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# Secretary-General Hails International Criminal Court AS Centrepiece of ‘New Age of Accountability’, Urges Enhanced Cooperation with Security Council

## Humanity’s ‘Worst Nightmares’ at Intersection of Bodies’ Respective Mandates, Court President Declares, Setting Stage for Council Debate on Justice, Rule of Law

Amid the “new age of accountability” and growing demands for justice, the International Criminal Court and the Security Council must work together “in this new world”, where those contemplating horrific acts could no longer be confident that their heinous crimes would go unpunished, United Nations Secretary-General Ban Ki-moon said, opening the Council’s day-long debate on the rule of law and the intertwined roles both entities played in the pursuit of peace and justice.

“Justice is crucial for breaking cycles of violence and fragility,” the Secretary-General said, adding: “Let us do our utmost to draw solid lessons from a decade of advances and challenges. Let us do everything we can to see the Council and the Court work together to deliver both justice and peace.”

“The Court and the Council can support each other in building local justice responses and in strengthening the rule of law,” he said, noting that the two bodies frequently operate in the same political space and shared a common interest. The Court could help advance the purposes of the United Nations, above all “to maintain international peace and security”. And the Council — by understanding and respecting the Court’s work — could advance its own cause and better discharge its responsibilities.

The Secretary-General said that the Court’s accumulated experience and its value to the international community were evident, following 10 years of work after its establishment with the historic adoption of the Rome Statute in 2002. It was now possible to see how the actions and inactions of the Court and the Security Council had an impact on one another, he said, and, most importantly, it was possible to see how the activities of each could be mutually beneficial.

International Criminal Court President Sang-Hyun Song agreed. “The worst nightmares of humanity lie at the intersection of our respective mandates,” he said. “When massive crimes against innocent victims threaten international peace and security, both the Council and the Court have an important role to play. In the Court, the Council may recognize a unique avenue for ensuring justice as a crucial element in wider international efforts.”

Phakiso Mochochoko, of the Office of the Prosecutor of the Court, said links between that Office and the Council could be reinforced through cooperation, as had been the case with bilateral, international and regional arrangements in efforts to bring to justice the leaders of the Lord’s Resistance Army (LRA), including Joseph Kony. Such efforts should be replicated in other situations, he said, stressing that the failure to execute arrest warrants was related to the failure to implement other obligations by parties in conflict, such as those for ceasing armed action.

A new chapter must be opened in the collaboration between the Council and the Prosecutor’s Office, he said, with the Hague-based Office actively gathering information, monitoring situations that were the subject of preliminary concern and leading inquiries in the effort to determine those responsible for the most serious crimes. When, however, the judicial process led to an arrest order for such crimes, it was the time for the international community, through the Council, to act. “A consensus must be reached that shows clearly that both bodies take seriously the threat posed by grave crimes to international peace and security and have the necessary tools to put an end to them,” he said, looking forward to future interaction with the Council towards that end.

When the floor was opened for discussion, many of the nearly 60 speakers participating in the meeting applauded the achievements of the International Criminal Court and its relationship with the Council. Portugal’s representative said as the Council was increasingly focused on preventing conflicts, the Court was an invaluable “preventive tool” and that “prevention, once successful, means lives effectively saved”.

The debate also yielded a volley of suggestions for improving the bodies’ relationship and for bolstering and balancing common efforts towards achieving peace and justice. Some speakers said more matters should be sent to the Court, noting that to date, the Council had made two referrals — on situations in Libya and Darfur.

Many speakers today urged the Council to act on the crisis in Syria. Uruguay’s representative echoed the views of a number of delegations when he requested the Council to refer the case of Syria to the Court. In that context, he said the “Small 5 Group” had, in its draft resolution to the General Assembly, recommended that the permanent Council members should consider refraining from using a veto to block action aimed at preventing the ending of genocide, war crimes and crimes against humanity.

Others emphasized that the Court must remain independent and free of double standards. China’s representative said the United Nations Charter constituted the backbone of the rule of law. Hence, the Court must abide by the Charter, he said, and could not be reduced to a “tool” available to certain countries in pursuing their individual interests.

Further, Preneet Kaur, Minister of State for External Affairs of India, said the rule of law at the international level must be strengthened by “avoiding selectivity, partiality and double standards, as well as by freeing international criminal justice institutions from the clutches of political considerations”. The final agreed definition of the “crime of aggression” during the Review Conference of the Rome Statute in 2010 and the possibility of States parties opting out of the jurisdiction of the Court regarding that crime was a case in point of double standards, she said.

Some speakers suggested greater cooperation between the Court and the Council. The Head of the Delegation of the European Union said efforts to combat impunity would not be effective unless there was greater collective and individual cooperation with the Court. He said, out of 23 individuals against whom the Court currently had open cases, 12 were absconding from justice. In addition, non-cooperation with the

Court regarding the execution of arrest warrants constituted a violation of international obligations and the Union underlined the importance of full cooperation of States with the Court.

Speaking in his national capacity, Harold Caballeros, Minister for Foreign Affairs of Guatemala, which holds the Council presidency this month, said that he expected the debate to begin a dialogue that would draw the Council and the Court closer. The latter was a powerful option that the Council could use to restore confidence in the United Nations ability to efficiently prevent and resolve conflicts. The relationship between the two bodies should not depend on whether States parties to the Court were also Council members. Rather, it must be founded on the universal conviction that some crimes were so heinous that they must not go unpunished.

Among other topics raised, some speakers highlighted that the Rome Statute had not yet achieved universality. To that effect, the representative of Togo noted that not all Council members had acceded to the Statute and suggested establishing a working group on the Court within the Council, which could ensure better and improved relations.

Concerning referrals to the Court, New Zealand's representative said the Council should establish a working group to monitor and follow up on each matter sent to the Court. Reflecting common concerns about who should finance Council referrals to the Court, Germany's representative suggested that the United Nations and not the States parties should cover such expenses. The pursuit of justice should not be a "free ride", he said.

Also delivering statements were the Vice-Prime Minister and Minister for Foreign Affairs of Luxembourg, and the Minister for Foreign Affairs of Finland on behalf of the Nordic countries.

Other participants included the representatives of the United States, Colombia, Pakistan, Azerbaijan, South Africa, Morocco, Russian Federation, France, United Kingdom, Estonia, Peru, Liechtenstein (on behalf of the former Presidents of the Assembly of States Parties to the International Criminal Court), Brazil, Australia, Japan, Bangladesh, Slovenia, Argentina, Honduras, Lithuania, Botswana, Costa Rica, Lesotho, United Republic of Tanzania, Switzerland, Belgium, Mexico, Tunisia, Slovakia, Spain, Sri Lanka, Philippines, Chile, Austria, Ecuador, Sudan, Czech Republic, Timor-Leste (on behalf of Samoa), Netherlands and Bolivia.

The meeting began at 10:10 a.m., was suspended at 1:01 p.m., reconvened at 3:10 p.m. and ended at 6:35 p.m.

### Background

The Security Council had before it a concept note for the Open debate of the Security Council on "peace and justice, with a special focus on the role of the International Criminal Court", 17 October 2012, annexed to a letter from the Permanent Representative of Guatemala (document [S/2012/731](#)), which notes that this year the Court celebrated its tenth anniversary and handed down its first verdict, showing that it was fully operational. It says that the purpose of today's debate is to explore how the Court, as a tool of preventive diplomacy, can assist the Council in carrying out its mandate to uphold the rule of law, maintain peace and security, and combat impunity while ensuring accountability for mass atrocities. It would also examine how the relationship between the two bodies had developed over the past decade and to consider the way forward in strengthening their linkages.

The main formal linkages between the two bodies, it notes, concern the authority of the Security Council to issue referrals or deferrals to the International Criminal Court, under the Rome Statute and Chapter VII of the United Nations Charter. Issues to be considered in that light are the Council's commitment to the Court's achievement of a successful prosecution following a referral. It says that reluctance on the part of the Council to assist the Court in situations of non-cooperation could be seen by the international community as a failure on the Council's part to uphold its commitment to the rule of law and accountability. Furthermore, in deciding which situations to refer to the Court, the Council must enunciate and adhere to recognizable criteria so that it is not perceived as being wholly arbitrary in terms of which

cases it refers, what avenues need to be exhausted beforehand, and what conditions apply. The point is that the rule of law is grounded in stable and non-arbitrary rules, and when the Security Council is using a legal tool to promote the rule of law, it too should be seen as adhering to the rule of law.

Also to be considered, according to the note, are situations in which peace and justice come into conflict in the short-term, such as the case where a suspected perpetrator of violations is offered asylum in order to end an active conflict, thus delaying accountability. An example is provided in the form of the case of Charles Taylor, who was granted asylum in Nigeria in exchange for relinquishing power in Liberia and later transferred to the Special Court for Sierra Leone on Liberia's request. Both those actions were praised by the Council. A related issue concerns deferrals by the Council of investigations or prosecutions by the Court when it deems it necessary for the maintenance of international peace and security. While a deferral is not amnesty, careful consideration must be given to the effects of deferral in terms of preservation of evidence, the status of detainees and the lives and safety of victims and witnesses.

The note adds that while the Court's jurisdiction over crimes of aggression has yet to be activated — requiring ratification by at least 30 States parties, as well as a further decisions — there is little doubt that the Court's jurisdiction over such crimes will enhance the Council's toolbox in the maintenance of international peace and security and should be discussed in advance.

### Opening Remarks

Opening the debate on peace and justice, Secretary-General BAN KI-MOON told Council members that “we are living in a new world” where those contemplating horrific acts that shock the conscience of humankind could no longer be confident that their heinous crimes would go unpunished.

“We live now in an age of accountability,” he said, adding that the International Criminal Court stood at the centre of the new system of global criminal justice. After ten years, the independent and impartial Court had accumulated a considerable amount of experience, he said, highlighting that its value was evident and that it was possible to see how the actions and inactions of the Court and the Security Council impacted one another. Most importantly, he said, it was possible to see how the activities of each could assist the other.

“Only if perpetrators of grave crimes are prosecuted and held to account, can there be any hope that future such crimes will be prevented and peace preserved,” he said. “Justice is crucial for breaking cycles of violence and fragility.”

Further, he said, even the possibility of the Court engagement in a given situation could create an incentive to set up local mechanisms to deliver justice. That gave the Council a critical role when mandating peacekeeping or special political missions to strengthen national capacity to prosecute serious crimes.

Using the Democratic Republic of the Congo as an example, he said the United Nations Organization Stabilization Mission in the Democratic Republic of Congo (MONUSCO) had worked with national authorities to set up and support prosecution support cells to investigate and prosecute serious crimes in the eastern part of the country. The Court could help strengthen national responses to serious crimes through the domestic incorporation of provisions of the Rome Statute. In addition, the Court's outreach work was intended to stop cycles of violence from recurring.

He went on to say that since the Council and the Court frequently operated in the same political space and shared a common interest, the Court could help advance the United Nations purposes to maintain international peace and security. Likewise, the Council, by understanding and respecting the Court's work, could advance its own cause and better discharge its responsibilities.

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

SANG-HYUN SONG, President of the International Criminal Court, said the Rome Statute made clear that States were responsible for prosecuting serious crimes and the Court was “a court of last resort” to be called on to act only where States were unwilling or unable to do so. From the 60 States parties required to bring the Statute into force a decade ago, the Court had grown to a community of 121 States, with more joining each year.

“Each step we take towards universality reduces the potential for impunity and strengthens the prospect of justice for the victims of terrible crimes,” Judge Song said. Working on the basis of the law, the Court’s role was to establish guilt or innocence, and not to take political views. In addressing challenges on how best to achieve peace and security in situations in which the Court could play a judicial role, it was important to remember that the Court did not deal with ordinary crimes, but those considered, according to the Rome Statute, to be the gravest in the eyes of the international community, where victims numbered not in the hundreds but in the thousands.

For that reason, he continued, the Statute included a provision enabling the Security Council to refer situations inside or outside the normal limits of the Court’s jurisdiction to the Prosecutor, as it had done twice, in relation to Darfur and Libya. Those referrals were an important sign of the international community’s growing confidence in the Court.

For the Court to effectively deal with situations referred by the Council, he stressed that it needed to be able to count on the full cooperation of all United Nations Member States, whether or not they were a party to the Rome Statute, including in investigations, tracing assets of suspects and executing arrest warrants. He requested that the Council underlined this obligation of full cooperation. Further, noting that the financial implications of these referrals were an area of concern, he welcomed the General Assembly resolution 66/262 on voluntary contributions by United Nations Member States.

Highlighting the relationship between the Court and the Council, he said “the worst nightmares of humanity lie at the intersection of our respective mandates. When massive crimes against innocent victims threaten international peace and security, both the Council and the Court have an important role to play. In the Court, the Council may recognize a unique avenue for ensuring justice as a crucial element in wider international efforts.”

Further, he went on to say, the Council had the unique prerogative to create a specific judicial mandate for the Court, to extend its jurisdiction and to require non-States parties to cooperate, and to receive a Council referral which would allowed the Court Prosecutor to open an investigation without waiting for judicial authorization.

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

PHAKISO MOCHOCHOKO, Office of the Prosecutor of the International Criminal Court, speaking on behalf of the Prosecutor, concurred that the Security Council and the Court were seized with many of the same situations, noting that the Council authorized peacekeeping missions in the situations in which the Office of the Prosecutor undertook his activities. His Office also examined the link between sexual violence and conflict, and monitored situations where grave crimes were presumed to have been committed. Given those communalities and more, the relation between his Office and the Council could be reinforced if the field of collaboration was expanded beyond the situations specifically referred by the Council, and if there was more exchange on thematic questions. Such dialogue was essential because the Council, exactly like the Prosecutor’s Office, worked to prevent mass atrocities, which could threaten international peace and security, from being committed.

However, differences between the two bodies, he said, had to be acknowledged. The Council’s nature was that of a political organ belonging to the United Nations system, while the Prosecutor’s Office was an independent organ embodied in an independent judicial institution, which must always respect precise juridical criteria and rigorous attention to matters of competence, in order to preserve all its legitimacy and

credibility. He noted the frequent concern over politics entering into the case selection as a result of Security Council referrals. The Rome Statute provides procedural mechanisms to ensure that such concerns were dealt with; the Court did not automatically accept referrals and had to independently decide its competence in every situation. Any effort to interfere with such independence would only serve to undermine the Court's credibility. The preventative role was, however, also enshrined in the Rome Statute, and the Prosecutor had the possibility of a variety of activities in that regard.

To show how linkages between the Office and the Security Council could be reinforced, he pointed to the cooperation between bilateral, international and regional arrangements in efforts to bring to justice the leaders of The Lord's Resistance Army, including Joseph Kony. Such efforts should be replicated in other situations, he said, stressing that the failure to implement arrest warrants was related to the failure to implement other obligations by parties in conflict, such as those for ceasing armed action. Real peace and real justice depended on respect for Council resolutions. Political and diplomatic support of the Council for Court action must be increased and in that effort it would be valuable to examine the strengthening of certain measures, like the need to avoid all unnecessary contact with suspects of the International Criminal Court.

A new chapter must open in the collaboration of the Council and the Prosecutor's Office, he said, with the Office actively gathering information, monitoring situations that were the subject of preliminary concern and leading inquiries in the effort to determine those responsible for the most serious crimes. When, however, the judicial process led to an arrest order for such crimes, it was the time for the international community, through the Council, to act. A consensus must be reached that showed clearly that both bodies took seriously the threat posed by grave crimes to international peace and security and had the necessary tools to put an end to them. He looked forward to future interaction with the Council towards that end.

#### Statements

SUSAN RICE (United States) said that strengthening accountability for the worst atrocities was a core security and moral principle of her country. For that purpose, she put particular value on national capacity-building in the area of justice and the rule of law, which could be strengthened through special transitional law mechanisms, including hybrid national and international Courts. Although the United States was not a party to the Rome Statute, it recognized that the International Criminal Court could be an important tool for accountability. Her country had cooperated with it in several cases and would pursue additional cooperation, including information sharing and witness protection, as consistent with United States policy and law.

The referral of Libya was critical to that country's democratic transition, she said, urging it to operate with due process and enforce accountability on all sides in its further handling of justice issues. The lack of accountability in Darfur continued to fuel resentment and conflict there and beyond, after Sudan had refused to acknowledge its obligations under Council resolutions. Pressure on those evading the authority of the Court should be increased; she praised Malawi for refusing to host the indictees in question.

There were many ways, she said, that the Council should back the Court's actions, but the Court must not cover its expenses with assessed funding of the United Nations. The interests of peace and justice were best served when both bodies worked within their own realms, but in a way that was mutually enforcing. She supported the delay until 2014 of the Court's exercise of jurisdiction over the crime of aggression in order to allow a proper process to be followed.

She also stressed that those responsible for atrocities in Syria must be brought to justice without prejudging the appropriate venue for it, maintaining that the Syrian people should have a voice in that matter, as long as justice was carried out in a manner consistent with international law. She avowed that the United States would not rest until those accused of serious crimes faced predictable justice.

NÉSTOR OSORIO (Colombia), noting that crimes under the Court's jurisdiction had been defined in his country, said that in regard to the interaction between the Court and the Council, the referral procedure provided the Council with a viable alternative when criminal trials of individuals added towards the goals

of international peace and justice. However, when considering potential referrals, the Council should assess the existence of legal standards in the concerned country. Complementarity should be considered in that respect. An essential component relied on the premise that Council decisions would rigorously be carried out because the failure to execute warrants would cast shadows of doubt on the Council's credibility.

He said the issue of financing criminal trials following Council referrals should be considered within the Council and the General Assembly, as well as with the States parties to the Statute. It was important to remember that when a situation of conflict threatened international peace and security and the Council had to act, it had the valuable possibility to engage international criminal justice through the Rome Statute.

PRENEET KAUR, Minister of State for External Affairs of India, recognized the importance of the peaceful settlement of disputes in the maintenance of international peace and security and in the promotion of the rule of law. However, the Security Council needed to lay more emphasis on Chapter VI of the United Nations Charter to promote the peaceful settlement of disputes rather than take coercive measures. The rule of law at the international level, she stated, must be strengthened by "avoiding selectivity, partiality and double standards as well as by freeing international criminal justice institutions from the clutches of political considerations". The final agreed definition of the crime of aggression during the Review Conference of the Rome Statute in 2010 and the possibility of State parties opting out of the jurisdiction of the Court for the crime of aggression was a case in point of double standards.

She said her country's reservations on the Statute and the International Criminal Court were well known. The role given to a political body like the Council in its work had prevented the Court from becoming a universal institution, adding that three of the Council's five Permanent Members were not party to the Court. Further, the selectivity by which the Council had made referrals under Article 16 of the Statute had raised concerns about political considerations playing a dominant role in such referrals, as well as concerns about the Court's independence. Under those circumstances, the Court was not the solution to ensuring peace and justice at the national and international levels, nor was the establishment of ad hoc international criminal tribunals. The solution lied in building national institutions through capacity-building efforts so that they could function consistent with the rule of law.

LI BAODONG (China) said that without justice there could never be sustainable peace. As those elements complemented each other, justice should never be pursued at the expense of a process of peace. The United Nations Charter constituted the backbone of the rule of law. Therefore, the Court, as an integral part of the international system of the rule of law, must abide by the Charter and could not be reduced to a tool available to certain countries in pursuing their individual purposes and interests.

He expressed hope that the Court would exercise caution in carrying out its functions. States bore the primary responsibility, and the Court should not replace national jurisdiction. For efforts to be supported towards establishing a just and peaceful world, impunity needed to be eliminated and the root causes of conflict should be examined.

MASOOD KHAN (Pakistan) said justice should not be reduced to punishment. It should recognize injury, establish truth, acknowledge victims' dignity and preserve their narrative in collective memory. From that perspective, restorative justice was preferable, as it healed wounds and promoted societal reconciliation. Restorative justice was more effective when it was neither externally imposed nor culturally alien.

Emphasizing the importance of the principle of complementarity and the need to strengthen domestic judicial systems, he underscored that the International Criminal Court was the court of last resort. The primacy of national jurisdiction had to be respected. Where national criminal justice systems were not robust, reforms could be undertaken in judicial systems, prisons, and security apparatus. Ending impunity must be attained by strengthening local courts, enhancing the investigative capacity of national police, establishing forensic laboratories, supporting local prosecutors and improving prison conditions.

Although his country was not a signatory to the Rome Statute, he said it acknowledged the rights and obligations of States parties to it. However, he stressed that no action of the Security Council should lead to the use of the Court for political purposes, and that it would be advisable to “maintain the necessary space” between the Council and the Court to ensure the Court’s objectivity, credibility and independence.

Since its existence, he noted, only a few situations, mostly from one part of the world, had been referred to the Court. The 2004 Agreement had clearly stated the parameters of the relationship between the Court and the United Nations. A more diligent scrutiny of empirical and accumulated evidence was required to assess the Court’s contribution in relation to the work of the Council and the correlation between the two bodies.

JOSÉ FILIPE MORAES CABRAL ( Portugal) said that while the Court was a treaty-based body, its model was clearly influenced by the Council and its recent history and strategic approach to counter impunity and uphold accountability, as reflected in its resolutions. With 121 States parties to the Rome Statute, the Court was, indeed, an instrument of peace and justice that represented a broad international convergence. Yet, efforts should continue to bring it closer to universality. States parties had a role to that effect by, among other things, preserving the integrity of the Statute.

The Council, he pointed out, also had a role to play, for instance, through the way it exercised its referral powers and the manner in which it followed up those decisions to support the Court, particularly when cooperation was failing. As well, the Council and the General Assembly had to ensure the distribution of costs associated with a referral decision. At a time when the Council was increasingly focused on prevention, the Court was a privileged preventive tool. “Prevention, once successful, means lives effectively saved,” he said, “and that’s the most important reason for the Council, States parties and the international community to join hands in strengthening the International Criminal Court and supporting it in its path to universality.”

AGSHIN MEHDIYEV (Azerbaijan) concurred that there could be no peace without justice, including stringent respect for all aspects of international law in all resolution of conflicts. He welcomed the fact that in recent years such respect had increased at the national and international levels. Although his country was not a party to the Rome Statute, he agreed that maintenance of international law was consistent with maintenance of international peace and security. In that context, he supported the expansion of the Court’s competence to prosecute the crime of aggression, which would, in turn, strengthen further linkages between the Court and the Council.

Noting that serious challenges remained, he said violations of international law did not always receive adequate attention at the national and international levels, and often resulted in renewed conflict and new crimes. Conflict resolution initiatives must ensure that peace and justice worked effectively together, based upon fundamental principles of the United Nations and uniform application of international law.

BASO SANGQU (South Africa) said he also agreed on the essential connection between peace and justice, which was reflected most starkly in the Rome Statute’s allowances for deferral of Court activity in the interest of peacemaking in specific activities. Underlining the importance of that provision, he said he also looked forward to strengthening the fight against impunity through the activities of both the International Criminal Court and the Security Council, although it was important to respect the different, independent mandates of each.

Neither body should sacrifice any part of its mandate in order to support the activities of the other, he stressed. The Council referrals that had been made had not seemed serious because of the exemptions they included and the lack of follow-up. He hoped that the debate would lead to an honest stock-taking on how the Council could make its relationship with the Court more effective in such areas.

MOHAMMED LOULICHKI (Morocco) said that, in order to bring about sustainable peace, the complexity of each conflict situation must be taken into account in the fight against impunity. The United Nations Charter must be the basis of action in all such situations, with respect for territorial integrity and national sovereignty strictly maintained. States had primary responsibility for justice in the case of serious crimes and the international community must assist in building the capability of those States that had weak



criminal justice system. The Court came into play when a country could not hold accountable those responsible for the most serious crimes.

Noting that judicial arrangements other than the International Criminal Court had also been effective, such as international and mixed tribunals, he said he was pleased with the United Nations focus on transitional justice in post-conflict peace-building. His country had included in its new Constitution provisions specifying the prosecution of grave violations of human rights, and it hoped to contribute to the upholding of international law through its support of United Nations peacekeeping.

PETER WITTIG ( Germany) said the Council and Court had established an enduring relationship. They should work closely to continue towards their common goals, he said, pointing out that the Court gave the Council important options in the fight against impunity. However, the special characteristics of both organs must be considered, with the Council being a political organ, while the Court was an arena of justice. Further, not all Council members had acceded to the Statute and some had questioned the Court's role in peace and justice. While the Council referred to the Court the situations in Darfur and Libya, the Council was sometimes divided, as in the case of Syria.

Turning to referrals, he said that there were a number of steps to take in support of the Court. Yet, Germany shared frustration with issues of cooperation, as in the case when warrants had not executed in a given situation, which cast doubt on the Court's credibility. The Council should also take note of a State's failure to cooperate. In addition, when referring a situation to the Court, the Council should ensure that the United Nations and not the States parties covered related expenses. The pursuit of justice should not be a "free ride", he said. He was pleased that both the States parties and the General Assembly had opened the way to finding a solution to that problem.

VITALY CHURKIN (Russian Federation) said the Council had a special part to play in strengthening the foundations of international law. Thus, it was important that its decisions relied on the United Nations Charter and international humanitarian law. Keeping this in mind, the Council must avoid making hasty decisions. As well, it must deal with the need to combat impunity. Since the Court had indeed provided the Council with "a new tool" to achieve that goal, both must work together. Given this inter-relationship, he attached special importance to harmonizing efforts, as it was no easy feat to achieve peace and punish the guilty. Further, the Court's work must take into account common efforts to find a solution to a crisis.

There were, he went on to say, a number of challenges, including the issuing of warrants and States failing to cooperate. However, the primary role of prosecuting serious crimes was the responsibility of States. Concerned about the Court's actions regarding the area of the crime of aggression, a political matter committed most often by a State, he said under the United Nations Charter the power for determining an act of aggression rested with the Security Council. In conclusion, he said the Court was young and needed broad support. Its actions would determine and define its role in the future.

KODJO MENAN ( Togo) said that, when peace and security were threatened, the Council and the Court should work together with common principles towards the elimination of impunity and promotion of accountability. The Court and Council's relationship called for complementarity with a framework based on the agreement between the Court and the United Nations. He also noted that some Council members had not acceded to the Statute.

Regarding referrals, he said that, when making referrals of situations, criteria had to be established for the Council to use in order to ensure that the process was impartial, consistent and transparent. Among concerns were the issues of financing and the cooperation of States, the latter being under the discretion of the States involved. The experience of ad hoc jurisdiction demonstrated that Council decisions had not always been met with compliance. Concluding, he suggested establishing a working group on the Court within the Council, which could ensure better and improved relations.

GÉRARD ARAUD (France) said that the increased activity of the Court was partly due to the growing number of States parties to the Rome Statute. The overlap of agendas should be no surprise; with the number of investigations ongoing there was a tremendous potential for prevention. Tracing the history of

the strengthening relationship between the Council and the Court, including referrals and increased references to the Court in statements and resolutions of the Council, there had, nevertheless, been gaps, such as the lack of referral of the situation in Syria, which had resulting in more violence.

He went on to say that he noticed the call for restraint of the veto when atrocities were involved. As well, there had been the lack of action on non-cooperation. The preventative work of the Court should be strengthened by greater support in the form of flexibly applied sanctions, for example. Consideration of reactions to non-cooperation must, in any case, receive greater attention.

PHILIP PARHAM (United Kingdom), noting his country's strong support for both international law and the Court, said that Council cooperation with the Court was critical, and the Council must underline the need for Member States to cooperate with the Court. He recounted Council resolutions and statements that referred to the Court's roles to show the growing complementarity of the two bodies. Failures of cooperation with the Court on the part of Member States and other parties presented complex challenges, but such challenges must be overcome in the interest of the victims.

He called for those who had not yet acceded to the Rome Statute to do so and all those who were States parties to fulfil their obligations, leading to a point where it was ensured that all grave violators of human rights were held to account. His country remained committed to ensuring accountability for grave violations of human rights, in particular, those committed in Syria.

HAROLD CABALLEROS, Minister of Foreign Affairs of Guatemala, said that as the most recent country to become a State party to the Rome Statute, Guatemala had proposed today's debate to help fight impunity and strengthen the rule of law, particularly in the Council's work. The meeting's concept note aimed to identify common links between the United Nations and the Court, and challenges and proposals to address them. Today marked the first time the Council was comprehensively addressing the relationship between both bodies.

He said he expected the debate to begin a dialogue that would draw the Council and the Court closer. The latter was a powerful option that the Council could use to restore confidence in the United Nations ability to efficiently prevent and resolve conflicts. The relationship between the Council and the Court should not depend on whether State parties to the Court were also Council members. Rather, it must be founded on the universal conviction that some crimes were so heinous that they must not go unpunished. It was in the Council's interest to promote complementarity, cooperation and universality.

Out of respect of State sovereignty and due to limited resources, he said, it was necessary to support the primacy of national criminal jurisdictions to investigate or prosecute perpetrators of crimes listed in the Rome Statute. Sadly, the Court did not have the capacity to take on all the worst crimes, just as the Council could not take on all crises. The Court was a "court of last resort". Stating that everyone should work to prevent situations from recurring, he stressed the need to take necessary measures and bolster cooperation to end impunity and ensure those responsible for the worst crimes were brought to justice.

In addition, he continued, cooperation was critical for the Council to follow through on its own decisions and adequately follow up on referrals. Such steps could deter future crimes. The Council should also promote the Rome Statute's universality. With each State that ratified the Statute, the need to resort to referrals would diminish, as would the number of breaches of the Court's decisions. He said universality would also further respect for the rule of law, human rights and accountability. "We call upon the membership to maximize the advantages the Court presents to the Security Council as a preventive diplomacy tool," he said.

JEAN ASSELBORN, Deputy Prime Minister and Minister for Foreign Affairs of Luxembourg, heralding the tenth anniversary of the entry into force of the Rome Statute, said the Rome Statute offered important options for the Council, particularly in situations of mass atrocities. The functions of the Council and the Court were complementary as both bodies aimed to protect populations at risk. The Court had a deterrent effect that helped strengthen conflict prevention. The 2005 cases on Darfur and the 2011 cases on Libya had clearly demonstrated that the appropriate use of the Council's authority to refer a situation to the Court

significantly enhanced accountability for the most serious crimes. In the future, once the Court was in a position to exercise jurisdiction over crimes of aggression, the fight against impunity would be able to progress further. Luxembourg had already inscribed the crime of aggression in its Criminal Code. By early 2013, Luxembourg would have completed the ratification process of amendments to the Rome Statute adopted at the June 2010 Kampala Review Conference, including the crime of aggression.

The Council would be in a better position to strengthen its interaction with the Court, he said, if it was adequately informed about crimes being committed on the ground. He welcomed the fact that the Office of the United Nations High Commissioner for Refugees (UNHCR) increasingly took part in the Council's deliberations. The Council should, as well, make full use of other information sources such as reports of commissions of inquiry. In that regard, information from sources on crimes committed in Syria in recent months had been overwhelming. Those responsible for the terrifying violence, war crimes, egregious human rights violations and crimes against humanity in Syria would have to answer for them one day.

The Court complemented national criminal jurisdictions, which were the first line of defence against impunity, he said. Thus, the Council could, for example, play a useful role by ensuring its peacekeeping operations in post-conflict situations were equipped with the required capacity or accompanied by measures to help strengthen the rule of law and national courts. Luxembourg was committed to strengthening complementarity. Toward that end, it had begun a partnership several years ago with the International Centre for Transitional Justice. It supported the Justice Rapid Response initiative aimed at training national justice professionals to investigate global crimes.

ERKKI TUOMIOJA, Finland's Minister of Foreign Affairs, speaking for the Nordic countries, called attention to the International Criminal Court's ten-year existence and encouraged increased interplay between the Court and the Council. The Court had become the centrepiece of the international criminal justice efforts, demonstrated by 121 States parties to the Rome Statute, the growing number of judicial proceedings, and the Council's two referrals to the Court. The Rome Statute, which included the Trust Fund for Victims, was also restorative by nature. Through their shared goals of preventing conflict and protecting populations at risk of mass atrocities, the Council and the Court were united.

He said the Court's referrals to the Council had shown that, while the Court was an independent, judicial institution, "it was not alone on the international scene". The Council should approach the Rome Statute's provisions consistently and with due regard to their purpose and intent. Recalling that the Court's mandate was limited and did not extend to issues such as executing arrest warrants or taking action in cases of non-cooperation, he said the Council should assist the Court to fulfil its tasks in situations referred to it by the Council.

Noting the current times of austerity, he emphasized that it was the responsibility of Member States to ensure the Court necessary resources for investigations and trials in referred situations. However, States bore primary responsibility for investigations and prosecutions, even for the most serious international crimes. To assist States with that responsibility, other actors, including the Court, the United Nations and regional organizations, had an important role to play. Progress in the area of positive complementarity would strengthen the rule of law.

TIINA INTEL MANN (Estonia), President of the Assembly of States Parties to the Rome Statute, and her country's Ambassador-at-large for the Court, said that the fact that justice was a fundamental building block for peace was noted in the very preamble of the Statute. She welcomed the Council's increasing focus on rule of law and justice and its increased references to the International Criminal Court in resolutions and statements, evidence that the Council had recognized the Court's contribution to the fight against impunity and to international peace and security. Both bodies would greatly benefit from a more efficient and vigorous Council follow-up on situations referred to the Court, including the use of sanctions. There should be coordination between the sanctions committees and the Court to ensure that frozen assets belonging to individuals could be claimed by the Court to finance the defence of those individuals before the Court and, ultimately, for reparations to victims.

Non-cooperation was another area in which the Court would benefit from follow-up by the Council, she said, noting that the Assembly of States Parties had in place its own mechanisms to follow up on instances of non-cooperation by States parties. The financial burden, however, placed on the Court by Council referrals might not be sustainable in the present arrangement. Therefore, effective cooperation and assistance by all States and international and regional organizations were as critical for the Court as it was for ad hoc international tribunals. In future referrals, the Council might consider imposing an obligation to cooperate with the Court on all Member States in order to make the Court's work in those cases more effective. It would also be helpful if the Council established a working group or caucus on the Rome Statute to derive lessons from past referrals. Maintaining that the ultimate way to ensure accountability for international crimes was universal ratification of the Statute, she called upon all States which had not yet done so to accede. "Let us not fail those who have suffered from atrocity crimes and look to us for succour," she concluded.

ENRIQUE ROMÁN-MOREY (Peru) said a balance sheet could be drawn to examine the Court's performance over the last decade, as reflected in the helpful Concept Paper. Referring a matter to the Court did not end the Council's involvement. Further, political considerations could not be used in referrals, which would be a message supporting impunity, and referrals should not be perceived as being selective. The Council must follow up on the work being done by the Court, and must stand ready to work on the ground, including protecting civilians. Financing referrals was a concern, and budgetary issues were the responsibility of the General Assembly, as well. Regarding the jurisdiction of the Court on crimes of aggression, the utmost must be done, he stressed, to ensure that the Kampala amendments were ratified by the broadest number of States.

CHRISTIAN WENAWESER (Liechtenstein) spoke on behalf of Zeid Ra'ad Zeid Al-Hussein of Jordan and Bruno Stagno Ugarte of Costa Rica, all former Presidents of the Assembly of State Parties to the International Criminal Court. At the heart of today's political debate, he said, was the Council's authority to refer situations to the Court. The Council had used that competence only twice: in 2005 on the situation in Darfur and in 2011 on Libya. Referral decisions by the Council had proven to be a mixed blessing for the Court and for international criminal justice, as they were driven by political convenience. In that regard, the Court had specifically been accused of bias against a particular region and manipulation by powerful countries that chose to stay outside the jurisdiction of the Rome Statute; thus, it had very limited support from its constituency.

He advised the Council to take several steps towards a more symbiotic relationship with the Court. Most importantly, the Council must back up its referral decisions with measures that enforced cooperation. He added that the Council did not even have a mechanism to deal with notifications of non-cooperation with the Court, "a serious shortcoming that needs to be fixed urgently". An important case in that regard might be headed the Council's way once the Court had taken a decision on the Libyan Government's admissibility challenge. As for reducing suspicion of selectivity, the Council should delete language exempting certain individuals from the Court's jurisdiction. The rules concerning complementarity should also be clearly reflected in referral decisions, and referral resolutions should stipulate that cooperation obligations referred by a State are based on the Rome Statute in its entirety.

MARIA LUIZA RIBEIRO VIOTTI (Brazil) said her country remained steadfast in its commitment to the Rome Statute and the view that sustainable peace and justice were mutually supportive. Coming to terms with the past and addressing grievances were very important aspects of true reconciliation. At the same time, referral of violations to the Court by the Council should not occur by default. The political circumstances of any given conflict and the consequences of referral must be carefully considered. For the greatest chance of success, the Council should consider that peace and justice would be both best served if the involvement of the Court were very well timed. The risk of jeopardizing a peaceful solution should be duly considered, since the most effective means for saving lives was the cessation of violence. At the same time, the prerogative of invoking the exemption clause in such cases should be used with caution.

In its referrals to the Court, she added, the Council must avoid double standards and selectivity. In that context, she firmly opposed any exemption of categories of individuals from the jurisdiction of the Court. Universal adherence to the Rome Statute was also a priority. In addition, given the financial burden

to the Court of referrals, she suggested giving practical meaning to the provision of the Statute according to which Court expenses might be provided by funds of the United Nations, subject to the approval by the General Assembly. Further consideration of cooperation between the Court and the Council was merited in the fight against impunity, she concluded, pledging her country's continued support in that endeavour.

JIM MCLAY ( New Zealand), describing the Court as an important feature on the justice landscape, said that when referring a matter to the Court, the Council should, as a matter of course, establish a working group to monitor and follow up the case. Further, the Council should never refer a case simply because of political outrage at an intractable problem or because it had no other political strategy to deal with it. It also should never use its powers under the Statute to shield nationals of non-party States. Both the Court and the Council would suffer damage to their credibility if referrals were seen to be politicized or if justice was seen as discriminatory.

As it was indeed the "court of last resort", he pointed out that there would be times when the Court would not be the best mechanism to be applied in a particular case. Even in cases where it would be the appropriate mechanism, the timing of such application needed to be carefully judged. In the future, the Council would need to seriously consider a number of questions, including on whether a Court reference could be an incentive or disincentive to a peace settlement, and on the Council's willingness to ensure that indictees were brought to trial. While the Court was a "hugely valuable resource" for the international community, he said "we must be careful in its application and wise in its use".

PHILIPPA JANE KING (Australia) said although views would differ on the appropriate time to press for accountability, particularly when delicate political settlements were being negotiated, combating impunity and acknowledging past wrongs were important to establishing lasting peace based on human rights and the rule of law. In that context, it was important to ensure the separate efforts of the Court and the Council, which had different mandates, could be carried out cooperatively to end impunity for the most serious crimes. In the case of Syria, for example, the Council should consider referring the situation to the Court. That referral would send an important message that there was no impunity for those who committed the most serious crimes, and that the Syrian people could expect justice. The Council, however, must also exercise vigilance against referring situations such as Syria's without taking appropriate and complementary action.

Once the Council had referred a situation to the Court, she said, it must continue to offer the Court its support, particularly when a State had failed to cooperate. She also called for the Council's future referrals to be precisely drafted so as to identify clearly the cooperation obligations on States. Cooperation between the Council and Court must extend beyond referrals, specifically to situations that rested on both of their agendas. The decision by the 1572 Sanctions Committee to lift the travel ban on Laurent Gbagbo, enabling him to reach The Hague, exemplified the importance of such cooperation. Likewise, sanctions committees covering situations before the Court should closely consider the question of whether indictees should also be designated for sanctions. The Court, also, must continue to engage with the Council through regular briefings and the provision of detailed advice.

KAZUO KODAMA ( Japan) said that, in commemoration of the International Criminal Court's tenth anniversary, his Government would host a symposium today in Tokyo on the Court, in which the Court's Prosecutor would participate. He noted with appreciation the full activities being carried out by the Court, starting with the first judgement on the Lubanga case in March this year. However, still facing the Court was the major challenge of how to bring to justice war crimes and crimes against humanity committed in the territory of a non-State party to the Rome Statute.

In that regard, he lauded the Council's referrals of the situations in Darfur and Libya, which had been tried by the Court. Turning to the situation in Syria, he stressed that actions of violence and oppression against innocent civilians and other serious human rights violations must not be tolerated in the context of the rule of law. It was reasonable that the situation in Syria be referred to the Court and he expressed regret that the Council was divided on that and had failed to respond effectively. He called upon the Council to recognize its duty of being primarily responsible for maintaining international peace and security.

The Council's decisions were political in essence, he went on to say. Any Council referrals to the Court were not purely for legal reasons. The Council should give due consideration to matters not only to find peaceful solutions to situations, but also to deter future crimes. In addition, the Council must continue to be duly engaged after referrals were made in order for those referrals to be truly effective. Any lack of cooperation could result in the failure to indict a perpetrator of serious crimes, and undermine its own credibility and that of the Court. Once the Council decided to refer a situation or case, its members were morally responsible to cooperate with the Court, even if they were not States parties to the Rome Statute. In conclusion, he said he expected deeper dialogue and cooperation between the Council and the Court.

THOMAS MAYR-HARTING, Head, Delegation of the European Union, said that the Union was a firm supporter of the International Criminal Court, which was key in bringing to justice those individuals bearing criminal responsibility for genocide, war crimes and crimes against humanity. The Union underlined the important relationship between the Court and the Security Council, and commended the Security Council for its decisiveness in referring the situations in Darfur and Libya to the Court.

However, he said, efforts to combat impunity would not be effective unless there was greater collective and individual cooperation with the Court. Out of 23 individuals against whom the Court currently had open cases, 12 were absconding from justice. Non-cooperation with the Court in regard to the execution of arrest warrants constituted a violation of international obligations. The Union underlined the importance of full cooperation of States with the Court, including the prompt execution of arrest warrants.

ABULKALAM ABDUL MOMEN (Bangladesh) said that peace and justice were complementary and it was critical, in negotiating peace processes, to take into account the views of victims. Noting the referral powers of the Council, he said that it was worrying that on the situation in Libya the Council could not actively cooperate with the Court on its referral. In fact, the few instances of Council cooperation with the Court were initiated by the situation countries themselves or the Prosecutor. Another worrying factor regarding Libya had been the exclusion of nationals of non-State parties to the Court from jurisdiction, and the recusal for the United Nations from any financial obligations in regard to the referral. Such developments undermined the rule of law, he maintained.

He called on all concerned to translate their commitments into action, in particular through executing arrest warrants, but also by building new social and economic institutions to achieve justice in a broader sense. He noted that Bangladesh had set up, in March 2010, an International Crimes Tribunal, to prosecute those accused of grave crimes during the 1971 war of liberation. Every step had been taken to ensure that the national process conformed to international standards, including visits to The Hague to study the work of the Court, and he hoped that the proceedings would be exemplary in ending impunity while also cementing national reconciliation. He hoped it would also show that it was possible for a national system of a developing country to bring to justice those responsible for war crimes even long after the event.

SIMONA LESKOVAR (Slovenia) welcomed the Council's focus on the Court, as well as the Court's first decision on reparations for victims, which proved it an important tool in maintaining international peace and justice. She encouraged all States to become parties to the Rome Statute in that light. The Court's preventive function was, in addition, an important element in implementing the "responsibility to protect", an important concept on which her country stood ready to engage in dialogue. Expressing deep concern over the crisis in Syria, she said that, at least for the sake of innocent victims, the situation should be referred to the Court to bring perpetrators of atrocities to justice. At the same time, she encouraged the Council to follow up on cases that had already been referred and to address questions of State cooperation. He underlined the responsibility to create a world free from genocide and mass atrocities in the twenty-first century.

MATEO ESTREME ( Argentina) said that, with time and experience, the international community had left the "peace vs. justice" paradigm to embrace "peace and justice" as complementary objectives. Recalling the stocktaking exercise of international criminal justice in 2010, of which Argentina was a co-focal point, he said it was clear that general amnesties had not led to peace, sometimes in fact contributing to the message that serious crimes were tolerable, while in cases in which criminal justice processes were

undertaken, the supposedly negative consequences of peace processes never took place. The answer could lie in proper sequencing of the two objectives.

Cooperation between the United Nations and the Court was crucial, with necessary respect for the judicial independence of the Court. The question of non-essential contacts with Court indictees must be part of the relationship agreement between the two bodies, but the fundamental element of the Court's success was cooperation by States, he said, particularly in regard to arrest warrants. The Council must follow up on Court reports of non-cooperation after its referrals; the establishment of some mechanism for that purpose should be considered. He expressed concern over the exemptions for nationals of non-States parties in referrals, and the lack of an agreement for providing the Court with the financial resources necessary to fulfil its mandate in cases of Council referrals. Both concerns must be addressed. Finally, stressing the firm commitment to the Court on the part of his country, he underlined the importance of the entry into force of the jurisdiction of the Court of the crime of aggression.

MARY ELIZABETH FLORES (Honduras) said that her country had accepted the jurisdiction of international and regional justice mechanisms, including the International Criminal Court, since their inception, and she encouraged all nations that had not yet done so to adhere to such bodies without reservation. The relationship between the Council and other bodies should always be constructive and transparent, and it was essential to have more precise provisions regarding the working methods of the Council for that purpose.

Judicial bodies should work with Member States to make available comprehensive information on situations under consideration and, in specific cases where national capacity was not adequate, international judicial power should be applied with respect for domestic law and national sovereignty. In the course of "building paths of redemption over tears of loss", subsequent to the painful armed conflict in her country, "the light of national and international law has given way to democratic paths". In that context, institutional stability and national capability to ensure judicial work for the collective welfare were critical.

RITA KAZRAGIENĖ (Lithuania) said the Council's power under the Rome Statute presented both an opportunity and a great responsibility. The Council could, she said, benefit from consistent and coherent practices. Thus far, it had referred two situations to the Court, and many strongly believed it should refer other ongoing situations. Developing a coherent approach to referrals would facilitate the process of determining when a referral should be made, she said. Once such a decision was made, the Council should ensure adequate financing was provided. The Court and the Council had gained much experience, and areas for further potential cooperation and action included Security Council resolution 1325 (2000) and subsequent resolutions on women, peace and security.

JOSÉ LUIS CANCELA (Uruguay) welcomed the Court's first judgment, against Thomas Lubanga, and called for the prompt ratification of the Kampala amendments to the Rome Statute. The Court needed to be funded by the United Nations when it took up cases referred by the Council, he said, adding that he was pleased the referral process was in force and advocated for its continued use in situations or cases of a similar nature. He agreed with a number of countries who requested the Council to refer the case of Syria to the Court and, in that context, recalled the proposal of the "Small 5 Group" in its draft resolution to the General Assembly, which recommend that the permanent Council members should consider refraining from using a veto to block action aimed at preventing the ending of genocide, war crimes and crimes against humanity.

CHARLES THEMBANI NTWAAGAE (Botswana) said his country was encouraged by the growing relationship between the Court and the Council, which he hoped would be further strengthened in the future. Over the last few years, Botswana had been outspoken about its support for the Court. In order to achieve a robust international justice system, the Rome Statute must work in complementarity with other tribunals. The Court was the "centrepiece" judicial organ in the prosecution of the most serious international crimes, he said, and it must intervene only when national systems were unwilling or unable to proceed.

The Court was effective in providing a system of checks and balances in the Council's work towards maintaining peace and security. It was therefore important to maintain a strong relationship between the bodies. However, he said that it was important to acknowledge that allowing the Council to play "an extended political role" could diminish and undermine the Court.

EDUARDO ULIBARRI (Costa Rica) said that in the pursuit of peace and justice, the relationship between the Council and the Court would always be complex, but should also be responsible and guided by principles that scrupulously respected the Court's independence. "International criminal justice should never be a card played for political negotiation or a means to appease despots, but an essential duty to humanity and to a more peaceful and safer international order based on general rules," he added. For that purpose, a protocol should be established to refer to the Court any case where there were strong indications of perpetration of crimes defined by the Rome Statute, provided there was no action in the national jurisdiction, to prevent the kind of paralysis occurring in relation to Syria.

Commitment to follow up on referrals was critical, and the obligation of compliance by all States, including on arrest warrants, must be established in each case. Subsidiary bodies to systematically ensure cooperation and follow-up should be established. The sanctions regimes of the Council, as well as peacekeeping mandates, should be harmonized to support the decisions of the Court. Above all, he stressed, the Council should apply a clear political will in the interest of justice. The States parties to the Rome Statute who were also Council members should take the lead in that effort.

MAFIROANE EDMOND MOTANYANE (Lesotho) said the Court had been an effective partner to the Council and brought heightened expectations to the world that the era of impunity was "no more" and perpetrators of heinous crimes would be punished. Such public faith could only be sustained if the Court maintained its independence and impartiality in the delivery of justice. In referring matters, the Council must not be persuaded by political motives. Moreover, it must adopt a consistent approach to referrals, with clear parameters within which the Council worked in crafting related resolutions, which should be clear and avoid double standards.

The referral of cases was not an end in itself, he said, emphasizing that the Council must follow up on them. Mandates must also match resources, as the Court could not discharge its obligations without adequate funding. With the Council's full support, the Court could fulfil its mandate of tackling impunity, providing justice to victims of the most atrocious crimes and contributing to the reconciliation of societies ravaged by violence, he said.

TUVAKO NATHANIEL MANONGI (United Republic of Tanzania) said a "fine balancing act" between peace and justice meant that the Court should complement and not disrupt or subvert endeavours by the international community — through actions by the Council or regional bodies — to seek peace and security. Similarly, the Council should continue to facilitate the Court's work in securing justice for the victims of atrocities by holding accountable the perpetrators. Cooperation between the Court and the Council was 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 outlining commonalities between the bodies, he said both had a global mandate and were preoccupied with activities in Africa. Because of significant difficulties, the Court's work on the continent was a matter of concern to many Governments, he said, emphasizing that impunity should be fought whenever and wherever it occurred, and the Court must be insulated from political influence, including from the Council. Given additional interest in Africa by other United Nations organs, he reaffirmed his country's belief that there could not be peace, security and justice without sustainable and inclusive development. On referrals, he urged the Council to be more transparent. In terms of jurisdiction, he said traditional justice processes, conducted in, for example, the Gacaca courts in Rwanda after the genocide, was a true illustration of justice not only being done but being seen as done. The Court was not a perfect instrument, but it was still the best model in addressing international justice, he said. "It deserves our support," he concluded.



PAUL SEGER (Switzerland) said referrals of matters to the Court should follow a consistent pattern without double standards. When a State failed to assume its primary responsibility to protect its population, the Court must be tasked to step in and the Council must assure that justice reached not only some of the victims of the worst crimes, but all of them. In that vein, the situation in Syria, “where heinous crimes are committed daily”, was a concern, he said, deploring that Syria had not responded to repeated calls from the international community to ensure accountability through a national procedure that was credible, fair and independent.

He called on the Council to refer the situation in Syria to the Court so that body could address all allegations of grave crimes, irrespective of who had committed them. At the very least, the Council should send a warning urging all parties to the conflict fully to respect international human rights and humanitarian law. The Council should announce that it intended to refer the situation to the Court unless a credible, fair and independent accountability process was being established in a timely manner, he said. Referrals should not be “half-hearted”, but strong and coherent. Given that the Council had advanced international criminal justice by establishing two United Nations-funded tribunals, it seemed inconsistent that the United Nations did not contribute to the costs of referrals to the Court. Referrals should also not contain exemptions for nations from non-States parties to the Rome Statute, and the Council must follow up on referral resolutions.

JAN GRAULS (Belgium), aligning himself with the statement made by the European Union delegation, said that the Court had shown itself to be at the very forefront of the fight against impunity. Therefore, cooperation with the Council was important. The very existence of the Court had a deterrent effect consistent with the role of the Council. Inaction on non-cooperation by States was, therefore, a matter of great concern. Ongoing, interactive dialogue between the Council and the Court should strengthen synergies in that and other areas.

He called on Member States, in addition, to collectively support the Court in its financial needs. Effective complementarity with national justice systems must be ensured; it was for that reason his country was working with other nations on an international legal framework for extradition and mutual assistance in criminal matters. Finally, he supported the proposal of Switzerland on referral of the situation in Syria to the Court, and urged countries to join the 35 others that had already endorsed it.

YANERIT MORGAN (Mexico), affirming her country’s strong support for the International Criminal Court, said she regretted the “open and manifest lack of cooperation with the Court shown by some States”. With 13 out of 19 arrest warrants issued by the Court remaining outstanding, impunity for serious crimes continued to be perpetuated. In that context, the Council had a pivotal role in supporting the Court.

However, the Council’s referral powers, she said, should be used in a responsible, objective, unselective and effective manner. Effective follow up was also essential in that regard, she added, underlining the mandatory character of the Council’s resolutions. The Council’s power of referral of an investigation or a prosecution must, as well, be used in a responsible manner. Finally, whether or not the Council had referred a certain situation to the court, both organs should cooperate

OTHMAN JERANDI (Tunisia) said that advancement of the rule of law at the international level was fundamental for fostering a world that was just and peaceful. Support of judicial mechanisms at the national level, in order to be able to prosecute violations of international law, was critical in that regard. The Court must be adequately supported, as well, with strengthened cooperation with the Council.

In that context, the Council must develop an integrated approach to referrals, avoiding double-standards and not ignoring such situations as pointed to in the Goldstone report and other issues regarding Palestine. Further, the Court should be reinforced by steps in prevention of crimes before they occurred. For that purpose, an international constitutional law court could be useful to review disputed national laws and invalidate fraudulent elections. It could also assist peoples in their quest for justice without a resort to violence and the ensuing bloody results.

FRANTIŠEK RUŽIČKA (Slovakia) said the Council and the Court should cooperate fully to achieve their main objectives of maintaining peace and security, and fighting impunity for the most serious crimes of

concern to the international community. He welcomed the Council's resolutions that referred the situations in Sudan and Libya to the Court. Acting under Chapter VII of the Charter, the Council had initiated the Court's action when crimes falling within its jurisdiction appeared to have been committed. But simply referring the situation to the Court was not enough.

Adequate follow-up to ensure that affected parties were fully complying with Council resolutions and were cooperating with the Court was necessary, he said. There were cases in which the lack of cooperation undermined not only the Court's activities, but also the fundamental principles of the United Nations. Today's debate was the beginning of discussions on the matter. Constructive dialogue and effective cooperation between the Council and the Court were vital to ensure that the most serious crimes under international law did not go unpunished and lasting peace was achieved.

FERNANDO ARIAS ( Spain) said the rule of law was essential for the maintenance of peace and security, human rights and sustainable development. Effective multilateralism was impossible without respect for the rule of law, which was a basic principle of Spain's political model. Strengthening relations between the Court and the Council was an important area, as both bodies shared complementary elements. The existence of the Court had in many cases put an end to impunity, and the body was having a deterrent effect, he said.

The cases of Darfur and Libya were examples of the complementary nature of the Court and the Council, and it was essential that the necessary political will was put forth beyond the technical aspect of this debate, he said. He suggested, among other things, that increased dialogue between all United Nations members, especially among Security Council members, would avoid the polarization of States and could bridge gaps on looming matters of justice. Periodic meetings would allow for a honing of relations between the two bodies, he said, and States parties to the Rome Statute could pass along their experience to countries in their regions that had not yet acceded or ratified the instrument.

PALITHA T. B. KOHONA (Sri Lanka) said the rule of law must be understood in the context of individual rights, as well as in ensuring the progress of individuals and societies, particularly with the right to development. A rules-based approach was also needed to protect the environment. The rule of law was best understood in a holistic manner. The United Nations could play a crucial, helpful role in domestic compliance with treaty obligations by helping States build capacity. Close cooperation in applying laws nationally, regionally and internationally was vital to address the growing problem of transnational organized crime and terrorism, which threatened global peace and good order.

Confronting those challenges, he said required close cooperation and capacity-building nationally and regionally, including enforcement by the law. Unilateral and selective application of international law rules must be avoided. Sri Lanka had always advocated the settlement of internal and global dispute through negotiation, mediation and other peaceful means. Countries must be allowed to create their own local mechanisms to consolidate peace, encourage reconciliation and strengthen democratic institutions. They must have the much-needed space to begin that restorative process. In such situations, the Organization could address the gaps, taking into account local sensitivities.

EDUARDO JOSE ATIENZA DE VEGA (Philippines) said the rule of law was the "bedrock" upon which nations built stable and flourishing societies and fostered strong relations. It was also an effective tool to prevent conflict and impunity. Adherence to the rule of law had contributed to the Philippines further strengthening its democratic institutions and processes, and had translated into significant inroads in economic growth and included a commitment to settle differences, as was seen with the signing on 15 October of the Framework Agreement between the Government and the Moro Islamic Liberation Front (MILF), which aimed to lay down the groundwork to achieve just, lasting and genuine peace in Mindanao. He said attention must be given to, among other things, exploring ways by which the Court could assist the Council as a preventive tool to uphold the rule of law, accountability, peace and security.

OCTAVIO ERRÁZURIZ (Chile), affirming that peace could not exist without justice, strongly supported the work of the Court. Noting the connections between the work of the Court and the Council, he said that the Council should exercise its power to refer situations or suspend investigations on the basis of consistent

parameters. It was a necessity for the Council to follow up on the referrals made to the Court, and the Council must pay special attention to situations of refusal to cooperate with the Court.

Calling the principle of complementarity the cornerstone of the Rome Statute, he urged the Court to intervene in States within its jurisdiction in which crimes had been committed and such States were unable or unwilling to carry out necessary judicial proceedings. As cooperation of Member States was fundamental for the work of the Court, his country had formulated a pledge, during the recent High-level Meeting on the Rule of Law, to develop national legislation for that purpose.

ANDREAS RIECKEN (Austria) said that, as a State party to the Rome Statute, his country fully supported the Court's work and independence, and called for it to be provided with all necessary support and cooperation. Noting the common concerns of the Court and the Council, as well as the accomplishments of the Court, he called the referral of the situation in Libya to the Court a milestone, commenting that other situations would warrant the same decisive action by the Council. In that regard, he called for a coherent approach to referrals.

A referral of the situation in Syria to the Court would, he said, send a clear signal that every individual responsible for serious crimes would be held accountable. However, referral was only the starting point for justice, he maintained, affirming that all States must abide by their obligation to cooperate with the decisions of both bodies, particularly in regard to the arrest of suspected perpetrators. In addition, he called on the United Nations to bear an adequate share of the costs incurred by Council referrals. He lastly stated that the power of deferral should be used only with great caution, and called on the Council to ensure full cooperation with the Court.

PATRICIO TROYA (Ecuador) said the most serious crimes must not go unpunished and the biggest tool against impunity was the Rome Statute, as seen in the Lubanga case, which had closed one of the "bloodiest chapters" of recent history. Punishing those who committed criminal acts helped victims overcome trauma and laid the groundwork for peace, he said. To better accomplish that, cooperation between the Court and the Council should be enhanced, he said, adding that the Court could not complete its tasks without firm support from Member States and the Council since honouring commitments to financing was critical. In that context, the core budget of the United Nations should include allocations to the Court. He also called for all necessary action to bring into full force the provisions on crimes of aggression. It was unfortunate that three of the permanent members of the Security Council had refused to accede to the Rome Statute, when instead they could do their part in fighting impunity.

DAFFA-ALLA ELHAG ALI OSMAN (Sudan) said "war is war", and wherever there was fighting, there would be casualties and rights violations. The Council should pay attention to the root causes of conflict and to addressing them. Highlighting that the Council and the Court had different mandates, he said promoting the rule of law within the framework of international security must not be used as an excuse that flouted justice, he said. He pointed out that creating new international laws and making them binding without giving parties the opportunity to adopt a national and sovereign decision was not justice.

Sudan had turned over a "new leaf", making great progress in achieving justice, settlements and reconciliation, and he expected the Council to assume its role in supporting those efforts by, among other things, adopting necessary measures against the armed groups that had not joined the reconciliation process. The Council had a duty to maintain peace and security and promote the rule of law, he said, yet many issues pertaining to the Court's application of the rules of its Statute, especially regarding its relationship with the Council, remained the subject of international and legal contention, as confirmed in today's discussion by many speakers.

EDITA HRDÁ (Czech Republic) expressed strong commitment to international criminal justice. The history of her country, where serious crimes under international law and serious human rights abuses were perpetrated during World War II and the Communist era, constituted an argument for the Court's existence. Such crimes must not happen again, and supporting the Court was the only way to achieve that goal. The Court's role in fighting impunity was irreplaceable. The Czech Republic stood ready to support it wherever possible. To that end, last month the Czech Deputy Prime Minister and Foreign Affairs

Minister had joined an informal ministerial network on matters related to the Court established by Liechtenstein.

She said that the Court would not be able to address crimes not linked to its State parties until the Rome Statute became universal. Until then, the Council had a special responsibility to close the impunity gap by making referrals to it. She was encouraged by Council resolutions 1593 (2005) and 1970 (2011), but regretted that the Court had not received the necessary Council support so far to fulfil its mission. The Council had the power to enforce its own resolutions and make sure that States cooperated with the Court. She expressed hope that the debate would be taken as a call by the United Nations membership to act on that matter. Impunity was not a solution.

The two referrals during the Court's 10-year existence were not an overuse of that tool. Situations in the last decade involving "the most serious crimes of concern to the international community as a whole", as set out in the preamble of the Rome Statute, could have been referred by the Council to the Court, including situations in which those crimes continued today. Double standards could hinder promotion of the rule of law and international justice. Consistency, which had a preventive effect, was needed in the Council's practices. The United Nations should cover the cost of future referrals to the Court, as it did for referrals to United Nations ad hoc tribunals.

SOFIA MESQUITA BORGES (Timor-Leste), also speaking on behalf of Samoa, said the Court's verdicts against Thomas Lubanga and Charles Taylor had sent a strong message to victims of violence that the global community was serious about fighting impunity and ensuring justice for the most heinous crimes against humanity. She expressed hope that the complementarity and unique relationship between the Court and the Council would continue. Greater cooperation between the two would allow the Court's work to be carried out in a more efficient, timely way. The lifting of the travel ban on President Gbagbo to allow him to be present at the Court's proceedings in the Hague and the increase in references to the Court in Council resolutions, such as 2071 (2012), were examples of such cooperation. She encouraged States that had not done so to consider ratifying the Rome Statute.

The Court's ability to implement its mandate must be strengthened. Council referrals should include a financing mechanism to ensure that the Court had the resources and capacities to fulfil its mandate efficiently and effectively. The Council's support of the Court was not limited to adequate, necessary financing. Referrals to it under article 13b of the Rome Statute should also seek to encourage States' cooperation. Justice must be seen in order to be done, and that must happen in a timely way, she said. As the growing number of States parties to the Rome Statute showed, the fight against impunity was universal.

As such, the United Nations should support efforts to strengthen the Court's capacity to deliver justice and to receive the cooperation needed. During last month's United Nations treaty event, Samoa had ratified the Kampala amendments to the Statute on crimes of aggression. In doing so, Samoa reaffirmed its faith in the rule of law and the vital protection the law offered to all States, especially to the weak and small, without having to resort to armed forces or belonging to a military grouping to guarantee its protection.

MARCEL VAN DEN BOGAARD (Netherlands) underlined the value of regular dialogue on the subject at hand, given the interdependence of the work of the United Nations and the International Criminal Court. He also encouraged the Council to receive periodic briefings from the Court's President and Prosecutor. He called the Court a "powerful instrument for enforcing international law, ending impunity and serving as a deterrent of future crimes". In that way, ending impunity was both a beginning and an end in the "responsibility to protect process". Welcoming the decisive referrals made thus far, he said that consistency was important in the matter of referrals and he would welcome a discussion on the financing of the work of the Court resulting from such referrals. He called on the Council to remain actively engaged in those situations and said that States must be urged to cooperate.

Regretting the persistent disagreement in the Council over Syria, he favoured referring the situation to the Court, which, he said, did not necessarily exclude prosecutions at the national level. He called on non-State parties to accede to the Rome Statute and on all States parties to ratify to ratify the Kampala amendment swiftly. He noted, finally, that, to promote interstate cooperation in the investigation and prosecution of

international crimes, the Netherlands, Belgium and Slovenia were developing a multilateral instrument that would fill the gaps in the international legal framework for extradition and mutual assistance in criminal matters. He also announced that, as the host country of the Court, the Netherlands was co-organizing a ceremony marking the 10-year anniversary of the Statute's entry into force, to be held before the Assembly of States Parties on 14 November.

SACHA SERGIO LLORENTTY SOLÍZ (Bolivia) trusted that today's debate would help foster peace based on social justice. For that purpose, the Court must move towards the goal of truly universal jurisdiction, as war crimes must be punished in a systematic manner. Noting that certain countries that had the greatest capability for war had yet to accede to the Rome Statute, he commented that there would never be true justice if the resultant inequality persisted. For that reason, United Nations reform was critical, and a new Council — a new platform for multilateral relations — was essential in that regard.