United Nations A/C.6/57/SR.13

General Assembly
Fifty-seventh session

Official Records

Distr.: General
11 February 2004
English
Original: Spanish

Sixth Committee

Summary record of the 13th meeting
Held at Headquarters, New York, on Monday, 14 October 2002, at 10 a.m.

Chairman: Mr. Prandler . . . . . (Hungary)

Contents

02-63671 (E)

0263671

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

Agenda item 158: Establishment of the International Criminal Court (A/57/208, A/57/403)

1. **Mr. Kirsch** (Chairman of the Preparatory Commission for the International Criminal Court) said that the Commission, which had formally remained in existence until the conclusion of the first meeting of the Assembly of States Parties to the Rome Statute, had finished its substantive work in July 2002 and had submitted the final report on that work to the first session of the Assembly of States Parties, held from 3 to 10 September 2002. In its work the Commission had accorded priority to the issues specifically singled out in resolution F of the Final Act of the Rome Conference and by the end of its tenth session it had completed the documents identified in that resolution, namely the Rules of Procedure and Evidence, the Elements of Crimes, a draft relationship agreement between the Court and the United Nations, the basic principles governing a headquarters agreement, detailed financial regulations and rules, an agreement on the privileges and immunities of the Court, a budget for the first financial year and the rules of procedure of the Assembly of States Parties, and had adopted a report on the crime of aggression. With regard to the second cluster of issues, the Commission had prepared draft resolutions and decisions relating to the meeting of the Assembly of States Parties, the establishment of subsidiary bodies, the procedures for nomination and for conduct of elections, the financing for the Court and the budget for the first financial period, officials and staff of the Court and other aspects concerning its establishment.

2. It was his deep conviction that the vocation of the International Criminal Court was and remained universal acceptance, and the fact that the Commission had adopted all its instruments without a vote represented a remarkable achievement.

3. Given the immense effort required to turn the Court into a reality, it would take time for the Court to become fully operational; nevertheless, it must be established on a solid foundation. Its success would depend on the continuing support of all States and of the public at large, especially during the crucial initial period of its existence. The current momentum must be maintained. For the time being, the necessary steps were still being taken to ensure the establishment of a strong and effective Court which would make it possible to attain the objectives of international justice and the end of impunity and recognition of the Court's place in the world.

4. **Mr. Al-Hussein** (President of the Assembly of States Parties to the Rome Statute) said that the first session of the Assembly had been highly productive and had provided an opportunity to reaffirm the centrality of international law in the quest for international justice. The Assembly had adopted seven instruments prepared by the Preparatory Commission for the International Criminal Court on the basis of resolution F of the Final Act, as well as the budget for the first financial period of the Court. With regard to the budget, it should be emphasized that the Court must start off on a secure financial footing and to that end the States parties must pay their assessed contributions in full.

5. The Assembly had adopted 15 resolutions and 4 decisions concerning the functioning of the Court and the working of the Assembly and its subsidiary bodies, in particular the resolution on the procedure for the election of judges which, together with the election of the Prosecutor, was scheduled to take place during the first resumed session of the Assembly, to be held from 3 to 7 February 2003. The importance of the first election could not be overemphasized; therefore, in order to ensure the integrity of the electoral process, the Bureau of the Assembly had appealed to States parties to refrain from entering into reciprocal agreements of exchange of support in respect of the election of judges. The Bureau had also urged States parties to consult with each other before submitting nominations for the office of Prosecutor, in accordance with the recommendation that the Prosecutor be elected by consensus. The elections should provide an opportunity to reaffirm the independence, impartiality and integrity of the Court, which would have an important bearing on its overall acceptability.

6. The Assembly had approved the appointment of the Director of Common Services and extended the mandate of the advance team of experts working to secure the early and effective establishment of the Court. He was confident that by the time the judges, the Prosecutor and other key officials of the Court took up their posts the following year, the necessary arrangements for the operations of the Court would have been established. The Assembly had also made a number of recommendations leading to the

establishment of a Bureau subcommittee to submit proposals on aggression and on the appointment of the External Auditor.

7. Although the Assembly's work was in a nascent stage, the outlook was favourable. The fact that all the instruments, resolutions and decisions had been adopted by consensus was a sign of maturity that should serve as an example in the future. The Court would require all the goodwill that States could muster and the assistance of the United Nations, including the Sixth Committee. In the draft relationship agreement between the Court and the United Nations, which he hoped would be finalized in the near future, emphasis was placed on the obligation of the two organizations to cooperate closely and consult each other on matters of mutual interest. In that connection, the Assembly had requested the United Nations to continue providing it, on a provisional basis, with substantive secretariat servicing as well as conference services and facilities, and trusted that it would receive a favourable reply.

8. **Ms. Nørgaard** (Denmark), speaking on behalf of the European Union, said that the Central and Eastern European countries associated with the European Union — Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia — and the associated countries — Cyprus and Malta — aligned themselves with her statement. The European Union was committed to the broadest possible support for the International Criminal Court, would assist it to buttress the rule of law and combat impunity and would endeavour to ensure that it met the highest standards of competence, fairness and due process. The nomination and election of the judges and the Prosecutor must be transparent and consistent with the criteria set out in the Rome Statute.

9. Although some States feared the prosecution of their nationals for politically motivated purposes, she was convinced that the Statute provided all necessary safeguards against that possibility. The European Union was ready to address those concerns through frank and constructive dialogue, while preserving the integrity of the Statute and the objective of individual criminal accountability. In that spirit, the European Council of Ministers had recently agreed on a set of conclusions and guiding principles which constituted the common European Union response to the United States proposals for bilateral non-surrender agreements.

10. She noted with satisfaction that the Statute had entered into force and that the number of ratifications and accessions was currently 81. Moreover, the Preparatory Commission had finished its work and the Assembly of States Parties had held its first session, adopting by consensus all the instruments and decisions that enabled the Court to become operative. The groundwork in The Hague was progressing, thanks in large part to the contribution of the advance team, the host country and the coalition of non-governmental organizations.

11. She trusted that the United Nations Secretariat would continue to provide services and facilities for delegations and the Assembly of States Parties, at least until the Assembly had its own secretariat in 2003. The European Union supported the decision of the General Assembly whereby the cost of the utilization of services in 2002 should be paid in advance; the corresponding expenses for 2003 would be paid from the Court's budget and the United Nations would incur no costs.

12. **Mr. Lacanilao** (Philippines) welcomed the fact that the number of ratifying States had exceeded 60 earlier in the year and the Rome Statute had entered into force on 1 July 2002. The Court did not yet, however, enjoy universal support. Many countries, including some important Powers, had remained aloof, preferring to wait for the Court to begin to operate in order to be convinced of its impartiality and freedom of domination by a certain region.

13. The Philippines had signed the Rome Statute and was currently studying the legal, political and practical implications of becoming a State party, which did not mean any lesser commitment to the promotion of human rights, the elimination of impunity and the preservation of international peace; rather it betokened an unwillingness to take a perfunctory decision for such motivations as jumping on an unstoppable bandwagon or possibly having a national elected as one of the Court's first judges.

14. A danger as yet unrecognized concerned the Court's jurisdiction with respect to the crime of aggression as defined in the Rome Statute. Genocide, crimes against humanity and war crimes, which were the other crimes provided for in the Statute, contained the common thread of violation or abuse of human rights and came within the scope of *jus in bello*. The crime of aggression, however, belonged to *jus ad*

bellum, since it referred more to a threat to or a breach of international peace. The Rome Statute conferred on the Court immediate jurisdiction with respect to the first three crimes, but in the case of aggression the Court would not have jurisdiction for at least seven years. The Court's credibility would be compromised if it did not exercise full jurisdiction over the crime which had been regarded as "supreme" for the past half century and had motivated the establishment of the United Nations itself.

15. Another issue connected to the crime of aggression which had been hotly debated at the Rome Conference was the importance of maintaining the independence of the Court in the face of the important role of political bodies such as the Security Council. It remained to be seen whether the compromise solution of including paragraph 13 (b) and articles 5, 16 and 98 in the Rome Statute would impair the independence of the Court. Its independence and credibility were certainly endangered by a disturbing proposal made in the Preparatory Commission and the Assembly of States Parties: that the political processes of the United Nations should be allowed to intrude on the Court's exercise of jurisdiction over the crime of aggression when a consensus definition on that crime was reached. The jurisdiction of the Court, a judicial body, must not be limited by what political bodies of the United Nations determined. The latter were neither judicially competent nor impartial. Their intrusion would violate the substantive rights of the accused to due process and possibly the rights of the victims as well.

16. The dangers posed by the intrusion of politics on the Court process were real. The Court must not be subordinated to the dictates of powerful countries solely because the system established in 1945 had accepted the domination of the victorious in return for the guarantee of peace and security for all. It was time for justice and the rule of law to prevail over privilege, and the International Criminal Court must be able to determine objectively and independently individual criminal responsibility for the serious offences under its jurisdiction.

17. **Mr. Mackay** (New Zealand) expressed satisfaction that, despite the complexity of the Rome Statute and the issues arising from its implementation, the International Criminal Court was an established reality and 81 States were parties to the Statute. The commitment of civil society to the ideals of the Court had played a vital part in the process.

18. To be truly effective, the Court must have the greatest possible geographical reach. New Zealand therefore supported all efforts towards universalization of the Statute, commended States that were in the process of becoming parties and hoped that others would follow their example.

19. The initial years of the Court would be critical, with many challenges to be faced. A case in point had been a draft resolution whose provisions exempted all peacekeepers from the jurisdiction of the Court. In July 2002, his delegation had expressed its grave concern about the text in the Security Council and had been disappointed that the Council had seen fit to proceed with the adoption of resolution 1422 (2002); it hoped that there would be no renewal in 2003. Subsequently many States had received requests for article 98 agreements, which raised many difficult issues. In the formative period all States parties had a particular responsibility to support the Court and protect the integrity of the Statute, and New Zealand would shortly sign the Agreement on the Privileges and Immunities of the Court and would become a party to it as soon as its domestic processes were completed.

20. An immediate challenge was the election of the judges and Prosecutor, on whom the credibility and impartiality of the Court would depend. The members of the Court must be of the highest calibre and exceedingly well qualified. The Court was international and therefore must be representative of the States parties and their legal systems. In terms of representation of women, it should be without precedent.

21. The Court would be more effective than ad hoc tribunals in deterring the relevant crimes, thanks to its permanent character and the system of checks and balances provided for in the Statute, and would be an important tool of international justice. New Zealand would continue to work with others to ensure that the Court was given the opportunity to prove itself, put an end to the culture of impunity and, in the words of the preamble to the Statute, "guarantee lasting respect for and enforcement of international justice".

22. **Mr. Kolby** (Norway) said that the adoption of the documents negotiated by the Preparatory Commission at the first meeting of the Assembly of States Parties marked a milestone in international criminal justice. Support for the International Tribunals for the former Yugoslavia and Rwanda and for other institutions of

criminal justice must be redoubled to enable them to complete their mandates successfully. He therefore appealed to all States to cooperate by surrendering indictees and providing assistance with regard to witnesses and the enforcement of sentences.

23. The Agreement on the Privileges and Immunities of the Court must enter into force as soon as possible. The Agreement, adopted by the Assembly of States Parties, had been ratified by Norway on 10 September 2002, the day on which it had been opened for signature. Thus far, Norway was the only State to have ratified it, and he urged other States to ratify it as soon as possible.

24. His delegation was favourably impressed by the efforts of States to adapt their laws and practices to the key norms of the Statute. The Norwegian authorities would disseminate the "elements of the crimes" adopted at the Assembly of States Parties to the Norwegian armed forces, and it was to be hoped that all the States parties would translate and internalize in their own systems both those elements and the key definitions of crimes in the Statute. In that regard, he commended the non-governmental organizations and other civil society protagonists, together with the Coalition for an International Criminal Court, for helping to disseminate and promote an objective understanding of the role and purposes of the Court.

25. Priority should be given to the dialogue on issues concerning the fight against impunity for the worst international crimes. Participants in the dialogue should include not only States that were advocates of an independent, impartial and objective International Criminal Court but also States that preferred to address those issues within the framework of their own national systems. Norway would continue to emphasize obligations to bring perpetrators of the most serious international crimes to justice, with a view to demonstrating that the Court was also in the national interests of States committed to the rule of law.

26. His delegation commended the advance team in The Hague for its excellent work in facilitating the entry into operation of the Court, and the Director of Common Services, whose critical contributions it awaited with interest. It also commended the host State, the Netherlands, for providing outstanding support to the Court and upholding its independence: commitment to the rule of law must involve commitment not only to the integrity of the Statute but also to the integrity of the Court itself.

27. In order to contribute liquidity in the critical embryonic phase of the life of the Court, Norway had made available to it 6 million Norwegian kroner (800,000 euros) as an advance payment of its assessed contribution. He urged States that had not yet done so to take action as soon as possible, in accordance with the letter from the Secretary-General of 18 September.

28. After reaffirming Norway's full commitment to the integrity of the Statute and a credible and responsible Court that operated effectively and enjoyed the broadest possible support of States, he said that a strengthened rule of law was in the interests of all States, irrespective of their size, regional affiliation or political orientation.

29. **Mr. Akamatsu** (Japan) said his country, which had played an active role in the adoption of the Statute of the Court at the Rome Diplomatic Conference in 1998 was pleased to join with other countries in celebrating the birth of the new judicial body. As the Minister for Foreign Affairs of Japan had stated, this Statute would contribute to preventing the most serious crimes of concern to the international community from recurring in the future, thus further strengthening international peace and stability; the Statute bore particular significance because it established, for the first time in history, a standing international court to judge such crimes.

30. At last, after many vicissitudes, an international criminal court would bring to justice those who committed the most serious of all crimes: genocide, crimes against humanity, war crimes and crimes of aggression. He paid a tribute to all those whose efforts had contributed to that great endeavour, especially the International Law Commission, representatives in the Sixth Committee, the participants in the Rome Conference and the members of civil society.

31. The negotiators in Rome had successfully synthesized in the Statute the most important legal principles — such as that of complementarity, designed to exclude any chance of impunity — and a wealth of practices deriving from the principal legal systems of the world. The Statute thus reflected a delicate balance that had enabled the Court to gain wide support throughout the international community. The next step was to ensure that the Court operated as smoothly as possible, which would depend, among other things, on

the selection of the judges, the Prosecutor, the Registrar and other officials, the establishment of the Trust Fund for Victims and the provision to the Court of diverse and reliable legal resources. In that regard, the experience of other international tribunals, such as those for the former Yugoslavia and Rwanda, would be especially valuable.

32. Another important task was to gain universal support for the Court. More than 80 States had already ratified the Statute, but over 100 States had not yet done so. Peoples all over the world must feel that the Court belonged to them and have confidence in it.

33. His Government was currently conducting a thorough examination of the articles of the Statute so as to ensure compatibility between the Statute and Japan's domestic law. The Japanese Minister for Foreign Affairs had stated that his country would accelerate that examination, now that the International Criminal Court had become a reality. Japan intended to participate actively in the discussion aimed at ensuring that the Court played an effective and dependable role in the area of international criminal justice.

34. **Mr. Huston** (Liechtenstein) observed that since the Sixth Committee had last met the previous year, the Rome Statute had entered into force and the Assembly of States Parties had held its first session and adopted all the legal documents necessary for the International Criminal Court to function. His country welcomed the approval of a mechanism to elect the judges of the Court which took into account the need to represent both genders and all the geographical regions and principal legal systems of the world. He was particularly pleased that that mechanism was based on the proposal originally submitted by his own delegation and that of Hungary, among others. He trusted that the mechanism would permit full implementation of article 36 of the Statute. However, in order to ensure the success of that election procedure, States must do their utmost to nominate highly qualified candidates. Other factors exerting a decisive influence on the success of the Court would be the appointment of a Prosecutor of very high standing and the recruitment of highly qualified staff for all levels of the Court's work.

35. In July, the Security Council had adopted resolution 1422 after a strange discussion in which peacekeeping missions had been played off against the International Criminal Court. His delegation considered that resolution 1422 was inconsistent both with the Rome Statute and with the functions and powers of the Security Council under the Charter of the United Nations, and hoped that the Security Council would refrain from renewing that resolution in the following year.

36. Attempts had also been made to apply article 98 in a manner not provided for in the Statute. The negotiations had been based on the assumption that article 98 would apply solely to status-of-mission and status-of-forces agreements, and was not intended to create a loophole of impunity for nationals of States which were not parties to the Statute. The proposed non-surrender agreements would undermine not only the integrity of the Court but also the very principle of territorial jurisdiction of States, of which the International Criminal Court was an extension, and also the jurisdiction of States over their own nationals, a fundamental principle which should not be undermined by any agreement concluded with States parties. In that context, as in the case of resolution 1422, the International Criminal Court should be the ultimate arbiter of its own jurisdiction, in line with the provisions of the Rome Statute.

37. There were appropriate ways of addressing disagreements concerning the content of international treaties which respected the legitimate prerogatives of the negotiating parties and the international legal order, and there were also inappropriate ways of doing so. The past year had witnessed a wide range of such inappropriate initiatives, which must be stopped in their tracks in order to avoid damage to the Court.

38. The developments in the sphere of international criminal law were irreversible; international law was entering a new era, in which it would be of immediate and direct relevance to the peoples of the world. That being so, his delegation considered that the Rome Statute would be strong enough to withstand attacks on the Court's integrity. His country would do all it could to protect the Statute and the Court from unwarranted and inexcusable schemes.

39. **Mr. Zellweger** (Switzerland) drew attention to the irreversible character of the International Criminal Court and expressed the hope that it would end impunity around the world and facilitate the adoption of the instruments required to ensure respect for international humanitarian law and put an end to the worst violations of human rights.

40. Since the previous debate on the International Criminal Court, the number of ratifications of the Statute had practically doubled, enabling it to enter into force; in addition, the Preparatory Commission had concluded the negotiation of the documents required for the effective functioning of the Court, and the first session of the Assembly of States Parties had adopted all of those documents by consensus, so that the Court could begin its work under the best possible circumstances.

41. The States parties to the Rome Statute must ensure that the requirements for the effective functioning of the Court were met; mention should be made, in that connection, of the unflagging support of the coalition of non-governmental organizations, whose role was vital.

42. With regard to the financing of the Court, there was a need to ensure that the institution could recruit staff and assume other commitments; that would require a contribution of resources as soon as possible. He was pleased to announce that his Government would soon remit not only its contribution for 2002, but also an advance contribution for the first year of the Court's Operating Fund. In addition, the first steps had been taken to ratify the Agreement on the Privileges and Immunities of the International Criminal Court as soon as possible.

43. At the beginning of 2003, the Assembly of States Parties would elect the judges and the Prosecutor. His delegation hoped that they would be honest and independent and would remain above political considerations or interference; his delegation was proud to present the candidature of Ms. Barbara Ott, who, in her capacity as a military judge, possessed practical experience in prosecuting war crimes, especially in connection with the Rwandan genocide. With regard to the Prosecutor, it was to be hoped that he could be appointed by consensus and not by voting.

44. In the future, it would not be sufficient to recall the obligations of the States which supported the Court; rather, there would be a need to draw attention to the at least moral responsibility of those who opposed the Court and hampered its activities. The Court did not impair the rights of States not parties to it, and, when it tried the perpetrator of a crime committed in the territory of a State party, regardless of his nationality, it would not assume extraterritorial powers, but would exercise regular, traditional territorial jurisdiction, as recognized by all modern penal codes. Lastly, he warned of the danger that the proliferation of immunities and escape clauses could pose to the Court's functioning.

45. **Mr. Zackheos** (Cyprus) said that his delegation aligned itself with the statement made by the representative of Denmark on behalf of the European Union and, accordingly, would restrict himself to a few remarks. The current discussion was taking place one month after the first session of the Assembly of States Parties to the Rome Statute and the entry into force of that landmark instrument of international law, which would strengthen the existing United Nations instruments for promoting international peace and justice.

46. His delegation welcomed the growing acceptance of the Statute and said that the effort to gain the widest possible number of ratifications or accessions to the Statute should preserve its integrity and respect for its letter and spirit.

47. His Government had been one of the earliest advocates of a permanent international criminal jurisdiction to punish the most serious international crimes, and it had contributed actively to the discussions which had led to the establishment of the International Criminal Court. Impunity had encouraged the perpetration of heinous crimes throughout history; it was therefore to be hoped that the establishment of the Court and its effective functioning would break that vicious cycle. He further expressed appreciation to civil society, and in particular to the Coalition for an International Criminal Court, whose vision and perseverance had acted as a spur to the establishment and eventual universality of the Court.

48. His country, the victim of foreign occupation, attached great importance to the provisions of the Rome Statute and, in particular, to the fact that the jurisdiction of the Court extended to war crimes and crimes against humanity, such as forcible population transfers, the transfer by the occupying Power of its own population into the occupied territory, enforced disappearances of persons and the subsequent refusal to give information on the fate or whereabouts of those persons.

49. As a member of the Bureau and of the Subcommittee on the Crime of Aggression, his delegation would contribute vigorously to meeting the challenges ahead, such as the appointment of the

judges under article 36 of the Statute. In that context, his delegation had decided to present the candidature of Mr. Georghios Pikis, President of the Supreme Court of the Republic of Cyprus, for the post of judge of the Court.

50. **Mr. Valdés** (Chile) said that the entry into force on 1 July 2002 of the Rome Statute had been a landmark in the evolution of the legal community of nations, which had taken a final and irreversible step in battling impunity and judging the individual responsibility of those who committed heinous crimes which shocked the conscience of humankind. His Government reiterated that the adoption of the Rome Statute reflected an ethical and moral evolution on the part of all of humanity, based on the conviction that there must be no impunity.

51. After drawing attention to the work carried out by the Preparatory Commission, as well as the adoption at the first session of the Assembly of States Parties of the instruments required for the full establishment of the International Criminal Court, he reaffirmed his delegation's full support for the principle of universal justice on which the Court was based and announced that his Government intended to ratify the Rome Statute; it was essential to maintain the integrity of the Statute and ensure respect for the balance which it achieved, so that the Court could act effectively and independently.

52. As the Secretary-General had said at the closing of the first session of the Assembly of States Parties, the international community had found the missing link in international law. It was now incumbent on Member States to strengthen that link with the support of more States and ensure that it remained connected to the chain of progress for humanity.

53. **Mr. Murargy** (Mozambique) said that the atrocities committed during past wars had forced the international community to adopt international legal instruments to defend human rights. The establishment of the International Criminal Court was important because it meant that those who violated such rights could be sanctioned.

54. Mozambique remained resolutely engaged in the struggle against genocide, crimes against humanity and war crimes, as had been demonstrated by its full and active participation in all meetings of the preparatory process leading to the establishment of the Court.

55. His Government, which had signed the Rome Statute in 2000, had begun the process of ratification. In order to disseminate in Mozambique the objectives of the Court, it hoped to hold a workshop in early 2003 which would bring together politicians, academics and representatives of civil society.

56. The work of the Preparatory Commission had been most successful, and Mozambique, which had participated actively in the building of the consensus embodied in the report of the Preparatory Commission, sincerely hoped that no effort would be spared in ensuring an early start to the Court's operations.

57. He was convinced that the Rome Statute unequivocally safeguarded national sovereignty and urged all Governments to sign and ratify the Statute without delay. In addition, in order to enable the Court to become operational worldwide, he urged all countries in a position to do so to provide legal and technical support to developing countries and help them with capacity-building so that the mainstreaming of the Court in their domestic legal frameworks did not remain a mirage.

58. **Mr. Hoffmann** (South Africa) said that the convening in September 2002 of the first Assembly of States Parties had confirmed the establishment of the International Criminal Court and had ushered in a new era in which the perpetrators of war crimes, crimes against humanity and genocide would no longer enjoy impunity.

59. South Africa had signed and ratified the Rome Statute and had finalized legislation on implementation of the Statute, thereby becoming able to cooperate fully with the Court or prosecute in South Africa those who committed the crimes contemplated in the Statute.

60. Because of the importance of the Court, his Government was currently engaged in a budgeting process with the aim of paying its assessed contributions on time. It had also begun to consider the possibility of nominating a candidate for the position of judge of the Court.

61. His delegation urged all States which had signed the Statute to ratify it before the inauguration of the judges in April 2003. It appealed to the retracting States to reconsider their position. The Court deserved the support of all States of good will.

62. The Assembly of States Parties would be convening various meetings in 2003, including a

working group on the crime of aggression, and it was to be hoped that the United Nations would provide it with the resources necessary to make those meetings a success.

63. **Mr. Kanu** (Sierra Leone) said that Sierra Leone had been committed to the concept of a permanent international criminal court from the outset and had therefore participated in the 1998 Conference of Plenipotentiaries that had adopted the Rome Statute, and it had been one of the first countries to sign and ratify that Statute. The establishment of the Court had provided the international community with the opportunity to punish the perpetrators of heinous atrocities. In 2000 Sierra Leone had requested United Nations assistance in setting up a special court to try persons responsible for crimes against humanity and violations of international humanitarian law in Sierra Leone. He urged those who had been against that idea to reconsider their position. The special court, which was fully operational, had ordered the commencement of the necessary investigations.

64. His Government was confident that the International Criminal Court would gain universal acceptance. The Statute of the Court, with its complex review and admissibility procedure, provided for multiple safeguards against frivolous prosecutions, which should allay any apprehension on the part of States which were not parties to it. Sierra Leone would seek, together with its regional partners, an advisory opinion from the International Court of Justice on article 98 agreements.

65. With respect to the election of the judges of the Court, he fully subscribed to the criteria enunciated in article 36 of the Statute, especially the principle of the equitable distribution of seats.

66. His delegation was of the view that the definition of the crime of aggression must reflect the distinction between the "act of aggression" and the "crime of aggression" committed by an individual. A formulation of that nature was in conformity with the provisions of the Statute. Moreover, the crime of aggression could be committed by persons who had effective control of the State and military apparatus as a result of a policy decision. In view of the experience of Sierra Leone in the subregion, his delegation was in full agreement with the view that it was crucial to reflect that distinction in any definition of the crime of aggression.

67. He urged all States that had not yet done so to become parties to the Statute in order to make the Court truly universal.

68. **Ms. Pulido** (Venezuela) expressed satisfaction at the successful conclusion of the Assembly of States Parties to the Rome Statue of the International Criminal Court and the Statute's entry into force. She particularly welcomed the agreement that had been reached on the procedure for the nomination and election of judges and the Prosecutor and on the nomination period for candidates for the first elections. Her delegation attached great importance to the election of judges and considered that the requirements laid down by the Statute should be met by the judges and Prosecutor that would be elected in due course.

69. The Assembly must continue its examination of the definition of the crime of aggression and its consideration of the future implementation of the Court's subject-matter jurisdiction, on the basis of the statutory rules that had been established, to ensure that it was adapted to the development of international society.

70. As the Court embarked on its work, every State should endeavour to ensure that it accomplished its objective, namely to deliver justice in the case of the most reprehensible crimes. It was also essential to maintain the integrity of the Rome Statute and, to that end, total compliance with the obligations agreed by States was crucial: States' actions must be in full accord with the letter and the spirit of the Statute.

71. The application of the Statute should be based on a broad interpretation of its provisions and in full conformity with its principles and objectives. That interpretation should take into account the text as a whole and its context. Her delegation would spare no efforts in working for an effective Court that would be untainted by politicization.

72. Lastly, she again called on States that were not yet party to the Statute to consider their accession to it as a matter of urgency.

73. **Mr. Hmoud** (Jordan) said that his delegation supported the decision by the Assembly of States Parties to request the Secretary-General to continue carrying out the secretariat functions of the Assembly on a provisional basis. In that regard, it considered that the most effective way of giving expression to current

and future cooperation would be by means of a General Assembly resolution.

74. The entry into force of the Rome Statute marked an important transition in international relations and reflected a new approach on the part of the international community to dealing with the perpetrators of the most serious crimes. It gave rise to hopes of a new era in which an international mechanism would deliver justice for both the perpetrators and the victims of such crimes.

75. Jordan had signed and ratified the Statute of the International Criminal Court, which had been incorporated into its domestic law and took precedence over previous legislation. The Government had, however, established a committee with the task of studying the measures necessary to achieve legislative harmonization and recommending procedures for effective cooperation with the Court and the authorities of other States parties.

76. His delegation viewed the adoption of a procedure for the election of judges and the Prosecutor as an important step towards guaranteeing the competence and efficiency of those elected to the Court. It would work closely with the Court bodies, other States parties and the Government of the Netherlands, as well as the appropriate Arab League institutions, to achieve the purposes of the Rome Statute and ensure the effective functioning of the Court.

77. **Ms. Katungye** (Uganda) said that the procedure adopted by the Assembly of States Parties for the election of judges, the Prosecutor and the Registrar was complicated and had given rise to concern among a number of member States. It was to be hoped that, once the judges had been elected, truly universal representation would be achieved. In that context, Uganda had decided to submit a candidate for election, Mr. Nsereko, a renowned scholar and a first-class criminal lawyer of high moral integrity. She urged States parties to give him their support. As for the recruitment of the staff of the Court, her delegation hoped that the process would be transparent and that the inequities that had occurred in other organs would not be repeated.

78. Her delegation, which had participated in the first meeting of the Assembly of States Parties and the meetings of the Preparatory Commission, called on all countries that had not acceded to or ratified the Rome Statute to do so as soon as possible in the interests of full universal participation.

79. **Ms. Beleva** (Bulgaria) said that the adoption of the Rome Statute was a milestone in the history of the codification and progressive development of international criminal law. There was no doubt that the international community was more prepared than ever to establish a permanent International Criminal Court that would complement rather than replace national criminal courts; it would not be restricted to being an instrument of justice but would also lead to greater respect for international humanitarian law and human rights.

80. The question of whether the Court would be effective and would establish confidence in the basic principles of justice would depend on compliance by States parties, in good faith, with the obligations arising from the Statute and on the cooperation that third States would be prepared to extend to the Court.

81. Questions had recently arisen concerning the application of article 98, paragraph 2, of the Rome Statute and the possibility of concluding bilateral agreements with States not party to the Statute. In that regard, her delegation favoured the position of the European Union, which offered the possibility of continuing the dialogue and strengthening cooperation with such States. Such bilateral agreements would specify the manner in which national jurisdictions ought to operate, and in particular those of States not parties. Article 98, paragraph 2, emphasized the primary role of the State in the exercise of criminal jurisdiction over its nationals and, indeed, required them to exercise that jurisdiction, thus reflecting the principle of the complementarity of the International Criminal Court vis-à-vis national jurisdictions. In her delegation's view, the conclusion of bilateral agreements on the extradition of persons who had committed very serious crimes was not in contradiction with article 98, paragraph 2, provided that such agreements established the obligation of States parties not to hand over to the Court the perpetrators of such crimes without the consent of the State not party to the Statute. The aim of such bilateral agreements should be to prevent perpetrators of the most serious crimes from escaping criminal prosecution.

82. Her delegation had always attached great importance to the principle of a universally applicable system of international justice. It had therefore

consistently supported the establishment of the International Criminal Court and was determined to prevent, prosecute or punish serious breaches of humanitarian law in accordance with its domestic legislation and its international obligations.

83. **Ms. Álvarez Núñez** (Cuba) recalled that her delegation had supported all the efforts of the international community to establish an impartial and independent international system of justice and that it had participated in the Rome Conference, working with others on the codification of the Statute and the definition of crimes against humanity, such as the deportation or forcible transfer of population, sexual slavery and any other form of sexual violence of comparable gravity, and extermination.

84. Her delegation's main priorities were the definition of the crime of aggression and the independence of the International Criminal Court. Cuba had participated as an observer at the first meeting of the Assembly of States Parties and considered the adoption of the resolution on the continuation of its work on the crime of aggression to be extremely important. It was to be hoped that the Working Group on the Crime of Aggression would begin its work in 2003. Her delegation remained in favour of the drafting of a provision on the crime of aggression that would take into account the progressive development of customary international law and the purposes and principles enshrined in the Charter of the United Nations.

85. Security Council resolution 1422 (2002), however, seriously compromised the Court's independence and constituted unlawful interference by the Council in the interpretation, amendment and implementation of treaties, as well as being a violation of the Charter and the law of treaties and a threat to international law, including the principle of equality before the law.

86. The situation had recently been exacerbated with the imposition — which could well be characterized as arrogant and irresponsible — of humiliating bilateral treaties obliging some States parties to the Rome Statute to renege on their international obligations. In view of the need to respect the legitimate rights of States that had made a sovereign decision to ratify the Rome Statute, her delegation reiterated its readiness to cooperate in ensuring that international criminal justice was carried out in accordance with the rules and principles of international law and, in particular, of the Charter of the United Nations.

The meeting rose at 12.40 p.m.