



General Assembly

Sixty-eighth session

42nd plenary meeting
Thursday, 31 October 2013, 3 p.m.
New York

Official Records

President: Mr. Ashe (Antigua and Barbuda)

*In the absence of the President, Ms. Picco (Monaco),
Vice-President, took the Chair.*

The meeting was called to order at 3 p.m.

Agenda item 75 (continued)

Report of the International Criminal Court

Note by the Secretary-General (see A/68/314)

Reports of the Secretary-General (A/68/364 and A/68/366)

Mr. Estremé (Argentina) (*spoke in Spanish*): Argentina expresses its appreciation and recognition of the President of the International Criminal Court, Mr. Sang-Hyun Song, for presenting the report of the International Criminal Court (see A/68/314) to the General Assembly. We also particularly acknowledge the presentation of the report of the Secretary-General, which contains information relevant to the implementation of article 3 of the Relationship Agreement between the United Nations and the International Criminal Court (A/68/364), as requested by the General Assembly in resolution 67/295.

The Rome Statute and the International Criminal Court (ICC) are among the most notable achievements of multilateral diplomacy, and their contribution to the fight against impunity with regard to crimes against humanity, genocide and war crimes is evident. Little more than a decade since the adoption of the Rome Statute, the Court is a fully functioning permanent international criminal tribunal. Argentina commends

the fact that there are to date 122 States parties to the Rome Statute, and 11 States have ratified the Kampala amendments.

The other issue that I would like to highlight concerns the crime of aggression. My country, like many other States parties, is committed to the earliest possible ratification of the Kampala amendments. Despite the great difficulty of having a substantive reference to the crime of aggression in the Assembly resolution, owing to the strong opposition of a small handful of delegations, Argentina will continue to work towards achieving 30 ratifications before 2017 so as to be able to establish the Court's jurisdiction in that way, as foreseen in Kampala.

With the passing of time since the entry into force of the Rome Statute, the necessary accountability for crimes under the Statute has become integrated in a tangible way into the deliberations of the United Nations and of the entire international community. The Security Council has done so, integrating the Court itself in its consideration of specific situations. All that has strengthened the fight against impunity. However, there remain challenges that must be overcome.

Mutual cooperation between the United Nations and the Court is crucial, with full respect for the Court's judicial independence. The issue of non-essential contacts with persons upon whom arrest warrants have been served falls under the cooperation between the Court and the United Nations provided for in the Relationship Agreement. Argentina thanks the Secretary-General for having included such

This record contains the text of speeches delivered in English and of the interpretation of speeches delivered in the other languages. Corrections should be submitted to the original languages only. They should be incorporated in a copy of the record and sent under the signature of a member of the delegation concerned to the Chief of the Verbatim Reporting Service, room U-506. Corrections will be issued after the end of the session in a consolidated corrigendum.

13-54081 (E)



Accessible document

Please recycle



information in his report (A/68/364). Essentially, however, it is the cooperation of States with the Court that is the fundamental aspect of the Court's ability to discharge its mandate. The requirement to cooperate is particularly relevant to arrest warrants.

With regard to referrals made by the Security Council, Argentina understands that the Council cannot just take note of the reports of the Prosecutor or of the Court without following up on compliance with the requirement to cooperate with the Court, or on certain situations in the field such as the detention of Court personnel in 2012.

Argentina, which is currently a member of the Security Council, welcomes the commitment made by the Council in presidential statement S/PRST/2013/2 of 12 February 2013, to an effective follow-up of Council decisions with regard to international tribunals, including the ICC. We therefore urge Council members to make that commitment effective through a specific follow-up mechanism for the situations that the Council has referred to the Court.

There are other elements about which my delegation is concerned. However, I would like to highlight one aspect relating to the way in which the Council has made referrals to the ICC and the way in which the General Assembly deals with that. It involves an issue that can seriously impact the Court.

In establishing that none of the costs stemming from the two referrals to the Court would be met by the United Nations but by the States parties to the Rome Statute, the Council has distanced itself from the provision of article 115 (b) of the Rome Statute and article 13 of the Relationship Agreement. With the increasing number of cases, the pressures on the resources available to the Court have been acknowledged. In practical terms, not to consider the funding of referrals could jeopardize the Court's long-term viability.

Resolution 67/295, adopted in August, acknowledged, as the resolution to that effect does every year, the need for funding for the investigations and judgements of the Court, including for the situations referred by the Security Council. The resolution, however, makes no mention of the way in which the funding should be provided for, in particular with regard to referrals by the Council. That was owing to the opposition of a very few delegations, despite the fact that it concerns a norm of the Rome Statute and the Relationship Agreement, as I have just pointed out.

Argentina would like to underscore that fighting impunity is the aim of the States parties to the Rome Statute and also of the United Nations. However, that objective must go hand in hand with the commitment to provide the Court with the resources necessary for it to discharge its mandate.

That commitment is not foreign to the United Nations, given that it has been evident with respect to the ad hoc tribunals established by the Security Council. It must now be addressed with respect to the International Criminal Court. The lack of any action with regard to the funding to be provided by the United Nations under article 115 of the Rome Statute will only negatively impact those cases currently before the Court and the proprio motu work of the Prosecutor.

In 2012, 10 years had elapsed since the establishment of the International Criminal Court. Today, the Court is a permanent and fully mature tribunal, the centre of the criminal justice system of the international community. However, we States parties face challenges. The issues raised by the African Union are central to the current debate concerning the International Criminal Court. Argentina believes that we must continue a frank dialogue among all actors regarding such issues and concerns, with care not to impinge on the judicial independence of the Court.

In conclusion, I would like to state once again that Argentina believes that the International Criminal Court is one of the most notable contributions to the fight against impunity. I wish to recall that one of our stated aims is to ensure the noble mission and the function of the International Criminal Court in a multilateral system that seeks to end impunity, to establish the rule of law, to promote and support respect of human rights and to achieve a lasting peace, in accordance with international law and the purposes and principles of the Charter of the United Nations. I would like to reiterate that the Argentine Republic is fully committed to the International Criminal Court.

Mr. Wenaweser (Liechtenstein): This year's debate on the report (see A/68/314) of the International Criminal Court (ICC) comes at a time when the Court finds itself in the headlines more frequently than any of us could have imagined at the Rome Conference 15 years ago. Some of the Court's activities are evoking strong reactions, particularly in Africa, where the Court has been most active so far. The challenge for us, collectively, is to address those political challenges in a

manner that is fully consistent with the law contained in the Rome Statute. We are satisfied to see that the necessary dialogue has commenced and look forward to continuing it, particularly among States parties.

The Rome Statute system has put accountability for the most serious crimes within the reach of conflict and post-conflict societies. That is a profound paradigm shift following decades of impunity in many parts of the world, a shift made possible by the strong political will of the States that gathered in Rome. They did so not because they thought that fighting impunity would be an easy thing to do, but because it was the right thing to do. Today, as we discuss the work of the Court, we should remember the spirit of Rome. We should be ready for constructive dialogue with the critics, but also ready to stand up for our principles.

Looking at the Court's judicial record, we believe that it has been doing precisely what we have asked it to do: investigate and prosecute those who are alleged to bear the greatest responsibility for crimes under the Rome Statute, follow the evidence and apply the law. Nevertheless, the Court has been subject to much criticism. Such criticism is in reality often directed against the Security Council, which has referred two cases to the ICC and thereby extended its jurisdiction over non-States parties. We do not find any evidence that the decisions of the Court itself are in any manner motivated by politics rather than the law.

In order to counteract misconceptions and politically motivated criticism, all States that believe in justice should strengthen their support for the Court, diplomatically, politically, financially. We must show greater ownership over the system we have established and continue to improve it from within. In that regard, I would like to draw the Assembly's attention to a recent initiative by Botswana, Jordan and Liechtenstein that would add a provision to the Court's rules of procedure and evidence. The proposal addresses the important issue of presence at trial and the possibility of presence via videoconferencing, if exceptional circumstances so require. We hope that the initiative can be one significant part of a more comprehensive response to the recent controversies. Most importantly, it would illustrate the willingness of States parties to do their part to assist the Court at a difficult time.

States parties should also make every effort to ensure the highest possible quality of judges. Nominating the most qualified judicial candidates is the most

important measure in that respect. Recent experience also illustrates that we must put greater emphasis on ensuring witness protection. That is an urgent task and of essential importance for the effectiveness of the Court. Much can be learned from the experience of other international and mixed tribunals in that regard.

Finally, we must also ensure that we equip the Court with the financial resources it needs to fulfil its mandate successfully. Otherwise, budget constraints could hamper the quality of ongoing activities and prevent the Court from opening new investigations, as the Prosecutor has warned. We also must also find a sustainable solution for the financing of Security Council referrals, in accordance with the Relationship Agreement between the United Nations and the Court.

We welcome the increased collaboration between the United Nations and the ICC. We commend the Secretary-General for issuing thoughtful guidance on limiting contacts with persons who are the subject of arrest warrants or summonses. It is essential that those guidelines are implemented consistently and that their implementation continue to be monitored by the Secretary-General's office. We welcome the efforts of certain high-level United Nations officials to communicate essential contacts with persons who are the subject of arrest warrants well in advance. At the same time, we believe that it is important that all United Nations personnel not engage with indictees on their own authority. We hope that States that have not yet done so will develop their own policies on limiting contacts with fugitives, based on those principles.

A significant advance in the relationship between the Court and the United Nations was the adoption of Security Council resolution 2100 (2013). That decision mandated the United Nations Multidimensional Integrated Stabilization Mission in Mali to support efforts to execute ICC arrest warrants related to crimes committed in that country. That could serve as a blueprint for other situations as well, in particular those referred to the ICC by the Council itself. That positive step, however, cannot mask the fact that, overall, the manner in which the Council deals with the Court remains problematic. Greater consistency by the Council and, most of all, more credible follow-up on its own referral decisions would be in the interest of both the Council and the Court.

The recent events in Syria have reminded us of the importance of the Kampala amendments to the

Rome Statute adopted in 2010. At the Kampala Review Conference, we added provisions that criminalize the use of poisonous and other gases no matter whether they are used in international or in non-international armed conflict.

But the biggest step forward made in Kampala are the amendments on the crime of aggression. They complement the prohibition of the illegal use of force enshrined in the Charter of the United Nations. The most serious forms of the illegal use of force by one State against another will become a punishable offence before the Court. The ICC will thereby help enforce the core principle of the rule of law at the international level.

With the recent ratifications by Andorra, Cyprus, Slovenia and Uruguay, we have come an important step closer to the activation of the Court's jurisdiction over the crime of aggression in the year 2017. We will continue to offer assistance to States that are interested in ratifying and implementing the Kampala amendments, and we will encourage States that are interested in joining the ICC to ratify the Rome Statute in its 2010 version.

Mr. Giorgio (Eritrea): My delegation takes note of the report (see A/68/614) of the International Criminal Court (ICC) and would like to offer some comments on agenda item 75.

Eritrea firmly believes in an international order well grounded in full respect for the rule of law. Eritrea is a signatory to the Rome Statute and signed it in good faith. Although not a State party, Eritrea is seriously concerned about the development of ICC activities. The current state of implementation does not seem to do what was envisaged at the entry into force of the Rome Statute on 1 July 2002.

Eritrea shares the same concerns raised by African Heads of State and Government during the recent Extraordinary Session of the African Union Executive Council, held in Addis Ababa, with the theme of Africa's relationship with the International Criminal Court.

Indeed, over the past years, instead of serving justice and fairness, more consideration has been given to politics. Unless adequately and immediately redressed, that approach will further undermine the entire international criminal justice system.

The African Union has intensively discussed its relationship with the International Criminal Court in

the light of the evolving situations in some African countries. It is highly regrettable that its repeated requests regarding certain cases have not been acted upon by the International Criminal Court, the Security Council or the Assembly of States Parties.

Moreover, in September, Eritrea, along with other African States, filed an *amicus curiae* observation to the Appeals Chamber that elaborates on how a cooperating individual who concurrently occupies a high Government office should be handled in order to encourage State cooperation without endangering that office-holder's constitutional rights. Eritrea, as a non-State party to the ICC, willingly joined the observation with information that could help the court apply the law impartially.

The unacceptable treatment of African States and their leaders by the ICC is aggravating the current situation rather than addressing the root cause of the problem. The present challenge concerns not only the future management of international criminal justice, including cases of impunity and violence in the world, but also the way in which States relate to each other in the context of the international justice system.

Challenges are better addressed through a candid and realistic exchange of views, based on full respect for the rule of law within the family of nations. We hope we will be able to act in a manner that reflects a deep understanding of the complexities of nation-building as revealed by several African cases and the African Union discussions on the ICC.

In that context, let me add the voice of Eritrea in urging the General Assembly to work for comprehensive reform of multilateral institutions, including the Security Council and the ICC. Our collective efforts for justice, equality and fairness must continue to be consolidated.

My delegation wishes to stress that the notion of an effective multilateral system can be achieved only if it is based on unambiguous and transparent rules that apply to all players without selectivity, politicization or double standards, in order to build an enduring relationship based on a shared commitment to peace, security, justice and opportunity.

Mr. Rowe (Australia): Australia would like to thank President Song for his report (see A/68/314).

Australia is both shocked and appalled that today, some 70 years after the Second World War, and

20 years after the tragedies in the former Yugoslavia and Rwanda, serious international crimes are continuing to be committed, and committed on an alarming scale. Every day we are presented with fresh evidence that children, women and men have been the victims of unimaginable atrocities that deeply shock the conscience of humankind. All too often such crimes are neither investigated nor prosecuted, which sends a dangerous message to would-be perpetrators that their acts will be tolerated.

It was in response to such concerns that the International Criminal Court (ICC) was established. States have the primary responsibility to prosecute serious international crimes committed on their territory or by their nationals. However, as a court of last resort, the ICC has a critical role to play in advancing the international community's fight against impunity. That is why Australia is, and will remain, an unflinching supporter of the ICC, and why we will do everything in our power to help achieve the aims and objectives of the Rome Statute.

We commend all organs of the Court on the contribution they have made so far to the establishment of the Court as a significant part of the international architecture. The international community can take great pride in the progress that has been made since the adoption of the Rome Statute. In particular, we welcome the surrender this year of Bosco Ntaganda and the ratifications by a growing number of States of amendments on war crimes and the crime of aggression.

We also welcome the ratification of the Rome Statute this year by Côte d'Ivoire and the progress being made towards universalization of the Statute, on which Australia is actively working, including in the Pacific region. We encourage States that have not yet done so to ratify the Rome Statute and to join Australia and the parties to the Statute in seeking justice for the victims of serious international crimes.

In providing our unwavering support to the Court, we acknowledge the concerns raised regarding the ICC's approach to a number of matters, including concerns raised by the African Union in relation to the cases against Kenya's President Kenyatta and Deputy President Ruto. Australia has welcomed the opportunity to engage in an exchange of views with the African Union and with Kenya. We are ready to listen closely to those concerns. We are also confident that we will be able to work together to find a constructive way

forward, and also look forward to discussions on this issue at the upcoming meeting of the ICC Assembly of States Parties.

While solutions are being discussed, it is important to recall that all States must fulfil their obligations under international law, whether such obligations derive from being a party to the Rome Statute or from resolutions of the Security Council.

We also take this opportunity to underscore our view that it is imperative that the Security Council provide ongoing support to the ICC, especially in relation to situations it has referred to the Court. At the same time, we wish to welcome the Secretary-General's guidance to the Secretariat on contact with persons subject to arrest warrants. We call on the United Nations to implement that policy strictly.

The International Criminal Court was born out of the international community's collective commitment to hold those accused of serious international crimes to account and to bring at least a measure of justice to the victims of those crimes. That is a goal that we surely all share. Australia, for its part, remains committed to working with all States to ensure that we turn that aspiration into a reality.

Mr. Diener Sala (Mexico) (*spoke in Spanish*): Mexico would like to thank Judge Sang-Hyun Song, President of the International Criminal Court, for his presentation of the Court's ninth annual report (see A/68/314) to the General Assembly. We welcome Mr. Herman von Hebel as Registrar of the Court and Mr. James Stewart as Deputy Prosecutor, both of whom have been in their positions since the start of 2013. We wish them every success as they proceed to discharge their responsibilities.

Mexico welcomes Côte d'Ivoire's adherence to the Rome Statute during the reporting period, which brings the number of States parties to 122. We reiterate our energetic call on those States that have not yet done so to adhere to the Rome Statute without delay. The earliest possible universalization of that important instrument is a goal of which we must not lose sight in our common effort to combat impunity for the most heinous crimes in the world.

The report presented today demonstrates the real progress made in the judicial activities and investigations of the Court. The period under review includes, among other things, the first voluntary

surrender by a person subject to an arrest warrant of the Court, more extensive judicial activity by the Court regarding participation by victims and reparations, and the launching of an investigation into a situation referred by a State in 2012. That, together with legal developments in the various situations that the Court has been examining, shows not only the progressive consolidation of international criminal jurisprudence, but also the growing credibility and trust in the system set up by the Rome Statute. Despite the undeniable progress, fundamental challenges remain to be solved before the Court can effectively discharge its mandate, and we believe that the United Nations makes a positive contribution to that end as well.

First, we agree with the President of the Court that there is a need for the firm and constant support of the international community. Mexico is and always has been an active supporter of the Court, and it reaffirms its continued support to the International Criminal Court and the objectives for which it was created. We underscore the relevance and value of the Court as an independent permanent judicial body to combat impunity in respect of the most egregious crimes at the international level, when the State involved is unwilling or unable to actually take action.

We commend the ongoing dialogue and collaboration between the United Nations and the Court, and we urge the United Nations to continue that work. In the same regard, we commend the President of the Court and its other organs for participating in the special session on international criminal law, a meeting held in April at the Organization of American States, on the basis of a resolution which Mexico submits biannually to that organization.

Secondly, my delegation wishes to stress the critical importance of the cooperation of States in executing arrest warrants and detention orders issued by the Court. Mexico deplores the lack of cooperation, sometimes open and explicit, exhibited by some States. That affects the effectiveness of the system and perpetuates impunity for serious crimes. We welcome the adoption of the United Nations revised policy on non-essential contacts with persons subject to arrest warrants from the Court. We urge the United Nations to implement its policy strictly in order to help promote cooperation with the Court.

The report shows that the two situations referred by the Security Council to the Court faced a lack of

cooperation from both the States and other States. In some cases the Court notified the Security Council of the lack of cooperation. There is an urgent need for the Security Council to immediately follow up on situations referred to the Court so as to promote cooperation between States and the Court. We welcome the open debate held by the Security Council in October 2012 on the role of the Court (see S/PV.6849), and we urge the Council to continue with initiatives that promote the strengthening of the relationship between the two bodies.

Thirdly, Mexico would like to recall one fundamental issue that must be dealt with if the Court is to be strengthened, namely, the allocation of adequate resources so that it can carry out its work effectively. In that regard, we urge the General Assembly, in accordance with its powers, to implement the provisions of article 115 of the Rome Statute in order to allocate sufficient funds to finance the Court's expenditures occurring in situations referred to it by the Security Council.

Finally, given the violations currently being committed in various parts of the world, Mexico would stress that the Security Council must be guided by objective criteria and not by politicized criteria, in referring situations to the International Criminal Court. In that way the international community can help to ensure that international crimes do not remain unpunished.

Mexico reaffirms its commitment to the International Criminal Court and stands ready to work towards the common goal of combatting impunity for international crimes, both within the United Nations and in other relevant forums.

Ms. Intelmann (Estonia): Estonia aligns itself with the statement delivered on behalf of the European Union. The present statement is delivered in my capacity as President of the Assembly of States Parties to the Rome Statute and as Estonia's Ambassador-at-large for the International Criminal Court.

The report of the Court (see A/68/314) demonstrates how the Court is working to meet the challenging mandate that States gave to it under the Rome Statute. There are now eight active situations under the Court's consideration, a considerable number of which were referred by the States concerned. During the past year, two more countries referred their situations to the

Court, thereby expressing confidence in that judicial institution.

The growing membership of States parties to the Statute further demonstrates that confidence. Over the past years, we have witnessed a steady increase in the number of States parties. The number now stands at 122. Eleven States have ratified both amendments to the Rome Statute, which were adopted at the Assembly's review conference in Kampala in 2010. Three more States have ratified one amendment to the Statute.

States are responsible for the Rome Statute system. States negotiated the Rome Statute, and States are responsible for the Court's success and development. States within the Assembly have been working collectively throughout the past year to reinforce their support to the Court in critical areas like cooperation and assistance to victims. Some of those activities have taken place outside the two traditional places where Assembly members work — The Hague and New York — in various capitals, where they advocate for reinforced assistance and to conduct very focused discussions with policy makers.

The Assembly holds one annual session this year in The Hague starting on 20 November. It is crucial that all parties to the Statute participate in the meeting, as the Court and the Rome Statute have come under increased scrutiny in different forums. The coming session will be a critical moment to demonstrate our resolve to fight impunity. The annual Assembly session provides an excellent opportunity for a political discussion on all matters of concern to States Parties. One such opportunity is the general debate. This year States are also encouraged to speak on the subject of complementarity — to provide information about their efforts to create genuine domestic infrastructures for accountability for atrocity crimes.

Additionally, given that all of the active situations are on the African continent, the coming Assembly session will, at the request of African States, allocate a special segment to discussing some of the concerns voiced by African States parties. I have also invited a high-level representative of the African Union to address the opening plenary of the Assembly.

As we prepare for the upcoming Assembly session, we must also bear in mind the victims of atrocity crimes. That includes assistance and reparations, as provided under the Statute. States are encouraged to attend and actively participate in the annual meeting

of the Assembly of States Parties in order to strengthen our work to ensure accountability for the most serious crimes of concern to the international community as a whole.

Mr. Zack (United States of America): We would like to thank President Song of the International Criminal Court (ICC) for his presentation of the ninth annual report of the ICC to the General Assembly (see A/68/314), covering the period from 1 August 2012 to 31 July 2013. We recognize President Song for his continued service to the ICC.

Strengthening accountability for those responsible for the worst atrocities remains an important priority for the United States. President Obama has repeatedly emphasized the importance of preventing mass atrocities and genocide as a core national security interest and a core moral responsibility for the United States. The United States is committed to working with the international community to bring concerted international pressure to bear, so as to prevent atrocities and ensure accountability for the perpetrators of such crimes. Although the United States is not a party to the Rome Statute, we recognize that the ICC can and does play an important role in a multilateral system that seeks to ensure accountability and end impunity.

The ICC is, by its nature, designed only to pursue those accused of bearing the greatest responsibility for the most serious crimes within its jurisdiction, when States are not willing or able to genuinely investigate or prosecute. We therefore continue to support positive complementarity initiatives by assisting countries in their efforts to develop domestic accountability processes for atrocity crimes. Accountability and peace begin with Governments taking care of their own people.

The international community must continue to support rule-of-law capacity-building initiatives, including the creation of hybrid structures where appropriate, in order to advance transitional justice, and it must develop a shared approach to recurring issues, such as coordinated and effective protection for witnesses and judicial personnel. From the Democratic Republic of the Congo to Senegal's efforts with the African Union to prosecute Hissène Habré, the United States continues to support efforts to build fair, impartial and capable national justice systems and hybrid tribunals where appropriate.

At the same time, we must strengthen accountability mechanisms at the international level. We will continue to work with the ICC to identify practical ways in which we can work to advance our mutual goals on a case-by-case basis and consistent with United States policy and laws. In the past year, for example, we worked with the Court and other States to help assist in the voluntary surrender to the ICC in March of Bosco Ntaganda, allegedly responsible for atrocities committed in the Democratic Republic of the Congo. That was an important moment for all who believe in justice and accountability.

In January, President Obama signed into law an expansion of the United States War Crimes Rewards Program to permit the offer of rewards for information leading to the arrest, transfer or conviction of individuals accused of criminal responsibility for genocide, war crimes or crimes against humanity by any hybrid or international criminal tribunal, including the ICC. Shortly thereafter, we added a number of individuals subject to ICC arrest warrants to our rewards list, including Joseph Kony in the Uganda situation and Sylvestre Mudacumura, who is still at large, in the Democratic Republic of the Congo situation. We look forward to continuing to engage with States parties and other States on those and other shared issues of concern, such as information-sharing and witness protection.

It is critical that the international community remain committed to working towards coordinated efforts, both to prevent atrocities before they occur and to provide accountability for those responsible for atrocities that do happen. Although the international community has made progress on both fronts, much work remains. The United States remains committed to working in partnership with others to achieve those goals. We look forward to continued discussions here at the United Nations and to our upcoming participation as an observer at the Assembly of States Parties to the Rome Statute of the ICC in The Hague next month.

Mr. De Aguiar Patriota (Brazil): I join others in thanking the President of the International Criminal Court (ICC), Judge Sang-Hyun Song, for his statement and for presenting the ninth report of the Court to the General Assembly (see A/68/314). I commend the judges of the ICC for their role in contributing to the rule of law and to the development of international criminal law.

Brazil remains steadfast in its commitment to the Rome Statute and to the cause of justice that is its *raison*

d'être. The independence of such an important judicial institution and the universality of its reach provide the foundation for its legitimacy, and legitimacy is perhaps the single most important basis for bringing accused persons to justice with fairness and full respect for their rights.

Therefore, Brazil is a staunch supporter of Court's universality. Two thirds of the United Nations membership have ratified the Rome Statute, but that does not make it universal. We need to ensure further progress towards the adherence of all Member States. Enhancing the Court's legitimacy through universality is a means to promote peace and justice. In that context, I am pleased to recall that all South American countries are parties to the Rome Statute.

Let me underscore the importance that we attach to the first Review Conference of the Rome Statute, which took place in Kampala in 2010 and in which Brazil was an active participant. The activation of the Kampala amendments, in 2017, will represent a major contribution to completing the international criminal justice system adopted in Rome in 1998.

We also welcome the fact that the Court has also issued its first judgement, in the *Lubanga* case, while noting that its workload is increasing, including through territorial State referrals — or self-referrals — by a number of countries. On the other hand, Brazil has spoken out about issues of a structural nature that go to the heart of the relationship between the Court and the United Nations.

First of all, we reiterate that the prerogative of the Security Council to refer cases to the ICC must be used with caution and only after other tools have proved to be inadequate or insufficient and after thorough consideration has been given to its repercussions for the prospects of peace and reconciliation. Moreover, the Council must be rigorous and take a principled approach when pursuing the referral track, avoiding double standards and selectivity. However, we regret that the two referrals thus far have been stained with the notion of selective criminal accountability, by which certain categories of individuals are exempted from ICC jurisdiction.

Also, the acknowledgement of the importance of article 13 of the Relationship Agreement between the United Nations and the ICC on the conditions under which funds may be provided to the Court when it incurs expenses as the result of Security Council referrals

must go beyond rhetoric. President Song himself has questioned the sustainability of a system under which referrals are made but the costs of any investigation and trial proceedings are met exclusively by the Parties to the Rome Statute.

Brazil made a statement in explanation of vote after the adoption of resolution 67/295 to voice in unambiguous terms our deep concern over that issue. We agree with South Africa that any say by the Security Council on the budgetary aspects of a referral would usurp the competence of the Assembly, violating Article 17 of the Charter of the United Nations.

The latest developments in Africa, including the outcomes of the latest Extraordinary Summit of the African Union, are a powerful reminder of the need for the Security Council and member States of the Assembly of States Parties to engage constructively with African States. We need to exercise diplomatic wisdom in order, on the one hand, to preserve the international criminal justice instruments that we have been building, while on the other hand, remaining sensitive to requests that are legally sound and enjoy widespread political support.

We must be able to hear the concerns expressed by African States, without reservations. We are convinced that there exists an institutional space to diffuse polarization, uphold respect for international law and the rule of law, and address questions raised by member States of the African Union.

The quest for peace and justice is always challenging. It is a key common purpose of both the United Nations and the Court. Our efforts in that regard must be informed by the shared values that bring the General Assembly together, having made the first permanent, treaty-based International Criminal Court a reality. Brazil stands ready to continue to contribute to strengthen both objectives.

Mr. McLay (New Zealand): New Zealand thanks President Song for his report (see A/68/314), and pays tribute to his ongoing service and that of his fellow judges on the International Criminal Court.

New Zealand has traditionally been a very strong supporter of the Court. We have invested in the success of international judicial mechanisms, particularly the Court, and we have been active in encouraging a wide membership in the Rome Statute, including through work to that end in the Pacific region. We continue to urge widespread membership in the Statute, and we will maintain that effort.

New Zealand is committed to the principle of accountability and to the fight against impunity. We also recognize that there are a variety of ways to address grave crimes committed in conflict situations and to rebuild communities once atrocities have been committed. National courts have the primary responsibility for the prosecution of such crimes, and New Zealand supports a focus on complementarity. We have also seen the real value of alternatives to formal judicial processes, such as truth and reconciliation commissions.

Moreover, in particular situations, regional Courts also make a lot of sense. They are complementary to both national and international mechanisms. In that regard, New Zealand is pleased to be involved in supporting the development of the African Court on Human and Peoples' Rights.

The diversity of judicial and non-judicial responses to allegations that grave crimes have been committed in conflict situations demonstrates that every situation has its own complex dynamics. There is no single right answer. Finding a sustainable solution to a particular conflict situation, which is also inevitably riven with politics, requires much more than the technical application of criminal law.

We cannot hide from the reality that the Court is currently facing the strongest challenge of its 10-year existence. New Zealand recognizes the very real concerns of the African Union and Kenya and believes that those concerns require careful and serious consideration. We also see the current challenges to the Court as an opportunity to put the Court on a more solid footing, so that it can continue to serve the international community in the future. The independence and impartiality of the Court and its processes are of the utmost importance, and they must be protected. However, as States, we have the responsibility to engage in open dialogue on those challenges. Most importantly, we should be prepared to state when we think changes might be required.

When a Court loses its credibility in the eyes of a large segment of the community, those with political and legislative responsibility have a right and a duty to act so as to restore its effectiveness and credibility. To that end, New Zealand believes that there are ways in which member States of the Assembly of States Parties to the Rome Statute can and should respond to the concerns of those States parties that have raised

concerns. Both individually and collectively, through the Assembly, States parties have a responsibility to shoulder some of the burden for making the Court work effectively.

Rules are important and must be respected. But they are never cast in stone. If there is a problem with the rules, Member States must be willing to sit down with colleagues to work constructively in order to address those concerns. We must look for procedural solutions, including the use of modern technology, and find pragmatic ways to address the reality of summoning a sitting head of State before the Court. We urge all States parties and Member States to go to the Assembly of States Parties meeting in November, ready to engage in its work and with the political will to find solutions.

The Court and its rules must not make it difficult for States parties to cooperate. The Court's framework should be able to accommodate a more flexible and pragmatic approach to participation in proceedings, an approach that recognizes exceptional circumstances. In such situations, we need to empower the Court to facilitate cooperation. All those involved in the work of the Court, including the Office of the Prosecutor as well as States parties, must act in ways that support and encourage cooperation, taking into account the long-term interests of the Court and the wider international community.

As a result of concerns with regard to current cases before the Court and other matters, Kenya and members of the African Union have called on the Security Council to defer those cases. Under article 16 of the Rome Statute, the right to request a unquestionable deferral exists, and that should be recognized. There is a legitimate expectation that when issues related to the Court are raised, the Security Council will act responsibly and respectfully. The request by the African Union and Kenya must, therefore, be considered by the Security Council with an open mind and a true willingness to hear and give proper consideration to all sides of the argument.

New Zealand therefore believes that the power of deferral, like the power of referral, should be used with great care and restraint, as mentioned by Brazil earlier. It also believes that we should not be afraid to use that power in appropriate circumstances. Deferral should contribute to international peace and security, and it must be temporary. In that regard, New Zealand notes that a deferral might allow more time for the Court and

the Assembly of States Parties to work on resolving the concerns raised by Africa.

In order for the Court to remain viable, there needs to be an honest and respectful recognition of the challenges and an openness to have dialogue on how best to address those challenges. Because of our consistent and strong support for the Court, New Zealand believes it is necessary to urge the Court and the Assembly of States Parties to work on addressing the concerns that have been raised.

In short, New Zealand is committed to playing its part in these challenging times and to resolving those issues in a manner that will allow the Court to thrive as a significant and permanent part of the international architecture.

Mr. Cancela (Uruguay) (*spoke in Spanish*): I wish to thank the President of the International Criminal Court, Sang-Hyun Song, for presenting the annual report of the Court (see A/68/314).

Uruguay has historically supported resolving disputes through the law, in accordance with the provisions of the Charter of the United Nations. Today we would like to highlight the important activity of the international courts in meting out justice, and trying offenders, whoever they may be and wherever they may be. After the atrocious violations of human rights in the 1990s in Rwanda and the former Yugoslavia and the establishment of the respective ad hoc tribunals, the international community understood that an international criminal court was finally needed to discourage any repetition of such aberrations and so that those responsible for any such acts could be judged with the full weight of the law, whether at the national or international level.

This year we are celebrating the fifteenth anniversary of the adoption of the Statute of the International Criminal Court. As we mark this anniversary, we welcome the development and historical evolution of international law, but fundamentally it is to pay tribute to the maturity of the international community in its fight against impunity.

Our country notes with satisfaction that since the signing of the Rome treaty, membership in the Court has increased significantly. It now has 122 members, equivalent to almost two thirds of the current membership of the United Nations. We hope that this trend will continue and increase so that the

memberships of both organs will be equal in the near future, and so that the jurisdiction of the Court can extend automatically to all of humanity. Likewise, we hope that member States will remain such and will reconsider the idea of denouncing the Rome treaty, because that would be a harmful step backwards in terms of the primacy of justice in acts committed by men.

Uruguay, after ratifying the Rome Statute, was the first country in Latin America to deposit its instrument of ratification. This year we have the high honour of being the first in Latin America to have deposited the instrument of ratification of the Kampala amendments to the Statute of the International Criminal Court. These two acts demonstrate our level of commitment to the Court. Currently 11 member States have ratified the amendments. We urge other member States in the region and other regions to do so, so that the amendments can enter into force as soon as possible, that is, by 2017.

We decided to take on the responsibility of becoming the regional coordinator for the Group of Latin American and Caribbean Countries for cases of non-cooperation with the Court. That is a considerable task, and, together with the other three coordinators, we can help the President of the Assembly of States Parties to the Statute whenever there is a case of non-cooperation. We hope soon to have the last regional coordinator, for a region that is not yet represented. Both steps taken this year denote Uruguay's strong commitment to the Court as representative of international criminal justice.

With regard to cases referred to the Court by the Security Council, we are pleased that this practice was established and trust that its use will continue. The impact of armed conflicts and the growing number of those responsible for serious violations of human rights continue to be quite disturbing. As a corollary, we believe that the Security Council should act consistently when faced with similar cases or situations.

We cannot pretend that the Council feels bound by its previous actions because it is not a court, but a political body. But it is also the organ empowered by the Charter to maintain international peace and security, acting on behalf of the entire international community. We believe it should act responsibly and in a non-selective manner in dealing with each situation where the peace is threatened. For that reason, we agree with a group of countries that believe that the Council should be asked to refer the case of human rights

violations in Syria to the Court so that perpetrators can be brought to trial, regardless of who they are or who they represent. In that context, we understand that it would be advisable that the permanent members of the Council consider refraining from using their veto to block Council action.

It is quite clear that according to article 115 (b) of the Rome Statute, the United Nations should help to pay expenses arising from cases that the Organization refers to the Court through the Security Council so as to share the financial burden of international criminal justice. On that basis, we expect that, in accordance with article 13 of the Relationship Agreement between the Court and the United Nations, the necessary arrangements will be made as soon as possible so that that cooperation can be implemented.

We believe that the existing cooperation between the Security Council and the Court should be deepened. That means that there has to be some mechanism to follow up on cases referred by the Council to the Court.

Ms. Paik Ji-ah (Republic of Korea): At the outset my delegation would like to express its sincere appreciation to the President of the International Criminal Court (ICC), Judge Sang-Hyun Song, for his prominent leadership and for his comprehensive report on the current activities of the Court. My delegation also commends the joint efforts of the Chambers, the Office of the Prosecutor and the Registry, which have laid solid foundations for the effective functioning of the Court. We also take this opportunity to welcome the solemn undertakings of the new Registrar and Deputy Prosecutor.

So far, the Court has demonstrated notable achievements with its involvement in eight situations, in Uganda, the Democratic Republic of the Congo, the Central African Republic, Kenya, Côte d'Ivoire, the Sudan, Libya and Mali. We note that the caseload of the Chambers has increased significantly in the past year.

The Trial Chamber issued its first acquittal regarding the situation in the Democratic Republic of the Congo last December. The Pre-Trial Chamber issued very contrasting decisions on Libya's admissibility challenges on two cases. We expect that when the screening procedure of the Appeals Chamber is completed, those two examples will contribute to the precise interpretation of the principle of complementarity and the related articles of the Rome Statute.

Regarding the situation in Kenya, we wish to note that the case of Mr. Ruto and Mr. Sang is now at the ongoing trial stage in which the accused are present before the judges without any arrest. The recent decision on excusal from continuous presence of the accused at trial, made by the Appeals Chamber last week, will be a valuable precedent to help international criminal lawyers understand the legal logic of article 63 of the Statute.

The Office of the Prosecutor has devoted itself to undertaking its duties in spite of an increased workload in the past year. We wish to note with appreciation that there has been progress on the case of Mr. Abdallah Banda Abakaer Nourain, despite the difficult situation in Darfur. We also expect that the Prosecutor will keep on doing her best in the prosecution of Mr. Laurent Gbagbo of Côte d'Ivoire.

We note in particular that the Prosecutor has succeeded in detaining Mr. Bosco Ntaganda, who is the first indictee subject to an ICC arrest warrant to surrender of his own will to the custody of the Court. My delegation would like to deliver our special appreciation to the countries contributing in transferring him to The Hague. We believe that the case effectively shows that the ICC has now firmly established itself and is widely respected as the core institution bringing justice in the most heinous crimes taking place throughout the world.

We may recall that, during our debate on the drafting of the Rome Statute in the twentieth century, not all of us shared the same view on the establishment of a permanent court to pursue international criminal justice. However, since the Statute's entry into force in 2002, the number of the State parties has steadily grown to 122. During the past year, Côte D'Ivoire has joined the members as a new State party to the Statute. The steps taken have moved us closer to universality and have simultaneously promoted the overall integrity of the ICC.

Despite the Court's remarkable achievements and constructive role in strengthening the tribunal system, there is still a lot more to do in order to accomplish its mandate. In addition, those goals cannot be completely achieved by the efforts of the ICC alone. It is also crucial to enhance the international community's ongoing endeavours in the pursuit of justice, the rule of law and sustainable peace.

We cannot overemphasize that it is absolutely vital for the United Nations and the ICC to further

strengthen their relationship by building upon the existing agreement. Moreover, it is also critical for the Court to garner ample support and cooperation from all States Members of the United Nations. For example, without their full cooperation the ICC cannot execute the outstanding arrest warrants for perpetrators of grave crimes, nor conduct thorough investigations for the appropriate prosecutions.

The International Criminal Court was established to embody the principles of the Rome Statute so as to end impunity and contribute to the prevention of grave crimes, such as genocide, war crimes and crimes against humanity. To fulfil its mandate, the ICC must be respected as a non-political, independent judicial institution by all the stakeholders, as well as by States parties to the Rome Statutes. That is how we can expect the ICC to continue to pursue criminal accountability against the most serious crimes of international concern, and thus to continue its positive contribution to laying a solid foundation for sustainable peace for the future.

My delegation strongly believes that it is in the interest of humanity as a whole to uphold the principle of the rule of law by promoting the functions and work of the ICC. The Republic of Korea will remain one of the strongest supporters of the Rome Statute and of the ICC, and will continue to work tirelessly to attain that common goal of the international community.

Mr. Salinas Burgos (Chile) (*spoke in Spanish*): At the outset, we would like to thank the President of the International Criminal Court, the Honourable Judge Sang-Hyun Song, for presenting to the Assembly the Court's comprehensive report covering the period from 1 August 2012 to 31 July 2013 (see A/68/314). It describes, inter alia, the investigations currently under way and reflects the growth in the Court's activities. We also take this opportunity to welcome the new Registrar and Deputy Prosecutor of the Court.

The important responsibilities of the International Criminal Court and its work undoubtedly merit the attention of the international community. For Chile, the Court has become the most advanced expression of the development of international criminal justice and represents one of the most relevant initiatives in that domain in recent times. From the viewpoint of the protection of human rights, the establishment of the Court is clearly a major advance in the fight against impunity, and a clear sign that its States parties are

committed, with the international community, to travelling further on that path. Chile therefore strongly supports the work of the International Criminal Court.

At the previous session, the Assembly had the opportunity to commemorate the tenth anniversary of the entry into force of the Rome Statute. As the Criminal Court enters its second decade, it should continue to consolidated as an independent international criminal tribunal until it acquires a universal character. In that connection, we welcome Côte D'Ivoire as a new State party to the Rome Statute, becoming the 122th State party to the international treaty.

We are convinced that a close relationship between the International Criminal Court and the United Nations, through the latter's principal organs — the General Assembly and the Security Council — is vital to the performance of the functions of this international criminal tribunal. In sum, the Court assists in strengthening the promotion of the rule of law, respect for human rights and the fight against impunity, and thus in achieving international peace and security in accordance with international law and the purposes and principles of the Charter of the United Nations and the Rome Statute.

We welcome the existing cooperation between the United Nations and the International Criminal Court, which is reflected, for instance, in the report that the President of the Court presented to the Assembly and in the reports of the Prosecutor to the Security Council on situations referred by the Council. Also, the Court's New York Liaison Office is vital in promoting cooperation and representing the Court at various meetings, following developments that are relevant to it.

We take this opportunity to reiterate that the linkage existing between the Security Council and the International Criminal Court, and specifically the powers of the Council to refer situations or suspend investigations in accordance with articles 13 and 16 of the Rome Statute, must be based on consistent criteria that demonstrate that the decisions are not arbitrary. As a new member of the Security Council, Chile will emphasize that point. We are also convinced that the Council must follow up on its referrals, in addition to supporting its decisions by setting up those criteria, and without that involving interference in the Court's activities. In addition, with regard to the referrals, special attention must be paid to the refusal of States to cooperate with the Court.

Lastly, it would also be appropriate, whenever the Security Council makes a referral to the Court, for the General Assembly to make suitable arrangements to ensure the financial resources necessary for the Court to deal with the referral. We reiterate, in that regard, that it is important for the Court, in carrying out its mandate, to have the necessary material and human resources, in keeping with its judicial tasks and the lofty functions it must perform.

The principle of complementarity is the cornerstone of the Rome Statute, by virtue of which national tribunals have the primary responsibility to investigate, bring to trial and punish those guilty of the most serious crimes of international concern, as established in the Rome Statute. The International Criminal Court must be called on to intervene only in those cases when the States in which crimes within their competence have been committed are unable or unwilling to conduct the relevant legal proceedings.

In that connection, we believe it is crucial to the work of the Court that the crimes specified under the Rome Statute should be so characterized in domestic law. It is also vital for States to cooperate with the Court. For those reasons, my country has made progress on legislation to that effect, in accordance with the Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels, adopted on 24 September a year ago (resolution 67/1).

We call on the States that have not yet done so to become parties to the Rome Statute in order to achieve its universality. We also call on the States parties to adopt the Kampala amendments to the Rome Statute, approved in 2010. My country is working towards achieving that goal.

Allow me to take the opportunity to again express our appreciation to the President of the Court for the valuable work of the Court under his presidency and for the invaluable contribution it is making in the fight against impunity.

Mr. Zellweger (Switzerland) (*spoke in French*): All of us gathered here are guided by the same values and by the same concern that justice must be rendered to victims and impunity for the most serious crimes must end.

The 20 years that have elapsed since the modern era of international criminal justice began provide

ample evidence that translating those values into reality is difficult. It is difficult because the work often has to be carried out in conflict or fragile post-conflict situations, because it is part of the much greater challenge of establishing or restoring the rule of law, and because convicting the perpetrators of crimes is not enough to meet the essential needs of the victims. It is also difficult because we do not always agree on how we should accomplish that seemingly unachievable task.

The diverging expectations regarding international criminal justice have been expressed more vigorously in recent times. Switzerland has been listening carefully, especially to the concerns that have been expressed by some African States. Today we acknowledge that that we could have done more to enter into a dialogue with those who shared their concerns with us. Today, however, we underline our readiness to openly discuss the challenges facing both the States parties and the International Criminal Court (ICC). Five weeks ago, at the initiative of Switzerland, 24 ministers from all regions of the world adopted a declaration of commitment to the International Criminal Court. They affirmed in particular their readiness to engage in dialogue to resolve outstanding issues that affect the role of the Court in the fight against impunity. That offer is earnest and sincere.

Switzerland is open for a constructive discussion on the functioning of the Rome Statute system, here, in the framework of bilateral exchanges and at the upcoming Assembly of States Parties to the Rome Statute, in The Hague. The dialogue would be based on our shared values, as mentioned.

The 122 States parties, including 34 from Africa, have voluntarily acceded to the Rome Statute in a common understanding. It is understood that the judicial independence of the Court and the irrelevance of the official position of the accused are absolutely essential for the credibility and proper functioning of the Court. States were willing to confer those rights on the Court because, under the principle of complementarity, each States retains the sovereign choice to conduct proceedings at the national level.

No genuine national proceedings are taking place in Syria despite all the serious crimes committed there. Switzerland and 57 other States have written to the Security Council, calling for a referral to the ICC. In the aftermath of the use of chemical weapons in Syria,

such a measure is all the more necessary. We therefore reiterate our call to States from all regions of the world to join us in demanding accountability in Syria. While there is currently no consensus for a referral, the issue of accountability will not go away. It is essential to deal with this question without reservations in the framework of the upcoming Geneva talks on Syria if that country is ever to achieve sustainable peace.

Turning now to the relationship between the ICC and the United Nations, my delegation welcomes the publication of the revised guidelines on contacts between United Nations personnel and persons who are the subject of an arrest warrant or summonses issued by the Court. We encourage the Secretariat to strictly implement the guidelines and to continue the positive practice of informing the President of the Assembly of States Parties and the ICC Prosecutor of relevant contacts.

There cannot be a strong ICC without the support of the United Nations and the support the entire staff of the ICC, which enables the Court to handle its ever-growing caseload. We take this opportunity to express our gratitude for their hard work. It is our sincere hope that we will keep working together to make a reality of our shared values, to render justice to the victims, and put an end to impunity for the most serious crimes.

Mr. Van Oosterom (Netherlands): Representing the host country to the International Criminal Court (ICC) and as the facilitator of last year's resolution on the report of the Court (resolution 67/295), I would like to thank the President of the Court, Judge Sang-Hyun Song, for presenting to the General Assembly the ninth annual report of the International Criminal Court (see A/68/314) and for his personal efforts to safeguard the integrity and independence of the Court. This annual report to the United Nations and this very debate we are having today in the General Assembly highlight the important role the Court plays in our common efforts to build an international community that is characterized by the rule of law and the respect for human rights, an international community in which there is no place for impunity.

As we have seen time and again, sustainable peace and security cannot be achieved if the perpetrators of the most serious crimes are not brought to justice. To ensure the Court's success in fighting impunity for the most heinous crimes of international concern, we as an international community must all work together.

All States have a duty to investigate and prosecute those suspected of such crimes, both nationally and internationally.

Universal adherence to the Rome Statute of the International Criminal Court therefore remains crucial. My country, like many others, is pleased to welcome Côte d'Ivoire's ratification of the Rome Statute, bringing the total number of States that have ratified or acceded to it to 122. It is our sincere hope that many more countries will join in the near future. We also call on all States parties to swiftly ratify the Kampala amendments on the crime of aggression.

The cooperation and assistance provided by States parties, non-States parties, the United Nations and other international and regional organizations is important for the Court to function well. That is especially true with regard to the arrest and surrender of suspects, the provision of evidence, the protection and relocation of victims and witnesses and the enforcement of sentences.

As representative bodies of the international community, the United Nations and its Security Council have an especially important role to play in supporting the work of the Court. In that regard, the Netherlands welcomes the constructive and increased cooperation between the Council and the Court over the past decade. The Security Council in particular has a responsibility to provide political and financial support with respect to the situations that it refers to the Court. The Netherlands therefore calls on the Council to remain actively engaged in the situations it refers to the Court.

The Netherlands is also in favour of referring the situation in Syria to the ICC, and we regret the continuing disagreement on that issue within the Security Council. A great number of Member States signed a letter urging the Security Council to take on its responsibility in this matter (A/67/694, annex). Since then, a chemical weapons attack against civilians has taken place in Syria. The crimes committed cannot and must not go unpunished. We remain convinced that a referral is appropriate in the absence of alternatives.

African States contributed greatly to the establishment of the Rome Statute, and their continuing support for the ICC remains important. It is crucial that the concerns regarding the ICC voiced at the most recent African Union Summit be addressed at the upcoming Assembly of States Parties through open, constructive dialogue.

In The Hague just last month, my country organized a retreat to which all ICC States parties were invited. The main topic of discussion was improving the relationship between the ICC and several countries from the African region in order to promote and sustain dialogue among all States parties. Such dialogue should address all valid concerns, including those of the victims and their communities.

The Trust Fund for Victims is increasingly important in supporting both communities and individual victims of international crimes, including children and victims of sexual violence. We call on all States to continue their voluntary contributions to that important tool for compensation in the future.

Both the Court's workload and the expectations it must meet are high. This year, the Court has made important institutional progress. Steps must be taken to further enhance the efficiency of the Court, both by the Court and by its States parties. As the focal point of the study group on governance, we will present several concrete, constructive suggestions during the upcoming Assembly of States Parties.

It is important to stress here that fighting impunity for the crimes of genocide, crimes against humanity and war crimes is a responsibility shared by all States Members of the United Nations, not just the States parties to the ICC. Only if States are not willing or able to fulfil their obligations themselves do we look to the Court to step in. That has been the case, either through referral or self-referral, in the situations the Court currently has under investigation. We must therefore strengthen the principle of complementarity and enhance States' domestic capacities to investigate and prosecute the most serious crimes of international concern. That would strengthen complementarity.

Together with Argentina, Belgium and Slovenia, the Netherlands and an ever-increasing number of like-minded States are advocating negotiations with all Member States on a multilateral treaty to fill the gaps in the international legal framework for extradition and mutual legal assistance for the crime of genocide, crimes against humanity and war crimes. We invite all those present here today to join us in these efforts to promote inter-State cooperation in the domestic investigation and prosecution of those crimes.

At the end of the day, the ICC remains the leading international institution in the fight against impunity for the gravest crimes. The report presented here today

by President Song shows that the Court is working very hard to meet the international community's high expectations of it in regard to delivering justice — not in the last place — to the myriad victims of these crimes around the world. We commend the Court for its efforts in improving efficiency and enhancing investigative capacities.

For the Court to continue to bring justice to the victims of the most heinous of crimes worldwide, we cannot stress enough the importance of its independent judicial role. We as States have a responsibility to support it and keep it free from political considerations.

We cannot and must not underestimate the positive impact the Court has had in the first decade of its existence. It has contributed greatly to the fight against impunity, making our time the age of accountability. As my Minister for Foreign Affairs, Franciscus Timmermans, said last year at the tenth anniversary of the ICC in The Hague, in the Hall of Knights, prevention, protection and prosecution are closely linked. If the ICC truly fulfils its mission, its efforts will and do contribute to the prevention of the most heinous crimes, leading to additional protection of civilians. It is up to all of us here to ensure that the ICC can continue to fulfil its mission.

Mr. Naanda (Namibia): My delegation welcomes the latest report of the International Criminal Court (ICC) submitted to the General Assembly (see A/68/314). We wish to welcome the President of the Court, Judge Sang-Hyun Song, and to thank him for presenting an in-depth briefing on the latest engagements of the Court.

The establishment of the Court signified the foundation of the principal forum for international criminal justice. As the number of States parties continues to increase, we are making good progress in realizing the full implementation of and universal participation in the Rome Statute. We welcome the recent ratification of the Rome Statute by the Government of Côte d'Ivoire, bringing the total number of African States parties to 35 and the total number of States parties to 122. That is a significant achievement.

Our debate on the report of the ICC demonstrates the role of the Court in our common efforts to build an international community characterized by the rule of law, respect for human rights and a commitment to global peace and security. My delegation reaffirms that for sustainable peace to be achieved, there can be

no impunity for the perpetrators of the most heinous crimes. Therefore, the ICC's complementary role in deterring and prosecuting such crimes cannot be overstated. The Court is intended to be a court of last resort in the exercise of jurisdiction over crimes within the jurisdiction of the Court. States parties have the primary responsibility to facilitate the legal and technical capacity of their domestic institutions to investigate and adjudicate international crimes without reference to the International Criminal Court.

We welcome the Court's efforts to promote the adoption of implementing legislation and the review of domestic laws to facilitate different forms of cooperation with the Court when it exercises complementary jurisdiction in respect of international crimes. An increase in the availability of domestic avenues for the prosecution of international crimes will not only reduce the number of cases coming before the Court, but will immensely contribute to the suppression of international crimes, as mandated by the Rome Statute. States parties are therefore reminded of their responsibilities to investigate and try international crimes in their domestic jurisdictions.

The cooperation of States parties with the Court is critical to the Court's effectiveness and credibility. Article 86 of the Rome Statute imposes an obligation on States parties to cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court. The extent to which States cooperate with the Court, as envisaged in article 86 and other forms of cooperation set out in part 9 of the Statute, depends on the manner in which the Court came to assume the jurisdiction in a situation in question. Where referrals have been made by States parties, cooperation from such States has invariably been forthcoming. That has largely been demonstrated in the cooperation of States such as the Democratic Republic of the Congo, the Central African Republic, Uganda and Kenya, which resulted in the surrender of suspects to the Court.

However, with regard to referrals by the Security Council, State cooperation in effecting arrests mandated by the Court pursuant to such referrals has largely not been forthcoming. The non-cooperation of some States has been informed by different considerations about the relative balance between the pursuit of justice and peacemaking efforts in conflict situations. In both the Darfur and Libya situations, indictments were issued without adequate regard for the impact of such

indictments on the prospects of ending the conflicts in those countries. The referral of situations to the ICC by the Security Council has proved to be highly political and controversial, and those situations enjoy the lowest degree of State cooperation in the enforcement of court orders.

The history of the ICC's creation and the active involvement of African States demonstrate that the Court was created for the benefit of victims of serious crimes around the world, in particular those in Africa. It is therefore not surprising that African States parties constitute the biggest bloc in the membership of the Court, which is a clear demonstration of the continent's commitment to the work of the Court. It is therefore important to note that the African Union (AU) has raised concerns with regard to the indictments of sitting Heads of States, which led to several AU decisions on the matter. We therefore underline the need for greater understanding of the concerns raised by the AU, as they are genuine concerns that may impact on the prospects of peace and security on the continent.

Mrs. Byaje (Rwanda): I thank you, Madam President, for allowing me to present the views of Rwanda on this important topic. Rwanda values this meeting, in which we are afforded the opportunity to consider whether the international criminal system in place has met the expectation of ensuring accountability.

With regard to the International Criminal Court (ICC), Rwanda shares the views expressed by the Extraordinary Summit of the African Union held in Addis Ababa on 12 October.

The rule of law is strengthened if there are no exceptions or double standards in the application of justice, including international justice. The ICC was meant to act independently of political interference. Unfortunately, its activities have not always lived up to that expectation. The ICC has been selective in its methods of investigating and prosecuting perpetrators of serious international crimes in that it has so far failed to accept the glaring truth that similar crimes have been committed with impunity in different parts of the world. It is evident that political bias and control and a flawed methodology are being deployed in the name of international justice. Yet the ICC proponents are ostensibly deaf to the increasingly vocal criticism against the Court's bias regarding Africa.

With regard to the principle of complementarity, we are of the view that the ICC should be seen as a court

of last resort. It should intervene only when concerned national courts are unable or unwilling to try cases committed on their own territory.

Rwanda is of the view that the Republic of Kenya is able and willing to prosecute all cases related to the 2007 post-election violence, including the cases of its President and Deputy President. Rwanda expresses the concern that the trial of Kenyan leaders outside their country would undermine the sovereignty, stability and peace in that country and in all neighbouring States, as well as the reconciliation and reconstruction process and the normal functioning of constitutional institutions. Furthermore, Rwanda would like to underline the principles deriving from national laws and customary international law that Heads of States and other States' senior officials are granted immunity during their tenure of office. The immunity of sitting Heads of States was also recognized by the International Court of Justice.

Rwanda believes in justice and in international justice. But my country is of the view that the search for justice should be pursued in a way that does not impede or jeopardize efforts aimed at promoting lasting peace. That is why, in the aftermath of the 1994 genocide against the Tutsis in Rwanda, Rwanda put in place a restorative justice through gacaca courts, which at the same time allowed for truth, justice and reconciliation. The result is that, despite the genocide that took the lives of more than 1 million people 19 years ago, the social fabric has been rebuilt and Rwandans live together peacefully.

In conclusion, let me point out that one can rightly say that international criminal justice is experiencing a credibility crisis. Hence the need to review what we have achieved over the past decades and to chart a way forward. The key principles enshrined in the Charter of the United Nations, notably the sovereign equality of States, require that all peoples of the United Nations family — mighty or weak, rich or poor, white, yellow or black, man or woman — be treated equally. We do not want that noble principle to be deformed into a process in which the mighty must sit in judgement of the weaker, even when the mighty is guilty of a crime against a weaker counterpart.

Mr. Mukongo Ngay (Democratic Republic of the Congo) (*spoke in French*): My delegation has taken note of the ninth annual report of the International Criminal Court to the United Nations (see A/68/314), as presented

by the President of the Court, Judge Song. The Court's workload continues to increase, with eight cases under investigation and eight situations under preliminary examination, and two cases have moved to the appeals stage.

It is important to recall that the situation in the Democratic Republic of Congo was voluntarily referred to the International Criminal Court by the country's authorities, who acted on behalf of the wounded population of a post-conflict country where what some rightly called "the first African world war" had taken place. The International Criminal Court was created precisely to take charge in that type of situation. Therefore, the creation of the Rome Statute, which is a matter of mere theory for some, remains a tangible reality that the Congolese people, particularly those in the eastern part of the country, experience daily.

In that regard, it should be noted that the Mouvement du 23 mars (M-23), a band of negative forces bankrolled by foreign interests, was created to prevent the arrest of Mr. Bosco Ntaganda, who is responsible for war crimes and crimes against humanity — massacres, assassinations, rape, child recruitment, and so on — that earned him an arrest warrant from the International Criminal Court. The rest is well known. The Democratic Republic of the Congo remains firm and has paid a heavy price in that difficult fight against impunity.

In the same vein, the recent discovery of two mass graves in Kibumba, in the eastern part of the Democratic Republic of the Congo, where it is clear that the negative forces of the M-23 executed their victims, including children, should lead swiftly to an investigation by the International Criminal Court. Furthermore, the leaders of that terrorist movement, who have long been on the updated lists of persons targeted for sanctions by the United Nations, the European Union and the American Government, although they are protected by neighbouring countries where they have found refuge, must know that there will be no impunity. They must answer for their acts before the Court. We call on the countries harbouring them to cooperate in their arrest and transfer to the competent legal authorities.

Wars and all forms of violence that deny the dignity and sanctity of human beings do not have a nationality. That reality, which some want to limit only to the Democratic Republic of the Congo in order to evade their obligations and responsibilities, is intolerable

and unacceptable. It affects us all, and cooperation with the International Criminal Court should form the foundation of that concern.

In terms of cooperation, we always say the Democratic Republic of the Congo was the first State party to develop significant cooperation with the International Criminal Court. My country's cooperation with the Court serves as a model, and several legal instruments attest to that. The Democratic Republic of the Congo did not wait for the entry into force of the Rome Statute to ratify it. It ratified it on 30 March 2002, more than three months before its entry into force.

The Democratic Republic of the Congo took the initiative to refer its situation to the International Criminal Court itself on 3 March 2004, and signed a judicial cooperation agreement with the Court on 6 October 2004. It also signed a judicial assistance agreement with the United Nations Organization Mission in the Democratic Republic of the Congo and with the International Criminal Court. In connection with the proceedings before the Court, on three occasions the Democratic Republic of the Congo properly executed arrest warrants issued by the Court with regard to its nationals.

As can be seen, the Democratic Republic of the Congo is convinced that peace and justice are complementary. It has experienced the irreplaceable role of justice as a factor of social harmony, national reconciliation, peace, security and stability.

The annual report of the International Criminal Court to the United Nations, which is now before the Assembly, underscores the growing importance of the work of the Court and of the Rome Statute on the international scene. It reports very significant progress in the work of the Court, with the start of trials in certain cases, the confirmation of charges in others and the opening of new investigations in still others.

The progress in the work of international criminal justice occurs in the context of the major challenges the Court faces, the most important of which remains non-cooperation. In that regard, the reality of change in the perception of the Court, even by some States that had previously shown great support for it, should be recognized. A sense of injustice and the perception of unfairness is slowly taking root in the minds of some Africans who believe that international justice has become a sort of tool for applying pressure on African leaders. It is essential that the Court put in

place mechanisms that can curb that perception, which threatens to undermine the Court's reputation and jeopardize its success, even though more than half of the States Members of the universal Organization joined the Court less than five years after its entry into force.

But it is equally important that the Court focus on its own operations, reflect on its working methods and become more professional and less political. Politics and justice do not necessarily make a good combination.

To restore the climate of trust between the Court and the African Union, which is still deteriorating, some solutions are needed. First, the dialogue already under way between the African Union and the International Criminal Court must be strengthened in order to revive State cooperation. Secondly, the principle of complementarity in African countries must be implemented, while acknowledging that it is first up to each State to investigate and prosecute the most serious crimes of international significance. Thirdly, we must make the best use possible of the initiative to expand the mandate of the African Court on Human and Peoples' Rights to include the legal jurisdiction to rule on international crimes.

In order to close this chapter, my delegation would like to welcome Côte d'Ivoire's recent entry into the club of States parties to the Statute, bringing the number of States parties to 122.

The Review Conference of the Rome Statute, held in Kampala in May and June 2010, was a valuable opportunity for Member States to acknowledge the achievements of the Rome Statute and reinforce the belief that the International Criminal Court is a gift of hope for future generations and a very important step towards the respect of human rights and the rule of law.

In the Kampala Declaration, States reaffirmed their will to promote the Rome Statute and its full implementation, as well as its universality, the record of international criminal justice and the amendment of the Rome Statute that now defines the crime of aggression and the conditions under which the Court has jurisdiction over that crime. Those are all achievements that we must carefully protect.

In conclusion, and reiterating my delegation's determination to ensure the integrity of the Court's Statute, I would like to once again urge States that have not yet done so to join the mechanism of the

International Criminal Court, so that together we can contribute to the universalization of the fight against impunity.

Mr. Ishikawa (Japan): At the outset, I would like to thank President Sang-Hyun Song for presenting the comprehensive report on the work of the International Criminal Court (see A/68/314). As my delegation has said on many occasions, Japan attaches great importance to the central role of the International Criminal Court (ICC) in enhancing the rule of law at the national and international levels.

It need be said only once that the ICC plays a key role in the maintenance of international peace and security through the achievement of justice and the prevention of grave crimes and violations of international humanitarian and human rights law.

The ICC enjoys high credibility throughout the world. One hundred and twenty-two States are now party to the Rome Statute. Japan would like to extend a warm welcome to Côte d'Ivoire on its joining the States parties to the Statute in February 2013. As a leading supporter of the Court in the Asia-Pacific region, which as of now is the most underrepresented region in the Assembly of States Parties, Japan renews its commitment to continuing to encourage our Asia-Pacific friends that have not yet done so to ratify or to accede to the Statute by providing assistance for the development of legal systems and human resources.

We all know that the Court has been playing a remarkable role in putting an end to impunity against the most serious crimes, such as genocide, crimes against humanity and war crimes. However, it must also be acknowledged that the Court cannot achieve its purpose alone. In that regard, allow me to commend the tireless efforts of Ambassador Tiina Intelmann, President of the Assembly of States Parties to the Rome Statute, in addressing the non-cooperation issue by listening carefully to the concerns of the relevant States parties. The difficulties that we now face in that context must be overcome in order to advance the cause of the rule of law.

As the focal point on non-cooperation for the Asia-Pacific Group in the Bureau, Japan continues to underline the importance of cooperating with the Court in terms of the execution of the mandate under the Rome Statute. Mutual cooperation between the ICC and the United Nations is also crucial. That is particularly relevant with regard to the cases referred

by the Security Council. Cooperation strengthens the Court's credibility by meeting the expectations of victims and the international community.

It cannot be overemphasized that the key priority of international criminal justice is to serve those people who have suffered most from grave crimes and to ensure that such victims and affected communities within the jurisdiction of the Court are supported. In that regard, Japan commends the praiseworthy work of the Trust Fund for Victims of the ICC for the benefit of victims and their families under the leadership of the Chair of the Board of Directors of the Fund, Mr. Motoo Noguchi.

In conclusion, Japan remains deeply committed to providing the ICC its unwavering support, to fostering an ICC that will be even more efficient, effective, universal and systemically sustainable and to contributing to our common goal of ensuring that the perpetrators of the most serious crimes are held accountable.

Mr. Zagaynov (Russian Federation) (*spoke in Russian*): We have carefully examined the most recent report of the International Criminal Court (see A/68/314), and thank the President of the Court for having prepared it. Our country is committed to combating impunity for the most serious violations of international law that are of concern to the entire international community. In that context, we attach great importance to the work of the International Criminal Court (ICC).

As the report of the Court notes, some difficulties remain regarding its functioning, the key issue being the failure of States to execute arrest warrants. In the view of the ICC leadership, the main negative factor in that regard arises from the low level of State cooperation with the Court. We believe that it is not only an issue of States and their unwillingness to cooperate with the Court. The problems are more systemic, their root causes are primarily to be found in the Rome Statute, which, unfortunately, is not an agreed instrument. It concerns the inadequate reflection of the powers of the Security Council in that document and the difficulties in interpreting the provisions of the Statute with regard to the immunities of State leaders. As a result, in our view, not without reason the Court often blames regional shortcomings without taking into account a country's particularities. The concerns recently expressed by the States of the African Union affirm that observation.

In the context of the ICC, there remains a significant issue regarding the inclusion of the crime of aggression in its Statute. We believe that the Kampala amendments do not fully take into account the Security Council's powers under the Charter of the United Nations. We believe it to be extremely undesirable that the Court have jurisdiction over the crime of aggression without an appropriate definition by the members of the Security Council. There are some issues concerning the implementation of the Kampala amendments on the crime of aggression. Such issues could, in our view, jeopardize the Court's future work.

We hope that the ICC will continue to work to overcome the challenges that it faces and that it can fully and effectively implement its mandate. Ultimately, the Court's response to such issues will determine its future effectiveness as the universal body as the principal international court of law.

Mr. Ulibarri (Costa Rica) (*spoke in Spanish*): Costa Rica thanks Judge Sang-Hyun Song for presenting the most recent report of the International Criminal Court (see A/68/314) in accordance with article 6 of the Relationship Agreement between the International Criminal Court and the United Nations. We particularly underscore its clear and detailed account of the situation concerning the most significant judicial and procedural developments facing the Court. We would like to welcome Judge James Stewart as the Deputy Prosecutor and the election of Herman von Hebel as Registrar of the Court.

Costa Rica views with satisfaction the increase in the number of States parties to the Rome Statute. We welcome its ratification by Côte d'Ivoire in February, which raised the number of States parties to 122. My country is committed to continuing to work for the universality and integrity of the Statute and for the entry into force of the Court's jurisdiction over all crimes covered by the Statute. In that regard, we wish to express our gratitude for the work carried out by the delegation of Romania in the working group on the universality of the Rome Statute and to commend the praiseworthy efforts of the delegation of Liechtenstein towards the ratification of the amendment on the crime of aggression.

The resolution on the ratification of the amendments to the Rome Statute adopted in Kampala in 2010 was adopted in the Foreign Affairs Committee of the Legislative Assembly of Costa Rica in August.

Approval in the plenary remains pending. We hope that it will take place in the coming months. Moreover, my country ratified the Agreement on Privileges and Immunities of the International Criminal Court in 2011.

We also welcome the fact that the working group on the independent oversight mechanism, facilitated by Costa Rica in The Hague, was able to be agreed. That will enable that subsidiary body to begin its monitoring tasks in accordance with the provisions of article 112 of the Rome Statute.

The repeated failure of some States parties not to comply with the clear and binding obligations under the Rome Statute are of great concern to us. Especially serious is the non-compliance manifested by the refusal to execute outstanding arrest warrants.

It must be kept in mind that the Court's cases, as President Song recalled today, involve the most serious crimes against humanity, the victims of which are real people, not legal abstractions; they deserve to have the alleged perpetrators held accountable for their actions. As history has shown, there can be no lasting peace without justice.

Another issue that deserves full attention is the Court's financial situation. Despite the clearly difficult global economic situation, budgetary constraints must not be allowed to threaten the functioning of the Court, or worse, its independence. The Court's activity has grown substantially owing to grave violations of human rights and dignity and greater acknowledgment of its jurisdiction. The Court's docket includes eight investigations, eight preliminary examinations and 23 arrest warrants in relation to eight situations. More than 5,000 victims are participating in its proceedings. All of this is reflected in its operating costs and programmes.

For the coming year, the Court has conducted an exercise aimed at analysing costs and the efficient use of resources and has established a reasonable and transparent budget. Costa Rica does not support initiatives that seek to limit the Court's scope or capacity. That is why we will not support any proposal aimed at a zero-growth budget or the inclusion of a new item that relates to the rental costs of the Court's headquarters. We thank the Kingdom of the Netherlands for its offer to cover 50 per cent of the rental of the Court's temporary headquarters. However, a balance of €3 million remains, and my delegation believes it should be considered under the Court's next operational budget.

The driving force of the Court must remain the pursuit of justice, ending impunity for the worst crimes and ensuring care for victims, without neglecting its outreach and information activities. The quantity and quality of those functions of the Court should not be influenced by financial issues.

Given the new and timely challenges facing the Court, we echo the words of President Song in affirming our view that the only matters that can and should be addressed are requests from States or parties involving proceedings that are fully compatible with the legal framework of the Rome Statute and the judicial powers of its bodies. The legal legitimacy of the Court represents its greatest value, and all States have the duty to respect and protect it.

In conclusion, Costa Rica will continue to support the universalization, independence and legitimacy of the Court, so that we, together with other States parties, can "guarantee lasting respect for and the enforcement of international justice", as set forth in the preamble of the Rome Statute.

Mr. Osman (Sudan) (*spoke in Arabic*): My delegation acknowledges the report (see A/68/314) before the Assembly today. We believe that the purpose of this international Organization is to actively promote the values of international peace and security and respect for human rights, based on the noble purposes and principles of the Charter of the United Nations, which emphasizes the important principles of equality among States and non-interference in their internal affairs. Our high hopes for the Organization and its principles are, however, being threatened and undermined by the conduct of certain countries in their dealings with other States based on a colonial perspective and an interpretation of the Charter in a way that suits their agenda and interests and that reflects negatively on international relations.

As we review today's report, it must be acknowledged that the current practices of the International Criminal Court (ICC) and the Office of the Prosecutor clearly show a distortion, from a political point of view, in the role played by the Court since its inception. In that framework, we would recall the various reservations expressed with respect to the Rome Statute regarding the role of the Prosecutor.

Ending impunity remains a goal of justice that is agreed upon by all and is first, foremost and directly the responsibility of the national jurisdiction concerned.

The relationship between the Security Council and the ICC has been rejected by numerous countries because it has consecrated the influence of a political body over a judicial body. That opinion was reflected by several countries participating in the 1998 Conference in Rome.

My country rejects the politicization of justice, and consequently considers the relationship between the Security Council and the ICC to be wholly invalid. That was shown in the adoption of resolution 1593 (2005), under which the Security Council referred the situation in Darfur to the ICC — a resolution that was not adopted unanimously.

Last year during the discussion on this item, my delegation warned that the United Nations could become the secretariat of the Office of the Prosecutor. We stated that rights given to the ICC in the Relationship Agreement between the ICC and the United Nations were groundless and without legal effect.

The report indicates the missions that have been entrusted to United Nations officials and how they should deal with the ICC. That reinforces our comments and endangers the impartiality and the responsible work of United Nations officials, as today the Court is defining the activities and communications of those United Nations officials.

The current international reality, especially on the African continent, has clearly proved that the ICC has politicized the concept of justice. That is why the stance of the ICC has been increasingly rejected on the African continent. It all started when the African Union requested that the Security Council defer the case against the Sudanese President, and recently, that it defer the prosecution against the Kenyan President as well. At that Extraordinary Summit of the African Union, leaders also strongly condemned the fact that the Court had been targeting African leaders, and it issued a decision that no sitting African President should appear before any foreign court.

We would also like to add that numerous African leaders and heads of delegations, some of whose countries are States parties to the Rome Statute, have expressed their concerns as to what is happening on the African continent and the negative effect it will have on peace and security in Africa. They expressed those concerns when discussing the issue during the high-level meetings at the sixty-eighth session of the General Assembly in September. Today, as I am addressing the Assembly, a meeting is being held here in New York

by members of the African Union, a few metres away. At the meeting, five Ministers for Foreign Affairs from African countries, having been delegated by the African Group, are meeting with Security Council members to express the position that I just now explained, namely, that the International Criminal Court has been targeting the African continent and African Presidents. The ministers are asking the Security Council to defer all cases previously referred to the Court. The Sudan would like to join those ministers in condemning what has been taking place in regard to the ICC's stance towards African leaders.

Finally, we are all aware of the selectiveness and double standards that the ICC implements. The ICC has often overlooked heinous crimes that have occurred and that continue to occur in several regions outside Africa, such as those still being committed against the Palestinian people. Where is international justice there? Where is the ICC? Where are those who claim to support the ICC and the Security Council? The Palestinian people are being killed, and their rights are being violated on a daily basis.

In conclusion, in the light of the negative practices of the ICC since its inception, the Sudan today calls on States to reconsider the Relationship Agreement between the United Nations and the International Criminal Court, as noted in today's report, in order to ensure the sovereignty and independence of the United Nations from that new institution, which has, so far, not acquired global or universal acceptance.

Mr. Huang Huikang (China) (*spoke in Chinese*): China has always valued the role of international criminal justice institutions in promoting the international rule of law and in punishing the most serious international crimes. China is consistently and actively engaged in efforts to build the international criminal justice system. China supports the establishment of an independent, impartial, effective and universal International Criminal Court (ICC), and we have attended the successive sessions of the Assembly of States Parties to the Rome Statute of the International Criminal Court as an observer.

China wishes to thank the Secretary-General for submitting the report of the International Criminal Court (see A/68/314) to the General Assembly in accordance with article 6 of the Relationship Agreement between the United Nations and the International Criminal Court and paragraph 19 of resolution 66/262.

Our thanks go also to President Sang-Hyun Song of the ICC for preparing that report.

I would like to make a few comments on the relationship between the United Nations and the ICC and on some aspects of the ICC's work.

First, on the relationship between the United Nations and the ICC, China supports cooperation between the two bodies in a manner that conforms to the Charter of the United Nations, Security Council resolutions and the Relationship Agreement between the United Nations and the International Criminal Court, as noted in the Secretary-General's report (A/68/364). The United Nations and the ICC are closely linked. As one of the trigger mechanisms for ICC jurisdiction, the United Nations, through the Security Council, has the right to refer situations to the ICC. As a control mechanism, article 16 of the Rome Statute states that the Security Council may request in a resolution, adopted under Chapter VII of the Charter, that no investigation or prosecution be commenced or proceeded with for a period of 12 months by the ICC, and the Security Council may renew such a request under the same conditions. China believes that for the two bodies to fulfil their respective functions and goals, the United Nations and the ICC must carry out cooperation within the legal framework specified in the Charter, the relevant Security Council resolutions and the Relationship Agreement between the United Nations and the ICC. That is the only way for both sides to derive benefits from their cooperation.

Secondly, with regard to the principle of the complementarity of ICC jurisdiction, China believes that, with the ICC becoming fully operational, the effective implementation of the complementarity principle has taken on greater importance. Under that principle, national courts have the primary role in the jurisdiction and trial of international crimes. Only when a State is unable or unwilling to deal with the international crimes in question can the ICC step in to complement the national court *vis-à-vis* the cases. However, in practice, disputes may arise over whether a particular case falls under the purview of the national court in the country concerned or under that of the ICC.

China has noted that multiple recent controversies over cases involving certain African countries, handled by the ICC, have given rise to resentment and worries on the part of the countries concerned and some African countries. China is deeply concerned at that

development. We maintain that the ICC must strictly comply with the complementarity principle, fully respect the needs and wishes of national courts to handle cases themselves, give positive consideration to the legitimate demands of the regional organizations concerned, and take actions to assist with national capacity-building so as to promote effective jurisdiction by the countries concerned over the relevant cases.

Thirdly, China wishes to reiterate that we support the international community in its endeavour to punish serious international crimes and deliver judicial justice. At the same time, we hope that the ICC will ensure that its efforts to safeguard judicial justice will be conducive to peace and avoid any negative impacts on the situation of the countries and regions concerned and the relevant political processes, so that its work will truly advance the well-being of populations on the ground. China will continue to follow the ICC's work and hopes that the ICC will win wider confidence and support through its practice.

Last but not least, the Chinese delegation would like to thank President Sang-Hyun Song of the ICC for informing us in a timely way of the latest developments in the case of President Uhuru Kenyatta of Kenya. The Chinese delegation welcomes the decision issued earlier today by the ICC deferring the start of the trial of the case. My delegation holds the view that the concerns of Kenya and the African Union should be addressed properly. China will pay close attention to the development of the relevant cases.

Mr. Kihurani (Kenya): We appreciate receiving the report of the International Criminal Court (ICC) (see A/68/314), which provides useful insights into the activities of the Court for the period under review, namely, 1 August 2012 to 31 July 2013.

The Assembly of State Parties to the Rome Statute of the International Criminal Court established an independent permanent International Criminal Court with authority over the most serious crimes that threaten peace and security. The Court, operating under the principle of complementarity to national criminal jurisdictions, ensures that effective prosecution measures are taken at the national level with enhanced international cooperation and, where necessary, the Court seeks to strengthen that capacity. The Preamble to the Rome Statute, while recognizing the primacy of national criminal jurisdictions, recalls that it is the duty of every State to exercise its criminal jurisdiction over the perpetrators of serious crimes.

We note that the report refers, and rightfully so, to the fact that public and diplomatic support for the mandate of the Court further contributes to its effective functioning and, furthermore, that the Court requires timely and full support from State parties in order to assist and support the Court in its activities. While we agree with those sentiments, we hasten to add that the cooperation referred to therein is and should be a two-way process that requires the Court to extend its cooperation, considerations, accommodation and support, especially those that are mutually beneficial, to States parties.

The current superficial, and in our understanding, wrong interpretation and implementation of the Rome Statute in relation to Kenya shows little or no accommodation to the concerns of an active, cooperating State party with a rich history of local jurisprudence. The Statute is clearly being applied in a manner that is highly prejudicial to a Member State's national, regional and international interests. In fact, we believe it is an interpretation consistent with a political agenda rather than a quest for fighting impunity or a search for lasting peace or justice.

Justice not only needs to be done but also needs to be seen to be done. Likewise, perhaps more important, the independence of the Court must not only be declared, but should also be seen to be present, apparent and real. Kenya is of the considered view that such is often not the case. We call upon all organs of the Court — the presidency, the Office of the Prosecutor, the three judicial divisions, the Registry and other offices — to take immediate action to ensure that their independence and that of the Court are not undermined. Collectively, we need to take urgent steps to ensure that such independence is actualized sooner rather than later.

In that regard, all State parties to the Rome Statute of the International Criminal Court should feel that they have equal access to the Court and to the Office of the Prosecutor and that no State party, or non-State party for that matter, should have privileged access to the Court or the Office of the Prosecutor.

It is a matter of public notoriety that the Court faces resource constraints. That has often been cited as a cause for its limited operations or involvement in situations that warrant the Court's urgent interventions aimed at curbing the escalation of crimes against humanity and other serious crimes that threaten peace, security

and the well-being of the world. It is regrettable that the Court is not seized of several ongoing situations affecting large populations of women and children who bear the brunt of the effects of the commission of the serious crimes. In that regard, we call upon the Court to prioritize its resource allocations so as to ensure that the finite financial resources, human capital and constrained judicial time are directed to areas that warrant urgent intervention and involvement; that is, in places and situations where such interventions are urgently needed and the impact of which will be immediate and have a causal effect on alleviating human suffering.

Kenya considers that the Rome Statute is undergoing a test as to its veracity, usefulness and impartiality. The way in which the Rome Statute is now being implemented contradicts what was envisaged during the negotiations on the Rome Statute. In the current implementation of Rome Statute, the international criminal justice system is faced with a unique historical conundrum that needs to be approached constructively, intellectually, politically and with a view towards achieving a positive and constructive outcome and the full realization of the ideals espoused by the Rome Statute's creators.

It may appear to the innocent eye that, in the present state of interpretation and implementation, the ideals of Rome Statute, namely, the punishment of serious crimes, the fight against impunity, the promotion of national healing and reconciliation and reparations for victims, may be achieved. However, it is Kenya's contention that the current implementation of the Rome Statute is counterproductive and antagonistic to those very ideals.

It is in that regard that the international community and the Court have a very special obligation. We should restrain ourselves from adopting a narrow, rigid and agenda-driven interpretation of the Rome Statute that seeks to exclude all other processes relevant and important for sustained international as well as national peace. Instead, we should advocate for an all-inclusive and carefully calibrated system with clear benchmarks and achievable standards. To that end, we must prioritize and build on the gains of reconciliation, promote restorative justice and foster national reconciliation rather than focusing on meting out raw punishment.

Kenya, as a proud member of the community of nations, has contributed immensely with limited resources to the achievement of peace, security and

multilateralism. We will continue to engage actively in matters relating to the Rome Statute and the International Criminal Court.

Mr. Joyini (South Africa): I am delighted to welcome His Excellency Judge Song, President of the International Criminal Court (ICC), to New York. We thank him and his team of judges, not only for the annual report for the period 1 August 2012 to 31 July 2013 (see A/68/314), but also for their tireless efforts to promote international criminal justice, with the ultimate objective of securing a peaceful world for all of us who live in it. As always, we found the report to be comprehensive, and it touches on very important aspects relating to the work of the ICC.

We have taken particular note of part II of the report, entitled “Judicial proceedings”. As a firm believer in judicial independence, we shall restrict our comments to that section. The effective and efficient functioning of the ICC itself, being independent but also accountable in its administration, is an important factor in bringing an end to impunity and for setting standards for the prosecution and adjudication of the most heinous crimes of concern to humanity. By trying those responsible, the world exposes the truth of the atrocities, deters future crimes and helps to attain justice for the victims. Victims deserve justice. That will happen by strengthening institutions of justice nationally and internationally. The ICC is central to that vision, and it must be strengthened to deliver justice everywhere.

South Africa continues to believe that an important tool in the fight against impunity remains the efforts to build national capacities to investigate and prosecute serious crimes of concern to the international community. It is therefore appropriate that complementarity is at the heart of the Rome Statute. It is for that reason that South Africa, together with Denmark, continues to exert efforts to mainstream complementarity-related activities.

For South Africa, the Rome Statute, and the International Criminal Court it created, does not operate in a vacuum but rather is an important element in a new system of international law. That modern system is one characterized by greater solidarity that, while remaining true to the principle of sovereignty, prioritizes the common good. The foundations for that modern system of law are of course, contained in the Charter of the United Nations, in particular the purposes

and principles of the United Nations — namely, to maintain international peace and security and to bring about peaceful solutions to conflict in conformity with the principles of justice and international law.

International criminal law as it stands today is built upon the pursuit of peace through the fight against impunity. Already in 1946, the Nuremberg Tribunal recognized that only through fighting impunity can the provisions of international law be enforced and peace attained. The relationship between peace and justice is therefore ubiquitous in the development of modern international law. That relationship between peace and justice was evident to the drafters of the ICC Statute. We are firmly committed to the idea that peace and security, on the one hand, and justice and the fight against impunity, on the other, must go hand in hand. We find those values, which we emphasize are the foundation of the modern system in which we interact, reflected in the Rome Statute.

It is important that we remember what we have said here, namely, that the relationship between peace and justice is ubiquitous in the foundation of our modern system and it is similarly present in the Rome Statute. Therefore, peace is also important, and peace must be given an opportunity to flourish in any given situation.

By now all of us are familiar with the contents of article 16, which provides that investigations and prosecutions may not be proceeded with for a period of a year after the adoption of a resolution by the Security Council under Chapter VII. Article 16 is present in the Statute precisely to ensure a complementary relationship between the pursuit of justice, on the one hand, and the attainment of peace on the other. It exists in the Statute precisely to ensure that, in the pursuit of justice, peace must be given a chance to flourish.

As members of the international community concerned about peace and justice, we are concerned about indictments that may derail peace processes. For that reason, we support the call made by the African Union for the Security Council to adopt an article 16 resolution in the context of Kenya. A precedent was created by resolution 1422 (2002), which the Security Council adopted at its 4572nd meeting, on 12 July 2002. The Security Council, during its adoption of that resolution, emphasized the importance of international peace and security. In paragraph 1 of the resolution, the Council, acting under Chapter VII of the Charter,

“Requests, consistent with the provisions of Article 16 of the Rome Statute, that the ICC, if a case arises involving current or former officials or personnel from a contributing State not a Party to the Rome Statute over acts or omissions relating to a United Nations established or authorized operation, shall for a twelve-month period starting 1 July 2002 not commence or proceed with investigation or prosecution of any such case, unless the Security Council decides otherwise”.

It is because of the relationship between peace and justice, as it exists in the new value-laden system of international law, that we see no contradiction between South Africa’s continued support for the ICC as a judicial body mandated to dispense justice, on the one hand, and our pursuit of the attainment of peace in Kenya through political means, including through the process provided for in article 16 of the Statute, on the other. For South Africa, therefore, peace and justice must necessarily go together. We cannot pursue one without regard to the other, and we certainly cannot pursue one at the expense of the other. They are two sides of the same coin. And while the Court continues to pursue justice, the political organs of the system we have created, including the African Union Peace and Security Council and the United Nations Security Council, must use all means available to them to ensure the attainment and maintenance of peace and security.

In conclusion, the International Criminal Court is an institution designed to create a better world through fighting impunity. We will continue to support the Court so that it can grow from strength to strength.

Mr. Norman (Canada): Let me first thank President Song for his report on the activities of the International Criminal Court (see A/68/314).

Canada supports efforts to ensure that the perpetrators of the most serious crimes of international concern are held to account. It is the duty of all States to prosecute within their jurisdiction those responsible for serious international crimes, but if States are unwilling or unable to do so, international mechanisms may fill the gaps and serve as a court of last resort.

The Court’s decision on 11 October that the case against Mr. Al-Senussi is inadmissible, as he is currently subject to domestic proceedings conducted by the Libyan competent authorities, provides an illustration of the principle of complementarity in action.

Canada takes note of the fact that that 122 States are now parties to the Rome Statute, following the ratification by Côte d’Ivoire on 15 February. We note that concerns have been raised by the African Union and several States in relation to the Court. We are hopeful that the upcoming Assembly of States Parties will provide us with an opportunity to understand those concerns better.

Canada encourages all States to abide by their international commitments. It is disturbing that some arrest warrants are not being executed.

(spoke in French)

Canada reiterates the need for fiscal discipline. States are accountable to their taxpayers, and we therefore have to insist on international mechanisms deliver good value for the money. While we note that the Court has realized savings over the past few years by way of administrative efficiencies and prioritization, more must be done to ensure that costs do not increase.

The Acting President *(spoke in French)*: We have heard the last speaker in the debate on agenda item 75.

Before giving the floor to speakers in exercise of the right of reply, may I remind members that statements in the exercise of the right of reply are limited to 10 minutes for the first intervention and to five minutes for the second intervention, and should be made by delegations from their seats.

Mr. Aldahhak (Syrian Arab Republic) *(spoke in Arabic)*: I want to respond to certain statements that were made with regard to the situation in Syria today. Within the framework of the right to reply, we would like to emphasize the following points.

First, the primary responsibility for promoting justice and accountability belongs to States.

Secondly, we cannot accept the use of noble values such as the promotion of justice to serve political or suspect agendas. Rather than there being consensus on such values, we have before us a conflict of interest.

Thirdly, selective analyses of events in Syria today would have it that responsibility lies solely with the Syrian Government. That does not take into account the crimes being committed by armed terrorist groups, including thousands of Takfiris and extremists from abroad, as well as foreign mercenaries. Not taking those crimes into account shows the duplicity of some in several international forums.

Justice must be free of selectivity, politicization and duplicity. That means not closing our eyes to certain verified war crimes and ensuring accountability for officials of certain known Governments deploying terrorists and mercenaries to Syria from all regions of the world. Those parties are providing training and weapons for the commission of terrorist crimes. The acts of those States that support terrorists are targeting Syria as a State and the Syrians as a people. It is clear that the interests of the Syrian people are not served by sending terrorists and mercenaries and destroying the country.

We are grateful to all those who are looking after the interests of the Syrian people. We reiterate that the only way to protect the Syrian people and to take sincere steps towards ending the violence is to support efforts that can lead to the holding of the “Geneva II” conference in order to arrive at a solution by means of an inclusive dialogue among Syrians. Only the Syrians can determine their future, by exercising their own will and independence through elections.

We call on the Swiss Government, which will serve as host of the Geneva conference, to respect the right of the Syrian people to make their own decisions through free will. We also call on them to be vigilant on military exports. We regret that a number of Syrians have been killed as a result of attacks using bombs manufactured in Switzerland. Switzerland is a signatory to conventions under international law, as pointed out in *Le Matin Dimanche* and *Sonntags Zeitung*. Those Swiss newspapers have confirmed those events.

Mr. Zellweger (Switzerland): I take the liberty of taking the floor again, since the representative of Syria has mentioned Switzerland. There are certain points on which we would even agree with the statement made by the Syrian representative.

One is that it is first and foremost up to the Syrian authorities to see to it that the crimes currently being committed are addressed by judicial means. That was also something we stressed in our statement, indicating that such proceedings had not taken place, and hence the letter to the Security Council asking it to refer the situation in Syria to the International Criminal Court (A/67/694, annex).

Secondly, we mentioned the situation in Syria. We did not speak of any side in the conflict, we did not pinpoint that any side had committed crimes. We mentioned the situation in the whole of Syria.

Thirdly, on the suggestion that Syrian people had been killed by bombs manufactured in Switzerland, I just wish to say, first of all, that there were no bombs; they were hand grenades. We certainly deeply regret that Syrian people have lost their lives because of hand grenades manufactured in Switzerland. But it is equally important to stress that Switzerland did not export those hand grenades to Syria. We have not done so in the past and we are not doing so at present. Those hand grenades were brought to Syria by other countries, independent of the will and control of the Swiss Government. The Swiss Government has publicly stated how deeply sorry it is that those hand grenades found their way to Syria and killed Syrian people. I reiterate that deep regret on our side. That was the case, but I also stress that we had no control over the use of those hand grenades.

The Acting President (*spoke in French*): May I take it that it is the wish of the General Assembly to conclude its consideration of agenda item 75?

It was so decided.

The meeting rose at 6 p.m.