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Friday, 30 October 2009, 4 p.m.
New York

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

The meeting was called to order at 4.20 p.m.

In the absence of the President, Mr. Grauls (Belgium), Vice-President, took the Chair.

Agenda item 75 (*continued*)

Report of the International Criminal Court

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

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

Mr. Muhumuza (Uganda): This being the first time my delegation has addressed this Assembly in this context, allow me to join others before me in congratulating the President and the bureau upon their election to lead the work of the sixty-fourth session of the General Assembly. With his vast experience and diplomatic skills, we have the confidence that he will guide this Assembly to success.

Allow me first to align my delegation with the statement made by the representative of Kenya on behalf of the Group of African States. We congratulate Judge Sang-Hyun Song on his election to preside over the International Criminal Court (ICC), as well as for his presentation of the fifth annual report of the Court (A/64/356).

Uganda supports the ICC as the world's principal partner in the fight against impunity for the most heinous crimes of concern to the international community. Uganda is thus committed to the mandate of the Court and appreciates its role in this endeavour. That is why Uganda was the first country to make a referral to the Court, which resulted in the case of *The Prosecutor v. Joseph Kony, Vincent Otti, Okot Odhiambo and Dominic Ongwen*. The defendants in that case are leaders of the terrorist rebel outfit known as the Lord's Resistance Army (LRA). As we speak, these fugitives no longer operate in Uganda nor on any territory controlled by Uganda, but that is no consolation to us, since they have continued to terrorize other areas in the region where they operate.

We are aware that without a police force of its own, the Court has to rely on the cooperation of States to execute warrants of arrest and surrender fugitives or the indicted persons whenever such warrants have been issued. Being a treaty-based body implies that State cooperation with the ICC is voluntary. We therefore call upon increased cooperation by Member States.

The ICC is steadily marching on the road towards universality. Accordingly, we welcome the most recent ratifying States — Chile and the Czech Republic — whose ratification of the Rome Statute has brought the total membership to 110 States. We call on other States which have not done so to consider ratifying the Rome Statute so that the fight against impunity for the most heinous crimes can be jointly waged by all States worldwide. Universal ratification would send a clear message that the civilized world has no room for impunity for anyone, anywhere.

It is gratifying to note that, unlike various traditional jurisdictions, the Rome Statute recognizes the victims of heinous crimes and allows them to

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participate actively in the proceedings, with a possibility of compensation for the harm inflicted.

Justice must not only be done; it must also be perceived to be done. It is mainly with that in mind that the Government of Uganda offered to host the first review conference of the Rome Statute, which will offer the great majority of the victims of the situations currently being considered from our region the opportunity to interface with the other stakeholders in the fight against impunity. We applaud the efforts of the civil organizations that have already made arrangements for delegates to meet with LRA victims in northern Uganda. Visits are currently being arranged, and we would encourage many more to take part in this effort so that victims do not remain on the sidelines, but rather take centre stage as they are at the core of the fight against impunity.

Uganda looks forward to hosting all delegations in Kampala from 31 May to 11 June 2010 for the review conference of the Rome Statute. We hope that within this period, the crime of aggression will be defined and the conditions under which the Court may exercise jurisdiction will also be agreed upon. The world can no longer afford to wait to deal appropriately with the perpetrators of aggressive wars which cause untold suffering to innocent people all over the world.

Finally, let me avail myself of the opportunity to extend from this rostrum a hand of welcome to Kampala for all delegations, States parties and non-State parties alike, civil society organizations and all stakeholders in the fight against impunity. We assure them of an atmosphere conducive to accomplishing the remaining tasks at hand.

In order to facilitate participation, my Government has waived visa fees for all delegates to the review conference, and further arrangements are being made with airline companies, transporters and the general hospitality industry to ensure that their stay in the Pearl of Africa will not only be fruitful but memorable as well.

Mr. Ntwaagae (Botswana): My delegation associates itself with the statement delivered by the representative of Kenya, who spoke on behalf of the Group of African States which are parties to the Rome Statute.

We wish to congratulate Judge Sang-Hyun Song on his election to the presidency of the International Criminal Court (ICC) and for his presentation of the report on its activities (A/64/356).

The preservation of the integrity of the Rome Statute of the ICC and the assurance that the Court remains impartial, fully independent and free from interference as it fulfils its primary function and delivers on its mandate are of utmost importance.

The Rome Statute provides the opportunity to advance the universal ideals enshrined in the United Nations Charter — international peace and security, justice and respect for human rights and the enjoyment of fundamental freedoms for all.

The fulfilment of the purposes and principles of the Charter remains the full responsibility of the Member States of the United Nations. Similarly, by extension of these purposes and principles to the ICC, its mandate of pursuing perpetrators of the grave crimes that are of serious concern to the international community has never been so compelling.

Mankind has never in its history faced a time of greater truth than the one we face today, where, more than ever before, the possibility of recourse to international legal institutions exists for victims whose States might be unwilling to prosecute. Therefore, the cooperation extended to the Court in fighting international crimes, impunity and grave violations of human rights is not without cause for the victims of genocide, crimes against humanity and war crimes.

Botswana, as a friend of the ICC, is committed to playing its obligatory role in supporting the judicial activity of the Court and has confidence in enforcement measures that are compelling as a deterrent against acts of serious crime and in the promotion of accountability.

Mr. Onemola (Nigeria): The Nigerian delegation wishes to congratulate Judge Sang-Hyun Song on his election as President of the International Criminal Court (ICC). We thank him for his comprehensive briefing to the General Assembly. We also extend our appreciation to the Secretary-General for the report on the ICC contained in document A/64/356, submitted to the General Assembly in accordance with article 6 of the Relationship Agreement between the United Nations and the International Criminal Court.

We are appreciative of the relentless efforts of the Court in carrying out its mandate as an independent judicial institution charged with investigating and

bringing to trial individuals accused of the most serious crimes of international concern, namely, genocide, crimes against humanity and war crimes. Nigeria aligns itself with the statement delivered by the African group of States parties to the Rome Statute.

Nigeria is deeply committed to the ICC, the establishment of which we recognize as one of the great advances of international law. The Court's function of ensuring accountability for grave crimes is vital to the maintenance of lasting international peace and security. To strengthen the ability of the Court to effectively discharge that most important responsibility, the Court relies on the cooperation of States, international organizations and civil society, in accordance with the Rome Statute and international agreements concluded by the Court. That cooperation is critical to ensuring proper investigations, the execution of outstanding warrants of arrest, the surrender of persons, the protection of witnesses, the enforcement of sentences and the enhancement of the Court's credibility as an effective tool to end impunity and contribute to the prevention of future crimes.

We welcome the increasing number of States that have become parties to the ICC Statute. With 110 countries — more than two thirds of the United Nations membership — having signed or ratified the treaty, there is clear movement towards the Court's universality. That welcome development is worthy of further support from those States that are yet to sign or ratify the Rome Statute.

We have taken note of efforts by the ICC to improve geographical representation, gender balance and representation of the different legal systems of the world in its recruitment activities, in accordance with the decision in ICC resolution ICC-ASP/1/Res.10. As we commend those efforts, we wish to underscore the need for the ICC to achieve the target of wide geographical representation and gender balance, especially with regard to the African region, which, in spite of the fact that it accounts for most if not all of the situations before the Court, is still underrepresented. We believe that the necessary balance can be attained without compromising the quality of the staff selected.

The ICC currently has four situations — Uganda, the Democratic Republic of the Congo, the Sudan/Darfur and the Central African Republic — and eight cases before it. With the expected increase in the number of cases, additional funding will be needed. We therefore call on all States to defray their outstanding contributions to the Court.

We are pleased to note that the Court has already entered into many relocation of witness and enforcement of sentence agreements with States. In order to encourage more States to enter into such agreements with the Court, we believe that the Court needs to become more proactive by exploring ways to facilitate the participation of more developing States in that regard.

The Review Conference of the International Criminal Court Statute, scheduled for Kampala in 2010, will provide us with ample opportunity to review achievements made and the challenges before us. As we look forward to the Review Conference, we encourage all States to participate actively in finding concrete ways of further emboldening the Court to fulfil its crucial mandate.

In conclusion, the Nigerian delegation reiterates its commitment to and continued support for the International Criminal Court.

Mr. Baghaei Hamaneh (Islamic Republic of Iran): My delegation would like to join previous speakers in thanking Judge Sang-Hyun Song, President of the International Criminal Court (ICC), for submitting the fifth report of the International Criminal Court (A/64/356).

It is generally recognized that if it is to be successful, the International Criminal Court should remain neutral, independent and apolitical and avoid double standards.

As many speakers have noted, next year the first Review Conference of the Rome Statute will be held in Kampala, Uganda, and the main item on its agenda will be the incorporation of the definition of the crime of aggression into the ICC Statute. The crime of aggression is the mother of all serious international crimes and, as such, both its definition and the way that the Court is mandated to tackle it will broadly influence the cause of ending impunity for such crimes and affect the whole architecture of international law and international relations.

On the question of the relationship between the ICC and the Security Council, my delegation believes that any decision of the Conference of the States parties would have lasting implications for the independence,

legitimacy, efficiency and even relevance of the Court. Certainly, the drafters of the Rome Statute intended the Court to be an independent judicial body, free of the influence and interference of political organs. Therefore, in principle, the responsibility of the Security Council under the Charter to determine the existence of an act of aggression should not in any way undermine the role of the Court in its judicial investigation and proceedings concerning the crime of aggression. Initiating the Court's proceedings, therefore, should not be subject to the Security Council's permission or approval. Hence, the determination of the crime of aggression should rest with the International Criminal Court itself, and States should have the right to refer the crime to the Court.

My delegation believes that the Court, as a judicial body, and its organs shall respect the laws and regulations prevailing in the system to which it belongs. In other words, in order to achieve its goals, in particular in collecting evidence or arresting suspects, it must refrain from taking any measure that could be considered an infringement of international law. In this respect, I recall the established principle of international law that only the States parties to an international treaty are bound to its provisions.

Likewise, the ICC cannot ignore international rules relating to the immunity of State officials, as recognized under article 98 of the Rome Statute. Moreover, the Court should take into account the consequences of its decisions on the advancement of peace and stability in each case. In this respect, I draw attention to the concerns raised by the African Union, the Non-Aligned Movement, the Organization of the Islamic Conference and many countries concerning the recent decisions of the ICC on the Darfur situation.

Let me touch upon another recent development — the declaration filed on 22 January 2009 by Palestine with the Registrar of the Court pursuant to article 12, paragraph 3, of the Statute. This declaration provides jurisdiction to the Court with respect to the crimes committed on the territory of Palestine since 1 July 2002. The Prosecutor of the Court is currently considering the capacity of Palestine to issue that declaration. It is expected that the Prosecutor shall interpret article 12 of the Statute in a manner ensuring that the main purpose of the Court — ending impunity for the perpetrators of international crimes of a grave nature — will be fulfilled.

The Acting President (*spoke in French*): We have heard the last speaker in the debate on agenda item 75. The General Assembly has thus concluded this stage of its consideration of agenda item 75.

Agenda item 72 (*continued*)

Report of the International Court of Justice

Report of the International Court of Justice (A/64/4)

Report of the Secretary-General (A/64/308)

Mr. Heller (Mexico) (*spoke in Spanish*): The Mexican delegation wishes to express its deep appreciation to the International Court of Justice for its hard work over the past year.

At the same time, Mexico welcomes the restructuring of the Court in November. The new composition of the Court reaffirms its universal character and ensures that its decisions will be adopted in the framework of the world's main legal systems and the multitude of regional perspectives and realities. All of this will, without a doubt, help the world's highest court pursue its excellent work**.**

Although the Court has experienced a steady increase in the number of cases under its consideration, we note with satisfaction that a backlog has been avoided, which clearly demonstrates that changes in its rules of procedure and working methods are having a positive impact. Significant proof of this is the fact that during the 2008-2009 judicial year, six cases were under consideration by the Court simultaneously.

Mexico notes that the Court's sustained level of activity has been made possible thanks to the guidelines adopted to improve its efficiency and, in particular, to the ongoing review of the practical guidelines of States appearing before it. However, my delegation also notes with concern the continuing need for increased support personnel so that the judges can continue to carry out their work.

Member States are obligated to reflect on how to support the work of the Court, particularly if its caseload continues to grow. That growth should be welcomed. It shows the willingness of States to settle their disputes by peaceful means. It also reflects the great trust of States in the world's highest court.

The United Nations and its Member States are at a moment of severe financial constraint. However, we

believe that more can and must be done for the Court. The Organization must make more efficient use of available resources and allocate them where they are needed the most. The Court most definitely deserves the support it requests and the General Assembly should heed to its call to increase the number of clerks, if only to alleviate to some extent their heavy workload.

As we have on previous occasions, we stress the importance of the dissemination of the Court's decisions through its publications and website. Nonetheless, my delegation notes that there is an important difference between the Court's website in English and French, on the one hand, and its Spanish version, on the other. The latter is considerably less rich in information, thus hampering the analytic work of Spanish-speaking scholars and practitioners of international law.

Mexico welcomes the Court's decision on the *Request for Interpretation of the Judgment of 31 March 2004 in the Case concerning Avena and Other Mexican Nationals (Mexico v. United States of America)*. We further welcome the Court's ruling in regard to the provisional measures requested by Mexico. We are also pleased that the Court issued a binding reaffirmation of the obligations incumbent upon the United States under paragraph 153 (9) of the Avena ruling of 2004.

In this vein, we stress the importance of the Court's ruling in January in connection to the obligation of each Member State to comply with decisions in any case to which it is party. Full compliance with the rulings of the Court is prerequisite to the effectiveness of international law. At the same time, such compliance promotes trust among States and thus enacts, in the words of the recently deceased eminent professor Thomas M. Franck, the power of legitimacy among nations.

The International Court of Justice is one of the keystones in the construction of the international rule of law. Its proper functioning is indispensable to that end. That is why Mexico reiterates its full respect and support to the International Court of Justice as the principal judicial organ for the peaceful settlement of disputes and its central work as guarantor of international law.

Mr. Lomaia (Georgia): Georgia welcomes the publication of the annual report of the International Court of Justice (A/64/4) and would like to thank the President of the Court, Judge Hisashi Owada, for his presentation yesterday, which was both detailed and informative. I would like to take this opportunity to express our appreciation to Judge Rosalyn Higgins for her invaluable contribution to the strengthening of international law through her work as Judge and President of the International Court of Justice.

President Owada started his presentation by updating the Assembly on the Court's ruling last October in favour of the request submitted by my country. The request for the indication of provisional measures was submitted in order "to protect its citizens against violent discriminatory acts by Russian armed forces, acting in concert with separatist militia and foreign mercenaries". That decision was taken in spite of the other side's fierce opposition. The Court recalled that the provisional measures that it indicated had a binding effect and thus created legal obligations.

It is solely up to the Court to determine whether or not our northern neighbours complied with the ruling. We, on our part, have provided the Court with clear factual evidence indicating that none of the provisional measures have been fulfilled. Not only have the forcefully displaced persons not been allowed to return to their houses, they are being arrested and detained merely for trying to approach their villages. Among the recently revealed facts and conclusions validating those arguments, available for the Court's consideration, we would single out just two.

The Secretary-General's report dated 24 August, entitled "Status of internally displaced persons and refugees from Abkhazia, Georgia" (A/63/950), confirmed the displacement of ethnic Georgians from the Abkhazia region. The Independent International Fact-Finding Mission on the Conflict in Georgia stated in its recent report that

> "several elements suggest the conclusion that ethnic cleansing was indeed practised against ethnic Georgians in South Ossetia both during and after the August 2008 conflict".

We express our deep confidence that the International Court of Justice will continue its careful and competent consideration of all pending cases, this particular case included.

In conclusion I would like to reiterate our strong support for the International Court of Justice in its role as the principal judicial organ of the United Nations.

The Court plays, as has been said here, a vital role in the peaceful settlement of international disputes and in strengthening the international legal order.

Mr. Kuzmin (Russian Federation) (*spoke in Russian*): We welcome the election of Judge Hisashi Owada as President of the International Court of Justice and thank him for presenting to the General Assembly the Court's annual report (A/64/4). At yesterday's meeting of the Security Council (S/PV.6208), the Russian Federation voiced its general assessment and essential approach to the activities of the International Court of Justice, affirming its respect for the Court's standing and recognition of its special role in intergovernmental relations.

Russia plays an active role in promoting the concept of international law, including within the main judicial organ of our Organization, the International Court of Justice. We do so out of our great respect for and trust in the Court, and on the basis of our conviction that the idea of the rule of law is a deterrent against attempts to resolve international issues through reckless military and political action.

I should like now to focus my reflections on one of the cases on the Court's docket, in which the Russian Federation is the respondent and upon which the representative of Georgia commented in much detail only a minute ago. I refer to the case on the application of the International Convention on the Elimination of All Forms of Racial Discrimination. It is in that claim, which Georgia brought before the International Court of Justice against the Russian Federation, that the wholesale cynicism of Georgia's action in South Ossetia in August 2008 is most apparent.

Having failed in its reckless military gamble and discredited itself before the international community, Georgia's leadership is now attempting to repair its terminally damaged image through the authority of international judicial bodies. It is saddening to note that the claimant in this case is the party that deemed it acceptable to fire at night on the peaceful civilian population of Tskhinvali and on Russian peacekeepers, while the respondent is the party that exercised its inalienable right to self-defence, pursuant to Article 51 of the United Nations Charter, commensurate with the scale of the attack and in the sole aim of protecting Russian peacekeepers and citizens in Southern Ossetia from the illegal actions of the Georgian side and of preventing future armed assaults.

The Russian Federation believes that the dispute that Georgia is attempting to bring before the Court clearly does not fall within the framework of the International Convention on the Elimination of All Forms of Racial Discrimination. The very name of the Convention reveals the artificial nature of Georgia's so-called claim against the Russian Federation. It is no coincidence that Georgia repeatedly had to re-draft its statement of claim, reducing time and again the number of the Convention's provisions allegedly breached by the Russian Federation. It is quite clear that, in such an ineptly manufactured case and even with the help of the experienced judicial practitioners retained by Georgia, it has been difficult to establish the relevance of the Convention, in which very different issues are addressed.

In the 18 years during which Georgia claims to have had an ongoing dispute with the Russian Federation falling under the Convention, it never once proposed holding talks on racial discrimination against Georgians, nor did it turn to the body specially established by the Convention, the Committee on the Elimination of Racial Discrimination, pursuant to the procedures under articles 11 and 14 of the Convention. The Russian Federation is convinced that the Court does not have the competence to consider this case.

The natural question is: Why is the Russian Federation participating in this process initiated by the Georgian side? As members of the Assembly know, the history of the Court includes a great many cases in which respondent States simply did not appear before the Court. These cases touched, inter alia, on fisheries jurisdiction, nuclear tests, Pakistani prisoners of war, the Aegean Sea and the United States diplomatic and consular staff in Tehran. Our participation in the judicial proceedings is yet further confirmation of Russia's adherence to the United Nations Charter and the Statute of the International Court of Justice, as well as to the fundamental principles of international law.

We are convinced that blurring the Court's jurisdiction by stepping outside the clearly defined framework of the international legal instruments on which it is based in order to extract from a narrowly specialized international treaty — in this instance, the International Convention on the Elimination of All Forms of Racial Discrimination — norms that apply to

completely different fields of international law will inevitably lead to a loss of confidence in the Court.

Over the past few years, an increasing number of States have recognized the Court's jurisdiction and an expanding range of issues have been referred to the Court. In 2007, the Russian Federation withdrew its reservations concerning the Court's jurisdiction with regard to six counter-terrorism conventions. However, this positive trend can continue only if it is based on a clear understanding of the limits of the Court's jurisdiction and of the substance of the cases referred to it.

The quest to ensure the Court's political neutrality and impartiality is reflected in the unique vote split over the provisional measures applied in the Georgian-Russian case. The Court took a constructive approach to the issue of determining the provisional measures, having ordered both sides — not just the Russian Federation, as Georgia had requested — to refrain from violating the International Convention on the Elimination of All Forms of Racial Discrimination. Russia is meeting that requirement and intends to continue to do so in the future.

The Court found that it had prima facie jurisdiction, with only eight judges voting in favour and seven against. A virtual 50-50 vote split has been quite a rare occurrence in the history of the Court. Furthermore, for the very first time in its judicial proceedings on provisional measures, seven judges formed a united front, signing an opinion dissenting from the position of the other eight. The conclusion of half of the judges that the Court's provisional measures, as part of the recognition of prima facie jurisdiction, were based on shaky legal ground speaks for itself.

Repeating the conclusion of the Russian side, the judges clearly stated that, at the very least, it was odd that Georgia, having referred to cases of racial discrimination allegedly committed by the Russian Federation since the early 1990s, had waited until armed conflict had broken out with Russian and South Ossetian forces to refer this dispute to the Court. Thus, for nearly two decades, no one, including Georgia, had even considered the possibility that racial discrimination was taking place against Georgians.

With regard to the role and the impact of the International Court of Justice, we stress the emergence of such phenomena as the fragmentation of international law and the proliferation of international legal bodies. This recent trend shows that, where international legal disputes arise, States are utilizing every available judicial resource — engaging in so-called court shopping — and, as a result, obtaining various legal decisions.

In addition, tribunals can issue different rulings on the same issue, as occurred, for example, with regard to effective monitoring in the case concerning *Military and Paramilitary Activities in and against Nicaragua***,** the *Tadic* case heard by the International Criminal Tribunal for the Former Yugoslavia, and the *Loizidou* case before the European Court of Human Rights. We believe that that is a negative trend. Unfortunately, international judicial proceedings will lose their purely legal nature and become forums for political manipulation under the pretext of international law. In the case of the International Court of Justice, it is particularly important that it clearly define its jurisdiction and adhere to proven practice in its judicial proceedings.

We are convinced that, as a result of this process, the International Court of Justice — a unique body with the last word on legal issues of great importance to various States — will not lose its iconic status as a standard-bearer of international law and will promote the unity and development of international law.

The Acting President (*spoke in French*): We have heard the last speaker in the debate on agenda item 72.

I now call on the representative of Georgia, who wishes to speak in exercise of the right of reply. May I remind him that statements in exercise of the right of reply are limited to 10 minutes and should be made by delegations from their seats.

Mr. Lomaia (Georgia): I wish to make two very brief remarks. What our opponents have just given themselves the freedom to call a decision based on shaky legal grounds is something that we read about in paragraph 14 of the report by the International Court of Justice (A/64/4):

> "After a thorough analysis of the arguments of the parties, the Court found that it had prima facie jurisdiction under article 22 of the International Convention on the Elimination of All Forms of Racial Discrimination to deal with the case and could accordingly address the

request for the indication of provisional measures submitted by Georgia."

Therefore, we expect that all members of the International Court of Justice will uphold the standard of respect for the Court and its decisions.

I should now like to cite two brief quotations from the report of the Independent International Fact-Finding Mission on the Conflict in Georgia, to which I just referred. We have just heard that the aggression of the Russian Federation was motivated by its will to respond to what it ostensibly calls an attack by the Georgian forces against civilians, which the Russian authorities said at that time amounted to genocide. Let me read out a very brief quotation from paragraph 27 of volume I of the report of the International Mission:

> "After having carefully reviewed the facts in the light of the relevant law, the Mission concludes that to the best of its knowledge allegations of genocide committed by the Georgian side in the context of the August 2008 conflict and its aftermath are neither founded in law nor substantiated by factual evidence."

To the contrary, the Mission found that the following had been carried out by or with the participation of Russian forces:

> "[T]he Mission found patterns of forced displacements of ethnic Georgians who had remained in their homes after the onset of hostilities. In addition, there was evidence of systematic looting and destruction of ethnic Georgian villages in South Ossetia. Consequently, several elements suggest the conclusion that ethnic cleansing was indeed practiced against ethnic Georgians in South Ossetia both during and after the August 2008 conflict."

I should like to read out one last quotation, from page 365 of volume II of the report:

> "During and, in particular, after the conflict a systematic and widespread campaign of looting took place in South Ossetia and in the buffer zone against mostly ethnic Georgian houses and properties. Ossetian forces, unidentified armed Ossetians, and even Ossetian civilians participated in this campaign, with reports of Russian forces also being involved. The Russian forces failed to prevent these acts and, most importantly, did not stop the looting and pillage after the ceasefire, even in cases where they witnessed it directly."

The Acting President (*spoke in French*): May I take it that it is the wish of the General Assembly to conclude its consideration of agenda item 72?

It was so decided.

The meeting rose at 5.10 p.m.