abide by its decisions, especially in situations in which international peace and security are threatened. Judicial bodies have played a fundamental role in strengthening the rule of law and in the promotion of stability and reconciliation within societies.

Thus, the relationship between the Council and other United Nations derived bodies should always be constructive and transparent. There must be an ongoing dialogue that allows resort to preventive diplomacy and to specific and effective mechanisms that serve as deterrents where hostility and violence prevail. Similarly, those judicial bodies should work with Member States in providing exhaustive information regarding the reports and ongoing investigations in order to ensure accuracy and objectivity. In specific cases, domestic capacities should be strengthened, but judicial power should be applied with respect for domestic laws and national sovereignty. In that way, we value the role played by the ICC in the fight against impunity and in strengthening the rule of law within individual nations.

Our region has also been severely shaken by vicious and painful armed conflicts. Thanks to the mercy of God, we have survived the tempests, and from the tears of loss and bloodshed we began to build towards redemption. Amidst tribulation, the light of national and international law has illuminated our democratic path. While unrest divided us in the past, today we are making efforts to work together, united in peace and harmony, as sister nations should. We bring the power of the whole to face our shared problems and to overcome the challenges of our common destinies.

We must not forget, however, that institutional stability and progress in the rule of law depend on national capabilities to generate collective well-being and on the capacity of Governments to respond to the people's needs, especially the huge needs of the most vulnerable sectors. They must lighten the heavy

burden of accumulated social problems, simultaneously increase freedoms while narrowing the distance between inequalities, and ensure that the marginalized masses who are caught in the tangled web of poverty have access to the benefits of participation and inclusion in the face of the overwhelming tide of globalization.

In our efforts to build the genuine rule of law, democracy must construct creative bridges to development so that we can make our way towards progress so that those who are alienated can turn their disappointment into hope.

**The President** (*spoke in Spanish*): I now call on the representative of Lithuania.

**Mrs. Kazragienė** (Lithuania): I wish to congratulate Guatemala on assuming the presidency of the Security Council this month, and to commend you, Mr. President, for convening this critical debate.

Lithuania aligns itself with the statement delivered by the observer of the European Union.

Peace and justice, as linked in the Rome Statute, need to be regarded as mutually reinforcing imperatives. That link, however, is often tested by practical and moral dilemmas. Being a State party to the Rome Statute and the Agreement on the Privileges and Immunities of the International Criminal Court (ICC), Lithuania strongly supports the ICC in its struggle as an important arbiter of international justice. Its existence reflects our common determination to end impunity and to uphold accountability for the most serious international crimes. It also bolsters international humanitarian law and human rights law by playing an important part in their interpretation and enforcement. It could and should be an effective tool of preventive diplomacy that the Security Council may refer to it in carrying out its mandate.

The complementary nature of the ICC reminds us that the best investment in the long run is the building of national capacities to investigate and prosecute international crimes.

The Security Council has its own unique role in the system of international justice, derived from both the Rome Statute and the Charter of the United Nations. When it considers that there is a threat to peace and security, the Security Council may refer a situation to the ICC, thus extending the reach of its jurisdiction to States that are not parties to the Rome Statute.

The powers vested in the Security Council present both an opportunity and a great responsibility. If exercised improperly, they could undermine the credibility not only of the ICC and the whole system of international justice, but primarily the Security Council itself. We believe that the Security Council would benefit from consistent and coherent practices that meet the expectations of certainty, predictability and impartiality in its response to alleged international crimes.

The Security Council has thus far referred two situations to the ICC. Many strongly believe that the Security Council should also refer other ongoing situations. Developing a coherent approach to referrals would facilitate the process of determining when a referral should be made. Lithuania believes that once a referral has been made, the Security Council should exercise responsibility for making that referral effective. This relates in particular to adequate arrangements for financing. The Security Council might also consider extending an obligation of cooperation to all Member States, and providing specific steps that concerned States should take.

The ICC relies primarily on the assistance from concerned States and requires international support when domestic support is insufficient or lacking. The Security Council should extend a greater degree of cooperation with the ICC also through diplomatic and political support, the coordination of its sanctions regime and the strengthening of peacekeeping mandates.

The ICC and the Security Council in their interaction have gained a great deal of experience. One example of a common area of concern with potential for further cooperation and action is resolution 1325 (2000) and subsequent resolutions on women, peace and security. A more formal framework for interaction, regular exchanges of views or open briefings between the two bodies may constitute a welcome and useful practice.

This year marks a milestone for the International Criminal Court. It has delivered its first verdict. With greater support by all, the ICC will make a difference in our quest for sustainable peace.

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

**Mr. Cancela** (Uruguay) (*spoke in Spanish*): At the outset, I wish to thank the delegation of Guatemala, in

its capacity as President of the Security Council, and the Security Council itself as the body charged with the maintenance of international peace and security, for the holding of this timely debate.

Uruguay believes that peace and justice are two fully complementary and mutually reinforcing values. It is short-sighted to believe that one of these values may be overlooked in order to achieve the other, and although such a view has occasionally prevailed in the actions of individuals, countries or international organizations, we cannot conceive that, in the twenty-first century, there can be talk of peace without justice, and of both without referring necessarily to the full attainment of the rule of law at both the national and international levels.

This year marks the tenth anniversary of the entry into force of the Statute of the International Criminal Court and thus the beginning of the end of international impunity. In this regard, we welcome the issuance this year of the first judgment with conviction of the Court in the case of *The Prosecutor* — whom we identify with the international community — *vs. Thomas Lubanga Dyilo*, and the completion of the second trial, which is currently in the stage of sentencing.

We call for the prompt ratification of the amendments to the Statute of the Court made at the Kampala Review Conference. We are pleased to report that my Administration has sent a message to the national Parliament requesting its approval. We hope that this approval will be given as soon as possible.

We welcome the fact that, from 1998 to date, the membership of the Court has grown to 121 States parties. This number corresponds roughly to two-thirds of the total membership of the United Nations. We hope that this trend will continue so that the membership of both organizations may be identical in the near future.

We understand that, in accordance with the provisions of article 115 (b) of the Rome Statute, the United Nations should help finance the expenses incurred as a result of referrals by the Security Council in order to share the financial burden of international criminal justice. On this basis, we expect that, in accordance with article 13 of the Relationship Agreement between the two bodies, arrangements shall be made to implement such cooperation.

With respect to the cases referred by the Security Council, we are pleased that this practice is now in effect, and advocate its continued use. We continue to

view with concern the impact of armed conflict and the increase in the number of those responsible for serious violations of human rights. We believe that consistent action should be taken by the Security Council in situations or cases of a similar nature.

For this reason, we agree with a group of countries that deem it appropriate to request the Security Council to refer the case of human rights violations in Syria to the Court for the prosecution of its perpetrators, whoever they may be or represent. In this context, we recall the proposal of the group of five small nations, in its draft resolution before the General Assembly, recommending that the permanent members of the Security Council consider refraining from using the veto to block Council action aimed at preventing or ending genocide, war crimes and crimes against humanity.

For the reasons stated, and to conclude, we believe that cooperation should be deepened between the Security Council and the Court, involving the establishment of a follow-up mechanism for cases referred by the Council to the Court.

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

**Mr. Ntwaagae** (Botswana): My delegation sincerely commends your great country, Mr. President, for the initiative you have taken to put this key agenda item on the table for debate during your presidency of the Council. The fact that the Council agenda is featuring a debate on this subject shortly after your country became the 121st State party to the Rome Statute should itself speak volumes about your country's commitment to supporting the International Criminal Court (ICC) and to contributing positively to strengthening the rule of law at both the national and international levels.

There is no doubt that the drafters of the Rome Statute must have envisioned a promise of a universal justice system guaranteed by a permanent court of last resort. My delegation is pleased to see the Court being recognized, and we pledge our full support to that institution because we believe that it is irreplaceable.

Prior to the drafting of the Rome Statute in 1998, the Security Council had formally endorsed the marriage between peace and justice through the establishment of the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda.

My delegation believes that in order to guarantee the separation of powers and the integrity of the Court and the Council, a clear distinction must be made to avoid politicizing their relationship. We see that relationship as both complementary and mutually reinforcing. Botswana further believes that both the International Criminal Court and the ad hoc tribunals have served and continue to serve as useful tools available to the Security Council in its quest to promote the rule of law and to entrench universal respect for human rights.

There can be no doubt that the ad hoc tribunals and the Special Court for Sierra Leone have also acted in their own right as a deterrent against mass atrocities and abuse of human rights the world over. As a State party to the Rome Statute, Botswana is encouraged to see the growth and evolution of the institution and, indeed, its relationship with the Security Council, which we want to see strengthened over time. We attach great importance to strengthening the implementation capacity of the Court so that it may successfully implement its mandate.

Over the past few years, Botswana has been outspoken in its defence of the International Criminal Court, because we believe that it has a very vital function to fulfil in the international justice system. We believe that, in order to achieve a robust and sustained international criminal justice system, the Rome Statute must be empowered by those who wish to see it achieve its intended objectives. It must work in complementarity with the ad hoc tribunals to promote peace and justice for victims of serious crimes and crimes against humanity.

The International Criminal Court therefore serves as the centrepiece of a worldwide criminal justice system with jurisdiction to prosecute those responsible for the most serious crimes of international concern. The fact that the central feature of the Statute is the principle of complementarity demonstrates the readiness of the International Criminal Court to defer to national justice systems. It must at all times be appreciated that the International Criminal Court intervenes only in situations where the national criminal justice system is either unable or for some reason unwilling to take action. Similarly, even in the most formal link between the International Criminal Court and the Security Council, as provided for in article 13 (b) of the Rome Statute, authority to defer cases was assigned to the Council in recognition of its primary role in the maintenance of international peace and security.

We further believe that the Court therefore provides a system of checks and balances in enabling the Security Council to pursue its mandate for the promotion of international peace and security. Whether or not the Council has in the past missed opportunities to reflect the provisions of article 16, that should not be held against it. It is therefore important to maintain a mutually reinforcing relationship between the International Criminal Court and the Security Council, which has a political mandate whereas the International Criminal Court exercises a judicial mandate.

The critical question we should be asking is how the relationship can be managed to prevent the possibility of undue pressure being exerted by one institution over the other. There are those who argue that the Security Council should follow up its referral actions and pursue States' cooperation with the Court. My delegation is of the view that, while that suggestion could result in an improved relationship between the Court and the Council, it is not apparent that it would translate into the implementation of arrest warrants or successful prosecution. It is the view of my delegation that the limited application of article 13 (b) does not extend beyond triggering the work of the Prosecutor and should remain as such. Allowing an extended political role to be played by the Council could diminish the judicial authority of the Court, and thereby undermine its integrity and independence.

Looking ahead, more ways could be explored on the engagement of the Security Council, in order to reinforce the Statute in the same manner that the Council benefits from the pursuit of justice and peace that is fully embraced by the Court.

**The President** (*spoke in Spanish*): I remind speakers to limit their statements to four minutes.

I now give the floor to the representative of Costa Rica.

**Mr. Ulibarri** (Costa Rica) (*spoke in Spanish*): Allow me at the outset, Mr. President, to congratulate Guatemala on assuming the presidency of the Security Council this month, and to commend you for organizing such an important debate. We participate in it convinced that justice, peace and security are global public goods that deserve enhancement and protection. Their nature is complimentary, not contradictory, and their final purpose is to protect the integrity and dignity of people and to provide reparations to victims.

Former Secretary-General Kofi Anan says it well in his recent memoir *Interventions: A Life in War and Peace*:

“The choice between justice and peace is no longer an option. We must be ambitious enough to pursue both, and wise enough to recognize, respect and protect the independence of justice”.

In order to fully exercise its mandate of maintaining international peace and security, the Security Council has the duty to promote the full exercise of international justice and the rule of law. That obligation is particularly important in relation to the International Criminal Court. Although the Court is an independent, treaty-based tribunal, the Statute of Rome gives the Council two prerogatives in its workings — to refer or defer cases. From that arise the right of the Council to influence the Court's actions and the possibility for the Court to expand its jurisdictional scope.

The nature of the Council is political; that of the Court is judicial. Therefore, their relation will always be complex. But for the same reason, the cooperation of the Council with the Court should be responsible and guided by a set of impartial and general principles that scrupulously respect the Court's independence. The Council should abide by the principle that international criminal justice is not a licence for political negotiation or a means to appease despots, but a tool to fulfil an essential duty to humanity and to foster a more peaceful and safer international order, based on general rules.

From that perspective, Costa Rica wishes to suggest some guidelines to the Security Council regarding its referrals to the Court. First, the Council should establish a protocol to refer to the Court any case in which there are strong indications of the perpetration of crimes defined by the Rome Statute, provided there is no action in the respective national jurisdiction. That is precisely what is happening in Syria, but the Council's reaction has been paralysis. It is time for this situation to be referred to the International Criminal Court.

Secondly, the Council should make a commitment to providing follow-up and support, including financial support, to its referrals to the Court. In the two situations referred to the Court so far, Darfur and Libya, follow-up and further cooperation have been almost non-existent.

Thirdly, it should establish, in its referrals, the obligation of compliance by all States, including arrest warrants.



Fourthly, it should establish subsidiary bodies to systematically ensure cooperation and follow-up.

Fifthly, it should harmonize and coordinate its sanctions regimes, so that they support the orders and decisions of the Court.

Sixthly, and finally, it should strengthen the mandates of peacekeeping and peacebuilding missions, so as to ensure their cooperation with the investigations and actions of the Court.

In short, the Council should apply clear political will in the interest of justice, establishing standards for action, acting in accordance with them and rejecting impunity. Thus the triad of peace, security and justice will be promoted seamlessly and with consistency, for the benefit of the rule of law.

The members of the Council that are signatories to the Rome Statute should take the lead in this respect. We congratulate Guatemala on its recent ratification of the instrument and for its commitment to advancing it.

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

**Mr. Motanyane** (Lesotho): I wish to congratulate you, Sir, on your assumption of the presidency of the Council for the month of October and on having convened this very important debate. I thank you also, Sir, for the concept note (S/2012/731, annex) that you circulated in preparation for this meeting.

Allow me to also thank the Secretary-General, the President of the International Criminal Court (ICC) and the Director of the ICC's Jurisdiction, Complementarity and Cooperation Division for their briefings earlier today.

The United Nations was created as a platform from which all countries, big or small, rich or poor, can collectively contribute to efforts to achieve the objectives of the United Nations Charter. Justice, peace and stability remain the main challenges of our time and, indeed, a *sine qua non* for addressing all other global problems. It is in that context that we welcome the opportunity to participate in this open debate on peace and justice, with a special focus on the role of the International Criminal Court. This is an occasion for us to reflect on how the International Criminal Court and the Security Council can better solidify their relationship and strengthen their cooperation in the pursuance of our common objective of the maintenance of international peace and security.

History has demonstrated that political solutions on their own do not bring about lasting peace in societies ravaged by conflict. But justice has proved to be a necessary ingredient for the sustenance of peace. It helps societies heal from the scars caused by conflict. With the establishment of the ICC, the international community confirmed its commitment to ending impunity and ensuring individual accountability for crimes committed under international law. We view the ICC as an indispensable pillar of the United Nations in advancing the rule of law and maintaining international peace and security.

For a decade now, the ICC has been an effective partner with the Security Council in the pursuit of a peaceful and just world order. Indeed, this has brought about heightened expectations on the part of the world's population that the era of impunity is no more and that the perpetrators of the most heinous crimes will be punished. The faith that the international community has in the ICC can be sustained only if the Court maintains its independence and impartiality in delivering justice. The ICC must not only be independent and impartial, but it must be seen to be so.

The ICC cannot deliver without the support of all of us, including the Security Council. We must not politicize the work of the Court if its legitimacy and integrity are to be protected. In exercising its powers of referral under the Rome Statute, the Council must not be persuaded by any political motives. Instead, it must do so objectively, on the basis of concrete facts that justify such a move.

Moreover, the Council must adopt a consistent approach to referrals. There should be clear parameters within which the Council works in crafting resolutions referring cases to the Court. Such resolutions must be clear and avoid double standards. Similar situations must be treated in the same way. When acting under Chapter VII of the Charter, the Council acts on behalf of all States Members of the United Nations. As such, the aspirations of the general membership of the United Nations should override the individual national interests of Council members and must therefore be embodied clearly in the resolutions it adopts.

In our view, the referral of cases by the Council is not an end in itself. It is critical that the support of the Council, without infringing on the Court's independence, be maintained from the commencement of the case until the successful conclusion thereof. The need for the Council to follow up on its referrals cannot

be overemphasized. Equally important is the need to ensure that mandates are matched with resources. It is difficult to fathom how the ICC could discharge its obligations under article 13 (b) of the Rome Statute if it is not provided with adequate funding.

The Rome Statute was signed by 120 States when it was opened for signature in 1998. It was only after almost a decade and a half that one more State Member of the United Nations ratified the Treaty and thereby brought the number of States parties to 121. We welcome Guatemala as a new State party, but we must redouble our efforts to promote more ratifications of the Statute. Our commitment to the maintenance of international peace and security must be manifested in our actions in support of the international judicial architecture. We could not agree more with the Secretary-General when he said:

“There can be no sustainable peace without justice. Peace and justice, accountability and reconciliation are not mutually exclusive. To the contrary, they go hand in hand”.

Allow me to conclude by emphasizing that the pursuit of a sustainable, peaceful world is an ideal that our forebears cherished. The supremacy of the rule of law over all individuals, ensuring accessibility to justice and the independence of the judiciary, should be our common goal. In the light of the ever-changing global threats and challenges to the maintenance of international peace and security, the Security Council should continuously develop and expand a rule-of-law approach in order to fulfil its quest to save humanity from the scourge of war.

The value of international judicial institutions such as the ICC must be recognized. With the full support of the Security Council and the international community, the ICC can fulfil its mandate of tackling impunity, providing justice to the victims of the most atrocious crimes, and contributing to the reconciliation of societies ravaged by violence.

As a State party to the ICC, Lesotho stands ready to support and cooperate with the Court in the quest to achieve justice and peace.

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

**Mr. Manongi** (United Republic of Tanzania): The United Republic of Tanzania welcomes this open

debate of the Security Council on peace and justice in relation to the role of the International Criminal Court (ICC). It is encouraging that this debate is taking place following the High-level Meeting on the Rule of Law at the National and International Levels.

We congratulate you, Sir, and the Government and the people of Guatemala on your assumption of the presidency of the Council and for having convened this open debate on a subject that my country deems important.

The United Republic of Tanzania is a State party to the Rome Statute. We applaud its values and support its universality. We believe that its universality would be a great milestone in eliminating impunity and in denying safe haven to the perpetrators of the most heinous crimes. At this stage, nothing would be more gratifying than to see the members of the Council that have not yet done so accede to the Rome Statute.

The pursuit of peace and justice is the main concern of both the Security Council and the ICC. It is often said that there cannot be peace without justice. Indeed, peace and justice are two sides of the same coin because one cannot flourish without the other. However, in some instances, the international community and the Council have had to grapple with the challenge of balancing between the two, especially when one seemed to take precedence over the other.

Not surprisingly, that balancing act has been an area of great tension. For some, it would be inconceivable for the Court to pursue justice at the expense of a peace process, even if it meant that the perpetrators of heinous crimes would get temporary relief from prosecution. The facilitation of peace should by no means be equated to an acceptance of impunity. However, the Court should be one of last resort, as has often been said today. It should complement and should not disrupt or subvert the efforts of the international community, through the Security Council, or even of regions to seek peace and security.

Similarly, the Security Council should support the work of the Court in securing justice for victims of atrocities by holding accountable the perpetrators of such crimes. Cooperation between the Council and the Court, as with States, is pivotal. The Council would also assist the work of the Court by calling on Member States to fully cooperate with the Court and by taking appropriate actions to ensure the implementation of arrest warrants issued by the Court. In addition, for

the Court to fulfil its mandate, it is imperative that it be provided with the necessary financial support, especially for referrals by the Council, which have proven burdensome to States parties.

My delegation cannot fail to identify some commonalities between the Security Council and the ICC. The most obvious is that both bodies have a global mandate but are preoccupied with activities in Africa. The Court's activities in Africa have faced significant difficulties, even when the issues that the Court seeks to address are matters of legitimate concern regarding justice and peace. As a result, the Court's work has regrettably been a cause of concern among many Governments on the continent. Such concerns are a source of great discomfort to many that are among the Court's great champions.

Impunity should be fought whenever and wherever it occurs. However, the adage "not only must justice be done; it must also be seen to be done" is true for any judicial body, as it must be for the ICC. The Court must be insulated from any form of political influence, including from this body. Therefore, the Security Council should assist the Court in that regard, as should Member States.

However, fortunately, not only the Council and the Court are preoccupied with Africa. Other United Nations organs and bodies are also concerned about the continent, mostly over its development. Their work reaffirms our belief that there cannot be peace, security and justice without sustainable and inclusive development in Africa and elsewhere.

Article 16 of the Rome Statute gives the Security Council the ability to defer ICC proceedings. There have been several attempts to invoke the Security Council to defer situations. We urge the Council to be more transparent by providing clear explanations to States that request deferrals. That would enhance cooperation and help offset some of the negative discourse against the ICC.

Justice for victims of heinous crimes is not the sole prerogative of the ICC. The principle of complementarity enshrined in the Rome Statute must be upheld. Member States have the primary responsibility to prosecute such crimes within their national jurisdictions. International assistance and cooperation are vital in building the capacity of national jurisdictions, especially in post-conflict countries, to enable them to discharge their obligation.

My delegation believes that there should be a reasonable mix between formal and traditional justice, whereby the latter provides for forgiveness, reconciliation and reintegration rather than trial and punishment, as stressed by the former. Traditional justice processes conducted in communities where crimes were perpetrated, as was the case in the gacaca courts in Rwanda after the genocide, are a true illustration of justice not only being done but being seen to be done.

Let me conclude by reaffirming Tanzania's firm belief in the International Criminal Court. We see the Court as an important instrument in the search for peace and justice. It is not a perfect instrument. It faces significant challenges. However, the advantages of the Court outweigh the challenges that it faces. It is still the best model for addressing international justice. It deserves our support.

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

**Mr. Seger** (Switzerland) (*spoke in Spanish*): At the outset, I would like to thank you, Mr. President, for convening this very timely debate.

(*spoke in French*)

The role of the Security Council in maintaining international peace and security and the mandate of the International Criminal Court to fight impunity go hand in hand. We must therefore do our utmost to maximize the synergies between the two bodies. In my statement, I will focus on the powers of the Security Council to refer situations to the Court in order to highlight two points.

First, the decision to refer a situation to the Court should be reasoned and consistent, as nearly all previous speakers have stated. In order to ensure a significant deterrent effect and to uphold the credibility of the Court and the United Nations in their fight against impunity, there can be no double standards. When a State fails to assume its primary responsibility, namely, to protect its population, on the one hand, and to investigate mass atrocities and prosecute their perpetrators, on the other, the International Criminal Court must be tasked to intervene as a measure of last resort. The Security Council must ensure that there is justice for all victims of the worst crimes, not only for some.

In that context, the situation in Syria, where heinous crimes are being committed daily, is of

particular concern. We deplore the fact that, to date, the Syrian Arab Republic has not responded to the repeated calls of the international community for it to establish a credible, fair and independent mechanism to ensure accountability for the perpetrators of those crimes. Switzerland therefore calls on the Security Council to refer the situation in Syria to the Court so that all allegations of grave crimes, irrespective of who committed them, can be investigated. It falls to the Council to find a political solution that brings lasting peace and reconciliation for the Syrian people. The imperative of accountability is, for us, a necessary precondition of such a solution.

At the very least, the Security Council should send a clear warning to all parties to the conflict, urging them to fully respect international human rights and humanitarian law in the ongoing conflict. It should also declare its intention to refer the situation to the International Criminal Court unless a credible, fair and independent mechanism is rapidly implemented in order to try and to punish the perpetrators of the violations. We note that an increasing number of Member States support our appeal. We encourage all other States to join our initiative for a letter on Syria to be addressed to the Security Council.

Our second point that we wish to underscore is the need for referrals to be made in a strong and coherent manner. In the past, the Security Council advanced international criminal justice like no other institution, by establishing two ad hoc tribunals that were financed by the United Nations. It would only seem consistent that the United Nations contribute to the costs of referrals to the International Criminal Court. Likewise, deferrals should not provide for exemptions for nationals of non-State parties. Furthermore, it is necessary that the Security Council determinedly follows up on referral resolutions. As shown by the high number of outstanding arrest warrants, cooperation from States is one of the most significant challenges faced by the Court, particularly in deferred situations. Referrals should not be the end of the Security Council's commitment to end impunity; rather, they should be the beginning.

In order to establish a stable and just world order for all, we need to strive unremittingly for peace and justice. Peace cannot be sustainable where injustice persists and, conversely, justice is an illusion when war drags on. From time to time, there may be situations where efforts for peace seem to jeopardize efforts for

justice, in the short term at least. However, such a situation should not lead us to play peace off against justice, but to work harder on reconciling both goals in the long term. It is true that it is a great challenge, but we are convinced that we can and will meet it with success.

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

**Mr. Grauls** (Belgium) (*spoke in French*): Belgium fully associates itself with the statement made by the observer of the European Union. My delegation, acting in its national capacity, would like to make some additional remarks. Today's thematic debate provides us a unique opportunity to comment on the relationship between the Security Council and the International Criminal Court a decade after the Court came into being.

In handing down its first verdict in the *Lubanga* case, the International Criminal Court has confirmed its commitment to being at the forefront of the fight against impunity. In that struggle, the cooperation between the Security Council and the International Criminal Court is essential. That relationship promotes the rule of law, encourages respect for human rights and contributes to the establishment of lasting peace. Although mass atrocities amounting to crimes under the Rome Statute very often are threats to peace and security, the very existence of the International Criminal Court has a preventive effect fully consistent with the vocation of the Security Council. The Council, too, has repeatedly reaffirmed its strong opposition to impunity for the perpetrators of serious violations of international humanitarian law and human rights law.

I shall restrict myself to making three points. First, the fact that the Security Council is increasingly including provisions related to the International Criminal Court in its resolutions on specific countries is a positive development. However, the Council's unwillingness to respond when the Court informs it of non-cooperation by some States in cases referred to it harms its credibility and is, for Belgium, a cause for concern. The cooperation of States is essential to the proper functioning of the Court. The Security Council should encourage all Member States to cooperate fully with the Court in its investigations and prosecutions with which it has been entrusted.

Generally, a regular interactive dialogue between the Security Council and the International Criminal

Court about challenges that both institutions face could usefully contribute to strengthening synergies and the coherence of their action. In addition, Belgium wishes to reiterate how much it regrets that the Security Council places the financial burden of investigations and prosecutions arising from the two referrals on the State parties alone. It calls on the States Members of the United Nations to take collective responsibility in order to enable the International Criminal Court to fulfil its mandate as is appropriate.

Secondly, in accordance with the principle of complementarity, the Security Council may first request the competent national authorities to investigate and prosecute serious crimes of concern at the international level, instead of referring them right away to the International Criminal Court. Complementarity will only be fully implemented by States under two conditions. On the one hand, States would have to adopt legislation and adequate resources at the national level to enable effective prosecution of war crimes, crimes against humanity and crimes of genocide. On the other hand, it is essential that they have the legal tools necessary for full inter-State judicial cooperation in the matter, given the multitude of extraneous elements in prosecutions. It is within the framework of that last point that Belgium, in conjunction with the Netherlands and Slovenia, is launching a new initiative to negotiate a new international instrument on mutual legal assistance and extradition in those areas.

Finally, I would like to mention the initiative of Switzerland aimed at asking the Security Council to initiate investigations into all allegations of serious crimes committed in Syria, regardless of their perpetrators, and do everything possible so that those responsible for the crimes in question are prosecuted and punished. A referral of the situation in Syria to the International Criminal Court is one possible approach in that regard. Belgium therefore supports the Swiss initiative and calls on other States committed to the fight against impunity in the world to join the 35 others that have already signed on to it.

In conclusion, Mr. President, I would like once again to warmly thank you and your country for having taken the initiative to hold today's debate. I express the hope that we will have the opportunity to continue the discussion within the Security Council on the relationship between the Council and the International Criminal Court.

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

**Mrs. Morgan** (Mexico) (*spoke in Spanish*): I would like to thank the presidency of Guatemala for holding today's open debate.

Mexico is an active promoter of the work of the International Criminal Court and of the complete and effective consolidation of the international criminal justice system created by the Rome Statute. The Declaration adopted during the High-level Meeting on the Rule of Law (General Assembly resolution 67/1) recognizes the importance of combatting impunity for international crimes in order to preserve the rule of law, as well as the role of the Court in that important endeavour.

Ten years after it was established, it has been demonstrated that one of the most important challenges that the Court faces is the lack of cooperation from States. A total of 13 out of 19 arrest warrants issued by the Court to date remain outstanding, despite the fact that, in some cases, the whereabouts of the individuals is known worldwide. Mexico regrets the open and manifest lack of cooperation shown by some States, which undermines the effectiveness of the international criminal justice system and perpetuates the unacceptable impunity for the most serious crimes of concern to the international community as a whole.

The Security Council has a pivotal role in supporting the work of the Court. Allow me to express some ideas in that regard. First, Mexico believes that the capacity conferred by the Rome Statute on the Council to refer to the Prosecutor of the Court situations in which it appears that international crimes have been committed is a useful tool that contributes to the maintenance of international peace and security, complementary to other forms of triggering the Court's jurisdiction. That capacity should be used responsibly and effectively and be guided by objective criteria that are not selective or politicized. It is also essential that the Council follow up such referrals effectively, particularly when the Court informs it of a State's non-cooperation. In Mexico's view, there is no question that all States, party or non-party to the Statute, are obliged to cooperate with the Court in such situations, due to the mandatory nature of the Council's resolutions.

Secondly, the capacity that the Statute confers on the Council to request the Court to defer an investigation or prosecution should be used responsibly, carefully

weighing its implications for the safeguarding of evidence, the status of detainees and the protection of victims and witnesses, and only when the interests of peace and justice conflict.

Thirdly, whether or not the Council has referred a particular situation to the Court, both bodies should cooperate in situations in which they are both involved. A continuing exchange of information between the two, as well as the backing of the Council in urging States, whether parties or non-parties, to cooperate with the Court in such situations, is essential in order to ensure the system's effectiveness.

We are convinced that there can be no lasting peace without justice. The relationship between the Security Council and the International Criminal Court contributes to the necessary balance that must be achieved between both goals. A day before the new members of the Council are to be elected, we note that 7 of the 15 current members, including 3 of the 5 permanent members, are not yet parties to the Rome Statute. While the Security Council, according to the Charter, acts on behalf of all Members of the United Nations, Mexico calls on all States, and especially those that are current or upcoming members of the Council, to ratify the Statute as part of their commitment to combating impunity for the most serious crimes of international significance and to maintaining international peace and security.

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

**Mr. Jerandi** (Tunisia) (*spoke in Arabic*): At the outset, I would like to express my sincere appreciation to you, Mr. President, for organizing this open debate on promoting and strengthening the rule of law in the maintenance of international peace and security. It gives us an opportunity to review the progress that has been made in this area and to contemplate future actions so as to meet the aspirations of peoples striving to consolidate justice and the rule of law.

We are convinced that promoting the rule of law at the international level is fundamental to building a more prosperous, just and peaceful world. The United Nations plays a major role in this area. We believe that the efforts of the international community require more than developing the normative framework of international law. National priorities in that regard should support and implement international judicial mechanisms that can ensure accountability and end

impunity for those who commit genocide, war crimes, crimes against humanity, violations of international humanitarian law or gross violations of human rights.

My own country's endorsement of the Rome Statute and the accession to the Statute of 121 States attest to the respect that exists for the International Criminal Court (ICC) and its role in ending impunity. In order to support the Court, it is essential that it be given adequate resources. Such support also entails ratifying the Statute in order to enhance its effectiveness and establish close cooperation and constructive dialogue between the States concerned and the Court, which would enhance mutual trust. The multiple ways that the Security Council and the ICC can cooperate, as laid down in the Statute, reflect the importance that the international community attaches to enforcing international humanitarian law. As the body with primary responsibility for the maintenance of international peace and security, the involvement of the Security Council can provide strong support for the Court in dealing with more serious crimes.

It is also important that the Security Council continue to develop an integrated approach to using its power to refer the most serious international crimes to the ICC. In that regard, it must avoid policies that reflect a double standard in dealing with situations that pose a clear threat to international peace and security, particularly where there are practices that constitute war crimes that fall under the jurisdiction of the ICC. In that regard, a case in point was cited in the 2009 report of the United Nations Fact-Finding Mission on the Gaza Conflict (A/HRC/12/48) — the Goldstone report — which was followed up by the ICC Prosecutor's 3 April decision regarding Palestine. We are confident that the Security Council's adherence to the basic tenets of the rule of law in developing that approach will enhance the effectiveness of its future resolutions in such cases.

The creation of the ICC was a first and important step. In our view, it should be reinforced by taking additional steps and making further efforts to prevent such crimes before they take place. We would therefore urge States to respect their obligations under existing international legal and human rights instruments. In that regard, Tunisia proposes creating an international constitutional court, similar to the ICC, to which national and international civilian organizations, as well as democratic political parties, can turn to challenge constitutions or laws that

contravene international law or the holding of unfree elections. The proposed court's mandate would include reviewing disputed constitutions and laws and, in extreme cases, invalidating fraudulent elections, thus rendering illegitimate vis-à-vis the United Nations the regimes that they support. Another for the court's no less important mandate would be to provide advice to countries that are in the process of writing their constitutions so that they are in line with international standards. We believe that the establishment of such a court would encourage Governments to abide by their obligations under international instruments, which in turn would help to meet the aspirations of peoples to freedom, justice and democracy and to seek peaceful change, thereby avoiding any resort to violence, with all its evident and bloody costs.

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

**Mr. Ružička** (Slovakia): Allow me to congratulate you, Mr. President, on assuming the presidency of the Council for the first time in the history of your country. I wish you every success in your hard work.

Slovakia is very much in agreement with the statement made earlier by the observer of the European Union, but there are some points we would like to reiterate in this discussion. Among those points is the acknowledgment of the unique role that the International Criminal Court (ICC) plays as a court of last resort in the absence of genuine action by national authorities. The second principle is that of complementarity, which is one of the core principles on which the Rome Statute is based.

This year we commemorate 10 years since the Rome Statute came into force, which is why we commend the initiative to organize this important debate in the Security Council. We firmly believe that it will positively contribute to further developing the cooperation between the Council and the International Criminal Court.

The Court and the Council should be on the same page and work on the same wave length. The maintenance of international peace and security and the fight against impunity are of the utmost importance for both of them and for all of us. The Court is dealing with the most serious crimes of concern to the international community. It should therefore enjoy the highest degree of confidence from the United Nations and its

Members, as well as the powers conferred upon it by the Rome Statute.

We welcome the resolutions of the Security Council referring the situations in the Sudan and Libya to the ICC under Chapter VII of the Charter of the United Nations. Slovakia also supports the initiative taken by Switzerland with regard to the situation in Syria. However, simply referring a situation to the Court is not enough. Adequate follow-up and enforcing full compliance by the parties concerned with the Council's resolutions, in particular with regard to cooperation with the Court, are also necessary. We are seeing cases where the lack of cooperation undermines not only the Court's activities but also the fundamental principles of the United Nations.

We believe that this meeting is only an initial step towards further discussions. Constructive dialogue and effective cooperation between the Security Council and the International Criminal Court are essential to deal with the most serious crimes under international law.

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

**Mr. Arias** (Spain) (*spoke in Spanish*): Spain aligns itself with the statement delivered on behalf of the European Union and would like to make some additional comments in our national capacity. I sincerely thank Guatemala for the work that it has undertaken to advance this initiative, on which we should all cooperate to further development it and provide timely follow-up.

Following on the High-level Meeting on the Rule of Law at the National and International Levels, held on 24 September, Spain believes that the holding of this debate is very pertinent. We hope it will allow us to delve deeper into this topic with the goal of improving coordination between the Security Council and the International Criminal Court, as well as strengthening the concept of the rule of law in this context.

The rule of law is essential for the maintenance of international peace and security, respect for human rights and sustainable human development. Legal certainty and compliance with obligations derived from international commitments are preconditions for stable and peaceful relations based on trust and mutual respect. Effective multilateralism is not possible without respect for the rule of law and international legal certainty.

Spain is a country firmly committed to respect for the rule of law, which is a basic principle of our political model and our coexistence and it guides our Government on domestic and international matters.

I believe that holding a debate such as this is of great interest, as it allows us to strengthen relations between the Security Council and the International Criminal Court. As we all know, relations between the Court and the Council are governed by the provisions of the Rome Statute and the Charter of the United Nations, signed in San Francisco. While the Security Council is the organ responsible for maintaining international peace and security, as set forth in paragraph 1 of Article 24 of the Charter, the International Criminal Court is the organ responsible for prosecuting, with the support of States, those crimes of international scope that, due to their seriousness, endanger peace and security around the world. The prosecution of those crimes that most concern and affect the international community is therefore a complimentary and constitutive element in maintaining international peace and security. The existence of the International Criminal Court and its action and prestige have in many cases put an end to the impunity that was enjoyed by known international criminals. That is having a deterrent effect, which is playing an enormous role in the maintenance of international peace and security.

The cases of Darfur and Libya, referred by the Security Council to the International Criminal Court, are good examples of the complimentary nature of the relationship between the Council and the Court. The 4 October 2004 Relationship Agreement between the United Nations and the International Criminal Court, signed by the President of the Court and the Secretary-General on behalf of their respective institutions, provides a framework for cooperation that still offers a wide range of room to manoeuvre for improving and strengthening relations between both bodies. To that end, it is essential that the necessary political will be put forth.

Beyond the technical and legal aspects of the debate on the relationship between the International Criminal Court and the Security Council, I should now like to underscore a number of proposals that could improve the relationship between the two institutions, and thus contribute to bolstering the rule of law and, with it, the maintenance of international peace and security.

There are different opinions or perspectives within the Organization that must be heard with the objective of fully understanding the attitude of some of the States with regard to the International Criminal Court. For that reason, there must be dialogue between all United Nations Members, especially between and among the members of the Security Council. That is the only way to avoid polarization among States members of the Council and to help them to come together on compatible and constructive points of view. What I have just said could also help to reduce the gaps that separate members of the Council on important issues of international justice. It could also lend greater consistency and coherency to their relations with the Court.

Some members of the Council continue to be great champions of the International Criminal Court since its inception. I call upon those countries to continue to promote cooperation between the Court and the Security Council.

The holding of periodic meetings on this topic more frequently than those that have been held so far, similar to those that are held on other issues, would allow for an improvement of the relations between the two bodies. It would also allow for all parties to know the stance of all Council members with regard to cooperation with the International Criminal Court.

It would also be desirable for those countries that are part of the Rome Statute to play an informative role vis-à-vis the countries of their region that have yet to ratify the Statute, passing along their experience in the International Criminal Court. In short, an open dialogue at the United Nations on the relationship between the Security Council and the International Criminal Court would contribute to a greater understanding of international justice in general and of the Court in particular. That would help to generate greater confidence in the institutions of the international system of justice, and in particular in the Court.

In conclusion, I also wish to stress that the relations of the Court have broadened beyond the Security Council to other bodies, as set forth in article 87 of the Rome Statute. Improved cooperation among the Court, the Peacebuilding Commission, the African Union and the Organization of American States is also of great importance in supporting the fight against impunity with respect to serious international crimes, strengthening the rule of law among the international community.



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

**Mr. Kohona** (Sri Lanka): Let me join other speakers in thanking you, Mr. President, for convening this open debate. In one sense, the rule of law at the national and international levels provides an essential framework to protect and consolidate the rights and freedoms of individuals in societies, including developing and maintaining peace, stability and good order and dispensing justice.

The concept of right and just goes back to very early organized societies. The concept of the rule of law evolved over the centuries. It is ingrained in the culture of all nations and is the topic we are discussing today. What initially evolved within domestic society, at some point began to influence international society as well.

Since 2003, the Security Council's thematic debates on the rule of law have focused on egregious violations of international humanitarian law and human rights law and have helped to reinforce the global community's disapprobation of such violations.

I would like to recall a landmark meeting (see A/66/PV.128) that was convened by the President of the General Assembly at its sixty-sixth session, on 13 September. The event marked the adoption of resolution 66/291, entitled "Strengthening the role of mediation in the peaceful settlement of disputes, conflict prevention and resolution", and was followed by the screening of the documentary *Beyond Right and Wrong*.

The presentations on that day offered creative ways to make mediation more effective. One of the speakers emphasized that justice should not always be reduced to retribution — an all too easy solution. Besides, that approach is derived from a certain specific cultural background. Other approaches to dispute resolution and addressing wrongs should be explored as we give greater meaning to the concept of rule of law. There are other mechanisms used by different societies.

The rule of law at the international level helps to maintain peace, good order and respect for the law. It also sustains economic progress, including achievement of the Millennium Development Goals. While it has long been used in the context of individual rights, the rule of law must also be understood in the context of ensuring economic progress of individuals and societies, particularly with regard to the right to

development. We should also not forget the need for a rule-based approach to environmental protection.

Grievances based on violations of economic and social rights, defined by law, have the capacity to spark violent conflict that could even spill over borders. The rule of law is therefore best understood in such a holistic manner. The flash points of future conflicts may very well lie in access to critical resources such as water and energy.

In maintaining a balance between economic progress, development, environmental sustainability and the utilization of natural resources, the rule of law can be broadened both at the national and international levels.

The codification of international law and legal obligations is an important aspect of the rule of law at the international level. The Office of Legal Affairs plays a central role in that regard. Today, there is hardly an area of human activity that is not regulated by treaty law. Over 550 multilateral treaties are deposited with the Secretary-General. Domestic compliance with treaty obligations is an area where the United Nations can play a crucial and helpful role, particularly in assisting States with capacity-building.

Close cooperation in the application of laws at the national, regional and international levels is vital in addressing the growing problems of transnational organized crime and terrorism, which threaten international peace and good order. Drug trafficking has become associated with high levels of violent crime that contribute to cross-border instability.

International organized crime is now a funding source for terrorism that is becoming a destabilizing factor both economically and socially. Piracy is a major challenge to the established global order. Confronting that challenge involves close cooperation and capacity-building at both national and regional levels, including in enforcement of the law.

However, long-term solutions to transnational organized crime, terrorism and piracy will need to focus on the delivery of basic services by justice and security institutions, without forgetting the complex root causes that have generated those challenges.

The principle of sovereign equality enshrined in the Charter of the United Nations, which is intrinsic to international rule of law, must be maintained, as international rules are made and implemented. It is a

principle that protects all States, especially the small and the weak.

Equally important is the maintenance of the principle of non-interference in the internal affairs of Member States, especially in situations that do not pose a threat to international peace and security. Specific circumstances may call for international involvement, which should be based on broad consensus within the international community and among concerned States. Unilateral and selective applications of international law rules must be avoided, as it undermines the very principles that we seek to promote.

Sri Lanka has always advocated the settlement of internal and international disputes by peaceful means. Negotiations, mediation and other peaceful means must be the first essential resort.

Mindful that conflict and post-conflict settings are complex environments, we must recognize the challenges of trying to balance national security interests and the maintenance of rights. Countries with strong legal foundations have the resilience to restore democratic institutions to their inherent strengths. Countries must be allowed to create their own local mechanisms to consolidate peace, encourage reconciliation and, most important, to strengthen democratic institutions. There is therefore a need to give them the much needed space to begin that restorative process. In such situations, the United Nations can provide assistance to address the gaps, while factoring in local sensitivities.

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

**Mr. De Vega** (Philippines) (*spoke in Spanish*): First of all, allow me, on behalf of my country, to thank you, Sir, and to assure you that the Philippines, a developing country and the only Asian country with Spanish roots, welcomes Guatemala's presidency of the Security Council, a primary body of our United Nations.

(*spoke in English*)

The Philippines expresses its appreciation and full support for the efforts to bring attention and much-needed focus to an issue of vital importance. The rule of law at national and international levels is the bedrock upon which nations build stable and flourishing societies and foster strong relations. It emphasizes the protection of rights and underscores compliance with obligations. And it exacts responsible behaviour from both individuals and States.

The rule of law is essential as an instrument and object of policy as we seek to rebuild and strengthen societies in, or emerging from, conflict; as we strive to maintain international peace and security; as we pursue greater progress and prosperity; and as we toil to achieve justice. But even as we recognize the importance of the rule of law in post-conflict, transition and post-transition situations, we appreciate full well that it should rightly be considered first and foremost as an effective tool in preventing conflict and impunity.

For the Philippines, the rule of law is a cornerstone of the President Benigno Aquino's programme of good governance. The strict implementation of the rule of law demonstrates our Government's commitment to carrying out its responsibilities and obligations in a democratic environment. Adherence to the rule of law has contributed to the further strengthening of our democratic institutions and processes, and it has translated into significant inroads in economic growth. It has allowed us to act responsibly as a member of the community of nations.

Our country's adherence to the rule of law includes our commitment to settling differences and conflicts not by resorting to arms, but through positive engagement and negotiations. That was demonstrated by the historic signing on 15 October of the Framework Agreement between the Government of the Philippines and the Moro Islamic Liberation Front in southern Mindanao. The framework agreement was signed before President Aquino and Prime Minister Razak of Malaysia, and witnessed by the Secretary General of the Organization of Islamic Cooperation, Mr. Ekmeleddin İhsanoğlu. The Framework Agreement serves as a road map and lays down the groundwork to achieve just, lasting and genuine peace in Mindanao. In the words of President Aquino:

"In full view of the Filipino people, and witnessed even by our friends from different parts of the world, we commit to peace: A peace that will be sustained through democratic ideals; a peace that heals and empowers; a peace that recognizes the many narratives of the Filipino people, and weaves them into a single, national aspiration for equitable progress."

While that is a clear victory for peace and justice in our corner of the world, as an international community we continue to be seized with situations that require greater cooperation, coordination and concerted action. That is particularly the case in combatting impunity for

the crimes of the greatest concern to the international community: genocide, war crimes, crimes against humanity and crimes of aggression.

Ten years after the entry into force of the Rome Statute, the International Criminal Court (ICC) has taken its place as a fully functional, independent judicial institution in the continuing campaign against impunity for grave crimes. We take note of the statement made this morning by the President of the International Criminal Court, Mr. Sang-Hyun Song, apprising us of the developments, inroads and challenges facing the Court.

Last year, six States, including the Philippines, ratified the Rome Statute, more than at any time since 2002. We welcome the ratification this year by Guatemala, which brings the number of States parties to 121. We must continue to work hard to achieve the universality of the Rome Statute.

The Philippines notes the need to consider developing a systematic approach towards the Security Council's relationship with the International Criminal Court, especially in relation to the situations that the Council has referred under article 13 (b). That necessitates a better understanding of how article 13 (b) and the 16 prerogatives given to the Council under the Rome Statute are best utilized in country-specific situations on the Council's agenda.

In consideration of that approach, it must be emphasized again that attention must be given to exploring ways in which the ICC can assist the Council as a preventive tool for upholding the rule of law, ensuring accountability and achieving peace and security. In regard to future improvements in the Council's relationship with the ICC, the pertinent resolutions of the Security Council must preserve the integrity of the Rome Statute.

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

**Mr. Errázuriz** (Chile) (*spoke in Spanish*): We thank the presidency of Guatemala for convening today's meeting. Chile attaches great importance to the debate on peace and justice, with a special focus on the role of the International Criminal Court, under the agenda item "The promotion and strengthening of the rule of law in the maintenance of international peace and security".

We believe that without justice there is no peace. Peace cannot exist without justice, and justice must be exercised with the objective of ensuring peace. Chile therefore considers that this debate is extremely important, as we are convinced that the relationship between the International Criminal Court and the United Nations, through the General Assembly and the Security Council, promotes the rule of law, encourages respect for human rights, and contributes towards attaining international peace and security, in accordance with international law and the purposes and principles of the Charter of the United Nations. Chile considers the International Criminal Court to be the most advanced expression of the development of international criminal justice, and that it represents one of the most important initiatives of recent times.

From the perspective of protecting human rights, the creation of the Court was an important step in the fight against impunity and a clear sign that States parties are committed to the international community in making progress in that direction. For that reason, our country strongly supports the work of the International Criminal Court, and takes this opportunity to highlight the tenth anniversary of the entry into force of the Rome Statute. We also welcome the Court's first judgment this year, which demonstrates its proper functioning.

The main connection between the Security Council and the International Criminal Court resides in the capacity of the former to refer situations or to suspend investigations in accordance with articles 13 and 16 of the Rome Statute. Nevertheless, our view is that the Security Council should exercise its power to refer situations to the Court or to suspend investigations on the basis of consistent parameters, showing that its decisions are not arbitrary. We are also convinced of the need for the Security Council, in addition to supporting its own decisions on the matter, must follow up its referrals to the Court. Likewise, in respect of its referrals, the Security Council must pay special attention to refusals to cooperate with the Court.

The principle of complementarity is the cornerstone of the Rome Statute, whereby it is the primary obligation of national courts to investigate, prosecute and punish the perpetrators of the most serious crimes of international scope, identified in the Rome Statute. In that regard, the Court is called upon to intervene in cases where crimes have been committed within national jurisdictions but the State concerned is

unable or unwilling to carry out the respective judicial proceedings.

Finally, we believe that cooperation is critical to the work of the Court. For that reason, within the framework of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels that took place on 24 September, my country, Chile, pledged to develop legislation aimed at cooperation with the International Criminal Court.

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

**Mr. Riecken** (Austria): Austria aligns itself with the statement made by the observer of the European Union. On behalf of the Group of Friends of the Rule of Law, we warmly thank Guatemala for organizing today's open debate with a special focus on the role of the International Criminal Court (ICC), which is a most welcome continuation of the initiative concerning the Security Council and the rule of law that Austria started in 2004.

At the outset, I would like to reaffirm Austria's strong commitment to the rule of law and the fight against impunity. As a State party to the Rome Statute, Austria fully supports the work and independence of the ICC. We need to provide the ICC with all necessary support and cooperation for the effective discharge of its mandate.

The Security Council and the ICC share a common concern when it comes to international crimes that pose a threat to peace and security. The Security Council has played a leading role in promoting individual criminal responsibility, in particular by creating the ad hoc criminal tribunals that inspired the creation of the ICC.

This year marks the tenth anniversary of the entry into force of the Rome Statute, and we can look back at remarkable achievements. First, the ICC is well on its way towards universality. Almost two-thirds of United Nations Members are now party to the Rome Statute.

Secondly, the consensus reached at the Kampala Review Conference in June 2010 on the crime of aggression and other amendments to the Rome Statute was a landmark achievement in the evolution of the Court, which demonstrated the strong commitment of all States parties to the Rome Statute.

Thirdly, the ICC is now generally recognized as a key instrument in combating impunity, preventing

future crimes and promoting an international order based on the rule of law. The Court has now been fully operational for several years and is dealing with an increasing number of cases. It has delivered its first sentence, in the Lubanga case. Its expanding docket, which includes Heads of State and other high-ranking accused, sends a strong signal that justice applies to all, without any distinction based on official capacity or rank.

Accountability and the fight against impunity for serious violations of international human rights and humanitarian law are crucial responsibilities of both the Security Council and the ICC. The referral of the situation in Libya to the ICC through the unanimous adoption by the Security Council of resolution 1970 (2011) was a milestone in this regard. We believe that other situations would warrant the same decisive action by the Security Council, and call for a coherent approach to referrals.

We cannot turn a blind eye to mass killings of innocent civilians, such as those we are currently witnessing in Syria. We must stop the atrocities and ensure that the perpetrators and those ordering the crimes are brought to justice. A referral of the situation in Syria to the ICC would send a clear signal that every individual responsible for war crimes and crimes against humanity will be held accountable and should reconsider his or her actions. We are pleased that, on Monday, the Council of the European Union reaffirmed its support for the investigations of the independent international commission of inquiry on Syria, with express reference to crimes against humanity and war crimes according to the definition of the Rome Statute of the ICC.

However, the referral of a situation by the Security Council to the ICC is only the starting point for justice. The ICC cannot fulfil its mandate without the continuing political support of the Security Council and the material support and cooperation of Member States, in particular with regard to the arrest and surrender of suspected perpetrators. All States must abide by their obligations to cooperate under the relevant Security Council resolutions and the Rome Statute. When considering referrals, the Security Council should ensure that ICC staff and officials are granted all the immunities and protection that are necessary to fulfil their mandate. In view of the increasing caseload of the ICC, we call on the United Nations to bear an adequate share of the costs incurred by Security Council referrals.

Finally, with regard to the question of the use of article 16 of the Rome Statute, we are fully aware that the Security Council has the power to ask the ICC to defer an investigation or prosecution in full accordance with the Rome Statute. However, we believe that this power should be used with great caution, especially in situations which the Council had referred to the ICC in the first place.

Cooperation with the ICC remains the key challenge for the future. We call on the Security Council to ensure full cooperation with the Court in accordance with the obligations of Member States under the Rome Statute and relevant Security Council resolutions.

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

**Mr. Troya** (Ecuador) (*spoke in Spanish*): It is a great pleasure for my country to participate in this open debate organized by the presidency of the Security Council under the leadership of Guatemala, which we thank for having convened this meeting.

Without justice there is no peace. Ecuador is convinced that the International Criminal Court is the only means by which the victims of the serious crimes under its jurisdiction can make their heard and see their suffering addressed. As expressed in the fourth paragraph of the preamble of the Rome Statute, the most serious crimes of concern to the whole international community must not go unpunished.

To this end, the best tool in the fight against impunity is specifically the Rome Statute of the International Criminal Court. In its 14 years of existence, it has allowed for the prosecution of some of the worst violators of human rights, as shown by the recent sentence issued in the Lubanga case, which brought to an end one of the bloodiest chapters in the history of the conflict in the Democratic Republic of the Congo and demonstrated the contribution of the International Criminal Court to the maintenance of international peace and security.

The punishment of those who commit crimes referred to the International Criminal Court complements the Security Council's task of maintaining peace and security. It does so because, in rendering justice and punishing those who commit criminal acts, it contributes to overcoming the trauma of the victims of armed conflict around the world and lays the groundwork for building lasting and strong peace.

Cooperation between the two bodies is essential, within the framework of the greatest respect for the work of each, if the Court is to support the maintenance of international peace and security by judging those who seek to undermine it, and if the Security Council is to act within and in favour of the rule of law at the international level.

The Court cannot do its work without the firm political support not only of Member States, but also of the Security Council, expressed through respect for the Rome Statute and compliance with the commitments that led to the establishment of the Court, including those relating to its financing. For my delegation, it is indispensable for the International Criminal Court to enjoy the financing necessary to allow it to meet its objectives as set out in the Rome Statute, especially in the light of the increase in the caseload submitted to the judges, in the investigations being undertaken by the Prosecutor's Office, and in the general workload.

The delegation of Ecuador is of the view that the cases referred to the Court by the Security Council continue to create a financial burden for the States parties to the Rome Statute, while there is an unnecessary delay in compliance with the stipulations of article 13 of the Relationship Agreement between the ICC and the United Nations and article 115 of the Rome Statute, relating to the financing for expenses incurred by the Court due to cases referred to it by the Security Council.

The relevant arrangements must be made without further delay to fulfil what is stipulated in those articles. The Secretary-General and the General Assembly, each within its respective area of competence, must take the steps necessary to include in the United Nations regular budget the financial contributions of this Organization to the budget of the Court.

Ecuador believes that progressive universalization of the Rome Statute and of the jurisdiction of the International Criminal Court is an irrevocable goal. Beyond political considerations of the day, it is essential to progress toward the creation of genuine international criminal justice in order to take on the most heinous crimes and to punish the guilty, without regard to their nationality, position or office. Along those lines, we strongly call for every necessary effort for the effective operation of the 2017 provisions on the crime of aggression, without delays or excuses.

Unfortunately, it must be acknowledged that on innumerable occasions we have witnessed instances of a double standard being applied in referrals to the International Criminal Court. That kind of decisions — based on political considerations and using different measures for similar behaviour, condemning or defending on the basis of political interests or ideological leanings rather than on clear norms — detracts from the credibility of the Security Council's work and encourages impunity, with the regrettable consequences that that implies.

Particularly regrettable is that three of the permanent members of the Security Council continue to refuse to recognize the valuable contribution of the International Criminal Court and to accede to the Rome Statute, when their example would lead other nations to join the Court and contribute to the effort to fight impunity and strengthen the rule of law at the international level.

To conclude, we call on all States parties to the Rome Statute and on all organs of the United Nations to cooperate with the Court, not only by complying with the stipulations in article 3 of the Relationship Agreement between the Court and the United Nations and article 86 of the Rome Statute, but also by honouring the principles that nourished the founding of our Organization and that guide its work.

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

**Mr. Osman** (Sudan) (*spoke in Arabic*): I would like first of all, Mr. President, to congratulate you on Guatemala's assumption of the presidency of the Council for this month and to thank you for organizing today's debate.

We hope that our deliberations today will achieve the desired results by diagnosing and treating the root causes of conflict, which in many instances leaves behind civilian casualties and violates the rights of the most vulnerable segments of society, especially women and children. War is war, and wherever there is fighting and use of arms, there will be casualties and violations of human rights. Therefore, it is always best for the Security Council to pay utmost attention to the root causes of conflict and to work to address them.

As stated in Guatemala's concept paper (S/2012/731, annex), the Security Council and the International Criminal Court have their own mandates, completely independent of each other. Therefore, attempts to

confuse the two mandates have no logical basis. The International Criminal Court is a judicial organ and its constitutional framework is the Rome Statute, whereas the Council is a political organ and its framework is the United Nations Charter, which tasks the Council with responsibility for the maintenance of international peace and security. In other words, the Security Council is contrary to the International Criminal Court.

Therefore, promoting the rule of law within the framework of the maintenance of international peace and security must not be used as a pretext to politicize international justice in a way that contravenes the mandate of the Security Council as set out in the Charter. That point has already been made repeatedly, including at the founding Rome Conference. I refer specifically to the statement made by the Arab Group. I also want to draw attention to the fact that creating new international laws and making them binding, without giving the third party the right to adopt a national, sovereign decision and position, is unacceptable and contravenes the rules of international law, especially the 1969 Vienna Convention on the Law of Treaties.

Peace is the most transcendent value of justice. Therefore the inseparability of peace and justice must be taken into consideration when setting priorities. For instance, peace should first be established on the ground and then national machinery should be mobilized to achieve justice and combat impunity, provided that there is a parallel and complementary effort at reconciliation, compensation and mending the social fabric in post-conflict States. Perhaps the truth and reconciliation commissions of South Africa are the best example of how to overcome the bitterness of struggle, conflict and fighting through reconciliation and settlement committees in a way that allows different communities to regain the spirit of peaceful coexistence.

The Sudan has managed to turn over a new leaf after the Darfur conflict. Since the signing of the Doha Peace Agreement, now in effect, the Sudan has made great progress in achieving justice, settlement and reconciliation. With the same determination that led us to sign that Agreement, we will continue on our path towards settlement and justice. What we expect of the Council is for it to assume its natural role, which is to support those efforts and to adopt the necessary firm measures against the armed groups that have refused to join the Doha peace process and that occasionally launch attacks and carry out acts of sabotage in order

to create the illusion in the international community that the conflict persists. It is the duty of the Security Council to maintain peace and security and to promote the rule and primacy of law. There is therefore a need to respect the pillars and principles of international law, especially as regards the sovereignty of States and the principle of non-interference in the internal affairs of States.

Many issues pertaining to the ICC's mandate and application of the rules of its Statute, especially with regard to its relationship with the Security Council, remain the subject of international legal and political contention, as was reiterated by many speakers during today's debate.

In closing, I cannot fail to commend those members of the Council who spoke today and warned of the Security Council's haste in using its privileges under Chapter VII in terms of its relationship with the ICC, especially when security is related to issues of justice and peace in post-conflict situations, and stressed also the need to take into consideration the fact that peace and justice are indissociable.

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

**Mrs. Hrdá** (Czech Republic) (*spoke in Spanish*): The Czech Republic aligns itself with the statement made by the observer of the European Union (EU). I should like also to touch on a few points in our national capacity.

(*spoke in English*)

The Czech Republic is strongly committed to the idea of international criminal justice, in particular with respect to the International Criminal Court (ICC). The history of our country — where serious crimes under international law and serious human rights abuses were perpetrated during the Second World War and, after that, during the Communist era — constitutes an argument for the Court's existence. Such crimes must not happen again, and the ICC is one of the means to achieve that goal. Consequently, we believe that its role in the fight against impunity is irreplaceable, and we stand ready to support it wherever possible. For that reason, last month here in New York, the Deputy Prime Minister of the Czech Republic joined the informal ministerial network on matters related to the ICC that was established by Lichtenstein.

Until the universality of the Rome Statute is achieved, the ICC will not be able to deal with crimes without a link to its States parties, either the commission of such crimes on their territory, or by their nationals. During this period, the Security Council has, in our view, a special responsibility to close this impunity gap by making referrals to the ICC. We were encouraged by resolutions 1593 (2005) and 1970 (2011), although we regret that the ICC has not yet received the Security Council support that it needs to fulfil its mission. Specifically, this principal United Nations organ has the power to enforce its own resolutions and ensure that States cooperate with the ICC. In that context, we hope that today's open debate will be taken as a call by the United Nations membership to act on this matter. Impunity is not a solution.

We commend the Security Council for having adopted the aforementioned resolutions referring certain situations to the ICC. In that respect, we believe that two referrals during the Court's 10-year existence cannot be qualified as an overuse of this tool. During the past decade, there have been some situations, mostly internal armed conflicts around the world, that involved the most serious crimes of concern to the international community as a whole, as set out in the preamble to the Rome Statute. In our opinion, those cases could have been referred by the Security Council to the ICC, including some situations where these crimes continue even today.

There is a need for consistency in the Security Council's practice, which would also have a preventive effect. We would like to recommend that the costs of future referrals be covered by the United Nations, as is done for United Nations ad hoc tribunals. In a world based on the rule of law, there should be no authority without responsibility, and vice versa.

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

**Mr. Mesquita Borges** (Timor-Leste): I have the honour to deliver this statement on behalf of the Independent State of Samoa and my own country, Timor-Leste.

Allow me, Sir, first to thank Guatemala, as the most recent State party to the Rome Statute, for having organized this important open debate under your presidency. I would also like to thank the Secretary-General, International Criminal Court (ICC) President

Song, and Mr. Mochochoko of the Prosecutor's office for their briefings today.

The nexus between peace and justice are complex and intertwined. As such, the role and importance of the International Criminal Court in fighting impunity and promoting the rule of law is ever more interconnected with sustainable peace and the delivery of justice. Those linkages were clearly articulated in the outcome of the recent High-level Meeting on the Rule of Law at the National and International Levels.

For peace to be sustainable, justice and the rule of law must be guaranteed. The ICC plays an integral part in the architecture of the rule of law at the international level. The establishment of the Court 10 years ago was a major achievement in the protection of human rights and in upholding international humanitarian and criminal law.

Recently there have been major developments in the work of the Court. The first verdicts were delivered, in the cases of Thomas Lubanga and Charles Taylor. Those verdicts send a strong message to the victims of violence that the global community is serious about fighting impunity and ensuring justice for the most heinous crimes against humanity.

The mandates of the Security Council and the Court are complementary in nature, as international peace and security must go hand in hand with justice and the rule of law. We note the unique relationship between the Court and the Security Council and hope that such initiatives as this continue, to allow for this relationship to be further strengthened.

Greater cooperation between the two entities would allow the Court's work to be carried out in a more timely and efficient manner. We note the lifting of the travel ban on President Gbagbo, allowing him to be present for ICC proceedings at The Hague, and the increase in the number of references to the Court in Council resolutions, the most recent being in resolution 2071 (2012), of 12 October, as examples of such cooperation.

The growing faith of the international community in the ICC is evident not only in the increasing caseload, but in the growing number of ratifications of the Rome Statute. Currently there are 121 States parties to the Statute as the Court moves towards universalization, becoming the global justice institution it was envisaged to be. In this regard, we encourage those States that have not done so to consider ratifying the Statute.

Given the number of referrals, both nationally and from the Council, we must also strengthen the ability of the Court to implement its mandate. Security Council referrals should include a financing mechanism to ensure that the ICC has the resources and capacities to fulfil its mandate in an efficient and effective manner. The Council's support of the Court, however, is not limited solely to providing the adequate and necessary funding. Referrals to the Court under article 13 of the Rome Statute should also seek to encourage the cooperation of States with the Court.

The aforementioned challenges create impediments that affect the Court's ability both to carry out its mandate and that prevent the delivery of justice to victims. Justice needs to be seen to be done and must happen in a timely manner. As the growing number of States parties to the Rome Statute shows, the fight against impunity is universal. As such, States Members of the United Nations and the Security Council should support the efforts to strengthen the Court's capacity to deliver justice and to receive the necessary cooperation, when needed.

The ICC is charged with fighting impunity for the most serious crimes against humanity. Last year, the Kampala amendments to the Rome Statute were unanimously approved, adding crimes of aggression to the list of those crimes that cannot go unpunished. In that regard, we note Samoa's ratification of the Kampala amendments on crimes of aggression during last month's United Nations treaty event. In ratifying the Kampala amendments, Samoa reaffirmed its faith in the rule of law and the vital protection that the law provides all States, especially to weak and small States, without having to resort to armed forces or to belonging to a military grouping to guarantee their protection.

In conclusion, we appreciate the holding of this open debate and we hope that it becomes an annual event on the calendar of the Security Council. I would like to take this opportunity to reaffirm the strong commitment and support of both Samoa and Timor-Leste for the mandate and the work of the International Criminal Court. I congratulate you, Mr. President, once again on holding this debate.

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

**Mr. Van Den Bogaard** (Netherlands): The Netherlands would like to align itself with the statement



delivered by the observer of the European Union and takes this opportunity to add a few considerations.

The Netherlands thanks Guatemala for its involvement in the International Criminal Court (ICC) and commends it for organizing this important Security Council debate so soon after its ratification of the Rome Statute. The Netherlands would welcome a regular meeting of this nature given the interdependence of the work of the United Nations and the International Criminal Court. The Netherlands would encourage the Security Council to take advantage of the opportunity to receive periodic briefings from the Court's President and Prosecutor, as provided for in the Relationship Agreement between the United Nations and the International Criminal Court.

The Rome Statute states that atrocities are a threat to the peace, security and well-being of the world. While States bear the primary responsibility for protecting their citizens, the international community has an important role to play in enforcing international law and in ending impunity. The ICC is a powerful instrument for achieving those aims. Holding the perpetrators of atrocities to account is part of prevention. It serves as a deterrent and, as such, can help prevent future crimes. Ending impunity is both a beginning and an end in the responsibility to protect process. It helps to send the signal that atrocities are unacceptable to the international community.

Over the past 10 years, the Security Council has developed a constructive relationship with the International Criminal Court. The Netherlands compliments the Security Council on its decisiveness in referring the situations in the Sudan and Libya to the ICC. It is important for the Security Council to exercise consistency when it refers situations to the ICC. The Netherlands would also welcome a discussion on the financing of the situations that the Security Council has referred to the ICC.

The Netherlands calls upon the Security Council to remain actively engaged in the matters that it refers to the Court. For the ICC to function effectively, it is essential that States be urged to cooperate in the investigation and prosecution of the accused.

With regards to Syria, the Netherlands regrets the persistent disagreement in the Security Council. That has prevented the United Nations from taking decisive action. The world needs a strong, united and determined Security Council. The Netherlands

is in favour of referring the situation in Syria to the International Criminal Court. The decision to do so lies with the Council. The Netherlands would like to note that a referral of the situation in Syria does not necessarily exclude the possibility of prosecution at the national level.

The primary responsibility for an effective functioning of the International Criminal Court lies of course with the ICC and its States parties. The Netherlands calls on all States parties to ratify the Kampala amendments to the Rome Statute swiftly. The Netherlands would like to call on all non-State parties to sign and to ratify the Rome Statute.

The Netherlands is prepared to make an active contribution to international justice and the work of the ICC. To promote inter-State cooperation in the investigation and prosecution of international crimes, the Netherlands, Belgium and Slovenia are looking for ways to develop a multilateral instrument that will fill the gaps in the international legal framework with regard to extradition and mutual assistance in criminal matters.

The Rome Statute came into force 10 years ago this year. The Netherlands applauds the ICC's successes. As the Court's host country, in cooperation with the ICC and together with several States parties, it is organizing a commemorative ceremony, to be held on 13 and 14 November prior to the Assembly of States Parties session.

In the years to come, the Netherlands will remain firmly committed to a strong and effective International Criminal Court and is confident that the Security Council and the ICC will continue to work together constructively.

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

**Mr. Llorentty Solíz** (Plurinational State of Bolivia) (*spoke in Spanish*): The Plurinational State of Bolivia would like to congratulate you, Mr. President, on having convened this important debate, which is certainly timely. We hope that our statement and the other interventions today will enable us to make progress in achieving a lasting world peace based on social justice and security for all sovereign nations on the planet. Bolivia plays its role in that multilateral arena in the belief that all countries must meet their commitments equally.

The International Criminal Court must move towards the goal of a truly universal jurisdiction. We believe that war crimes, crimes against humanity and genocide must be punished in an exemplary way. That is a vital aim for those countries among us that have been victims of such violations. Any individual or group violating the dignity of people must be held accountable before humanity. In that regard, Bolivia wishes to underscore two fundamental points in its brief statement.

First, in order to achieve our aspiration of true universal jurisdiction, it must be emphasized that, unfortunately, even today, 10 years since the adoption of the Rome Statute, the countries with the largest military capacity have still not ratified the Statute. If the countries with the greatest military might, which moreover control the Security Council, cannot and do not respect the jurisdiction of the International Criminal Court, we are talking of first — and second-class countries. That violates the principle of equality among members of the international community.

We also believe that there will never be full international justice if the United Nations continues to avoid internal reform. As President Evo Morales Ayma of Bolivia said in his statement to the General Assembly a few weeks ago, if the United Nations wants

to change the world, it first has to change itself (see A/67/PV.11). We cannot continue with the existing archaic structures; they belong to another time and do not necessarily correspond to the realities of today. There is no point in 121 countries having acceded to the Rome Statute in 10 years, if only a handful of Powers control the Security Council. We should therefore be resolute in proposing change. We must dismantle those structures. It is vital that we build a new Council and a new architecture for multilateral relations. Bolivia commits its efforts to achieve that goal.

**The President** (*spoke in Spanish*): We have heard the last speaker in the debate. As President, having convened this debate, I would like to express our gratitude for the presence of so many countries making so many statements. I am also grateful for the presence of Mr. Mochochoko, representing the Prosecutor of the International Criminal Court, and Judge Sang-Hyun Song, President of the Court. We believe that our expectations for this debate have indeed been fulfilled. We hope that this will be the first step in an ongoing examination of what is potentially an extremely rich relationship between the Security Council and the International Criminal Court.

*The meeting rose at 6.35 p.m.*