Sixty-sixth General Assembly
Plenary
43\textsuperscript{rd} & 44\textsuperscript{th} Meetings (AM & PM)

PRESIDENTS OF INTERNATIONAL CRIMINAL COURT, INTERNATIONAL COURT OF JUSTICE

PRESENT ANNUAL REPORTS TO GENERAL ASSEMBLY

World Court Chief Welcomes Body's Role as ‘Guarantor of International Law’,
Criminal Court President Likens Rome Statute to ‘Brick Wall’ against Grave Crimes

The Presidents of the International Court of Justice and International Criminal Court today implored General Assembly delegates to honour the Courts’ jurisdictions, and respectively, rely on international law to resolve disputes between States, and “stand united” behind collective efforts to suppress the gravest crimes known to humanity.

“In these times of unprecedented interconnection between States and peoples, it is my sincere belief that a firm reliance on international law must underpin any and all future developments on the global stage,” said Hisashi Owada, President of the International Court of Justice, as he presented that body’s annual report. He was joined in the debate by Sang-Hyun Song, President of the International Criminal Court, who said that each time a nation joined that tribunal’s founding Rome Statute another brink was added to the wall that would protect future generations from “terrible atrocities”.

In his wide-ranging address, Judge Owada said the International Court of Justice — often called the " World Court" — as the “guardian of international law”, was proud to play a vital role in an increasingly globalized world. Driving home that point, he said that, over the past year, the Court had rendered four judgements and three orders involving States from all regions of the world and raising a wide range of legal questions.

The judgements, he continued, concerned alleged human rights violations in the Democratic Republic of the Congo, the application of the Convention on the Elimination of Racial Discrimination by the Russian Federation, and requests for intervention in a case of disputed sovereignty in the Caribbean Sea.

In addition, there had been a “remarkable” increase in the number of cases on the Court’s docket, he said, which stood at 15. The range of issues taken up was broader than ever, and cases — in various procedural phases — were now being handled simultaneously, shortening the time between written and oral proceedings. The Court was doing its best to respond to the high expectations for the expeditious handling of cases referred to it.

Throughout the morning debate, several speakers said the Court’s geographically diverse caseload spoke to its universal nature and to a growing confidence in its decisions. Its rulings — which often served as precedents — had enriched the codification and consolidation of international law. Canada's delegate, speaking also on behalf of Australia and New Zealand, said a wider acceptance of its compulsory jurisdiction had enabled it to fulfil its role more effectively. He, like many others, encouraged States that had not done so to deposit with the Secretary-General their acceptance of the Court's jurisdiction.
India’s Minister of State for External Affairs praised the Court’s steps to better cope with its increased workload, especially by re-examining its working methods, updating its practice directions for use by States and setting a demanding schedule of hearings that allowed it to consider several cases simultaneously.

Focusing on the interplay between the Court and the United Nations, Egypt’s delegate underlined the need to draw on the body’s experience in consolidating legal rules for accepting new members into the Organization, especially as related to the responsibility to protect and the distinction between terrorism and legitimate armed struggle in exercising the right to self-determination.

Addressing the Assembly in the afternoon, Judge Song welcomed Grenada, Tunisia, Philippines, Maldives and Cape Verde for acceding to or ratifying the Rome Statute in the last six months, bringing the number of States Parties to 119. The Court’s seventh annual report, which he presented to the Assembly, detailed developments on the judicial front. The number of situations under investigation had risen from five to seven over the last year.

Among them was the situation in Côte d’Ivoire, where the Court had authorized investigations into alleged crimes committed since 28 November in the wake of contested Presidential elections. Elsewhere, arrest warrants for Joseph Kony and three other alleged commanders of the Lord’s Resistance Army (LRA) in Uganda were still outstanding. The same was true for Bosco Ntaganda in the situation in the Democratic Republic of the Congo, and President Omar al-Bashir, Ahmad Harun and Ali Kushayb, regarding the situation in Darfur. “This is deeply distressing for the victims,” he said, imploring States to bring those persons to justice.

During the year, the Court had sought savings and had simply worked harder, he said, but if expectations continued to grow and resources remained stagnant, the situation would become untenable. The Court’s tenth anniversary on 1 July would usher in a new chapter as its first Prosecutor, Luis Moreno Ocampo, would hand the baton to his successor. Amid an ever increasing workload, the Court had sought savings and “simply worked harder”. But if the expectations continued to grow while the resources remained the same, the situation could become untenable. He, therefore, appealed to all States to support the Court and its work.

Following his remarks, delegates echoed the call to reinforce collective efforts to deliver justice. The Court, some said, served as both a deterrent for perpetrators and guarantor that people accused of genocide, crimes against humanity and war crimes would be brought to justice. While the Rome Statute allowed it to assume jurisdiction where national systems failed, States held the primary responsibility for prosecuting offenders. The Director General for Legal Affairs in Finland’s Foreign Affairs Ministry, speaking also for the Nordic countries, called the Court a “necessary tool” in ensuring perpetrators of international crimes were brought to justice.

Efforts towards universal acceptance must be redoubled, said the delegate of the United Republic of Tanzania, on behalf of the African States Parties to the Statute. The Court was a historic development in the struggle to advance the rule of law. African States represented 28 per cent of the 119 States Parties and all six of the Court’s current cases. Three of those cases were self-referrals, showing the region’s regard for the rule of law.

Not all of the speakers to take the floor were as enamoured of the Courts’ work. “Nothing is more dangerous than politicizing international justice,” said Sudan’s representative, whose Government had long warned against diverting the Court from its intended purpose. Linking a judicial body with a political body — as the Court had been with the Security Council by the Rome Statute — inherently violated the principle of separation of powers.

In that regard, the referral of the Darfur situation to the Court had been a “shameful political decision”, he said, which overlooked the most important parts of international law. The “unjust” referral of the Darfur file to the Court was based on parts of the Rome Statute which Sudan had never ratified. Pointing to the Vienna Convention on International Treaties, he said States that had not acceded to or ratified treaties were not bound by them.
In other business today, the Assembly adopted without a vote the second report of the Credentials Committee, accepting the credentials of all the representatives of the Member States concerned.

Also speaking today on the International Court of Justice was Nigeria’s Minister of Justice.

The representatives of Canada, Peru, Honduras, Senegal, Russian Federation, Switzerland, Japan, Singapore, Algeria, Colombia, Mexico, Nicaragua, Philippines, Chile, Brazil, Georgia and Costa Rica also addressed the Assembly.

Speaking on the report of the International Criminal Court was the Under-Secretary for Legal and Consular Affairs in the Ministry of Foreign Affairs of Estonia.

Representatives of the following countries also spoke: Australia (also on behalf of Canada and New Zealand), Trinidad and Tobago (on behalf of the Caribbean Community (CARICOM)), Egypt, Liechtenstein, Switzerland, Japan, Argentina, Mexico, Philippines, Democratic Republic of the Congo and South Africa.

A representative of the European Union also spoke.

The General Assembly will reconvene at 10 a.m. Monday, 31 October, to debate social development, particularly related to youth, ageing, disabled persons and the family, and also the launch of the International Year of Cooperatives (2012).

Background

The General Assembly met today to consider the respective annual reports of the International Criminal Court and the International Court of Justice.

The report of the International Court of Justice (document A/66/4) describes the Court’s composition, privileges and immunities, jurisdiction, functions, and judicial work. In addition, it notes visits to the Court and other activities, including publications, documents and the court’s website. Lastly, it notes finances of the Court, as well as methods of covering expenditure, drafting the budget, budget implementation, and the budget of the court for 2010-2011.

The Court, the principal judicial organ of the United Nations, consists of 15 judges elected for a term of nine years by the General Assembly, and the Security Council. Every three years, one third of the seats fall vacant. The next elections to fill such vacancies will be held in the last quarter of 2011.

From 1 August 2010 to 31 July 2011, 17 contentious cases and one advisory procedure were pending: 14 contentious cases and one advisory procedure remain so as of 31 July 2011. During this period, two new contentious cases were submitted to the Court, in the order shown: Certain Activities carried out by Nicaragua in the Border Area (Costa Rica v. Nicaragua); and Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand) (Cambodia v. Thailand).

It should be noted that, during the period under review, Judge Thomas Buergenthal resigned with effect from 6 September 2010. A seat having thereby fallen vacant, the General Assembly and the Security Council on 9 September 2010 elected Joan E. Donoghue (United States) as a member of the Court with immediate effect. Pursuant to Article 15 of the Statute of the Court, Judge Donoghue will hold office for the remainder of Judge Buergenthal’s term, which will expire on 5 February 2015.

The Assembly also had before it the Secretary-General’s report on his Secretary-General’s Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice (document A/66/295) covering the 1 July 2010 to 30 June 2011 period, which outlines the guidelines and rules of the fund.

During the reporting period the fund did not receive any applications for beneficiaries of financial
assistance, and received a voluntary contribution from Finland, totalling $13,726.00. As of 30 June 2011, the total balance of the Fund was $891,205.79. The report also outlined the need for additional funding by Member States and provided instructions for making voluntary contributions to the Fund.

Also before the Assembly was a note by the Secretary-General containing the report of the International Criminal Court (document A/66/309), which covers the 1 August 2010 to 31 July 2011 period and notes that the Court was charged with carrying out investigations into and trials of individuals allegedly responsible for the most serious crimes of international concern, namely genocide and war crimes.

According to the report, the Court made significant progress during the reporting period. Five new States acceded to or ratified the Rome Statute, bringing the total number of States parties to 116. The Court’s judicial activity reached a new high with the start of a third trial. The presentation of evidence in the Court’s first trial was concluded, and the verdict was expected by the end of the year. The Prosecutor opened a sixth investigation, following the Security Council’s unanimous referral of the situation in Libya. The total number of individuals subject to proceedings before the Court increased from 15 to 25, and seven new persons appeared before the judges pursuant to an arrest warrant or a summons to appear.

As the importance attached to the Court’s work and the relevance of the Rome Statute on the international scene grow, great challenges remained. According to the report, arrest warrants are outstanding against a total of 11 suspects, and the cooperation of States in bringing these persons to justice continues to be a key condition for the effective implementation of the Court’s mandate. At the same time, the growing casework and the referral of a new situation by the Security Council increased pressure on the resources available to the Court.

The Court was seized of seven situations, of which the situation in Côte d’Ivoire is pending the Pre-Trial Chamber’s authorization for the opening of an investigation. The situations in Uganda, the Democratic Republic of the Congo and the Central African Republic were referred by the States in question, and the situations in Darfur, Sudan, and Libya were referred by the United Nations Security Council. In each case, the Prosecutor decided that there was a reasonable basis for the opening of investigations. The investigation into the situation in Kenya was authorized by Pre-Trial Chamber III following a request from the Prosecutor.

With respect to the situation in Uganda, there was one case, The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen, with four warrants of arrest outstanding since July 2005.

In the Democratic Republic of the Congo, there were four cases, of which two are at the trial stage. In The Prosecutor v. Thomas Lubanga Dyilo, the presentation of evidence concluded and a verdict is expected by the end of the year. In The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui, the prosecution case finished in December 2010 and the first accused began presenting his case on 21 March 2011. In The Prosecutor v. Callixte Mbarushimana, an arrest warrant was issued and the suspect arrested during the reporting period. The case was at the pre-trial stage. In The Prosecutor v. Bosco Ntaganda, the arrest warrant has remained outstanding since August 2006.

Also, in the situation in Central African Republic, there was one case, The Prosecutor v. Jean-Pierre Bemba Gombo. The trial started on 22 November 2010 with the presentation of prosecution evidence.

In respect of the situation in Darfur, Sudan, there were three active cases. In The Prosecutor v. Abdullah Banda Abakaer Nourain and Saleh Mohammed Jerbo Jamus, on 7 March 2011 Pre-Trial Chamber I confirmed charges of war crimes in connection with an attack on an African Union mission, sending the case to trial. Arrest warrants remain outstanding in The Prosecutor v. Ahmad Muhammad Harun and Ali Muhammad Ali Abd-Al-Rahman, as well as in The Prosecutor v. Omar Hassan Ahmad Al Bashir.

In accordance with Security Council resolution 1593 (2005), the Prosecutor presented his twelfth and thirteenth reports on the status of the investigation into the situation in Darfur to the Council on
9 December 2010 and 8 June 2011, respectively, highlighting the lack of cooperation by the Sudanese Government, the continuation of the alleged crimes on the ground and the need to execute the outstanding arrest warrants.

In Kenya, there were two ongoing cases at the pre-trial stage, The Prosecutor v. William Samoei Ruto, Henry Kiprono Kosgey and Joshua Arap Sang and The Prosecutor v. Francis Kirimi Muthaura, Uhuru Muigai Kenyatta and Mohammed Hussein Ali. All six suspects appeared before Pre-Trial Chamber II on April 2011 pursuant to summonses to appear, and the confirmation of charges hearings were scheduled for September 2011.


In addition to the six investigations, the Office of the Prosecutor was conducting preliminary examinations in Afghanistan, Colombia, Côte d'Ivoire, Georgia, Guinea, Honduras, Nigeria, the Republic of Korea and the Occupied Palestinian territory. During the reporting period, the Prosecutor sought authorization from the Pre-Trial Chamber to open an investigation into the alleged crimes committed on the territory of Côte d'Ivoire after 28 November 2010. The request was pending at the time of the submission of the present report.

The final document before the Assembly was the Secretary-General's report on Expenses incurred and reimbursement received by the United Nations in connection with assistance provided to the International Criminal Court (document A/66/333), which covers the period 1 July 2010 to 30 June 2011. It states that the Organization provided facilities and services in the amount of $772,952 for satellite communication, costs for staff who worked on matters exclusively pertaining to the court, field security, library services, and others.

Additional expenses in the amount of $814,934 were incurred by the United Nations Office at Nairobi, the International Tribunal for the Former Yugoslavia, the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo, the International Criminal Tribunal for Rwanda, the United Nations Office at Geneva and the United Nations Logistics Base, Brindisi, Italy, for services provided for the period from 1 July 2010 to 30 June 2011.

Action on Report of the Credentials Committee

Before the Assembly began its work this morning, PABLO ANTONIO THALASSINÓS (Panama), Chairman of the Credentials Committee, introduced that body's second report, explaining that it covered the credentials of States to the sixty-sixth session, other than those of representatives contained in the first report, which the Assembly had approved on 6 September 2011. The Committee had decided to accept, without a vote, the credentials of all the representatives of the Member States concerned. Since the Committee's adoption of the second report, Moldova, Mauritania, Ukraine and Uzbekistan had submitted credentials in the form required by rule 27 of the Assembly's rules of procedure.

The Assembly then adopted without a vote the second report of the Credentials Committee (document A/66/360/Add.1).

Statement by the President of International Court of Justice

Introducing the Court's report for the period from 1 August 2010 to 31 July 2011, HISASHI OWADA, President of the International Court of Justice, presented a review of the judicial activities of the Court since last reporting to the Assembly in October of last year. In that time, the Court had rendered four judgements and three orders, involving States from all regions of the world and raising a broad range of legal questions.
The first, he said, was a judgement in the case Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), concerning alleged violations of the rights of Mr. Diallo, a Guinean citizen who had settled in the Democratic Republic of the Congo in 1964. Having been arrested and detained several times from 1988 through 1995 in connection with proceedings he had instituted in an effort to recover debts from business partners, he was expelled in 1996. The Court ultimately concluded that the circumstances in which Mr. Diallo had been arrested, detained and expelled from 1995 to 1996 constituted a breach by the Democratic Republic of the Congo of its international obligations and that certain reparations were due for injury he had sustained.

The Court's order on provisional measures in the case concerning Certain Activities Carried Out by Nicaragua in the Border Area (Costa Rica v. Nicaragua) regarded contested territory between the two countries, he said. An application by Costa Rica alleged that Nicaragua had occupied Costa Rican territory in connection with the construction of a canal, and related works of dredging the San Juan River. Pending a final decision on the contested area, Costa Rica was requesting provisional measures to prevent Nicaragua from stationing personnel and engaging in related activities or other actions which might prejudice Costa Rica's claimed title to sovereignty. The Court had decided upon provisional measures preventing either party from sending or maintaining any personnel in the disputed area.

A judgement was also issued on preliminary objections in the case concerning Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia v. Russian Federation), he continued. The Russian Federation had issued four preliminary objections to the Court's jurisdiction in the case under Article 22 of that Convention. The first two objections claimed: that there was no dispute between the parties concerning the interpretation or application of the Convention; and that the procedural requirements of Article 22 had not been fulfilled. Having concluded that the first two objections had merit, the Court held that it did not have jurisdiction in the matter and did not need to consider the third and fourth objections.

In May of 2011 the Court issued two judgements relating to requests by Costa Rica and Honduras to intervene in the case concerning Territorial and Maritime Dispute (Nicaragua v. Colombia), he said. The case between Nicaragua and Colombia concerned disputed sovereignty over several maritime features in the Caribbean Sea and the plotting of the maritime boundary between the parties. The Court determined that the legal interests of neither Costa Rica nor Honduras would be affected by its decision and the interventions requested were not granted.

In a case in which Greece had requested to intervene in the matter of Jurisdictional Immunities of the State (Germany v. Italy), he went on, the primary dispute concerned whether Italy had violated Germany's jurisdictional immunity by allowing civil claims against it in Italian courts based on violations of humanitarian law by the Third Reich during the Second World War. Given that, in that context, the Court would have to determine whether a judgement handed down by a Greek court could be enforced on Italian territory, the Court granted the Greek request to intervene.

Turning to the sixth case, an order on provisional measures in the case concerning the Request for Interpretation of the Judgment of 15 June 1962 in the Case concerning the Temple of Preah Vihear (Cambodia v. Thailand), he said that the request, filed by Cambodia, claimed that there was a dispute between the parties on the meaning and scope of that judgement, which, among other things, had found that Cambodia held sovereignty over the Temple of Preah Vihear, situated in the border area between the countries. The Court decided to indicate provisional measures to both parties, among them, the establishment of a provisional demilitarized zone, and ordered that both parties immediately withdraw their military personnel from the area.

In addition to having handed down those decisions, the Court continued to hold hearings in other matters, he said. There had been a remarkable increase in the number of cases on the Court's docket, which currently stood at 15. The Court made its best efforts to respond to the high expectations of the international community for the expeditious handling of cases referred to it.

Noting that this was his last address to the Assembly as President of the Court, he shared his reflections on the trust the international community placed in it. “States from all corners of the world,
faithful to their attachment to international law, continue to have recourse to the Court in order to find a judicial settlement to their disputes.” In each of the last 10 years, there had been an average of 15 cases on the docket, and sometimes as many as 28. The range of issues the Court had taken up was broader than ever before and it now handled a number of cases, in different procedural phases, simultaneously, thus shortening the time between written and oral proceedings.

“In these times of unprecedented interconnection between States and peoples, it is my sincere belief that a firm reliance on international law must underpin any and all future developments on the global stage,” he said in closing. “The International Court of Justice, as guardian of international law, is proud to play a vital role in our increasingly globalized world.”

Statements on the International Court of Justice

ALAN KESSEL (Canada), also speaking on behalf of Australia and New Zealand, noted that the Court had heard 14 contentious cases, deliberated four cases consecutively and been presented with two new cases. It had covered an “impressively” wide range of issues, and despite the increasing complexity of the issues before it, had managed to clear its backlog. His delegation was encouraged by the Court’s continued commitment to ensure the efficiency of its working methods.

He went on to say that the Court’s universality had been seen in the growing confidence in its decisions. Recalling that the Court was the principle judicial organ of the United Nations, he said it had special position in promoting the rule of law through its judgements and advisory opinions. Wider acceptance of its compulsory jurisdiction had enabled it to fulfil its role more effectively. In that context, he encouraged States that had not yet done so to deposit with the Secretary-General their acceptance of the Court’s jurisdiction.

E. AHAMED, Minister of State for External Affairs of India, noted that, whereas other international judicial institutions had competence and jurisdiction in specific areas, the International Court of Justice enjoyed a unique status as the only judicial body with the legitimacy derived from the United Nations Charter. It also enjoyed universal character with general jurisdiction. The Court was therefore uniquely placed to establish conditions under which justice and respect for the obligations of international law could be maintained — one of the primary goals of the United Nations. The report of the Court clearly illustrated the confidence that States had in it, as shown by the number and scope of cases as well the Court’s growing specialization in complex aspects of public international law.

The judgements delivered by the Court had played an important role in the interpretation and clarification of the rules of international law as well as in the progressive development and codification of international law. He said the Court had remained highly sensitive in respecting political realities and sentiments of States, while acting within the provisions of the United Nations Charter, its own Statute and other applicable international law.

The variety of areas in which the Court had pronounced judgements ranged from territorial and maritime delimitation, diplomatic protection, environmental concerns, racial discrimination, violation of human rights and others. It was also “praiseworthy” to note, he said, that the Court had taken significant steps to enhance its efficiency to cope with the steady increase in its workload through a re-examination of its procedures and working methods, updating of its practice directions for use by States, and setting a demanding schedule of hearings and deliberations that allowed the Court to consider several cases at the same time.

MAGED A. ABDELAZIZ (Egypt) said that, since its establishment, the International Court of Justice had strengthened important legal principles and rules through its Advisory Opinions on the legality of the use or threat of use of nuclear weapons, the Legal Implications of the Establishment of the Separation Wall in the Occupied Palestinian Territories, and the accordance with international law of Kosovo’s unilateral declaration of independence, among others. The Court’s efforts also contributed to the theme proposed by the President of the General Assembly for the current session, reaffirming the peaceful settlement of disputes and the role mediation could play in that regard. Therefore, Egypt emphasized the need to encourage State and United Nations organs and specialized agencies to request advisory opinions of the Court.
With regard to the current discussions of the recent request of Palestine to join the United Nations as a full Member, Egypt stressed the need to draw on the experiences of the Court in consolidating the established legal rules with respect to the criteria and procedures of accepting new Members. In that vein, it should draw on the experiences of the Court with respect to the responsibility to protect citizens in accordance with international law, as well as the distinction between terrorism and the legitimate armed struggle in the framework of the right to self-determination. It was also important to provide the Court with the chance to consider the legality of encroachment by certain principle organs of the United Nations on the competencies of other main organs “that are more representative and democratic in nature”.

It was also necessary to monitor and assess the implementation of the Court's judgements, decisions and advisory opinions, he said, reiterating Egypt’s proposal to establish a mechanism within the United Nations for that purpose. In that regard, he said, it was also important to note the League of Arab States’ October 2011 decision to present to the Assembly a draft text requesting an advisory opinion on the legal status of the Palestinian and Arab prisoners and detainees in Israeli prisons.

ALFREDO CHUQUIHUARA (Peru) said the purpose of the United Nations was to ensure that States consistently resolved their disputes peacefully, and to that end, States had proclaimed through resolution 26/25 (XXV) they would refrain from the threat of the use of force that was inconsistent with the Organization's principles. Reiterating Peru's commitment to comply with the Court's statutes, he urged others to abide by its decisions. In issues ranging from territorial and maritime delimitations to immunities regimes, States had freely opted to appear before the Court to resolve their disputes, due in part to the Court’s legal quality and the impartiality of its justices, which had led to universal recognition of its legitimacy.

Through the American Treaty on Pacific Settlement — or “Bogota Pact” — States had agreed to refer peaceful dispute settlement to the Court, he said, adding that Peru had recognized the Court's unconditional jurisdiction. Through the “Manila Declaration”, it had been reiterated that legal disputes should be brought to the Court and considered an unfriendly act. Sixty six States had indicated the compulsory jurisdiction of the Court and he urgently called on those that had not done so to accept the Court’s compulsory jurisdiction in contentious cases.

Regarding its contentious cases, he said the Court had had a busy docket, which included two new cases. The Court’s dialogue with the International Law Commission, and various regional and national courts, had made possible an exchange of views that had enriched the legal community. States should ensure the Court had the resources it needed to carry out its tasks. The requirements contained in the report, especially for human resources like legal assistance and security should be attended to as soon as possible.

MARY E. FLORES (Honduras) said her country had relied on the Court’s rulings to settle major territorial disputes with its neighbours. Its two-century old boundary disputes and other matters relating to territorial and maritime rights, which Honduras had not been able to resolve through mediation, had been submitted to the Court. The most recent cases dealt with the sovereign rights of Honduras in the Fonseca Gulf, the secure passage to the Pacific Ocean, and maritime delimitation in the Caribbean, as related to the Caribbean Sea Limits Treaty ratified with Colombia in 1999. The Court’s role in the new century would depend on its activity and acceptance in the international community.

Despite regional gains in strengthening the rule of law, “we live in an everyday reality where criminal activities and corruption threaten the core of governance and hinder — or even paralyze — the State’s national justice systems,” she said. A coordinated, strong institutional and international judicial framework was required, and in that regard, he praised the International Commission against Impunity in Guatemala for contributing to that accountability process. She also stressed the importance of several issues contained in the report, which had been “dormant” on the agenda, including the right to protect and the issue of human security. Recently, the Assembly had decided to continue the debate on human security, due to the lack of a definition for that concept. It was one that carried serious legal implications and it was of paramount importance for the Court to pronounce on States’ rights and responsibilities in that regard.
PAPE OUMAR NDIAYE (Senegal) said one could hardly imagine a better time to hail the Court's role in establishing a more just and peaceful world. Along those lines, he encouraged the Court, the only international judiciary, to continue to uphold international law. The Court’s growing role had been seen in the great number of requests presented to it, reflecting greater acceptance of the primacy of law and interest in peaceful dispute settlement.

Indeed, the Court had contributed to peaceful relations between States and the maintenance of peace and security, he said. By promoting the rule of law, the Court had helped to clarify the law, while its rulings and decisions — which had often served as precedents — had enriched the codification and consolidation of international law.

He said Senegal was pleased with the Court’s efforts to increase its effectiveness and believed it should be provided with the means to fulfil its laudable mission. Today, the benefit of peaceful dispute settlement was hardly debatable. The Court had contributed to achieving the purposes of the United Nations Charter. In closing, he said Senegal was deeply committed to justice, the rule of law and peaceful dispute settlement. His Government supported the Court and accepted its compulsory jurisdiction.

KIRILL GEVORGIAN (Russian Federation), said that his Government had always attached importance to the Court, noting the “dynamism” of its work. The increasing diversity of its cases spoke to its unique, universal nature. In the past year, the Court had upheld the highest standards of judicial practice, objectivity and independence. The Russian Federation was pleased with its judgement in April on the case of Georgia v. the Russian Federation and the application of the Convention on the Elimination of All Forms of Racial Discrimination. With it, the Court had made a notable contribution to shoring up the system of peaceful dispute settlement and the basis for the peacekeeping process.

In addition, the Court’s judgement confirmed the significance of tools such as negotiations, enhanced the authority of United Nations treaty bodies, and prevented an abuse of legal procedures through the circumventing of legal treaties, he continued. The Court had supported a State that was participating in peacekeeping and fulfilling its role as a peacekeeper. The complaint to the Court had been made after an attack on those peacekeepers. If the Court had ruled otherwise, any attack on peacekeepers could violate the Convention. The Court’s impartial judgement had led to a rise in confidence in it, as seen in the growing number of States accepting its jurisdiction and the diversity of issues being brought before it.

He went on to say that discussions were underway on the rule of law, a concept that had transformed into a practical survival tool for conflict and post-conflict societies. The Court aimed to bolster the rule of law through clarifying international law and settling the most delicate of disputes. Despite its busy calendar, it had maintained a high judicial quality in its decisions. Its request for more human resources and funding to adapt its judicial processes deserved the most careful attention. The Russian Federation would spare no effort in that area. Elections to choose judges would soon be held and he hoped that the most outstanding individuals would be chosen.

VALENTIN ZELLWEGER (Switzerland) said that his country supported a stable and just international order, to which international jurisdictions — and the International Court of Justice in particular — made major contributions. Switzerland had recognized the competency of the Court from the outset, he said, and invited all other States to do so as well. “All States should bring their differences before the Court so they can be settled peacefully,” he stressed. Switzerland also saluted the measures taken by the Court to improve its effectiveness and efficiency, and to cope with the increasing number of cases brought before it.

Switzerland was pleased with the rapid settlement of the case Belgium v. Switzerland, which was mentioned by the Court in its report, but wishes to make a clarification in that regard. The report quoted a letter in which Belgium had announced its withdrawal, he said, and in that letter, Belgium had paraphrased a paragraph from Switzerland’s “preliminary exceptions”. Only the original text of that paragraph expressed Switzerland’s unwavering opinion, he said.

JUN YAMAZAKI (Japan) said that he was especially impressed by the wide regional range of Member States seeking to resolve international legal disputes by referring cases to the Court. That fact
illustrated the universality of the Court and the great importance that Member States attached to it. The variety of the subject matter of recent cases, from territorial and maritime delimitation to interpretation and application of international conventions and treaties, also demonstrated the significant role the Court played in solving international disputes between States and providing opinions on important questions in international law. While dealing with the variety and complexity of such cases, the Court had taken effective measures to conduct its activity at a sustainable level.

In the present global environment, with ongoing armed conflicts and acts of terrorism, the firm establishment of law and order was indispensable. Indeed there was an increasing recognition in the international community of the necessity of maintaining the primacy of international law as well as the importance of settling disputes through peaceful means. In that regard, he said the role of the Court, as the principal judicial organ of the United Nations, was paramount. “We believe that the [Court] must bring to bear not only a profound knowledge of international law but also a farsighted view of the international community, given that the world is now experiencing rapid change,” he said. Japan respected the Court’s ability to meet this requirement and continued to fully support its work. In conclusion, he reiterated the great importance the international community attached to the lofty cause and work of the International Court of Justice.

LIONEL YEE (Singapore) reaffirmed commitment to a stable and peaceful international order based on the rule of law, as international law was indispensable to the realization of the purposes and principles of the United Nations, including the maintenance of international peace and security, and the preservation of friendly relations. Further, he welcomed the continued regional and subject-matter diversity of the cases on the Court’s list as at the end of the reporting period.

Turning to the Court’s administration, he lauded it for successfully clearing its backlog of cases and welcomed the Court’s efforts to keep its procedures and working methods under constant review to ensure its users could be confident that the Court’s proceedings would be as efficient as possible. He said Singapore also backed both requests by the Court for additional posts in the Professional and General Service categories, saying the requested posts would enable the Court discharge its duties successfully in the year ahead.

MOURAD BENMEHIDI (Algeria) said that as the principle judicial organ of the United Nations, the Court played a unique role in the international judicial system. Specialized judicial systems had not diminished its importance, and the number of cases on its docket, coupled with the heterogeneous nature and geographic diversity of States parties appearing before it, had shown its universality. Underscoring the importance of clarifying and disseminating the Court’s activities, he said the Court should participate in the Assembly’s High-level debate on the rule of law, scheduled for September 2012.

Enshrining the primacy of international law was also of crucial importance, he continued, adding that ideas to help the Court better carry out its work should be considered. The Court must be provided with resources to ensure swift action on its judgements and rulings. The number of cases and growing complexity of them meant that the Court must adapt in terms of human and material resources. The 14 pending cases undoubtedly would be concluded more quickly if additional means were provided.

Commending the Court’s efforts to tackle its growing workload by adjusting its calendar and working methods, he said the United Nations must consider the best means to provide support to the judicial body. The Court enriched the clarification of international legal rules, including through its Advisory Opinions. While not binding, they were an excellent guide for international organizations, including the United Nations.

NÉSTOR OSORIO (Colombia) said that it was useful for Member States to be kept apprised of contentious cases before the Court and how they were proceeding. He also noted that there was a constant flow of cases in the year under review today. Rulings by the Court covered a wide range of international life. The Court had worked with exceptional diligence on the many cases on its docket. The adaptations made to Court procedure through adjustment of the Guide to Practice had proved useful to States. The Court had worked expeditiously and completed cases in a timely manner, keeping delays due to the busy docket to a minimum.
The Court made valuable contributions to the state of the rule of law in the international arena, he stated. The court, in that context, played a special role in the United Nations architecture. Its actions and decisions could help promote and clarify norms in international law, including those that regulated its practice and proceedings. The President of the Court should be invited to participate in the Assembly's High-level event on the subject in September 2012.

YANERIT MORGAN (Mexico), noting the need for increased security staff for the Court, said the General Assembly must provide the judicial body the tools it needed. Of the 17 cases before the Court, a number concerned Latin American and Caribbean States, showing that region’s commitment to international rule of law and peaceful dispute settlement. She highlighted the Court’s role in legal rulings for States parties and the creation of international jurisprudence, as well as its fundamental role in developing international law.

She pointed to the Court’s ruling in the *Pulp Mills and the River Uruguay* case (Argentina v. Uruguay) as a clear example of its stature. Drawing attention to the evolving nature of cases before the Court, she closed by expressing Mexico’s attachment to the Court as the main judicial organ for peaceful dispute settlement.

CARLOS ARGÜELLO-GÓMEZ (Nicaragua) said this year was extremely busy for the Court and it was expected that next year would be the same, reflecting the Court’s relevance as the United Nations judicial organ and only universal court. In its work, it continued to promote, consolidate and disseminate information about the rule of law. The Court’s work was also vital to international security. Nicaragua regretted that only 66 States had recognized the Court’s compulsory jurisdiction. He urged States that had not done so to recognize its jurisdiction and contribute to the consolidation of the rule of law.

He went on to say that Nicaragua had worked to peacefully resolve disputes by participating in eight major and other cases before the Court, he said, including those involving military and paramilitary action, and in the case of *Nicaragua v. the United States*. That case was pending compliance and Nicaragua reserved the right to claim indemnification. The case between Nicaragua and Colombia had been extended due to incidental proceedings. In May, the Court had handed down a decision regarding the requests for intervention. More generally, Nicaragua would continue to abide by the Court’s rulings, which it had used to endorse and propose mechanisms for peaceful dispute settlement. It was enormously satisfied with the way the Court had been run.

CARLOS D. SORRETA (Philippines) commended the Court for sustaining such activity, and said the regular review of its procedures and working methods, updating of practices to be used by States (adopted in 2001) and setting of an “exacting” schedule had allowed the backlog of cases to be cleared, increasing confidence in the Court. It now required support in the area of human resources and he reiterated the call to provide the Court with the necessary means to ensure its efficient functioning. The Philippines also approved of the Court’s efforts to make its decisions more widely accessible to the public, among others, through publications, visits and sustained engagement with the media. He commended the annual publication of the Reports of Judgments, Advisory Opinions and Orders, the Yearbook and the Bibliography in that regard.

He went on to say that the Court’s website, with “dynamic” developments in its user interface, would continue to be important for keeping the Court engaged with the world. Noting that respect for the rule of law, transparency and accessibility must be among the Court’s cornerstones, he said such transparency must never compromise the Court’s security. He noted the Court’s request to strengthen its security team and to enable it to confront new technological threats. The steady rise in specialized tribunals to address the “demands of interdependence” spoke to the confidence in the rule of law which the Court had helped propagate. The Philippines counted on the Court to provide a framework of case law and norms to guide those tribunals.

OCTAVIO ERRÁZURIZ (Chile) thanked Judge Owada for his comprehensive report, noting the Court’s central position in the international legal system. He heralded the contributions of the Court that, within the framework of the multilateral system of peace and security, expanded relations between States while strengthening a sense of respect for the law through the fundamental principles and the mandates of the United Nations Charter which was “its backbone”.
Continuing, he urged Member States to ensure that principal judicial organ received the necessary support needed, both through material means and human resources, so that it could perform its functions in full competency. He noted with appreciation that the Court was utilizing modern methods, technologies and electronic means to not only publicize its work in a manner that was accessible to the international community, but to facilitate consultations of its work and documents. He concluded by thanking the President for his work and by stating his “renewed appreciation” for the invaluable contribution of the Court toward the observance of international law.

LEANDRO VIEIRA SILVA (Brazil) said that yesterday, in a briefing to the Security Council, Brazil had noted its appreciation of how that Council could make fuller use of the International Court of Justice in the settlement of disputes. Judge Owada had today spoken of the “organic links” that existed between the two bodies, he recalled, and Brazil believed that the Council would benefit from a closer relationship with the Court. Judge Owada’s observations on the “parallel and complementary” role of the Court and the Security Council were illustrated by a recent case between Cambodia and Thailand, in which Brazil had been directly involved.

The advisory jurisdiction of the Court had also played a major role in clarifying legal questions put forward by United Nations organs and other specialized agencies, he said. The Court’s latest report showed the high demand placed on the Court, which included cases covering a wide variety of issues and emerging from all continents. That demand demonstrated the “genuine universal character” of the Court and its importance as the principal organ of the United Nations, he said. However, as cases were becoming increasingly complex — often involving a number of phases and requests for urgent provisional measures — Brazil appreciated steps taken to enhance the efficiency of the Court.

Brazil praised the Court for its role in the development of international law and in upholding the principles of the Organization's Charter. The work of the Court was crucial to ensure the primacy of law in international affairs, he said, as well as the peaceful settlement of disputes and the promotion of more just, equitable and fair international relations. Brazil was proud to have contributed to that process along the course of the Court’s history, with highly qualified Brazilian judges, including Judge Antônio Augusto Cançado Trindade, who was currently serving on the body.

MOHAMMED BELLO, Minister of Justice of Nigeria expressed his unequivocal support for peaceful dispute settlement and underlined Nigeria’s adherence to the Court’s judgements as the principal judicial organ of the United Nations. Indeed, the universality of the Court’s rulings deserved accolades, and in that context, he called on countries that had not yet honoured its jurisdiction to do so. On the Bakassi case, he thanked the Court for its judgement, which had been carried out under the Green Tree Agreement, of which he was Chair. He also underlined the Court’s role in development of international law and ensured it of Nigeria’s support.

SHALVA TSISKARASHVILI (Georgia) said that on 1 April the Court had delivered a judgement in the case his country had submitted against the Russian Federation on the application of the Convention on the Elimination of All Forms of Racial Discrimination, upholding the latter party’s second preliminary objection. Georgia had tried to resolve the existing disputes through negotiations, both prior to and after major hostilities had begun in 2008. Georgia had formally invited the Russian Federation to participate in negotiations after that Government had breached the Convention.

Georgia had invoked its responsibility for various reasons, he said, citing the Russian Federation’s prevention of the right of return of people expelled from Abkhazia and South Ossetia. He also cited discrimination — prior to the start of major hostilities — against ethnic Georgians in those regions, which were controlled by the Russian Federation, including through ethnically motivated violence, violation of the right to freedom of movement, “ethnic cleansing”, violation of educational, cultural and linguistic rights, and “passportization”. Noting that Georgia had taken all measures to bring such acts to an immediate end, he focused on paragraph 172 of the report and paragraph 186 of the Court’s judgement, whereby parties were obliged to comply with their Convention obligations.

EDUARDO ULIBARRI (Costa Rica) noted his country’s absolute adherence to international law. As the Charter recognized the peaceful resolution of disputes to be one of the fundamental purposes of the
United Nations, he said, the Court’s activities were indispensible to the conduct of international affairs. It was therefore incumbent upon States to support its work financially and logistically.

More important, he continued, was that States respected the decisions of the Court — be they substantive or provisional in nature. That should be demonstrated in good faith without any provocations or attempts to undermine its decisions. Any fissures in the Court worked against the international community as a whole. He expressed appreciation for the interest shown in candidates for six new judges on the Court and thanked the Court for its efficiency.

Statement by President of International Criminal Court

SANG-HYUN SONG, President of the International Criminal Court, presented the body’s seventh annual report, which covered the 1 August 2010 to 31 July 2011 period, saying that five new States had joined the Rome Statute, bringing the number of States Parties to 119. On the judicial front, the number of situations under investigation had risen from five to seven. Among them was the situation in Libya, referred by the Security Council on 26 February in response to the “gross and systematic violation of human rights”. The Court’s Pre-Trial Chamber had issued arrest warrants against Libyan Leader Muammar al-Qadhafi, Saif al-Islam Qadhafi and Abdullah al-Senussi.

The Court also had authorized investigations into a seventh situation — Côte d’Ivoire — on 3 October, over alleged crimes committed since 28 November 2010 in the wake of Presidential elections. Elsewhere, the Court’s first trial had concluded in August with closing statements in the case against Thomas Lubanga Dyilo, who had been charged with using child soldiers in the Democratic Republic of the Congo. Judgement was expected before year’s end.

In the second trial, the presentation of evidence was nearing its conclusion concerning charges against Germain Katanga and Mathieu Ngudjolo Chui for the use of child soldiers, rape and murder, among other crimes, and a judgement was expected in the first half of next year. The Court’s third trial opened in November against Jean-Pierre Bemba, charged as a military commander with rape and murder allegedly committed in the Central African Republic. The trial had progressed well and prosecution was at an advanced stage.

A fourth trial under preparation, stemming from the situation in Darfur, Sudan, involved war crimes in connection with an attack on an African Union mission, confirmed in March, against Abdallah Banda and Saleh Jerbo. Proceedings in the situation in Kenya also had progressed significantly. The two cases each involved three senior persons alleged to have committed murder in connection with violence following December 2007 elections. The Court had set a legal precedent by dismissing Kenya’s challenge to the admissibility of those cases, over Kenya’s failure to provide enough evidence showing it was investigating the six suspects.

In addition to the seven investigations, the Prosecutor was conducting preliminary examinations regarding Afghanistan, Colombia, Georgia, Guinea, Honduras, Nigeria, Occupied Palestinian territory and the Republic of Korea, he added.

Arrest warrants for Joseph Kony and three other alleged commanders of the Lord’s Resistance Army (LRA) in Uganda were still outstanding, he continued. The same was true for Bosco Ntaganda in the situation in the Democratic Republic of the Congo, and President Omar al-Bashir, Ahmad Harun and Ali Kushayb, regarding the situation in Darfur. “This is deeply distressing for the victims”, he said, imploring States to bring those persons to justice. Explaining to victims why some warrants had not been implemented had been tasked to the Court’s outreach programme, which each week met with hundreds of people to make the judicial process more understandable.

The Court informed victims of their rights and helped them turn the possibilities offered by the Rome Statute into action, he said, noting that victims’ assistance in northern Uganda and the Democratic Republic of the Congo had seen the Trust Fund for Victims mature into a solid institution. By recognizing the need for reconstructive surgery and trauma-based counselling, for example, it had articulated a truly human dimension to international criminal justice. The coming year might see the first-ever judicial
Welcoming Grenada, Tunisia, the Philippines, the Maldives and Cape Verde for acceding to or ratifying the Rome Statute in the last six months, he said many important decisions were carried out by States Parties, including amendments to the Statute and election of the highest Court officials. The Assembly of States Parties in December would be especially significant as, for the first time since the Court’s establishment, a Prosecutor and six new judges would be elected.

He went on to say that the common objectives of the Court and the United Nations included the prevention and punishment of serious international crimes and guaranteeing respect and enforcement of international law. The Court was grateful for its cooperation with the Organization on issues ranging from security and field operations, to the exchange of information, to the testimony of United Nations officials. He also was optimistic that the proposed High-level meeting on the rule of law would provide new impetus for discussions on that topic.

With the Court’s tenth anniversary on 1 July 2012, a new chapter would open, he said, as the first Prosecutor, Luis Moreno-Ocampo, would hand the baton to his successor. Amid an ever-increasing workload, the Court had sought savings and “simply worked harder”. But if the expectations continued to grow while the resources remained the same, the situation could become untenable. He appealed to all States to “stand united” behind international efforts to suppress the gravest crimes known to humanity. By joining the Rome Statute community, each State added a brick to a wall that protected future generations from terrible atrocities.

Statements on International Criminal Court

OMBENI SEFUE (United Republic of Tanzania), speaking on behalf of African States Parties to the Rome Statute, called the Court a historic development in the global struggle to advance the cause of justice and the rule of law. It served both as a deterrent for potential perpetrators and ensured that persons accused of offences such as genocide, crimes against humanity and war crimes, were brought to justice. The Court was making substantial progress and was developing its own jurisprudence on fundamental aspects of the law. The Rome Statute allowed it to assume jurisdiction only where national judicial systems had failed; primary responsibility for bringing offenders to justice remained with States. That principle of complementarity advanced the promotion and protection of human rights by ensuring that accountability prevailed.

Universal ratification of the Rome Statute was fundamental to the Court’s work, he said. With the recent ratification of the Statute by Tunisia and Cape Verde, 33 African States had now ratified. Efforts toward universal acceptance must be redoubled. International cooperation, particularly with the African region, was vital to the Court’s success. African States had been involved in negotiations of the Statute and represented 28 per cent of the 119 State Parties. All six of the Court’s current cases were from Africa, three of them as self-referrals, demonstrating the region’s regard for the rule of law. Still, there was a perception that relations between the Court and African countries could be improved. States Parties considering candidates for the next Prosecutor should make improved relations with African States a priority.

Noting that the experiences of the Special Court for Sierra Leone and the International Criminal Tribunal for Rwanda had preceded the International Criminal Court and established respect for the rule of law, which had brought peace, order and stability to conflict-torn societies, he reiterated the African Group’s willingness to remain engaged in the work in the Court to end impunity and reinforce the rule of law.

PÄIVI KAUKORANTA, Director General for Legal Affairs for the Ministry of Foreign Affairs of Finland, speaking also on behalf of the Nordic Countries (Denmark, Iceland, Norway and Sweden), said that the reporting period was marked by significant events for the Court and for the global fight against impunity. In February 2011, the Security Council had, for the second time, used powers granted it by the Rome Statute and had unanimously referred, a situation — Libya, in this case — to the Court. That had been yet another acknowledgment of the fact that the Court was a necessary tool in ensuring that
perpetrators of international crimes were brought to justice. Recently, she noted, the Court's Pre-Trial Chamber had also granted the Prosecutor's request to open investigations into the situation in Côte d'Ivoire.

The number of judicial proceedings, as well as investigations and preliminary examinations, was growing. As the workload increased, necessary resources had to be ensured for the Court to fulfil its mandate. Welcoming new ratifications of the Rome Statute, the Nordic countries stressed that the Court would not be able to carry out its mandate without strong cooperation from States. It was a "very worrying development" that the number of outstanding arrest warrants was growing. In the case of Darfur, she called on States — and the Sudanese authorities in particular — to cooperate fully with the Court and comply with their legal obligations under Security Council resolution 1593 (2005). She further encouraged the Security Council to consider measures that would ensure compliance with that resolution.

It was States that bore the primary responsibility to investigate and prosecute International Criminal Court crimes in accordance with the principle of complementarity governing the Court's jurisdiction. In that respect, she drew the attention of the Assembly to the International Criminal Court's Legal Tools programme, which constituted a resource database for legal information on core international crimes. It was also vital, she said, to ensure that the issue of victims' participation and protection remained high on the agenda of the International Criminal Court.

RICHARD ROWE (Australia), speaking also on behalf of Canada and New Zealand, said that the Court remained a concrete expression of collective desire to ensure justice for victims of atrocity and to end impunity for perpetrators of the most serious crimes through a law-based system. Ultimately, it was States who had primary responsibility to prosecute serious crimes in their territory or by their nationals. Where that did not or occur, the Court acted as a complementary and necessary safety net of accountability. Over the last year, there had been growth in the political and diplomatic support for Court.

A landmark development this year had been the Security Council's unanimous referral of the situation in Libya to the Court in the early stages of the conflict. That referral, the Council's second such move, had demonstrated respect for the work of the Court and the important role the Court played in security architecture. Of course, the swift action taken by the Council regarding Libya could be contrasted with the Council's inaction on Syria, he added, and called for the perpetrators of crimes in that country to be brought to justice.

Although the Court had never been busier, cooperation of States in enforcing international arrest warrants remained a challenge. He said that his delegation recognized the difficulties non-executions of Court requests could have on the ability of the Court to fulfil its mandate. One of the most important follow-on effects of the Court had been that it acted as a catalyst for States to ensure their domestic capacity to deal with crimes under the Rome Statute. In order to link complementarity and broader efforts to fight impunity over the long term, the international community must focus on building the national capacity of States to assume their responsibilities in the justice sector. In that regard, his delegation noted the 2011 World Development Report conclusions on the importance of restoring confidence in institutions capable of delivering justice.

EDEN CHARLES (Trinidad and Tobago), speaking on behalf of the Caribbean Community (CARICOM), said that while his delegation recognized Court's efforts to bring successful completion to the cases now before it — as exemplified in the case of The Prosecutor v. Thomas Lubanga Dyilo, where a verdict was expected by the end of the year — it was concerned at the lack of progress in other matters, such as the case of The Prosecutor v. Joseph Kony, due to the failure to effect four arrest warrants that had been outstanding since July 2005. He urged all entities having binding legal obligations to cooperate with the Court to ensure that accused persons were arrested and brought to the Court for trial.

He also appreciated attempts by the Prosecutor to investigate and monitor information on crimes, potentially falling within the Court's jurisdiction, in Latin America, Asia and Eastern Europe, as suitable rebuttal to the Court's detractors who alleged that it was targeting Africa while ignoring atrocities committed elsewhere. He noted the Court's need for resources to effectively discharge its functions and, in that context, recalled that funds were to be provided by the United Nations, in particular in relation to expenses incurred due to referrals by the Security Council. The time was right for the Court and the
Organization to discuss the matter, as a new situation referred by the Council had put further pressure on available resources.

The Court was in the unique situation of needing to rely on the cooperation of States Parties, other States and intergovernmental organizations to carry out its work. He commended the growing areas of cooperation between the Court and the United Nations within the framework of the Agreement between them, as well as between the Organization and other intergovernmental entities such as the Organization of American States (OAS) and the Commonwealth, which would advance the promotion of peace, security and an end to impunity. He noted that CARICOM had endorsed the candidacy of Justice Anthony Thomas Aquinas Carmona of Trinidad and Tobago to fill one of six vacancies which would arise on the bench, and welcomed the support of all States Parties for his candidacy.

IOANNIS VRAILAS, Deputy Head of Delegation of the European Union, said that bloc was a staunch supporter of the Court. The consolidation of the rule of law and respect for human rights, as well as preservation of peace, and the strengthening of international security, were of fundamental importance to the Union. The Seychelles, Saint Lucia, Republic of Moldova, Grenada, Tunisia, Philippines, Vanuatu, the Maldives and Cape Verde — from different continents, joined the circle of States Parties to the Rome Statute, bringing the number to 119. The first Review Conference of the Rome Statute had been a major milestone, and had provided a forum for the States, international organizations and representatives of civil society in Kampala to reaffirm their resolve to promote the Statute, make specific pledges and submit themselves to a stocktaking.

That useful exercise had culminated in the adoption of two resolutions and a declaration and had clearly identified the areas for concentrated action. The Kampala Conference had successfully concluded its discussions on the subject of amendments to the Rome Statute: on Article 124; on extending the Court’s jurisdiction over additional war crimes in situations of non-international armed conflicts; and another on a crime of aggression.

As pledged at the Kampala Conference, the European Union further reinforced its policy in support of the Court. That had been translated into important direct financial assistance to the Court, civil society and third States. Nevertheless, the recent report, while commendable insofar as it described the efforts the Court had made in fulfilling its mission, described the challenges that the body was facing. The international community must now concentrate efforts to ensure that it was effective in punishing crimes and preventing them in the future.

The European Union member States were determined to continue their commitments towards effective implementation. “We need to reinforce our collective and individual efforts to ensure that the international arrest warrants issued by it are enforced,” he added. Particularly, he recalled Security Council resolution 1593 (2005) which imposed obligations to cooperate with the Court on a non-State Party, mentioning Sudan. The European Union regretted the infringements by Sudan of its international obligations. Unless all stakeholders put up a united front, the objectives of the Statute would not be achieved and “despots who committed crimes under the Statue would continue to get off scot-free”.

LAURI BAMBUS, Under-Secretary for Legal and Consular Affairs in the Ministry of Foreign Affairs of Estonia, said that the International Criminal Court was busier than ever, with seven situations under investigation and three trials currently ongoing, as well as a wide spectrum of preliminary investigations carried out in several regions. Estonia remained steadfastly committed to the principles of the Rome Statute and to promoting the rule of law.

He highlighted four key issues related to the Court. Firstly, the importance of pursuing the universality of the Rome Statute; secondly, the significance of upcoming elections of the Prosecutor and judges; thirdly, the necessity of better coordination in assisting national capacity-building; and fourthly, the importance of engaging regional organizations and providing information about the activities of the Court. The Court was entering a period of transition, with the crucial election of a new Prosecutor — which would have a huge impact on different aspects of the Court’s life. In that respect, while the Search Committee for the Prosecutor would give valuable impact, it needed to be emphasized that the Committee was of a technical nature and had an assisting function only. “The final decision lies solely in the hands of States Parties,” he stressed.
Among other new elections — which included six judges — was the selection of a new President of the Assembly of States Parties. Estonia was pleased to put forward the candidacy of Ambassador Tiina Intelmann for that position, he said, noting that, if elected, she would be the first woman to hold that honour, as well as the first President working full-time for the Assembly. Turning next to the issue of complementarity, he said that principle would only be possible if a State had the necessary legislative and institutional capacity to prosecute crimes included in the Rome Statute. In that respect, more must be done to achieve better coordinated efforts of States, the Court, international organizations and civil society in assisting national capacity-building. For example, he said, an interactive platform for information sharing would be a commendable initiative.

DAFFA-ALLA ELHAG ALI OSMAN (Sudan) said that his delegation had studied the report of the International Criminal Court, especially the second and third sections dealing with Sudan, and had found it "astonishing" that, despite the major important positive developments that had taken place there — especially in Darfur — the report continued to be based on purely political motivations and filled with inaccurate information. "We find ourselves, once more, confronted with politics masquerading as law," he said, adding: "Nothing is more dangerous than politicizing international justice." Sudan had long warned against such dangers, which diverted the Court from its intended purpose. Sudan had also warned States to help "keep international justice away from politics", so it could never be used as a tool for "selectivity and double standards" by certain States.

Linking a judicial body with a political body — as the Court had been linked with the Security Council by the Rome Statute — was, in itself a violation of the principles of the separation of powers, he said. That was due to the fact that the very act of transmitting any case under Chapter VII of the United Nations Charter was in itself a political decision, though aimed at "painting such a decision the colour of law". States, through the Security Council, had exploited Article 13(b) of the Rome Statute to suit their own needs. "Mixing politics with the law in this fashion is the true danger that threatens international justice," he said, adding that such actions would negatively impact the credibility of the law.

In that regard, the Council's resolution 1593 (2009), which had referred the situation of Darfur to the Court, had been a "shameful political decision", overlooking the most important parts of international law. In fact, President Omar al-Bashir had put an end to one of the most prolonged conflicts in Africa when he signed a Comprehensive Peace Agreement with South Sudan, among other actions, in the pursuit of peace. Additionally, the foundation for referring the Darfur file to the Court was "unfair and unjust", based as it was on elements of the Rome Statute, which Sudan had never ratified. He recalled, in that vein, that the Vienna Convention on International Treaties noted that States that had not acceded to or ratified treaties were not bound by them.

Turning to the most recent positive developments in "what was left of the conflict" in Darfur, he said that the joint efforts of Qatar, the African Union and the United Nations — along with the assistance of regional and international partners — had culminated with the signing in July of the Doha Document in Darfur. Tijani Sese, the leader of the Liberation and Justice Movement, had been appointed head of the Transitional Darfur Regional Authority. "The children of Darfur are the ones who are now responsible for Darfur regionally and at the international level," he stressed.

The Doha Document also included clear guidelines for reconstruction and rehabilitation in Darfur, he said, as well as for the creation of Special Tribunals for the execution of justice. Inviting international observers from the United Nations and others to monitor the work of those tribunals, he urged the international community to support, and not hinder, the efforts enshrined in the Doha Document.

Continuing, he said that paragraph 25 of the Court’s annual report had addressed the visits of President al-Bashir to several States Parties to the Rome Statute. It claimed that those States were obliged to cooperate with the Court based on article 87 of the Statute. However, the Prosecutor had overlooked the very text of that Statute, specifically Article 98, which referred to the importance of respecting the immunity of heads of State and high Government officials, as well as the principles that protected the sovereign rights of States — even if they conflicted with the Rome Statute. Moreover, it was the right of those States that had welcomed the Sudanese President to hold their own interests and obligations above the Rome Statute. The Prosecutor was "picking and choosing the articles that achieve
political gains”, he stressed, while ignoring the ones that did not.

Further, he said, Africa was being targeted by the International Criminal Court. That situation had led the African Union to adopt a position rejecting the “blatant politicization” of justice. “We are the ones paying the price of the misuse of this principle of universal jurisdiction,” he stressed, which had been taken out of its proper context. He was certain that Member States would see the validity of Sudan’s position, he said, in particular its refusal to ratify the Rome Statute.

HATEM TAG-ELDIN (Egypt) said that at a time of fundamental change in the Middle East, adhering to principles of the Rome Statute, as well as other international human rights instruments, sent a strong and unequivocal message to the international community that the international community must embrace such changes and commit to human rights and the rule of law. Egypt had demonstrated during the past few months its unflinching commitment to enter into a new era where society was guided by clear rules as well as by the principles of justice and equality before the law and by the practice of respect for human rights and fundamental freedoms.

Egypt said it welcomed the increased engagement of the Court with the League of Arab States, and had participated actively in the regional conference convened in May 2011 in Qatar. That conference was the first major event of its kind in the Middle East aimed at providing information on the workings of the Court and its legal framework. Egypt had also continued its constructive dialogue with the Court, and had received the Court’s Prosecutor, aiming to enhance cooperation with the Court as a non-State party.

He said that Egypt would express its support to the call of the African Union to the Security Council to defer the processes initiated by the Court with regard to the cases of Sudan and Kenya, in accordance with the provisions of Article 16 of the Rome Statute. It was imperative that the Prosecutor expedited the decision to begin the investigation of the crimes against humanity committed in the Occupied Palestinian Territory. It reaffirmed the responsibility of the international community to follow up on the recommendations of the Report of the United Nations Fact-Finding Mission on the Gaza Conflict, as recommended by the General Assembly in its resolutions 64/10 of 5 November 2009 and 64/254 of 26 February 2010.

CHRISTIAN WENAWESER (Liechtenstein) said the main principle underlying the Rome Statute — there must be no impunity for the worst crimes under international law — had indeed been universally accepted. He encouraged all States that had not yet done so to consider the advantages of joining the Statute. The most important advantage that came with ratification was that the Court, as an independent, professional and credible international institution, could, if necessary, conduct investigations and trials concerning crimes committed on the territory of a State Party or by its nationals.

The Court thus provided protection, through the deterrent effect, as well as a system of accountability and justice with strong regard for the rights of victims, he continued. The Court’s jurisdiction was however, complementary to domestic jurisdiction, which therefore took precedence as long as national authorities were willing and able to conduct genuine investigations and prosecutions. He added that recent and ongoing events in North Africa and the Middle East had highlighted the particular challenges as well as the indispensable role of justice mechanisms in conflict resolution.

Transitional processes must include a justice component as a fundamental building block of lasting peace. Amnesties for those responsible were inherently incompatible with this principle and risked reigniting the cycle of violence. Earlier in the year, the Security Council had referred the situation in Libya to the Court. Liechtenstein hoped that the Court had learned the lessons of the Darfur referral, and the delegation insisted that the Court receive due cooperation by all States concerned. Long-term follow-up was an indispensable part of a responsible interaction with the Court, which must not be simply employed as a short-term exit strategy for complex conflict situations.

VALENTIN ZELLWEGER (Switzerland) said the Court was now an integral part of the international architecture. The year 2011 had been marked by the unanimous decision of the Security Council to refer the situation in Libya to the Court. That move had evinced recognition of the fight against impunity as a precondition for lasting peace. It had also reflected the fact that the Court had become a
necessary and indispensable instrument for the international community. With 119 States Parties, the Court’s march towards universality was inevitable.

Switzerland underscored that the mission of the Court and the fight against impunity in general entailed responsibilities. On the one hand, the Court was responsible for selecting the situations and cases it followed. It must be able to explain why it took action in some cases and not in others, he said. On the other hand, those who referred situations to the Court also bore responsibility. If they asked it to become involved in a situation, they must fully assume the consequences. They could not invoke so-called “alternative” routes to justice.

States must absolutely demonstrate consistency in their support for the Court. He said that one could not applaud the issuance of arrest warrants in one case and criticize them or fail to execute them in other cases. That did not mean the Court was above criticism; on the contrary. Switzerland said the Court must be accountable for its activities to the Assembly of States Parties, as well as to the wider international community.

JUN YAMAZAKI (Japan), said that his basic stance on the Court could be expressed in the following four words: effectiveness, efficiency, universality and sustainability. Further, it could be said that the future of the Court depended most upon whether it could be universalized. As the number of States Parties to the Rome Statute increased, safe places for perpetrators of grave violations would be reduced. To encourage more membership in the Court, it should produce a solid record of performance by both effectively implementing its mandate and efficiently managing the conduct of its work. In order to realize effectiveness and efficiency, it was important that the Court not be excessively burdened, and that it and its work be developed in a systematically sustainable way. Five new States acceded to the Rome Statute and thus, Japan welcomed them. The Asia-Pacific Group witnessed the Philippines and the Maldives becoming members.

He reaffirmed the importance of cooperation in the Court’s work. In those cases where full cooperation had been extended by the States concerned, the Court was making steady progress. Where such cooperation had not been forthcoming, it faced serious challenges. Close cooperation among the Court, States Parties and civil society was also essential for its further development. In addition, cooperation between the Court and the United Nations, including the Security Council, was becoming more important.

DIEGO LIMERES (Argentina) said the Rome Statute and the Court were among the most notable achievements of multilateral diplomacy, and their contribution to the fight against impunity regarding crimes against humanity, genocide and war crimes was evident. Only a decade after the Statute’s adoption, the Court was a fully functioning, permanent criminal tribunal. But there were two aspects regarding which Argentina expressed serious concern due to their potential impact on the international justice system based on the Court’s body of decisions.

He went on to express his delegation’s concern for certain aspects of the Court’s work, including in paragraph 6 of Security Council resolution 1970 (2011), which provided that “nationals, current or former officials or personnel from a State outside [Libya] which were not a party to the Rome Statute of the [Court] shall be subject to the exclusive jurisdiction of that State for all alleged acts or omissions arising out of or related to operations in [Libya] established or authorized by the Council, unless such exclusive jurisdiction has been expressly waived by the State”. The Security Council decided in that case to follow the questionable precedent in the referral of Darfur of creating exceptions to the jurisdiction of the Court not provided for in the Rome Statute.

The other aspect for concern was the content of paragraph 8 of the same text, which provided that “none of the expenses incurred in connection with the referral, including expenses related to investigations or prosecutions in connection with the referral, shall be borne by the United Nations” and that such costs shall be borne by the Parties of the Rome Statute. Such a provision was inconsistent with Article 115 of the Statute, and Argentina urged Member States to address the matter.

YANERIT MORGAN (Mexico) said 119 States were now Parties to the Rome Statute, something which showed the clear commitment of universalization of the Court. She noted that, while the Lubanga
and other cases had been major achievements, the Court still faced challenges to ensure the efficacy of its work. Therefore, Member States should cooperate with that body, through, among other ways, enforcing outstanding arrest warrants. Meeting the challenges required cooperation of the States, other bodies and regional institutions, and the coming months were a chance to prove the international efficacy of the Court, especially in light of the election for a new prosecutor and six new judges.

She said the Court needed to examine issues of governance, the lack of State cooperation, and means to ensure a budget that would address its real needs. Indeed, while the Court now had the institutional strength to tackle myriad issues under its mandate, Member States must reach agreement regarding financing the body. This year Mexico had submitted a resolution to the OAS calling for the ratification of the Rome Statute and for cooperation among countries of the region regarding the Court’s work. In closing, she said that Mexico had strengthened its commitment to the Court.

CARLOS D.SORRETA (Philippines) said that his country had launched its candidature for a seat in the International Criminal Court and asked partners and friends to support the candidature of Miriam Defensor Santiago. The Review Conference of the Rome Statute had been held in Kampala, he said, and the stocktaking on international criminal justice had focused on topics such as the impact of the Statute on victims and affected communities, and complementarity and cooperation.

Noting that the Court was seized of five situations, he stated that the opening of a new situation, the three ongoing trials, the dismissal of charges against a suspect, the voluntary appearance of two suspects in the Darfur situation, and the issuance of a second arrest warrant were significant developments in the work of the Court. All that had demonstrated a firm resolve to address impunity. The Philippines also viewed with interest the activities of the Office of the Prosecutor, which had continued to monitor information on crimes potentially falling within the Court’s jurisdiction.

ZÉNON MUKONGO NGAY (Democratic Republic of the Congo) joined the statement of African State Parties and said that the situation in his country had been voluntarily referred to the Court by Congolese authorities on behalf of people suffering in a post-conflict situation. Indeed, it was to handle such situations that the Court had been created. Wars and all types of violence that stripped human beings of their dignity and integrity had no nationality. That reality, which some wished to limit to the Democratic Republic of the Congo in order to shirk their obligations, was intolerable and unacceptable, he stressed. It concerned everyone and should be the foundation of the Court.

He emphasized that his country was the first State Party to develop noteworthy cooperation with the Court, which could serve as a model for others. Several legal instruments attested to that fact, including the country’s ratification of the Rome Statute before it had entered into effect; voluntarily referring its situation to the Court; and the execution of three arrest warrants for Congolese nationals at the Court’s behest. From its own experience, the Democratic Republic of the Congo knew that peace and justice were complementary. Peacebuilding continued across the country with the support of justice.

Currently, the country had four cases before the Court, he said. He hoped that the first judgements would be handed down by the end of the year. He supported a proposal for in situ trials, which would provide satisfaction and prevent potential recidivism. He also said the Court must become more professional and less political as politics and justice did not go together. At the Kampala Review Conference in 2010, Member States had confirmed that the Court was a gift of hope for future generations and a very important advance towards respect for human rights and the rule of law. In closing, he invited delegations that had not yet joined the Rome Statute to do so.

DIRE TLADI (South Africa), associating his statement with that delivered on behalf the Group of African States Parties to the Rome Statute, recalled some of the occurrences over the past year regarding the work of the Court, including the eruption of post-conflict violence in Côte d’Ivoire and the Pre-Trial Chamber’s granting of its authorization to open an investigation into that situation; the Security Council’s referral of the situation in Libya to the Court; the issuance of an arrest warrant by the Court against Muammar al-Qadhafi; and summonses issued against six suspects in two cases in Kenya. Those and other events showed the magnitude of the challenges facing the Court, he said.

With respect to the situation in Libya — and other cases, whether in the past or in the future, which
had been referred to the Court by the Security Council — South Africa was well aware of the financial
strain borne by the Court. Since the referral was done on behalf of the United Nations and all its Members,
it was only fair that the financial burden of the task be borne by all Member States, and not only by States
Parties to the Rome Statute. South Africa hoped that consideration would be given to developing
approaches that would alleviate the budgetary strain resulting from referral of cases by the Council.

The most recent cases under consideration by the Court involved situations of international conflict,
he continued, which raised the challenge of the need to maintain not only actual but also perceptions of
impartiality. The investigations of conflict needed to be balanced with financial considerations, as well as
the current prosecutorial policy that only those most responsible should be tried before the International
Criminal Court. “If, however, the Court is seen as a ‘victor’s court’, this will have a negative perception on
the image, credibility and integrity of the Court as an independent dispenser of justice,” he said. South
Africa was also pleased to see in the report that the Court would soon be bringing to a close its first case,
The Prosecutor v. Lubanga Dyilo.

* *** *

For information media • not an official record