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Fifty-ninth General Assembly
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6th Meeting (AM)

LEGAL COMMITTEE SPEAKERS LAUD START OF JUDICIAL FUNCTIONING OF INTERNATIONAL CRIMINAL COURT; GROWING ADHERENCE NOTED

United States, Demurring, Says Bipartisan Domestic Objection Legal, Not Political; Urges Non-Payment of UN Funds to Court, Unless Reimbursed

Delegations hailed the start of the judicial functioning of the International Criminal Court as the Sixth Committee (Legal) this morning took up the Court's activities since the Rome Statute that established the Court came into effect on 1 July 2002.

Views were exchanged on the first two cases referred to the Court by the Democratic Republic of the Congo and Uganda. Other themes centred on the Victims Fund provided for under the Statute, the Court's jurisdiction, its relationship with the Security Council and the principle of complementarity between the Court's jurisdiction and those of States Parties.

Speaking of the examination of her country's case, Uganda's representative said it looked forward to the exploration of brazen acts in her country. Links were being established between the Court and local institutions to bring both views into the process of ending the war and healing the people of Uganda.

Noting the case referred to the Court by his country, the representative of the Democratic Republic of the Congo called for the interest of victims to be taken into account. He said victims should be educated about their rights.

New Zealand's representative said national courts should remain the first line of prosecution but when the severity of crimes, the political situation or national capacities made it necessary to rely on the international process, the Security Council should recognize the Court's role, including by referring situations to the Court to ensure perpetrators of the most serious crimes did not evade justice. The range of checks and balances in the Statute was a protection against abuse.

The United States disagreed. Its representative reiterated his country's well known views, saying its objection to the Court was legally and not politically based. The view was bipartisan with support on both sides of the United States Congress. Legislation did not allow it to subject itself to outside legal review. Also, no United Nations funds could be used to support the Court except on a reimbursed basis, since the Congress had stipulated its money could not be used to support the Court.

South Africa's representative called for States to meet their obligations in making the Court functional by paying assessed contributions fully and on time. Voluntary contributions to the Court and the Victims Trust Fund must be encouraged. The representative of Trinidad and Tobago said her country had pledged \$50,000 to the Fund.

She noted that the Statute of the Court was the first international instrument that specifically conferred the right to apply for reparations.

Ukraine's representative said that since the Court was now a reality, work on a definition of the crime of aggression should take centre stage. Uruguay's delegate said the principal of complementarity was becoming clear as her country translated elements of the Statute into national legislation. Japan's representative said his country had yet to accede to the Rome Statute, but it had been an observer in the Assembly session in The Hague.

Also speaking this morning were the representatives of Liechtenstein, Switzerland, Australia, Netherlands (for the European Union), Congo, Brazil (for the Rio Group), Norway, Sierra Leone, United Republic of Tanzania, China, Cuba, Russian Federation, Costa Rica, Germany, Gambia, Canada, Republic of Korea and Nigeria.

A representative of the International Committee of the Red Cross also spoke.

At the end of the meeting, Václav Mikulka, Committee Secretary and Director of the Codification Division of the Office of Legal Affairs, presented an oral update on the Repertory of Practice of the United Nations Organs.

The Committee will meet again at 10 a.m. on Monday, 18 October, when it will take up measures to eliminate international terrorism.

Background

The Sixth Committee (Legal) this morning took up the question of the International Criminal Court.

For its consideration, the Committee had before it a note by the Secretariat (document A/59/356) on activities facilitating the transition of work from the United Nations Secretariat to that of the Court based at The Hague. The note says the Secretariat had ceased to act as the new institution's provisional secretariat as of last 31 December. It had, however, continued to assist in the transition by transmitting to the Court Registrar material related to the first and second sessions of the Assembly of States Parties. The Secretariat had also made contacts regarding the handover and organizational matters.

Also, the note reports on steps taken to close the three Trust funds administered by the Secretary-General in respect to Court-related activities.

One had facilitated the participation of the least developed countries in the Assembly of States Parties. From a total of \$853,252 contributed by 10 Governments and the European Commission between 1997 and 2001, \$138,386 remained as of 30 June. It was in the process of being transferred to a similarly aimed fund established by the new secretariat.

Another fund had facilitated participation of developing countries in the work of the Preparatory Committee, the Conference of Plenipotentiaries and the Preparatory Commission. From a total of \$53,166 contributed by three Governments in 1998 and 1999, \$34,385 remained as of 30 June and was to be returned to the contributors.

The third fund had met the costs of the first and second meetings of the Assembly of States Parties at Headquarters in September of 2002 and 2003, plus the resumed first session between them in April 2003. By rules of the Court, remaining sums were to serve as a "credit" to contributors against future assessments. As of 30 June, a total of \$2,028,747 remained of monies contributed by 26 Governments and one foundation. These were transferred to a secretariat-established fund after notification of contributors.

The Assembly of States Parties met for its week-long third session (6-13 September) for the first time ever at its Hague headquarters.

The Rome Statute that established the Court came into force in 2002. The 97 States Parties who have ratified and acceded to the Statute are: Afghanistan, Albania, Andorra, Antigua and Barbuda, Argentina, Australia, Austria, Barbados, Belgium, Belize, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Burkina Faso, Burundi, Cambodia, Canada, Central African Republic, Colombia, Congo, Costa Rica, Croatia, Cyprus, Democratic Republic of the Congo, Denmark, Djibouti, Dominica, Ecuador, Estonia, Fiji, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Guinea, Guyana, Honduras, Hungary, Iceland, Ireland, Italy, Jordan, Latvia, Lesotho, Liberia, Liechtenstein, Lithuania, Luxembourg, Malawi, Mali, Malta, Marshall Islands, Mauritius, Mongolia, Namibia, Nauru, Netherlands, New Zealand, Niger, Nigeria, Norway, Panama, Paraguay, Peru, Poland, Portugal, Republic of Korea, Romania, Saint Vincent and The Grenadines, Samoa, San Marino, Senegal, Serbia and Montenegro, Sierra Leone, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Tajikistan, Tanzania, The Former Yugoslav Republic of Macedonia, Timor-Leste, Trinidad and Tobago, Uganda, United Kingdom, Uruguay, Venezuela and Zambia.

Statements

STEFAN BARRIGA (Liechtenstein) said it had been another eventful year for the Court, during which when the Prosecution had opened its first two investigations. The international community in New York had a key role to play in fostering political support for the Court and for States considering ratifying the Rome Statute. It was important to speak up when the Statute was challenged, and its principles must be explained when they were not understood or were misrepresented. All States must be involved in the fight against impunity, whether or not they were States parties to the Statute.

He said he hoped the Assembly of States Parties would periodically meet in New York as well as in The Hague and that States would continue to work on a definition of the crime of aggression. Also, the Court would soon have a Liaison Office in New York to complement those efforts and facilitate cooperation with the United Nations.

JURG LAUBER (Switzerland) said the 97 ratifications of the Statute which established the Court was a remarkable success. The campaign to make the Court universal should be pursued. Referring to the relationship agreement recently signed between the United Nations and the Court, he said the Court's representatives should be invited to meetings and conferences convened under the United Nations auspices, including those of the Security Council. Switzerland invited the Security Council to assume its responsibilities, whenever necessary, by exercising its particular competence as recognized by the Court's Statute.

Switzerland was convinced that the Court would be in a crucial position to contribute to the prevention of the most grave violations of human rights and international humanitarian law.

BEN PLAYLE (Australia) said the third meeting of the Assembly of States had dealt largely with budgetary and administrative matters. It was particularly gratifying that the Assembly had agreed on a contingency fund to address unforeseen events or expenditures the Court would face. It was also a welcome development that investigations had begun into the situations in the Democratic Republic of the Congo and in northern Uganda. The two States were to be commended for referring the situations in their respective territories to the Court.

DIRK JAN VAN DEN BERG (Netherlands), speaking for the European Union and its associated States, said they shared the Secretary-General's view that the International Criminal Court was the most significant recent development in the long struggle to advance the cause of justice and rule of law. The Court's importance as a safeguard against impunity could not be underestimated. By fighting impunity, he said, the Court strengthened the pre-eminence of law and respect for human rights, thus making a fundamental contribution to peace and security, and to the achievement of the very purposes of the United Nations.

The European Union welcomed the decision taken during the third session of the States Parties of the Court last September to intensify dialogue between the Court and the States Parties. The European Union also stressed the importance of maintaining cooperation between the Court and the United Nations and the United Nations community-at-large in New York.

He noted that the Court's support of victims' rights was a key element in its statute.

LAZARE MAKAYAT-SAFFOUESSE (Congo) said preserving the Court's integrity was the best way to protect the world from the odious crimes happening throughout the world. It was gratifying that the Court was ready to function. The international community must give technical assistance to countries so as to ensure that the principles set out in the Statute were fully implemented.

CARLOS SUARTE (Brazil), speaking for the Rio Group, recalled the achievements with regard to making the Court functional, making it prepared to begin hearing its first two cases. He said the Court was the paramount tool of the international community to fight impunity and that he applauded the establishment of the Victims Fund.

He said the Court complemented national actions to fight the most serious crimes. Work should continue on a definition of crimes of aggression. Also, the Assembly of States Parties should meet occasionally in New York.

Speaking in his national capacity, he said he looked forward to participating in the process that would help the Court carry out its work as it was called upon to play an increasingly wider role in bringing about a just world. The integrity of the Rome Statute must be paramount and the principle of universality must prevail. The Statute was the guarantee for the primacy of the rule of law worldwide.

ZENON MUKONGO NGAY (Democratic Republic of the Congo) said the Court's investigators, invited to his country in connection with the case brought by his government, would be given full immunity and freedom to carry out their work. He was convinced that once the Court was "up and running" those responsible for the killings and other atrocities in the Democratic Republic of the Congo would no longer think they would go unpunished.

He stressed the importance of assistance to victims, for whom the proposed compensation and reparation were of particular interest to victims. As victims would not be involved in decisions regarding the nature of the eventual awards, it was important that they were provided with information about the Statute's provisions on those matters. It was important that they knew what their entitlements were.

In the reform of the justice system of the Democratic Republic of the Congo, he said there would be recourse to international standards. There would be respect for international justice and the rule of law. The reform process should be supported and he commended the European Union and France for the assistance they provided his Government in that process. He called for more technical assistance. He stressed his Government's commitment to the International Criminal Court.

JOHAN L. LOVALD (Norway) commended the Netherlands, as the host nation, for its outstanding support for the Court, and for fully recognizing the requirements of an independent and effective Court. Observing that more than half the United Nations members had joined the Court, he said that a multilateral treaty to gain such acceptance in only six years was a remarkable achievement.

He noted the announcement by the Court's Prosecutor that there was reasonable basis to open an investigation into crimes allegedly committed since the entry into force of the Rome Statute in the territory of the Democratic Republic of the Congo and northern Uganda. It was significant, he said, that the first two cases being dealt with by the Court stemmed from referrals by governments directly concerned with them. His Government would give priority to dialogue on issues concerning the fight against impunity.

ALLIEU KANU (Sierra Leone) recalled that the rule of law was the essential ingredient for justice and the Court was the essence of bringing alleged war criminals to justice and reinforcing the fundamental principle of individual criminal responsibility for crimes under international law. He said ratification of the Statute was a first step for incorporating its elements into domestic legislation. His country was well on the way to doing that.

He said the Assembly of States Parties should develop the mechanisms and expertise to carry out its mandate under leadership of the Bureau so as to support and oversee the Court. Establishing a Liaison Office in New York would facilitate that goal.

ANDY MWANDEMBWA (United Republic of Tanzania) commended the Democratic Republic of the Congo and Uganda for requesting the Court Prosecutor to look into the situations in their countries. Indictments would play an important role for justice and in the fight against impunity that had been going on in those countries. As a close neighbour to both, his country would cooperate fully.

He said his country had signed the Agreement on Privileges and Immunities earlier this year and was working on implementing legislation to incorporate elements of the Statute into national law. The Trust Fund for the participation of least developed countries in the activities of the States Parties Assembly should continue. He said he felt contributions to the budget for running the Court would make or break its effectiveness.

QI DAHAI (China) said his country had long supported the establishment of an impartial, independent, effective and universal International Criminal Court, and attached great importance to its positive role in punishing serious international crimes. He noted the progress made by the Court in its work. The intense preparatory work done by the judges, prosecutors and all other staff of the Court had laid the groundwork for the effective functioning of the Court. Their efforts deserved commendation, he said. He hoped the spirit of coordination and cooperation that existed among the organs of the Court would set the tone for its future functioning.

NICOLAS ROSTOW (United States) said the well known position of his country on the Court was bipartisan; both sides of the Congress were agreed, and even both New York senators had voted in favour of the American Servicemen's Act that defined the United States position on legal grounds, not political ones.

Recapping that position he said it was an important principle of his country that one of its citizens should not be subject to the jurisdiction of an outside Court. Also, articles of United States legislation were not open to international review. Referring to "our friends who say 'trust us'", he said that was not a legal basis for moving further. Fundamental issues of concern remained open about legal aspects of the Court's functioning, including possibilities of multiple jeopardy, accountability and questions about the relationship between the Court and the United Nations Charter, which gave the Organization an authority that was not to be delegated.

Finally, he said, it should be noted that no services would be provided by the United Nations to the Court except on a reimbursable basis. It was an important point with the United States Congress that none of its funds should be used to support the Court.

JUANARAMOS RODRIGUEZ (Cuba) said her Government would continue to support an impartial International Criminal Court which was not selective in its work. Cuba had been involved in all stages of the preparatory work leading to the establishment of the Court. The work of the special working group on the crime of aggression should be open to all the United Nations members. She said she hoped the group would be able to complete its work and come up with a definition on the crime of aggression acceptable to all. The Assembly of States parties should grant the working group greater latitude in its work.

She expressed regret that Cuba was not able to be represented at a meeting related to the work of the working group because the United States authorities had prevented its delegation from travelling outside a specified distance beyond its New York mission. That was a clear violation of the United Nations Headquarters Agreement with the Host Country. It was another example of the host country's unilateralist attitude, she said.

STEPAN KUZMENKOV (Russian Federation) said he was pleased that the Court was continuing to grow, as evidenced by the increase in the number of States that had ratified its Statute. The Court's effectiveness would depend on its impartiality.

He said he was also pleased to note the relationship agreement that was recently signed between the Court and the United Nations. It was an important development. The Russian Federation was reforming its laws in

conformity with the provisions of the Court's Statute. It was in the process of ratifying the Statute. Discussions under way on the question of the definition of the crime of aggression should be balanced, with account being taken of the views of State parties and outsiders alike. The Russian Federation favoured strict compliance with the role of the Security Council on its Charter responsibilities on the issue of the crime of aggression.

OLEKSANDER KUPCHYSHYN (Ukraine) said the Court was now a reality as a major building block in the system of international security, based on complementarity and delicate balances. The system of international criminal justice based on the Rome Statute would be incomplete without a definition of the crime of aggression, including the elements of crime and the conditions under which the Court would exercise its jurisdiction. Taking into account that operational activity had begun, that work should be at the heart of the States Parties Assembly agenda.

FELIPE PAOLILLO (Uruguay) said the Court needed the maximum support of States. The request for a consideration of their situations by the governments of the Democratic Republic of Congo and Uganda meant that they were serious about not allowing to go unpunished for any crimes committed in their countries. His country was applying the elements of the Statute into national legislation. The principle of complementarity was becoming clear, as was the distinction between areas covered by national legislation and those that would come under the Court's jurisdiction.

HIROSHI TAJIMA (Japan) said it was obvious that the preparatory days were over and the operational phase of the Court had begun. His country had yet to accede to the Rome Statute, but it had contributed actively as an observer in The Hague this September.

To become an effective international judicial body, he said the Court had to have the cooperation of States Parties. The 97 States parties were barely more than half the United Nations membership. While establishing cooperative relations with States Parties, the Court must provide information of its activities in a transparent manner. By its actions, the Court must dispel the concerns and scepticism so often mistakenly directed at it.

He said that based on the principle of complementarity, the Court's primary objective was to realize the rule of law in international society. States should refrain from resorting to the Court as an international organization to find a convenient solution to an issue that was a State responsibility. Also, the possibility should be borne in mind that one party to a conflict could try to use the Court to strike at an adversary. The Court must ensure that its investigations are carried out in a fair and impartial manner.

BRUNO STAGNO (Costa Rica) said the third meeting of States parties had strengthened the Court's institutions. He welcomed the signing of the relationship agreement between the Court and the United Nations. He hoped the Court would be stronger through the two cases initiated by the Democratic Republic of the Congo and Uganda. He expressed appreciation for the goodwill of the two countries in submitting their domestic situation to the new international institution.

He said he trusted that the Court and the Security Council would develop a close relationship. Such a relationship was indeed evident as the Court's objectives coincided with the purposes of the Security Council in the promotion of peace security.

CHRISTIAN MUCH (Germany), speaking in his capacity as coordinator of the Friends of the International Criminal Court, said their role was to seek support for the Court, through information exchange. He said it was important that political support for the Court was upheld at the United Nations Headquarters in New York, through the promotion of the Court's contribution to the maintenance of international peace and security.

The Group included States Parties to the Court's Statute and non-members from all parts of the world. They totalled more than 100, with African States having the largest in number. He said it was particularly gratifying that among its members there were some involved in post conflict situations. He said that 110 countries or more were working together to promote the objectives of the Court.

CRISPIN GREY-JOHNSON (Gambia) said that with the two referrals of cases from the Democratic Republic of Congo and Uganda, as well as the constitution of the Court's pre-trial Chambers and the opening of investigations, it could confidently be said that the Court's credible march towards combating impunity was well under way. That was in itself a victory and affirmation of confidence in the Court, which continued to grow with the increase in the number of the State parties to its statute. Gambia was committed to the Court and would do everything possible to advance the Court's interests.

GAILE ANN RAMOUTAR (Trinidad and Tobago), speaking for the countries of the Caribbean Community (CARICOM), said the referral by two States of two different situations to the prosecutor was a positive indication of the trust and confidence States placed in the Court and its ability to punish perpetrators of grave crimes and to ensure justice for victims of those crimes. Similarly, the Court must be able to rely on States, not just in areas such as conduct of investigations but through political support, to attain the goals of justice and end impunity.

She welcomed the signing of the Relationship Agreement between the Court and the United Nations and said the Statute was the first international instrument that specifically conferred the right to apply for reparations through the Trust Fund. Her government had pledged to contribute \$50,000 to that Fund. It would also contribute \$10,000 to the Trust Fund for the participation of least developed countries in the work of the Assembly of States Parties.

HUGH ADSETT (Canada) said he was pleased to see the significant progress the Court had made in the past year towards becoming fully operational. The two referrals to the Court, by Uganda and the Democratic Republic of the Congo, last March, bore eloquent witness to the confidence of States Parties in the Court. With the announcement by its prosecutor of that formal investigations into the two cases were under way, the Court was fulfilling, in a methodical and disciplined way, its very *raison d'être*. Already, the Court had shown that it was not politicized.

HAHN MYUNG-JAE (Republic of Korea) said his Government was currently in the process of enacting the implementing legislation for the Rome Statute of the Court. He noted that a judge from his country was serving on the Court's Appeals Division. On 24 June his Government had signed the Agreement on Privileges and Immunities of the International Criminal Court. He recalled a round table on international humanitarian law with special emphasis on the role of international criminal courts organized last year by his Government on the occasion of the 42nd annual meeting of the Asia-Africa Legal Consultative organization.

SIVUYILE MAGUNGO (South Africa) called for States to meet their obligations to the functioning of the Court. Assessed contributions must be paid fully and on time, he said. Voluntary contributions to the Court and the Victims' Trust Fund must be encouraged. The relationship agreement between the Court and the United Nations Security Council was welcome. The Council should make use of the authority granted it by the Statute to make referrals.

JENNIFER MCIVER (New Zealand) encouraged the Security Council to cooperate fully with the Court within the framework of the Rome Statute and the Charter. She said national courts should remain the first line of prosecution. However, in instances where the nature and gravity of crimes, the political situation involved or the capacities of the national system made it necessary to rely on the international process, the Security Council should recognize the Court's role, including by referring situations to the Court to ensure that perpetrators of the most serious crimes did not evade justice.

She said the range of checks and balances in the Statute was a protection against abuse. Her country had ratified the Agreement on Privileges and Immunities earlier this year.

ROSETTE NYIRINKINDI KATUNGYE (Uganda) said she welcomed the Court's pronouncement of itself on the cases in the Democratic Republic of the Congo and in northern Uganda, to examine brazen acts that had been carried out in her country for 18 years. Her country was carrying out the ratification procedure and had signed the Agreement on Privileges and Immunities. Implementation legislation to cover both the Statute and the Agreement

were in the works. Further, links were being established between the Court and the Uganda Human Rights Commission to bring the views of both into the process of ending the war through dialogue and bringing healing to the peoples of northern Uganda.

FELIX AWANBOR (Nigeria) reaffirmed his country's belief in the credibility and acceptability of the Court as a global judicial institution to fight impunity and to ensure respect for international humanitarian law. Nigeria welcomed the positive developments in the Court since the entry into force of its Statute on 1 July 2002. He urged that meetings of the States parties be held alternately at The Hague and in New York; that arrangement would enhance the Court's political visibility in New York and result in greater participation in the work of the States parties by more delegations. He reiterated his country's commitment to cooperating with the Court.

GEORGES PACLISANU, observer for the International Committee of the Red Cross (ICRC), said it was crucial that ratification and accession to the Statute was accompanied by the adoption of adequate measures of implementation at the national level. Since the Rome Statute was founded on the principle of complementarity, he said States must assume their primary responsibility to repress the crimes falling within the Court's jurisdiction in their domestic legal systems and enforce the corresponding prohibitions.

Through its Advisory Service on International Law, he said the ICRC stood ready to continue to provide concerned States and authorities with legal advice and technical support relating to participation in and implementation of the Rome Statute, as well as other instruments of international humanitarian law.

Statement by Committee Secretary

VACLAV MIKULKA, Secretary of the Committee and Director of the Codification Division of the Office of Legal Affairs, presented an oral update on the Repertory of Practice of the United Nations Organs since no update on the Repertoire of Security Council Practice was required. Noting that studies were now posted on the Internet, he detailed the backlog and said there had been outside assistance with the research for a number of months. The cooperation had proved fruitful in many respects, but had demonstrated that the bulk of the work in preparing the Repertory studies fell to the Secretariat.

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