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President: Mr. Ali Abdussalam Treki (Libyan Arab Jamahiriya)

The meeting was called to order at 10.15 a.m.

Agenda item 75

Report of the International Criminal Court

Note by the Secretary-General (A/64/356)

Report of the Secretary-General (A/64/363)

The President (*spoke in Arabic*): It is my pleasure to give the floor to Judge Sang-Hyun Song, President of the International Criminal Court.

Mr. Sang-Hyun Song: I am very honoured today to address the General Assembly on behalf of the International Criminal Court (ICC).

This is my first opportunity to address the General Assembly since my election in March to succeed Judge Philippe Kirsch as President of the ICC. Judge Kirsch deserves great credit for his leadership not only in the establishment and early development of the ICC, but also in the development of the relationship between the ICC and the United Nations. I fully share his commitment to a strong and close relationship between the ICC and the United Nations. I look forward to further developing our mutually beneficial cooperation and support over the three years of my mandate as President of the ICC.

In my remarks today, I would like first to update the Assembly on the activities of the ICC and, secondly, to speak about the priorities for my presidency, focusing in particular on how they relate to the United Nations.

On 26 January 2009, Trial Chamber I began the first ICC trial, that of Mr. Thomas Lubanga Dyilo. He is charged with conscripting, enlisting and using children under the age of 15 to participate actively in hostilities in the Democratic Republic of the Congo. The trial is ongoing.

Next month, Trial Chamber II should commence the second trial of the ICC. Mr. Mathieu Ngudjolo Chui and Mr. Germain Katanga are each charged with seven counts of war crimes and three counts of crimes against humanity in the Democratic Republic of the Congo.

In the situation in the Central African Republic, Pre-Trial Chamber II recently confirmed three charges of war crimes and two charges of crimes against humanity against Mr. Jean-Pierre Bemba Gombo. Trial Chamber III is currently preparing for this trial, including ensuring the disclosure of evidence to the accused and the protection of witnesses.

Last week, Pre-Trial I commenced a hearing on the confirmation of charges against Mr. Abu Garda. He is charged with three counts of war crimes related to an attack on African Union peacekeepers.

The ICC is only halfway through its first trial. It is still too early to draw definitive conclusions about the judicial proceedings. Permit me, however, to make three general observations.

First, the extent of attention that must be given to the protection of witnesses is perhaps unprecedented for any court or tribunal. Of the 30 witnesses called so far in the Lubanga case, 22 testified in Court with some

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form of protective measures. In comparison, only 28 per cent of witnesses at the International Criminal Tribunal for the Former Yugoslavia have required any protective measure. The in-court protective measures are only one aspect of the measures to safeguard victims and witnesses. Much more goes on behind the scenes to ensure that victims and witnesses are not put at risk, while also guaranteeing the rights of the accused to a fair and public trial.

Secondly, the ICC is operating against a largely blank slate of jurisprudence. The Pre-Trial and Trial Chambers are routinely confronted with fundamental questions of interpretation of the Rome Statute, some of which concern completely new innovations in international law. In the past year, there have been two inquiries into the admissibility of cases on the basis of the principle of complementarity — one in the case of Mr. Katanga and the other on the situation in Uganda. The issues raised in these instances have been resolved ultimately by the Appeals Chamber.

Thirdly, the ICC has dealt ably with what many foresaw as a potentially significant practical challenge, namely, the participation of victims. A total of 102 victims have participated in the proceedings against Mr. Lubanga, and 345 victims will participate, through two legal representatives, in the trial of Mr. Katanga and Mr. Ngudjolo Chui.

The biggest obstacle to the conduct of judicial proceedings remains the lack of arrest and surrender of suspects. Warrants have been outstanding since 2005 for Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen for war crimes and crimes against humanity allegedly committed in Uganda. Bosco Ntaganda has been sought since 2006 for war crimes allegedly committed in the Democratic Republic of the Congo. Ahmad Harun and Ali Kushayb are each subject to warrants for crimes against humanity and war crimes issued in 2007 in relation to the situation in Darfur, the Sudan.

On 4 March 2009, Pre-Trial Chamber I issued a warrant of arrest for Mr. Omar Al-Bashir, the President of the Sudan. The Chamber found reasonable grounds to believe that he had committed five counts of crimes against humanity and two counts of war crimes in Darfur. As with all previous warrants, requests for his arrest and surrender were issued to States. It is the responsibility of States to arrest and surrender those persons, in accordance with their legal obligations.

Beyond those judicial proceedings, the ICC Prosecutor is continuing his investigations into the four situations before the Court. He is also proactively gathering and analysing information on crimes which may have been committed within the jurisdiction of the Court in other situations. The Prosecutor has publicly stated that he is looking into situations in Colombia, Georgia, Afghanistan, Côte d'Ivoire, Kenya, Palestine and Guinea.

I would like to turn now to the priorities of my presidency as they pertain to the United Nations. My three priorities for the Court are, first, to ensure respect for the judicial independence of the Court; secondly, to enhance the effectiveness of the Rome Statute system; and thirdly, to continue to strive to be a model of public administration. Today, I will speak about the first two priorities.

The hallmark of the ICC is its independent judicial nature. The drafters of the Rome Statute took great care to ensure that political considerations not be part of the work of the judges. Once a situation comes before the Court, justice follows its course. The judges cannot and will not take political considerations into account. They make judicial judgments on the basis of judicial facts. Those who wish to discuss political issues will need to do so in political forums. Those who wish to engage the judges should do so through judicial proceedings.

At the same time, this judicial institution operates within a political world. It depends on States and others not just for cooperation, but also to respect, protect and enhance the Court's judicial independence. When the ICC issues a decision, it must be enforced by States in accordance with States' legal obligations. If a request of the Court creates problems for a State, it should nevertheless respect the decision and consult with the Court in accordance with the Rome Statute. Where misperceptions may continue to exist, States, international organizations and civil society should continue to promote awareness and understanding of the ICC's purely judicial nature.

The second priority of my presidency is to enhance the effectiveness of the Rome Statute system. States, international organizations and civil society have been working for years to develop the system of international criminal justice. Their achievements have been remarkable, but it is not time to rest on one's laurels. The system can and should be further developed.

The primary responsibility to do so falls to States, but the ICC has a natural leading role to play. The system of international criminal justice can be enhanced in three ways.

First, the system can be broadened by advancing global ratification of the Rome Statute. Ratification of the Rome Statute is a sovereign decision of States. The ICC will not seek to persuade States in their decisions, but it will provide as much information as possible to those considering ratification.

Secondly, the system can be deepened by improving the ability and willingness of national jurisdictions to investigate and prosecute crimes within the jurisdiction of the ICC, namely, genocide, crimes against humanity and war crimes. The ICC will, subject to the limitations of its resources and its Statute, explore ways to assist States seeking to develop their capacities to investigate and prosecute international crimes.

Thirdly, the system can be strengthened by improving cooperation, in particular regarding enforcement by States of decisions and orders of the ICC. Cooperation is a matter of legal obligations which must be fulfilled. The ICC will nevertheless work with States to identify means and methods of enhancing the speed and reliability of cooperation.

The United Nations has an equally central role to play in enhancing the system of international criminal justice. While the first article of the Rome Statute establishes the ICC, the second requires it to be brought into relationship with the United Nations. Further development of the system of international criminal justice and its further integration with the United Nations system is in our common interest.

The ICC greatly appreciates the statements of the Secretary-General, the resolutions of the General Assembly and other bodies, and all the practical efforts undertaken by the United Nations in support of the international criminal justice system. The ICC looks forward to continuing to work with the United Nations, States, other international organizations and civil society to explore new means and methods for further enhancing the system of international criminal justice. In this regard, the stocktaking exercise to be part of the Review Conference convened by the Secretary-General in Kampala next year will provide an excellent opportunity not only to assess where the system stands, but also to set a road map for the future.

In 15 years, the International Criminal Court has gone from an idea on the agenda of the General Assembly's Sixth Committee and the International Law Commission to a robust judicial institution whose activities permeate the entire United Nations system. The futures of our two institutions have become very much intertwined. Members have my commitment and that of the Court to our continued contribution to the aims of the Rome Statute and the purposes and principles of the United Nations through our faithful adherence to the Court's independent and judicial mandate.

Mr. Ehrenkrona (Sweden): I have the honour to speak on behalf of the European Union. The candidate countries to become members of the Union Croatia, the former Yugoslav Republic of Macedonia and Iceland, the countries of the Stabilization and Association Process and potential candidates Albania, Bosnia and Herzegovina, Montenegro and Serbia, as well as Ukraine, the Republic of Moldova and Georgia, align themselves with this statement.

Chile and the Czech Republic have during this past year brought the number of States parties to the Rome Statute to 110. However, in order to truly reach our common goal of ensuring that perpetrators of heinous crimes are always and without exception brought to justice, we must continue to work for universal acceptance of the Statute and the International Criminal Court (ICC). The European Union therefore warmly welcomes the fifth annual report of the Court (see A/64/356), which clearly demonstrates that we have been successful in creating such a court. We are still in an early phase of the Court's life, but the tremendous progress already achieved in such a short time is a testimony to the hard work of its officials and staff. We wish to commend and thank them for their efforts.

This year, once again, the European Union reaffirms its unwavering commitment to fighting impunity for the most serious crimes of concern to the international community as a whole. Together, more than 10 years ago now, we took a momentous step forward when we adopted the Rome Statute, creating for the first time in history a permanent international court to ensure that perpetrators of crimes of genocide, crimes against humanity and war crimes are held accountable. Until we reach this goal, the distribution of justice might at times seem uneven, maybe even unfair, but our response to this challenge cannot be to

back away from the great achievements already made. Instead, we must continue down the path we have chosen and intensify our efforts to fight impunity.

The same answer applies when we are faced with another recurring challenge — when the two equally desirable goals of peace and justice are pitted against one another. We can certainly find several examples of peace processes made more complex through the introduction of accountability. Nevertheless, it is our responsibility to address both, not only because peace and justice are mutually reinforcing — since accountability is a cornerstone of the restoration of the rule of law in post-conflict countries — but also because victims of armed conflict should never be put in the position of having to choose between peace and justice for crimes committed against them and their families. It is our responsibility to offer them both. The only choices available are those of timing and method.

Besides our clear responsibility to provide victims with justice, we should keep in mind the long-term effects of the Court, which should be greater respect for international law, especially international criminal law, international humanitarian law, human rights and the rule of law. This will ultimately contribute to international peace and justice, in accordance with the Charter of the United Nations.

The Court cannot endure, however, without the cooperation of States. In this context, the European Union is deeply concerned that several warrants for arrest have still not been executed. We urge all States to cooperate with the Court and stress that a lack of cooperation on the part of States that are legally obliged to cooperate is unacceptable.

The ICC is a court of last resort. The primary responsibility for bringing offenders to justice lies where it should, with the States themselves. In a perfect world, we would therefore never have to resort to such a court. However, the reality is that there are times when individual States are not able or not willing to investigate and prosecute offences. The underlying reasons can be various. What is important is that in these cases we have reached agreement that the international community should come to the victims' assistance. In accordance with the basic principles of the rule of law, decisions concerning the admissibility of a case at the ICC must be based only on legal considerations. It is therefore vital and important to safeguard the Court's independence.

The European Union is highly appreciative of the support given by the United Nations. The United Nations is a critical partner of the ICC; it is often in a unique position to provide the Court with logistical and security support in the field. As far as cooperation with international organizations is concerned, more could be achieved; additional mechanisms for deepened cooperation with regional organizations could be established. The European Union, for its part, was pleased to be able to sign an agreement of cooperation and assistance with the ICC in 2006, allowing, *inter alia*, for regular exchange of information and documentation of mutual interest. The European Union encourages other relevant international organizations, including the African Union, to formalize their cooperation with the Court.

We are now approaching the Review Conference of the Rome Statute, to be held next year in Kampala. At that time, we will probably address a number of amendments in addition to those that we are obliged to address in accordance with the Statute. We will also have an opportunity to take stock of where international criminal justice is today — an exercise to determine where the ICC, together with the other international criminal courts and tribunals, is likely to have a defining role.

In that context, the European Union would like to express its gratitude to Uganda for that country's readiness to host the Conference, which indicates its commitment to the ICC. As one of the three African countries that have voluntarily referred a situation to the ICC, Uganda is also in a unique position to show other States how workable implementing legislation is introduced and how a State can effectively cooperate with the Court.

The International Criminal Court is a fundamental tool in preventing and deterring those crimes that undermine the very essence of humanity. The European Union is and will remain firmly committed to the Rome Statute and to the International Criminal Court.

Mr. McLay (New Zealand): I have the honour to speak today on behalf of Canada, Australia and New Zealand (CANZ). We commend the International Criminal Court (ICC) for all that it has accomplished to date and thank the President of the Court for his report this morning.

The Rome Statute is on its way to achieving universal acceptance. We can take great pride in the

fact that, in just over a decade, it has attracted 110 States parties. We commend those parties for committing themselves to the full implementation of the Rome Statute and to ending impunity for grave crimes. We thank also those States parties and non-governmental organizations that have actively promoted the universality and full implementation of the Statute in the wider community.

Every year since its inception, the ICC has reached important milestones in its development, and 2009 has been no exception. The Court is now fully operational. The Office of the Prosecutor is investigating crimes and has issued warrants against alleged perpetrators in four situations, with several others also under analysis. The year 2009 has seen the commencement of the Court's first trial as well as its first voluntary appearance. Next year will see another key "first" for the Court when the inaugural ICC Review Conference is convened in Uganda. The location of the Conference is a positive reflection of Africa's constructive engagement with the Court over the past decade.

As the 2010 Review Conference draws closer, we encourage States and stakeholders to continue working together to ensure its success. Tangible progress has been made in the Special Working Group on the Crime of Aggression, and there appears to be broad support for much of its work, particularly in relation to the definition of the crime and its elements. Although some challenging issues remain, CANZ will do its utmost to help bring those important negotiations to a successful conclusion, and we encourage other States to do the same.

We also encourage States not to overburden the Review Conference with too many other proposals to amend the Rome Statute. Such proposals should be considered only if they enjoy broad support, promote universality and address the Court's most pressing needs. While the Review Conference will be the first opportunity to consider amendments to the Statute, it will not be the last. The Conference will also provide a unique opportunity to undertake a high-level stocktaking of international criminal justice in order to assess its concrete achievements, challenges and lessons learned and to identify practical, meaningful ways to further strengthen the Court.

While the Court reaches its key milestones, it continues to face challenges. In addition to practical

matters that require resolution to enable it to operate effectively and efficiently, it faces some more overarching issues.

First, the Court does not yet have a global reach. Universalization must remain a primary goal. In the lead-up to the Review Conference, we encourage States that have not yet become parties to the Rome Statute to do so and thereby contribute to the ending of impunity.

Secondly, the Court relies on States and international and regional organizations to provide the political, moral and practical support necessary to enable it to fulfil its mandate. Assistance and cooperation must be provided with a view to, among other things, aiding in the arrest and surrender of accused persons, gathering evidence and enforcing sentences. To that end, we call on all States to cooperate with the Court and its processes. And we call in particular on the Governments of the Sudan and Uganda to act on the outstanding arrest warrants issued by the ICC and to play their part in assisting the Court to ensure that justice is done.

The CANZ countries will do their utmost to help make the Review Conference a success, and we encourage all participants to do the same. Above all, however, we will continue to provide the International Criminal Court with our strong and unwavering support.

Ms. Valère (Trinidad and Tobago): Trinidad and Tobago has the honour to speak on behalf of the States members of the Caribbean Community (CARICOM) which are States parties to the Rome Statute of the International Criminal Court (ICC). We wish to congratulate President Sang-Hyun Song on his election as President of the Court and to thank him for his report to the United Nations, in keeping with article 6 of the Relationship Agreement between the United Nations and the Court, as well as paragraph 17 of resolution 63/21.

We are confident that, under President Song's leadership, the Court will continue to discharge its obligations in a manner consistent with the noble principles set out in the Rome Statute and the mandate conferred on it by States parties to bring to justice those persons accused of committing crimes that fall under article 5 of the Statute: genocide, war crimes, crimes against humanity and, when defined, the crime of aggression.

CARICOM States parties are committed to carrying out our obligations under the Rome Statute in good faith. We have always viewed the report of the Court as a significant conduit for providing vital information on its activities to the wider membership of the United Nations. For us, this annual event is another mechanism for promoting the universality of the Rome Statute and the role of the Court in the fight against impunity. The recent ratification of the Rome Statute by Chile and the Czech Republic is further confirmation of the growing acceptance of the Court by States Members of the United Nations.

As a permanent international criminal tribunal aimed at fostering adherence to the cardinal principles of respect for the rule of law and the advancement of objectives on behalf of the hapless victims of serious crimes, the ICC has demonstrated in a relatively short period of time that it will investigate and prosecute those persons, whomever they may be, referred to it by States parties and other entities under the relevant provisions of the Rome Statute.

While CARICOM States parties welcome the advances made by the Court during the past year, we are deeply concerned about the failure of some States to honour their obligations under the Treaty. CARICOM States parties acknowledge that cooperation of all States parties and other entities with the Court is indispensable if the institution is to be effective in its quest to prosecute those cases that have been referred to it by States parties, other States or the Security Council.

Consequently, we regret the fact that there remain eight outstanding warrants of arrest in three situation countries for individuals accused of committing grave crimes. At this time, we wish to remind those States of their legal obligations to arrest and surrender to the Court all those individuals for whom warrants of arrest have been issued. The continued failure to execute these warrants of arrest serves to further undermine the efforts of the Court to counter impunity and bring about justice on behalf of the multitude of victims of war crimes, crimes against humanity and genocide. We urge all the concerned States to honour their obligations and cooperate with the Court in keeping with their Treaty obligations and the relevant resolutions of the Security Council.

Notwithstanding the failure of some States to cooperate fully with the Court, CARICOM States parties are satisfied with the strides made by the Court

during the current year as it seeks to bring justice to victims of grave crimes and protect the innocent from serious breaches of international human rights law, international humanitarian law and peremptory rules of customary international law recognized by civilized States. In this respect, we note with satisfaction the progress made by the Court in its first trial in the case of *Prosecutor v. Thomas Lubanga Dyilo*. Similarly, we welcome the start of proceedings in the case involving Germain Katanga and others. We will remain seized of the issues involved in these cases and are convinced that, despite the concerns raised by some detractors, the Court will continue to observe all the tenets associated with the conduct of a trial by an independent and impartial tribunal.

CARICOM States parties have observed that the Court is not only concerned with the rights of the accused, as is demonstrated by its scrupulous observance of the maxim *audi alteram partem* (hear the other side) in the *Lubanga Dyilo* and other cases, but it is also conscious of the potential dangers faced by witnesses to the crimes under its jurisdiction. Consequently, we commend the Court for its witness protection programme which is aimed at safeguarding witnesses from any potential harm that may befall them as a result of their participation in any matter before the Court. At this juncture, we wish to commend the Court for the introduction of various in-court protective measures that are utilized in the witness protection programme. We congratulate the Court for ensuring that the rights of the victims, witnesses and accused are preserved and respected during each proceeding.

The ICC is first and foremost a judicial body and, as such, States parties must seek to elect to its bench only those candidates who meet the requirements laid down in article 36 of the Rome Statute. It is the view of the CARICOM States parties that judges should be selected not only on the basis of their qualifications, competence and experience in the spheres of either criminal law or international law, but must also be of high moral character and representative of the principal legal systems of the world. In this regard, CARICOM is honoured to remind States parties of the candidature of Justice Duke Pollard of Guyana for election to fill one of two judicial vacancies at elections scheduled to take place during next month's Assembly of States Parties, to be held in The Hague. We are fully convinced that as a jurist representing the common law legal system, Justice Pollard satisfies the criteria for

election as a judge of the ICC, and we request the support of all States parties for his candidature which has been endorsed by CARICOM member States.

CARICOM States parties also look forward to the completion of the work aimed at defining the crime of aggression so that a definition of the crime can be adopted at the Review Conference, scheduled to take place in Kampala, Uganda, in June 2010. However, we wish to emphasize that, in seeking to reach consensus on this issue, States must be careful not to compromise the independence of the ICC and subject it to the authority of any other institution insofar as the exercise of jurisdiction over that crime is concerned.

Further, we draw Members States' attention to the recent proposal which calls for an amendment to the Rome Statute to include international drug trafficking as a crime within the jurisdiction of the ICC. This proposal is not a new one, receiving the support of some States at the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, held in Rome in 1998.

We respectfully submit that the transboundary criminal activities of international drug trafficking continue to have a deleterious impact on the socio-economic structure of the Caribbean region and elsewhere, sometimes beyond the reach of local judicial and law enforcement officials. We call for favourable consideration to be given to this proposal at our next Assembly of States Parties.

In conclusion, CARICOM States parties wish to reiterate that the Preamble to the Rome Statute of the ICC contemplates a relationship between the Court and the United Nations system. An efficient and effective relationship between both organizations would help us tackle the crimes of most serious concern to the international community as a whole and end impunity. We therefore view the success of the ICC as the business of all States Members of the United Nations, whether State parties or otherwise. CARICOM States parties therefore take this opportunity to call upon those Member States which have not yet done so to become parties to the Rome Statute.

This call assumes more urgency at a time when we are about to witness the cessation of the activities of the various ad hoc International Criminal Tribunals established by the United Nations. As a permanent international criminal tribunal which is also committed to global peace and security, the ICC has already

shown that it is a bulwark against those who violate the inalienable human rights of the most vulnerable among us and deserves the support of all of us.

Mr. Muita (Kenya): The Group of African States parties to the Rome Statute of the International Criminal Court (ICC) congratulates you, Sir, and your Bureau on your election to guide our work at the sixty-fourth session of the General Assembly. We assure you of our full cooperation as you carry out your mandate.

The Group also congratulates Judge Sang-Hyun Song on his election as President of the ICC and wishes him well in discharging the functions entrusted to him in that capacity. We have every confidence that he will meet the high expectations of his office.

I should like to begin by stating that the entry into force of the Rome Statute ushered in a new era in the administration of international criminal justice. The Court's deterrent role for the most serious international crimes is beginning to be felt as it engages in greater judicial activity. As a fully functional judicial institution, the Court is making substantial progress in its work and developing its own jurisprudence on international criminal justice. If it is to make more progress, the Court should be given all the necessary support.

War crimes, crimes against humanity and genocide know no borders. We must all become allies in fighting these crimes. To this end, the Rome Statute affords States the opportunity to deal with cases of human rights violations under domestic law and allows the ICC to assume jurisdiction only when affected States are either unable or unwilling to act. This principle of complementarity is a positive development in the quest to promote and protect human rights. The debate on justice and peace or peace and justice ought not to undermine the principle of complementarity and the fight against impunity.

I wish to take this opportunity to reaffirm the African Group's commitment to its obligations under the Rome Statute. The African States parties to the Rome Statute remain committed to the fight against impunity, as well as to the fair, independent, impartial and effective functioning of the International Criminal Court. To this end, the African States parties have continued to cooperate with the ICC on a broad range of issues.

The movement towards the universality of the Court is clearly visible. States are increasingly looking

to the Court as the central mechanism for the administration of international criminal justice. The emerging universal acceptance of the Court is reflected in the number of countries that have become parties to the Rome Statute to date. In this connection, we congratulate Chile and the Czech Republic, which have recently become parties to the Rome Statute, bringing the Court's membership to 110 countries. We urge States that have not done so to consider becoming parties to the Rome Statute of the International Criminal Court.

In the administration of international criminal justice in Africa, the ICC was preceded by the Special Court for Sierra Leone and the International Criminal Tribunal for Rwanda. The two judicial bodies proved that it is now possible to hold leaders accountable for grave crimes and human rights abuses. The implementation of the Rome Statute will therefore go a long way towards promoting and protecting this new culture and will act as a tool for deterring potential human rights abuses everywhere.

The African Group of States parties to the ICC commends the work of the liaison office in New York and urges all Member States to support the creation of a liaison office at the headquarters of the African Union in Addis Ababa in order to facilitate efficient interface with all members of the regional body, as well as to increase awareness and support for the Court. Furthermore, we look forward to the African Union concluding a relationship agreement with the International Criminal Court to enable better cooperation between the two bodies.

With regard to the upcoming Review Conference of the Rome Statute to be held in Kampala, Uganda, in 2010, the African States parties to the International Criminal Court pledge their active participation on all pending issues, such as the definition of the crime of aggression. States which are not party to the Statute and other stakeholders should feel welcome to give their views on the topics that will be discussed so as to enrich the process of advancing the high ideals of the Rome Statute.

In conclusion, I wish to emphasize the support of the African Group of States parties to the ICC for the process of transforming impunity into accountability. There is an urgent need to continue efforts to promote universal participation in the Rome Statute and to offer the International Criminal Court all the assistance necessary to enable the Court to effectively discharge

its mandate as the pre-eminent mechanism for deterring and punishing perpetrators of genocide, war crimes, crimes against humanity and aggression. If we are to win the fight against impunity, those found guilty of crimes of mass atrocity must be held accountable, whatever their rank in public life.

Mr. Badji (Senegal) (*spoke in French*): At the outset, I should like to express my warmest and heartfelt congratulations to Mr. Sang-Hyun Song on his election as President of the International Criminal Court (ICC) and to thank him for his detailed briefing on the activities of the Court. My delegation endorses the statement made by the representative of Kenya on behalf of the African Group of States parties to the ICC. I also wish to make some comments in my national capacity.

I wish to seize the opportunity of today's consideration of the annual report of activities of the International Criminal Court (A/64/356) to reaffirm once again the great importance that my country, Senegal, attaches to the promotion of the emergence of an international criminal justice system capable of meeting the legitimate aspirations of all peoples to peace and justice.

The urgent need to create such a system was clearly spurred by the memories of the abominable atrocities and horrors that so gravely scarred the twentieth century and were largely the result of the impunity enjoyed by the perpetrators of serious crimes such as war crimes, genocide, crimes against humanity and serious, widespread and repeated human rights violations.

Senegal, convinced of the supreme need to ensure that the ideals of justice and peace triumph over the impunity that accompanied such hateful acts, was a passionate supporter of all initiatives aimed at promoting the establishment of a permanent international criminal justice mechanism. In that respect, my country was among the first States to sign the international call for the establishment of an international criminal court and to ratify the Rome Statute of the International Criminal Court.

Senegal therefore welcomed the effective establishment on 2 July 2002 of the first permanent international criminal jurisdiction with a universal mission — the International Criminal Court — as the crowning achievement of the tireless efforts we had

undertaken for many years to that end. Those years of effort and tireless struggle were indeed not in vain.

Indeed, we have now been able to put in place a mechanism that was so eagerly awaited by all men and women of goodwill who have sacrificed body and soul to put an end to all the horrors and atrocities that have shaken and outraged humankind. Obviously, the creation of the ICC was one of the greatest achievements of our times in the fight against impunity for those who have committed the most serious crimes. Indeed, the establishment of the ICC, with its deterrent effect on potential perpetrators of serious crimes, will contribute to a decline in the number of atrocities committed around the world.

Now that the International Criminal Court is fully operational and is nearing a watershed moment in its existence — its first Review Conference, to be held in May 2010 in Kampala — it would be worthwhile to revisit the goals that guided its creation. Achieving those goals will determine to a great extent the effectiveness of the system that we have created in launching the Court. That review will be particularly useful in allowing us to fully gauge the complexities and magnitude of the tremendous challenges that we must meet in order to complete our common undertaking of creating an effective international criminal justice system in the service of all humankind.

To do so, we must never lose sight of the primary objectives that guided the drafting of the Rome Statute of the ICC. They include the need for an independent, apolitical and representative international court that can function efficiently and effectively in prosecuting individuals responsible for the most serious crimes; ensuring the right of States to assume the responsibility of trying such crimes if they are willing and able to do so — the well-known principle of complementarity; and the need to ensure that victims of such crimes receive appropriate reparation and compensation.

The Court should never lose sight of these goals if it is to be entirely successful, without resort to doublespeak or juridical sleight of hand, in becoming an institution with which all States can identify.

Mr. Wenaweser (Liechtenstein): I would like to thank the President of the International Criminal Court (ICC), Judge Sang-Hyun Song, for presenting the report of the Court (A/64/356) to the General Assembly and to wish him a very warm welcome to New York.

We are satisfied that the Court has made good progress in its judicial work and welcome the two new States parties to the Rome Statute, Chile and the Czech Republic. The number of States parties has now reached 110. Universal adherence to the Rome Statute remains a central goal. The importance of reaching it is illustrated on a daily basis, and we must therefore redouble our efforts in this respect.

We are pleased to see that the Court itself is contributing to this goal by working in the manner in which it was conceived — as an independent and effective international court committed to the highest standards of justice, working within its jurisdiction and on the basis of the principle of complementarity. We note that the ICC continues to be seized of four situations and that several other situations in different parts of the world are at the stage of preliminary investigations. As a State party to the Rome Statute, we fully respect the independence of the Court and will therefore not comment on the specifics of any cases before it.

The report makes it clear that the Court, in carrying out its functions, relies on the cooperation of States, international organizations and civil society, in accordance with the Rome Statute and international agreements. The Court has no police force of its own and therefore has to rely on States, in particular for the arrest and surrender of indictees. Cooperation is also required in the areas of analysis, investigation, witness protection and enforcement of sentences. In the case of Security Council referrals, cooperation is mandated in accordance with the relevant resolutions. The cooperation required in such cases is conceptually equivalent to the cooperation required with the tribunals created by the Security Council itself.

One very important difference between the ICC and the International Criminal Tribunal for Rwanda, however, arises from the fact that the Rome Statute always operates on the basis of the principle of complementarity, even in the case of a Security Council referral. Genuine domestic proceedings are therefore always the option preferred under the Rome Statute over the Court's own proceedings.

The principle of complementarity is one of the core features of the Rome Statute. Cases are admissible before the ICC only when the competent national jurisdictions are unable or unwilling to act. This is a reflection of the primary responsibility of States to

prosecute perpetrators of the most serious crimes under international law, in particular genocide, crimes against humanity and war crimes. This principle is also an important reason why the Court is currently analysing but not necessarily proceeding with investigations in all situations under review. National jurisdictions are thus crucial in the fight against impunity, and States can contribute to ending impunity without being party to the Rome Statute.

Nonetheless, it is the ICC that is at the core of the fight against impunity through its catalytic effect on national jurisdictions and by maximizing prevention and deterrence. Complementarity is also to be read in the context of the cooperation duties under part 9 of the Rome Statute, which covers international cooperation and judicial assistance. It is worthwhile exploring how international justice can interact better and more effectively with national justice systems.

We believe that the time has come to pay more attention to the practical implications of the principle of complementarity and to the role of the United Nations in this respect. We note that there is a consensus that there must be no impunity for the worst crimes under international law and that capacity-building and technical assistance, upon request, are crucial to enabling States to effectively prosecute perpetrators. We would therefore suggest that the relevant actors within the United Nations system enhance their efforts in this respect. The United Nations Office on Drugs and Crime, the United Nations Development Programme and several regional organizations have significant capacities in this area and should further expand their activities.

The Review Conference to be held next May in Kampala, Uganda, will provide an important opportunity to reflect on the achievements of and challenges to international criminal justice, and to consider possible amendments to the Rome Statute. It is important to note that the Conference will be not the last, but the first opportunity to amend the Statute. In this regard, States parties have a particular responsibility to work together to adopt provisions on the crime of aggression, as they are mandated to do by the Rome Statute itself.

Mrs. Aitimova (Kazakhstan), Vice-President, took the Chair.

In the area of stocktaking, to which the President of the Court also referred in his remarks this morning,

the planned phasing out of the ad hoc tribunals and other international and hybrid mechanisms will add an important dimension to these discussions. We appreciate the constructive spirit in which delegations, including non-States parties, are engaged in the preparation of the Review Conference. We call on all delegations to be represented in Kampala at the highest possible level, and appreciate the Secretary-General's commitment to making the Conference a success. We are convinced that such an approach will ultimately also lead to further progress on the path towards a universally accepted Rome Statute.

Mr. Wetland (Norway): Let me start by expressing Norway's full and continuing support for the International Criminal Court (ICC) and our recognition of the Court's work over the past year. We welcome the ICC's fifth annual report (A/64/356) and would like to thank the President of the Court, Judge Sang-Hyun Song, for his detailed and informative presentation to the General Assembly here today.

Today, I would like to focus on a few topical issues that are significant to the Court's work. They include the cooperation of States parties and other States, the universality of the Rome Statute and the preparations for a successful Review Conference in Kampala, Uganda, in 2010.

Before addressing these issues, I should like to commend the Court and its staff for the progress made over the past year. The Court has begun its first trial and the confirmation of charges against three individuals has been completed. The Court's second trial is scheduled to start at the end of November. We welcome these developments.

However, eight arrest warrants remain outstanding. They pertain to the situations in Darfur, Uganda and the Democratic Republic of the Congo. This is a matter of grave concern to Norway and brings me to the issue of State cooperation, without which the Court cannot function. We therefore urge all States Parties concerned to fulfil their responsibility to make the outstanding arrest warrants effective. We also urge the Government of the Sudan to cooperate fully with the Court and to comply with its legal obligations under Security Council resolution 1593 (2005).

Turning to the issue of universality of the Rome Statute, we are pleased to note that, with the entry into force of the Rome Statute for Chile on 1 September and for the Czech Republic on 1 October this year,

there are now 110 States parties to the Statute. It is a remarkable achievement that so many States from all regions have ratified the Statute in such a short period of time. It is also a genuine reflection of the international community's increasing rejection of impunity for serious crimes, and evidence that there is a rising tide in favour of the rule of law. The crimes falling under the jurisdiction of the ICC are universally accepted as the most serious crimes of international concern, and we share a common responsibility to ensure that they are effectively investigated and that the perpetrators are brought to justice.

We are now witnessing a historic shift towards the universal acceptance that the long-term interests of all nations, irrespective of their size, region or political orientation, are served by strengthening the rule of law and promoting justice. We therefore call on all States to become parties to the Rome Statute.

The last issue I would like to mention is the first Review Conference of the Rome Statute, to be held in Kampala next year. The preparations for the Conference are well under way, and Norway is committed to achieving a successful Conference that will further consolidate the Court's position as a vital tool in the fight against impunity. To this end, we will continue working with other States and civil society actors over the coming months. The Conference will provide the first opportunity to consider amendments to the Rome Statute and, more generally, the progress made in the field of international criminal justice.

Finally, I would like to reiterate Norway's firm and long-standing commitment to the integrity of the Rome Statute and to an effective and credible International Criminal Court. We believe that the ICC should enjoy the broadest possible support from all States. We all share the universal values that are fundamental to the protection of human dignity. This protection relies on concerted action to prevent the most serious crimes affecting the international community as a whole.

Mr. Sangqu (South Africa): As a State party to the Rome Statute, South Africa has consistently and constantly expressed its support for the International Criminal Court (ICC), and it is with pleasure that we can reiterate that support today. We continue to see the ICC as an important element in the fight against impunity and in the promotion of justice.

We would like to associate ourselves with the statement made by the representative of Kenya on behalf of the African Group of States parties to the International Criminal Court.

My delegation wishes to extend its appreciation to the Court for its comprehensive report, contained in document A/64/356 and submitted pursuant to article 6 of the Relationship Agreement between the United Nations and the International Criminal Court. The report covers a wide array of activities of the Court, both judicial and institutional.

To begin with, I wish to congratulate the new members of the Court on their election. We also wish to extend our congratulations to Judge Sang-Hyun Song on his election to the presidency. At the same time, we pay our respects to Judge Kirsch for the manner in which he led the Court in its formative years. We also express our heartfelt sorrow at the passing away of Judge Saiga, earlier this year.

On the judicial front, we note with appreciation the efforts of the Trial Chamber and the Appeals Chamber in the case of *The Prosecutor v. Thomas Lubanga Dyilo*, which relates to the situation in the Democratic Republic of the Congo, to ensure a fair trial by staying prosecution on account of its failure to disclose certain exculpatory evidence to the defence. Those efforts to ensure a fair trial by protecting the rights of the accused not only are in conformity with international human rights law, but will go a long way towards protecting the integrity of the Court as a fair and impartial institution. We have also taken note of the fact that the prosecution subsequently met the conditions necessary for the continuation of the trial. We look forward to the outcome of the Appeals Chamber decision regarding the victims' application to reclassify the charges as presented by the prosecution.

The case of *The Prosecutor v. Jean-Pierre Bemba Gombo* is one that my delegation is following closely, particularly insofar as it relates to the duty of States parties to cooperate with the Court. While it falls outside the scope of the current reporting period, my delegation has taken note of the decision of the Pre-Trial Chamber in the Jean-Pierre Bemba case in relation to the provisional release of Mr. Bemba and the possible effects thereof with regard to certain States parties identified by the accused. In the context of the decision, and bearing in mind our respect for the independence of the Court, we emphasize that, for us,

cooperation with the Court must take place in accordance with and within a certain and predictable legal framework and any domestic legislation implementing the Rome Statute. We look forward to continued engagement with the Court in that regard.

We also take note of the case of *The Prosecutor v. Omar Hassan Ahmad Al-Bashir*, which relates to the situation in Darfur, the Sudan. That case has led all of us to consider and evaluate the importance of the proper balance between peace and justice. As my delegation has stated consistently since this issue arose, we remain convinced that peace and justice must be mutually reinforcing. On a number of occasions and in different forums, we have pointed out that, in the context of the Rome Statute, the pursuit of justice is reflected in the provisions of the Statute that are aimed at ensuring non-impunity, while the pursuit of peace is reflected in, inter alia, the provisions of the Statute providing for Security Council action to defer investigations and prosecutions in the interest of peace. In the light of that, we emphasize the need to respect the judicial independence of the Court. At the same, we reiterate the call for the Security Council to consider the request for a deferment in the light of the purposes of that provision.

We have taken note of the situations under analysis by the Office of the Prosecutor, in particular those that have been made public, namely, the situations in Afghanistan, Colombia, Côte d'Ivoire, Georgia, Kenya and Palestine. We also note the particular situation of Palestine, which is under analysis. My delegation is convinced that, while technical arguments about the existence or non-existence of the State of Palestine can be made, a more purposive and value-laden interpretation in accordance with article 31 of the Vienna Convention on the Law of Treaties could influence the decision of the Prosecutor.

We are mindful of the importance of cooperation between States and the Court, and call on all States to cooperate. We are acutely aware, however, of the necessity for States to have a consistent, clear and unambiguous cooperation framework under the Statute. We commend the court for its efforts to engage in bilateral agreements for cooperation falling under the Rome Statute's general obligation to cooperate. We also again encourage the Court to continue to explore with the African Union the possibility of enhancing their relationship through, inter alia, the conclusion of

a relationship agreement and the establishment of a liaison office in Addis Ababa at the appropriate level.

The Review Conference of the Rome Statute will take place next year in Uganda. My delegation hopes that that very important Conference will be a success as we look to tackle critical questions such as the definition of the crime of aggression and the question of the transitional provision contained in article 124. We reiterate our position that, if the Conference is to be a success, its agenda ought not be overburdened, particularly given that the Review Conference will not be the last opportunity to propose amendments.

We also see the Review Conference as an opportune moment to take stock of the state of international criminal justice. Questions of peace and justice may be appropriately considered in the course of such stocktaking. The stocktaking exercise should also provide an opportunity for us to consider the importance of complementarity and how best to enhance that system. My delegation continues to believe that, in the final analysis, the success of international criminal justice founded on the Rome Statute must partly be determined by the capacity of domestic court systems to deal with these serious crimes. We therefore strongly support the initiative to carry out a stocktaking exercise as part of the Review Conference.

Mr. Pérez Pérez (Cuba) (*spoke in Spanish*): My country has supported and will continue to support the establishment of an impartial, non-selective, effective and just international criminal jurisdiction that complements national justice systems and is truly independent, and therefore not subordinate to political interests that could distort its essence.

We continue to be concerned about the International Criminal Court's lack of independence, considering the way in which its relations with the Security Council have been defined. Article 16 of the Rome Statute grants power to the Council to suspend investigations or indictments carried out by the Court. Article 5 of the Statute, pending a definition of the crime of aggression, purports in the future to subject the Criminal Court's jurisdiction to potential Security Council rulings on the existence of an act of aggression committed by a State. Those two elements raise doubts about the true effectiveness and independence of the Court.

The Cuban delegation participated with keen interest in all stages of the process of establishing the

International Criminal Court. We recognize the relevance of the Rome Statute to international law. However, the minimal expectations raised at the beginning of the process, such as the elaboration of a definition of the crime of aggression, have not yet been met. We hope that the definition of the crime of aggression can be elaborated at last, so that it can be broadly accepted by the international community and does not endanger the universality of the Statute with respect to future ratifications or accessions. In that regard, we believe that the next Assembly of States Parties, to be held in November at The Hague, as well as the Review Conference of the Rome Statute, to be held in Uganda in 2010, should place the issue of a final definition of the crime of aggression at the centre of its work.

For Cuba, a small country blockaded economically and financially that has been victim of countless aggressions by the greatest Power that ever was, it is very difficult to take the decision to adhere to the Rome Statute without a clear and precise definition of the crime of aggression. We have adopted, and will continue to maintain, a constructive position with regard to the establishment of truly impartial international criminal justice that is effective, independent and complementary to national jurisdictions. In that regard, we have followed with interest the evolution and functioning of that institution, *inter alia* through our participation as observers in meetings of the Assembly of the States Parties to the Rome Statute.

However, we would like to express our concern about the serious precedent that could be set by the actions of the International Criminal Court to initiate legal processes against nationals of non-States parties to the Rome Statute that have not even accepted the competence of the Court under article 12 of the Statute. The Cuban delegation believes that there must be respect for the principle regarding the consent of a State to be bound by a treaty, as provided for under article 11, part II, of the Vienna Convention on the Law of Treaties, of 23 May 1969.

My delegation reaffirms its readiness to contribute to the application of truly effective international criminal justice that adheres to the rules of international law and, in particular, to the Charter of the United Nations.

Mr. Chávez (Peru) (*spoke in Spanish*): I would first like to thank Judge Sang-Hyun Song, President of

the International Criminal Court (ICC), for being with us and for his interesting briefing on the work of the Court during the past year.

There have been some developments in the past year that are relevant to the work of the Court. For example, two States have ratified the Rome Statute, which now brings the number of States parties to 110. While that is encouraging, there are still many States that have not ratified or adhered to the Rome Statute. Peru therefore calls on States that have not done so to ratify or adhere to the Statute, so that it can become truly universal and ensure that war crimes, crimes against humanity and genocide do not go unpunished.

Although the increase in the number of States parties is necessary, there is also a need to strengthen State cooperation in order for the Court to achieve its goals. It is therefore always good to recall that States must comply with the obligations set out in the Rome Statute by facilitating the provision of information, carrying out Court orders, detaining the accused and subsequently transferring them to the Court, protecting witnesses and victims and implementing and modifying national norms in line with those of the Statute.

Unfortunately, the Court does not always enjoy the necessary cooperation. As the Court's report points out in referring to outstanding arrest warrants (A/64/356), it is unfortunate that persons for whom such orders have been issued by the Court have to date not been arrested to be handed over to the Court to be tried appropriately. There are even outstanding warrants dating back to 2005. That fact prompted the Court's President to say emphatically to a group of legal advisers last Monday that this problem is the greatest challenge that the Court faces.

State cooperation is an obligation that stems from the Court's Statute and from the Charter of the United Nations. Peru therefore urges States where those persons are located to cooperate with the Court by proceeding to arrest them immediately or by providing information with regard to their possible whereabouts. Let us remember that there can be no peace or lasting security if those responsible for crimes against humanity enjoy impunity.

Cooperation between the ICC and the United Nations also deserves to be supported. We therefore welcome the Relationship Agreement between the two institutions, which has enabled the Court to undertake valuable efforts, in particular in areas where the United

Nations has been working on the ground. It has also enabled the Court to raise awareness about its work and familiarize people with the Court. We trust that that cooperation will become increasingly close and coordinated, so as to ensure that the Court can enjoy the support of the various organs of the United Nations, especially the Security Council. Similarly, we hope that memorandums of understanding and cooperation agreements will soon be signed with peacekeeping operations, so as to facilitate the work of the Court.

The ICC plays a fundamental role in the context of promoting the rule of law, as it is the only permanent judicial institution charged with investigating and trying persons suspected of the most serious international crimes. That work takes place in the context of a proper balance in which the rights of accused are respected while at the same time victims are allowed to participate in proceedings — the latter being an innovative aspect of the Rome Statute.

However, it is the laudable work of the Court's judges and staff in combating impunity that has made it possible for the ICC to enjoy widespread legitimacy in the eyes of the international community. Among other things, that is reflected in the modifications to the working methods of the Court's presidency, the Office of the Prosecutor and the Court's secretariat, which has increased the efficiency of both its administrative and judicial proceedings. In that regard, it can be said that the international community, and victims in particular, view the Court as a genuine tool for justice. For example, during the current judicial year, there have been 4,870 communications under article 15 of the Rome Statute. That should serve to draw our attention to the fact that behind those communications are potential cases in which war crimes, genocide and crimes against humanity may have been committed.

Next year, when the first Review Conference is to be held, will be a very important one for the system established by the Rome Statute — and for States parties and non-States parties alike. The main outstanding task emanating from the Statute itself is to define the crime of aggression. The work done by the Special Working Group on the Crime of Aggression has made a valuable contribution to that end. Although States can make additional proposals, Peru believes that, at this time, efforts should be focused on the crime of aggression, and solely on proposals that can lead to consensus among States in the context of the work being done by the facilitators for the Review

Conference. We should be careful to avoid an agenda that serves to distract us from the main purpose of the Review Conference, namely, defining the crime of aggression and the conditions under which it can be invoked. Let us recall that this will not be the only review conference and that we will have opportunities to consider new proposals in the future.

Lastly, Peru would like to reiterate its readiness to participate actively and constructively in the preparatory work for the Review Conference in order to ensure the universal implementation of the Statute of the International Criminal Court and to be able to combat the most serious crimes that are an affront to the human conscience.

Mr. Park In-kook (Republic of Korea): First of all, I would like to join other representatives in expressing gratitude to Judge Sang-Hyun Song, President of the International Criminal Court (ICC), for his presentation of the annual report of the Court (see A/64/356).

My delegation would also like to welcome the Republic of Chile and the Czech Republic as, respectively, the 109th and 110th States parties to the Rome Statute. Such ratifications mark another major step towards achieving the ICC's goal of global ratification of the Rome Statute. Moreover, we hope to see the remaining countries join the ICC as soon as possible, and the Court attain universality at the earliest possible date. In that regard, my delegation would like to emphasize the importance of carrying out an outreach programme to those States that have not yet joined the Court. We urge the Court to steadily continue to engage in genuine dialogue with stakeholders, including non-members of the Court. As a wholehearted supporter of the ICC, my delegation is pleased to observe that the Court is now becoming a fully functional judicial institution.

The trial of a former Congolese rebel leader finally commenced in January of this year. That trial is a major step in the fight against impunity and the first International Criminal Court case to prosecute and condemn the use of child soldiers as a war crime.

However, the eight outstanding warrants of arrest remain to be executed. Without the universal participation of all States, the Court may not be able to fulfil its role as a key instrument in combating impunity. As stressed in the Court, the Court relies on cooperation in areas such as facilitating investigations,

arresting and surrendering persons, protecting witnesses and enforcing sentences. My delegation would like to emphasize that all States parties must do their utmost to provide the ICC with the best possible working conditions. At the same time, it is our firm belief that the judicial decisions of the ICC must be untouched by political interests or considerations and must remain in the true spirit of fairness.

My delegation also welcomes the Review Conference on the Rome Statute that will be held in Uganda next May. States parties will discuss possible amendments to the Rome Statute, primarily with respect to the crime of aggression. The Conference will also provide a critical opportunity to reflect on where the system stands and where it is headed. We must scrutinize the entire system of international criminal justice, including challenges with regard to providing cooperation, enacting and implementing legislation and carrying out domestic investigation and proceedings. Through that assessment, we can share invaluable lessons from other courts and tribunals, as well as experiences of broader international communities. My delegation re-emphasizes the importance of a sufficiently well-prepared and balanced review conference if meaningful goals are to be achieved.

In the relatively short period since the Rome Statute entered into force, the ICC has firmly positioned itself as the world's permanent court for punishing perpetrators of genocide, crimes against humanity and war crimes. It has also had a discernible effect in preventing and deterring those crimes. That achievement by the ICC will lead to enhanced respect for and adherence to the rule of law on the international level. The Republic of Korea has been actively engaged in the whole process of establishing the Rome Statute system, including prompt completion of domestic legislation in 2007.

In concluding my remarks, let me reiterate that the Republic of Korea is in full support of the future activities of the Court. We are confident that under the leadership of President Song the ICC will continue to play a crucial and integral role in preserving peace, maintaining justice and promoting the human rights of all people in the world.

Mr. Mohamad (Sudan) (*spoke in Arabic*): In the lives of nations and peoples there are significant landmarks through which the international community has sought to achieve peace, development and social

justice. The League of Nations was among those landmarks. It failed and was succeeded by the United Nations, which we are now striving to reform and make more efficient, especially the Security Council.

Among the mechanisms established by special treaty is the International Criminal Court. That Court now faces the same destiny of failure and loss because it has not learned the lessons of the past. Although it is still relatively young, its record is full of contradictions and flaws, so that it is now a threat to the peace and security of societies instead of being a mechanism for achieving so-called justice. In this context, we should not hide behind diplomatic phrases, as so often happens at the United Nations. We simply should not do that.

Thus we note that there is deep concern throughout wide segments — if not the great majority — of the international community because of the record of that institution, which has turned into a tool for settling political accounts in the name of justice and into a threat to peace, security and stability in several regions in the world, especially in Africa. In Africa, in their summit meetings and in the meetings of the African Union Peace and Security Council, African leaders have clearly expressed their concern over this situation.

For the first time in the history of multilateralism, a resolution issued by the African Summit has condemned the conduct of the Prosecutor, who has always lacked professionalism and has been characterized by an eager pursuit of publicity, fame and the limelight. Indeed, the Prosecutor has abandoned his status as a jurist and turned into a political activist who visits capitals and advocates against Governments, undeterred by conscience or sense of professionalism.

We wonder: is it an element of professionalism for the Prosecutor to turn into a political activist? Is it a requirement of his duties to chase publicity and fame and claim that the accused is not innocent even if the accused has not been condemned? Is it permissible for him to waste the resources of the institutions in that manner that is well known to everyone, near and far? And is there a legal or moral justification that allows him to remain in his post with his inability to manage his role in the institution? In fact, an internal administrative court has ruled against the way he carries out his administrative authorities, in addition to the cloud that continues to hang over his personal conduct.

The International Criminal Court is governed by a special treaty, namely, the Rome Statute. States have the right to adhere to or not to adhere to that treaty. The provisions of the Rome Statute apply to those States that have adhered to the treaty. However, involving the Security Council in the Court's work has made the Court subject to political considerations, to the politicization of justice and selectivism.

Under the mother treaty — the Vienna Convention on the Law of Treaties — the provisions of a treaty apply only to those States that are party to it. Therefore, the authority granted to the Security Council not only politicizes justice and makes it selective, but also violates the United Nations Charter and the law on treaties. The experience of the International Criminal Court has also demonstrated that it breaches established norms of international law and relevant treaties, such as the immunity granted to heads of State and Government.

There are precedents in the advisory opinions issued by the International Court of Justice that guide us towards avoiding manipulation and alteration of established rules in international law, such as immunities. We should also ask whether it is just to prosecute one party and exempt another, such as happened in Security Council resolution 1593 (2005). Is it justice that Africa is the only place against which the sword of that Court is raised? Is it a new legal apartheid?

We will say it out loud: stop politicizing justice. We say no to selectivity and double standards. We say no to breaches of and encroachments on the sovereignty of States and their sovereign choices and to targeting their leaders. We say no. Africa said that. The African Union said that, as did the League of Arab States, the Organization of the Islamic Conference and the Non-Aligned Movement. Stop trafficking in the name of justice.

In conclusion, we say to those who colonized our peoples and brought the system of apartheid to South Africa and protected it that our peoples have learned their lesson. Our peoples will not buy into the attempt to expropriate their free will and their sovereignty in the name of justice.

Mr. Aguiar Patriota (Brazil): I wish to thank the President of the International Criminal Court (ICC), Judge Sang-Hyun Song, for his informative report and also to commend him and his fellow judges on their

significant contribution towards fostering international justice.

Brazil participated actively in the negotiations of the Rome Statute of the International Criminal Court and, as a State party, attaches great importance to the work of the ICC, which is the first permanent treaty-based court to try persons accused of the most serious crimes of international concern.

Earlier this year, in July, the Court commemorated its seventh anniversary since the entry into force of the Rome Statute. Despite being such a young institution, the jurisdiction of the Court has already been recognized by an impressive number of States. To date 110 States have decided to join in order to put an end to impunity in respect of crimes of genocide, crimes against humanity and war crimes. It is needless to note the gravity of all those crimes and their terrible repercussion on national societies and the international community. We welcome the recent ratification of the Statute by Chile and by the Czech Republic. Now, South America is a region where all States are parties to the ICC. It is the sincere hope of my delegation that more States may ratify or accede to the Rome Statute in the near future with a view to granting a truly universal character to the Court.

In line with the provisions of the Rome Statute, the first review conference of the founding instrument of the International Criminal Court will be held in Kampala in 2010. We thank the Government of Uganda for hosting that important event. Numerous proposals for amendments have been submitted to the Secretary-General of the United Nations — the depositary of the Rome Statute — including on matters pertaining to war crimes, terrorism, drug trafficking and the enforcement of sentences.

Brazil is of the view that the review conference constitutes a valuable opportunity to address some of the most relevant issues concerning the Court. However, we believe that the forthcoming conference, which will be the first but definitely not the last opportunity to amend the Statute, should focus on a few selected topics, in particular the definition of the crime of aggression.

The Conference will also represent an excellent occasion to engage States parties, observers and civil society in a more in-depth discussion on the current status of international criminal justice. My delegation supports the idea of conducting a stocktaking exercise

with regard to international criminal justice. Such an exercise would mainly address issues related to the ICC, like complementarity, cooperation and national implementation, but would also build upon the experience gathered by other relevant international bodies, such as the International Criminal Tribunals for the Former Yugoslavia and Rwanda and the Special Court for Sierra Leone.

As the Sixth Committee of the General Assembly is considering the principle of universal jurisdiction in the current session, it may be appropriate to highlight that the ICC does not operate on such a jurisdictional basis. While universal jurisdiction would apply to cases in which the accused or potential victims have no particular link with the State exercising its jurisdiction and in which the alleged crime was committed outside the territory of that State, the jurisdiction of the International Criminal Court has been established on a different basis, in the light of the relevant provisions of the Rome Statute.

As we all know, there are only three circumstances in which the Court may exercise jurisdiction: first, the accused is a national of a State party or of a State otherwise accepting the jurisdiction of the Court; second, the crime took place on the territory of a State party or a State otherwise accepting the jurisdiction of the Court; or third, the United Nations Security Council, acting in accordance with the Charter of the United Nations and in line with the Rome Statute, has referred the situation to the Prosecutor, irrespective of the nationality of the accused or the location of the crime. Furthermore, the Court's jurisdiction is limited to events taking place since 1 July 2002 and to the three crimes included in the Rome Statute.

Another point that my delegation would like to stress is that the ICC is a court of last resort. According to the principle of complementarity, it is up to individual States to exercise their criminal jurisdiction and to bring to justice those responsible for the most serious crimes of international concern. The ICC can act only when and if the State concerned is not able or willing to conduct genuine criminal proceedings. With a view to implementing that principle, many States have enacted or strengthened their domestic legislation in order to typify those crimes under the jurisdiction of the Court.

Finally, my delegation wishes to stress the importance of further strengthening the cooperation

between the ICC and the United Nations. Peace and justice come hand in hand, and one cannot exist without the other. In addition, the work of the Court contributes to our endeavour to include the concept of the rule of law in the many ongoing initiatives undertaken within the United Nations system.

Mr. Okuda (Japan): I would like to thank President Sang-Hyun Song for his in-depth report on the most recent work of the International Criminal Court (ICC) and to congratulate the Court on its increasingly important role in the fight against impunity in the international community.

Japan believes that we are now in a crucial period for the ICC to define its role in the international community. The Court was established in 2002 as the first permanent international criminal court in the history of the world. In contrast with ad hoc international criminal tribunals, any State party may refer a situation to the ICC, and the Security Council also has the authority to refer a situation to it. Since the establishment of the Court seven years ago, three States parties — Uganda, the Democratic Republic of the Congo and the Central African Republic — have referred their respective situations to the ICC, and the Security Council has referred one situation — that of Darfur, Sudan — to the Court.

Japan would like to raise several points on the work of the ICC, intending to generate discussion both within the Court and at the Assembly of States Parties, as well as at the Review Conference of the Rome Statute to be held in Kampala, Uganda, in May and June next year.

First, one of the most important principles to be kept in mind is that of complementarity. Every State has the duty to exercise its criminal jurisdiction over those responsible for the most serious crimes, and the role of the ICC is complementary to such national criminal jurisdiction. States parties must do their best to exercise their national jurisdiction over a situation before referring it to the ICC. Moreover, in referring a situation, the State party must be prepared to cooperate fully with the ICC by fulfilling the obligations stipulated in the Rome Statute.

Secondly, the experience of the ICC, although relatively short, has reaffirmed the importance of cooperation by States. In those cases in which full cooperation has been extended by the States concerned, the ICC is making steady progress. However, where

such cooperation has not been forthcoming, the ICC is faced with serious challenges. Thus, cooperation by States with the Court is essential for its effective investigation and prosecution of cases, in particular as regards the arrest and surrender of suspects and the collection of evidence.

A third important aspect warranting serious consideration by the ICC is the rationale of judicial decisions rendered by the Court. Japan believes that the ICC will be able to firmly establish its credibility and reputation as a judicial organ if and when it interprets and applies the provisions of the Rome Statute and other relevant documents with utmost prudence and clarity. We hope to see the ICC continue to articulate as clearly as possible the rationale leading to the conclusion in each decision. Only by rendering decisions with solid reasoning can the ICC enjoy the full support of States parties and, more important, acceptance by the international community as a whole, including non-States parties.

Finally, let me turn to the matter of the universality of membership in the Rome Statute. Currently, 110 States are parties to the Statute. Japan is pleased to see the steady increase in the number of States parties. However, in order to enhance the role of the ICC in the international community, its membership should be universal. It is therefore important that more States become parties to the Rome Statute — especially States in the Asian region, where the number of States parties is much lower than in other regions. In order to achieve that aim, Japan, in co-sponsorship with the Asian-African Legal Consultative Organization, organized a seminar entitled “The International Criminal Court: Emerging Issues and Future Challenges” in New Delhi in March this year, with an inaugural address by the late Judge Fumiko Saiga. Japan will continue its efforts to increase the number of States parties, particularly from the Asian region, towards achieving the universality of the ICC.

Japan sincerely hopes that the points it has raised today will be given serious consideration by the ICC, States parties, other States and civil society, including non-governmental organizations.

In closing, I should like to express the sincere appreciation of Japan for the work that the ICC has accomplished to date. It is our hope that the Court will continue to work diligently towards the eradication of the culture of impunity and to consolidate its

credibility and reputation. In that regard, Japan is determined to continue and strengthen its contribution to the ICC and thus to the establishment of the rule of law throughout the international community.

Mr. Seger (Switzerland) (*spoke in French*): My delegation wishes at the outset to thank President Sang-Hyun Song for presenting the fifth annual report of the International Criminal Court (see A/64/356). We also take this opportunity to congratulate him on his election as President of the Court and to wish him much success in that new capacity. In addition, we wish to express our appreciation to the Court’s entire staff for their work and for their daily efforts in carrying out their tasks, which multiply daily as the Court’s activities increase.

The year 2009 marks an important milestone for the Court, with the opening of the first trial in its history and the confirmation of charges brought against three individuals during the reporting period. My delegation is pleased to see that the Court has thus entered a new phase in its existence.

That notable progress is a result not only of the tireless efforts of the Court and its personnel, but also of the fruitful cooperation that has taken place between the Court and certain States. In the past, my delegation has stressed the important — even essential — role played by State cooperation in the fulfilment of the Court’s mandate. We wish to reiterate that point today because we have some very telling examples to support it.

Indeed, we believe that the progress highlighted in the report is emblematic of the importance of State cooperation. It is precisely in those areas where States have cooperated with the Court that the greatest progress has been seen, whereas in the absence of State cooperation, the Court finds it impossible to carry out the mandate with which it has been entrusted.

My delegation regrets that state of affairs. Indeed, as the Court’s report reminds us, eight individuals against whom arrest warrants are outstanding have yet to be arrested. That is all the more worrisome because some of the arrest warrants issued by the Court are already several years old. The arrest of those individuals depends essentially on the full cooperation of States with the Court. My delegation wishes to recall that such cooperation is among the international obligations of States under the Rome Statute and the Charter of the United Nations.

The success of the Court's activities depends on the cooperation not only of States, but also of international organizations. In that regard, my delegation wishes to welcome once again the continued cooperation between the United Nations and the Court. As the report of President Sang-Hyun Song attests, such cooperation is essential at several levels, in particular within the framework of the Court's operations on the ground.

The international community has entrusted the Court with important tasks and responsibilities. In carrying out its activities, the Court affects the lives of thousands of individuals every day — men, women and children who have been drawn against their will into the turmoil of armed conflict and who have often been victim of or witness to acts beyond our comprehension.

The Court has the difficult task of asking these individuals to come forward as victims or witnesses to confront the perpetrators of serious crimes and to share experiences that they would prefer to forget forever. The victims and witnesses who face the accused before the Court unfortunately do so very often at the risk of their own lives and of those of their families. As the Court's report attests, the protection of witnesses is a central concern in the case of *The Prosecutor v. Thomas Lubanga Dyilo*. It is indispensable that the Court be able to grant these persons the protection necessary for their participation in the proceedings, as it will otherwise no longer be able to count on obtaining the testimony necessary to carry out its mandate. In this area, too, States and international organizations have an important role to play through their cooperation.

The Court was created by the international community in a common effort to fight impunity. The goal was to create a regime to guarantee that States will assume their responsibilities in the prosecution of perpetrators of the most serious crimes and which provides a mechanism that will intervene when States are unable or unwilling to fulfil those responsibilities. Today, 110 States have decided to participate in this regime. Although this institution was created by States and is largely dependent on them, it is essential, given its nature and mandate, that the Court not be subject to external pressures in carrying out its activities.

Over the course of the reporting period, the Court has shown us that it is a fully independent and impartial institution. In that context, my delegation agrees in no way with the unfounded criticism expressed earlier by the representative of the Sudan

with respect to the Court. The conduct of the proceedings under way also bears witness to the very high standards maintained by the Court for ensuring fair trial. My delegation can only welcome this development, which reflects the aspirations we voiced in Rome a little more than 10 years ago. In this context, my delegation cannot overemphasize Switzerland's continued commitment to and support for the Court.

Ms. Negm (Egypt) (*spoke in Arabic*): At the outset, I would like to express my appreciation to the President of the International Criminal Court (ICC) for submitting the report (A/64/356) under consideration today and to the Court for playing an important role in developing international criminal law definitions and concepts to address the heinous crimes committed against peoples and societies.

International criminal tribunals are becoming increasingly important in enforcing the rule of law, particularly international law and international humanitarian law and human rights law, with a view to maintaining international peace and security. Their role is thus complementary to that of national judiciaries, which have the inherent jurisdiction to prosecute citizens accused of such crimes, pursuant to the State's responsibility to ensure the safety and security of its citizens. That role is also based on the principle that sovereignty runs parallel to the responsibility of every nation and Government to protect its people from crimes.

The Egyptian delegation is therefore of the view that established norms of international law must be heeded if States are not to be obliged to implement conventions to which they are not party. Based on this and customary international law, a State should not be obliged to comply with the provisions of the Rome Statute if it has not explicitly and of its own free will agreed to do so. For a State to do otherwise would violate the principle of *pacta sunt servanda* and be incompatible with its sovereignty and freedom to choose the treaties to which it is bound.

At this juncture, the Egyptian delegation emphasizes the importance of Member States' stepping up their efforts to define the crime of aggression, especially as circumstances and developments on the international scene indicate the need to do so. Such a definition will enable the Court to exercise its jurisdiction over that crime as it does over the other crimes within its jurisdiction.

The Egyptian delegation also stresses the importance of the International Criminal Court's continuing to pursue a balanced approach in its work by adopting a policy accentuating its judicial nature and avoiding the politicization of its work so as to ensure its impartiality and independence and allow it to assume its legal and moral role and obligations. Egypt therefore believes it necessary for the Security Council to refer to the Court, without discrimination based on political reasons, all those accused of committing crimes against humanity and who threaten international peace and security. In this regard, Egypt affirms the importance of the Court's not referring to confidential lists of names of the accused and to maintaining transparency, in order to truly apply the principles of transparency and accountability.

From this perspective, the procedures for investigating, gathering evidence and authenticating documents need improvement, especially with regard to the investigation of crimes and the provisions of strong material evidence to confirm that alleged crimes are consistent with those defined in the Statute. Similarly, it is important not to legally classify facts based on incomplete or partial testimony and examination that do not take all relevant legal aspects into consideration.

Consequently, the Egyptian delegation reiterates that the Court should respect the aforementioned considerations when dealing with the African cases before it. Moreover, it should accelerate its decision-making process in these cases so that it may consider cases from other parts of the world. Otherwise, the continued consideration of cases from one region of the world may give the false impression that crimes against humanity are being committed only in Africa, or that the Court does not target other such crimes committed elsewhere.

In order to avoid selectivity in referring cases to the ICC, it is necessary that its work not be politicized. The Prosecutor must therefore expedite the decision to begin investigating crimes against humanity committed in Israel and the occupied Palestinian territories since 2002. We stress the urgent need for the Court to consider the report of the Independent Fact Finding Committee on Gaza, presented to the League of Arab States on 30 April 2009, and the Goldstone report (A/HRC/12/48) adopted by the Human Rights Council, in addition to the report of the fact-finding committee established by the Secretary-General on the Israeli

bombing of the camps and schools of the United Nations Relief and Works Agency for Palestine Refugees in the Near East.

The Court should work in cooperation with the Security Council and the General Assembly to prosecute all of those who committed the crimes set forth in these reports in order to ensure that none enjoys impunity. The rule of law must be upheld through the implementation of the legal norms which we all strive to uphold, and it must be strengthened through its application to all peoples and societies, without exception.

Mr. Urbina (Costa Rica) (*spoke in Spanish*): Costa Rica welcomes the fifth report (A/64/356) of the International Criminal Court and welcomes the Court's President, Mr. Sang-Hyun Song.

Sixteen years after the establishment of the International Criminal Tribunal for the Former Yugoslavia, which was not in Africa, justice and the fight against impunity have become ongoing concerns of the international community and also, perhaps, the instruments that do the most to strengthen international law and international humanitarian law. The International Criminal Court has been consolidated since the Rome Statute came into force. The Court's 110 members are committed to continuing and strengthening this process. The consolidation of the Court is directly linked to its growing legitimacy both in its internal attributes and in the recognition its activities receive throughout the world.

With regard to the Court's internal affairs, we note the strengthening of procedures confirming its independence, impartiality and compliance with the highest procedural standards. The historic beginning of the Court's first trial saw the implementation of strict measures to ensure due process and respect for the rights of the accused, while effective methods for protecting victims and witnesses have also been implemented. All these actions have come to justify the hopes that civilized peoples have placed in the institutions of justice.

Externally, the Court's legitimacy is also growing. The ratification of the Rome Statute by two new members, along with the clear interest of other States that are considering the possibility of acceding to the Court's jurisdiction and the first voluntary appearance of a defendant, are revealing signs of the advent of a new era in which justice is an integral

element of lasting peace and the rule of law extends beyond national borders into the international arena.

In connection with the process of the Court's consolidation, Costa Rica firmly believes in the duty of all to contribute to that consolidation by honouring their obligations, freely entered into, to assist the Court in carrying out its decisions and to protect and strengthen its independence. In doing so, not only are we supporting the Court, but, more important, we are fostering the rule of law at the international level.

In this context, we cannot view with indifference the decision of a group of States to refuse to cooperate with the Court in a case referred to it by the Security Council. These States have justified their refusal by citing the fact that the Security Council has not adopted a decision that this group is demanding. Besides violating States' obligations to cooperate with the Court, as provided for in article 86 of the Rome Statute, this decision contravenes Article 25 of the Charter of the United Nations. Costa Rica trusts that the dissenters will soon see reason, and we are certain that the report of the African Union panel coordinated by ex-President Mbeki of South Africa will mark the renewal of a constructive attitude.

Quite often, even in the highest political spheres, we encounter mistaken notions about international criminal justice. Those seeking to discredit the Court ally themselves with ignorance of basic concepts in an effort to cast doubt on the Court's independence. The voices of those who defend fugitives from international justice indicted for war crimes are shameless enough to use this court of peace to try to fool us all. They claim that it is only African criminals who are prosecuted, and in bad faith obscure the fact that three cases from that continent were referred to the Court by African Governments, and that the fourth, concerning the situation in Darfur, where hundreds of thousands of people have ended up dead, displaced or refugees, was referred by the Security Council in accordance with its resolution 1593 (2005) without a single dissenting vote.

In the face of such accusations, we must reiterate again and again the implications of the complementary character of the Court. Complementarity is the backbone of the international criminal justice system. The Court was created not so that its courtrooms might be filled to bursting, but rather with the aspiration that the day will come when they will no longer be used.

The International Criminal Court exists only to respond to situations in which national jurisdictions are unable or unwilling to prosecute the most egregious crimes. It exists only to supplement the deficiencies of national justice systems.

For that reason, as an elected member of the Security Council, Costa Rica has always supported strengthening the components of security sector reform, in particular national justice systems, in both peacekeeping and peacebuilding processes. We are convinced of the importance of transitional justice to ending conflict and that it is essential to ensure accountability and combat impunity in support of lasting peace. A national legal system capable of undertaking these tasks will lighten the load of international criminal justice and promote national reconciliation effectively. In that context, Costa Rica is supportive of and hopeful for the African Union's commitment to developing the legal capacity to draft model legislation covering crimes prosecuted by the Court, and to train staff and improve inter-institutional cooperation.

The Court's next report to the Assembly will include the decisions to be adopted at the Review Conference in Kampala, in the heart of Africa. As the Secretary-General has said, this will be an opportunity to take stock of achievements and to chart a path for the future. Work on defining the crime of aggression will be of particular importance. We are confident that there exists a constructive willingness to improve the Court, strengthen States' cooperation and increase the effectiveness of justice, the foundation of lasting peace and a key ingredient of sustainable development.

Mr. Mukongo Ngay (Democratic Republic of the Congo) (*spoke in French*): My delegation associates itself with the statement made by the representative of Kenya on behalf of the African Group of States parties to the International Criminal Court. We would also like to thank the President of the Court, Judge Sang-Hyun Song, for the report he has just presented (see A/64/356).

At times like these and in certain corners of the world, we often turn to experts in international criminal law and to the writings of people learned in doctrine to try to define and understand the true magnitude of war crimes, crimes against humanity or genocide. In the Democratic Republic of the Congo, a post-conflict country where what some have called the

first African world war took place, every individual, educated or not, can define such heinous crimes from his or her perspective as victim, witness or perpetrator, or whether he or she has been affected directly or indirectly.

The International Criminal Court was created precisely to exercise jurisdiction over the most serious international crimes. That is why the wording of the Rome Statute, which for some is mere theory, reflects a reality that the people of the Democratic Republic of the Congo, particularly those in North Kivu, South Kivu and Ituri, experience on a daily basis. That reality is truly Congolese, but we must stress that war and all forms of violence that deny the dignity and sacred nature of the human being know no nationality. They concern all of us, and cooperation with the International Criminal Court must concern all of us, too.

For its part, the Democratic Republic of the Congo was the very first State party to develop meaningful cooperation with the International Criminal Court. The cooperation between my country and the Court clearly makes it a model of such cooperation, to which several legal instruments attest.

First, the Democratic Republic of the Congo did not wait for the Rome Statute to enter into force before ratifying it. We ratified it on 30 March 2002, more than three months before it entered into force. Secondly, the Democratic Republic of the Congo took the initiative to refer its situation to the International Criminal Court on 3 March 2004. It signed an agreement of judiciary cooperation with the Court on 6 October 2004 and reached an agreement of judiciary assistance with the United Nations Mission in the Democratic Republic of the Congo and with the International Criminal Court.

With respect to the proceedings under way in the Court, the Democratic Republic of the Congo has three times correctly executed arrest warrants issued by the International Criminal Court against our own nationals. It is clear that the Democratic Republic of the Congo is convinced that peace and justice go hand in hand. It has learned first hand the vital role that justice plays as a factor of social harmony, national reconciliation, peace, security and stability. It is with the assistance of the international justice system that we have been able to restore peace to Ituri and North Katanga. It is also with the assistance of the international judicial system that we intend to restore peace throughout the national territory.

This is why the Congolese authorities have decided, with respect to the latest arrest warrant issued by the Court, to consolidate and complete the peace processes under way in the provinces of North and South Kivu and to conclude the process of integration of the former armed movements into the national army before we take a decision on that matter. That is a precautionary security measure that will benefit everyone, including the International Criminal Court and its officials.

The fifth annual report of the International Criminal Court to the United Nations, now before the Assembly, outlines the very meaningful progress in the work of the Court with the beginning of trials in certain situations, the confirmation of charges in others, and the opening of new investigations in still others. My delegation takes this opportunity to reiterate its interest in seeing the implementation of the proposal to hold *in situ* trials. This would offer the long-awaited opportunity to provide a certain moral satisfaction to the victims of the crimes in question and to deter potential repeat offenders.

As paradoxical as it may appear, the fact that such progress in the march of international criminal justice is taking place in the context of a robust campaign of hostility towards the Court serves as proof that the institution is, in fact, taking hold. We are at a historic moment in the fight against impunity for serious crimes. We should therefore recall that this phenomenon is not new. Hostility to the Court was first seen in Rome when the representatives of 120 countries, including the Democratic Republic of the Congo, out of 160 meeting in the Italian capital drafted and adopted the legal framework for the future Court in July 1999.

Yet, in the wake of the Rome conference, it was thought that it would take 25 years or more to gather the 60 ratifications necessary to the Statute's entry into force. The fact that more than half the States Members of the United Nations have joined the Court less than five years after its establishment proves that the path towards the universality of the Court has been laid. In that regard, my delegation welcomes the 109th and 110th countries to ratify the Rome Statute, Chile and the Czech Republic, to the club of States parties.

The Review Conference of the Rome Statute to be held in Kampala, Uganda, in May 2010 should, in the view of my delegation, give Member States the

opportunity to confirm the achievements of the Statute and to strengthen the conviction that the International Criminal Court is a gift of hope to future generations and represents very considerable progress towards ensuring respect for human rights and the rule of law.

Moreover, my delegation believes that, in respect to the Conference's programme of work, priority should be given to defining the crime of aggression and to determining the conditions for the exercise of the Court's jurisdiction in that respect, pursuant to the relevant provisions of articles 121 and 123 of its Statute.

In conclusion, and while reiterating my delegation's commitment to ensuring the integrity of the Court's Statute, I call once again on delegations that have not yet done so to join the International Criminal Court so that together we can contribute to the universality of the fight against impunity.

Mrs. Onanga (Gabon) (*spoke in French*): It is an honour for my delegation to take the floor. Allow me at the outset to congratulate and express our gratitude to President Sang-Hyun Song for his well-informed presentation of the report of the International Criminal Court (see A/64/356).

My delegation endorses the statement made by the Ambassador of Kenya on behalf of the African Group of States parties to the Rome Statute. We would like nevertheless to make several general comments on certain situations under consideration by the International Criminal Court.

First, my delegation believes that the manner in which the first trials will be carried out will establish the credibility of the Court because these early trials are milestones not only in the development of international justice, but also in the fight against impunity. On the basis of the report, Gabon welcomes the fact that the elements that make up the basic principles for trials received particular attention. Those elements were in stark evidence in the case of Thomas Lubanga Dyilo, when proceedings were stayed in order to address the concerns of the judges regarding the fairness of the trial.

Secondly, we believe that the Court's success will depend on the support provided to it by Member States — a point of view that the representative of Kenya has just expressed and which my delegation fully endorses — because the activity of the Court will

not be able to fully meet all our expectations without the effective cooperation of all Member States.

Moreover, on the eve of the Review Conference, Gabon commends the Ugandan Government for its decision to host that Conference. We hope that Member States will make full use of that important meeting, which in our view should make it possible above all to reaffirm the integrity of the Rome Statute.

In conclusion, my delegation takes this opportunity to reaffirm its full commitment to the work of the International Criminal Court and to its full promise for building an international society based on the rule of law and where there is no longer room for impunity.

Mr. Hernández (Mexico) (*spoke in Spanish*): Mexico wishes to thank the President of the International Criminal Court (ICC), Judge Sang-Hyun Song, for presenting the annual report of the Court (see A/64/356) to the General Assembly.

As the years pass, it is becoming more evident that the work of the ICC is proving itself to be an efficient way to prevent new crimes from being committed and to contribute to conflict resolution and peacebuilding processes. That is why Mexico reiterates its support for the work of the International Criminal Court. The recent adherence of Chile and the Czech Republic to the Rome Statute is reason for the international community to celebrate. Some 110 States Members of this Organization, from all regions, are now States parties to the Statute, which demonstrates the clear trend towards its universality. In view of that, we again call on all States that have not yet done so to join the ICC system so that it can enjoy full universal scope.

The ICC is a very young institution. As such, it has generated great expectations, faces important challenges and receives severe criticism regarding its ability to establish itself as a transparent and efficient model for the administration of justice. For Mexico, those three aspects will be met to the extent that the Court can fulfil its mandate. As a clear example of that, we welcome the developments of the Court described in the report, in particular the beginning of the first trial in January and the imminent start of the second. It is fitting to underscore that in those cases, despite the fact that the investigations, the gathering of evidence and the protection of witnesses and victims were

carried out during armed conflicts, the ICC has proven to be a fully functional entity.

However, we should not lose sight of the fact that if the ICC is to fulfil its mandate, it will depend to a great extent on the cooperation it receives from States, international and regional organizations and, naturally, civil society. Therefore, such cooperation with the Court is a long-term political, juridical and diplomatic commitment to ensuring that it can eradicate impunity and impart justice.

In fulfilling that mandate, the ICC has been criticized in recent months for its alleged selectivity in intervening exclusively in one region. In seeking to weigh the fairness of such criticism, we must bear in mind that the situations before the Court have been referred to it in accordance with the provisions of the Statute itself, in some cases by decision of the States involved, and in others by decision of the Security Council in view of facts and situations that it considered a serious threat to international peace and security. Thus, no critique of the Court's activities can overlook that framework or claim not to know it.

In relation to the situation addressed in Security Council resolution 1593 (2005), we must remember that the United Nations Charter sets out in Article 25 that all Members of the Organization must accept and carry out the decisions of the Security Council. Consequently, the refusal of the Government of the Sudan to cooperate with the ICC represents clear non-compliance with a legally binding obligation. We have noted before this Assembly and in the Security Council that there is no dilemma of choice between peace and justice. Both objectives must be an integral part of efforts to resolve any armed conflict, and neither should be achieved at the expense of the other.

Mexico therefore acknowledges the importance of the voluntary appearance of rebel leader Bahr Idriss Abu Garda, one of the alleged perpetrators of the attack on the Haskanita base in Darfur, before the ICC. That action should contribute to encouraging all parties to that conflict to cooperate with the Court forthwith.

Mexico would like to address the financial activities of the Court. We believe that seven years of experience have given it the necessary maturity to

administer its resources in a diligent, acceptable and transparent way. Nevertheless, we note with concern that there is still room for improvement if the ICC is to be fully cost-effective without sacrificing the fulfilment of its mandate. Such improvements should include proper and comprehensive budget planning, better financial practices, relevant rationalizing of resources, and the development of judicial proceedings and procedures in an efficient and responsible manner. We hope that such measures will be adopted to contribute to the better use of the allocated resources.

On that same point, Mexico calls on the Court's bodies and officials to think about its real needs and to propose their own measures of internal austerity, with consequent savings. That would encourage States parties to respond to requests on budgetary matters. Mexico further believes that decisions of the Court with financial implications must be submitted to or, at least, discussed with the Assembly of States Parties, the oversight body for administrative issues and budgetary review and approval.

Next year will provide a great opportunity for the ICC and international criminal justice with the holding in Kampala, Uganda, of the first Review Conference of the Rome Statute. The outcome of that event will enable the entire system created around the Statute to confirm the great achievement that it represents for the international community and international law.

Mexico calls upon States to actively participate in the Review Conference. To that end, the forthcoming eighth session of the Assembly of States Parties should facilitate the development of a substantive and constructive dialogue aimed at the in-depth review of all amendments proposed to date. That will enable the Conference to identify its concrete objectives and to ensure the best possible conditions for its success.

Finally, I should like to reiterate that ensuring international justice, ending impunity, strengthening the rule of law, promoting and respecting human rights and re-establishing and maintaining international peace and security are objectives in accordance with the Charter of the United Nations and the Rome Statute. Mexico will assist the Court in attaining them.

The meeting rose at 1.10 p.m.