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# General Assembly

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Thematic Debate on International  
Criminal Justice (AM & PM)

### **AS DEBATE CONCLUDES, MANY DELEGATIONS STRESS INTERNATIONAL CRIMINAL JUSTICE SYSTEM**

### **CANNOT REPLACE NATIONAL MECHANISMS IN BUILDING TRUE RECONCILIATION**

#### **Other Speakers Say World Now Has 'Means to Fight Impunity', Hail Courts, Tribunals as One of Greatest Legal Achievements in Past Century**

The international criminal justice system — hailed by some as one of the greatest legal achievements of the past century — could never replace national mechanisms in building true bridges between former enemies, stressed delegates today as the General Assembly concluded its unprecedented thematic debate on the link between global justice systems and reconciliation.

While many delegates expressed support for the international criminal justice system, including the International Criminal Court and the Tribunals in the former Yugoslavia and in Rwanda, a wide array of impassioned positions emerged as more than 30 speakers, including several post-conflict States with first-hand experience in reconciliation, addressed the Assembly. A number of speakers took issue with core elements of the international criminal justice system as it was currently understood, and emphasized the need to explore alternative mechanisms and strengthen national ownership over both justice and reconciliation efforts.

“Punitive vengeance in the name of justice cannot be a means to reconciliation,” said the representative of Kenya, as she warned against a “narrow and rigid” interpretation of the role of the justice system in reconciliation. She instead urged the adoption of a system that did not focus solely on meting out individual punishment, but rather one that would spotlight the need to build bridges and bring communities together.

Indeed, said the representative of the Republic of the Congo, international criminal justice systems could never replace national reconciliation, and reconciliation could not be possible on the basis of justice alone. Instead, it “needed other ingredients”. He cited, as an example of best practices, the establishment of South Africa’s Truth and Reconciliation Commission, which had demonstrated the “clever alternatives” that could be found by exploring other systems of justice.

“A tribunal will not achieve justice if it only succeeds in kindling resentment, popular discord and anger,” said the representative of Sri Lanka, emphasizing that the current system “only pays lip service to the cultural backgrounds of the rest of the world”. Accountability — particularly retributive justice — was prominent. Briefly sharing the experience of his country, which had suffered from a 27-year-long conflict, he said that the Sri Lankan Government had initiated a domestic mechanism emphasizing restorative justice, in keeping with its religious and cultural background and political sensitivities.

Criticisms also focused more specifically on the Court itself, with numerous delegations decrying the body as a politicized one dealing in selectivity and double standards. In that vein, Sudan's representative noted that citizens of a certain country should not be excluded from being brought to justice because of the political weight of that State. He also questioned why most of the cases before the International Criminal Court were from Africa.

The representative of Syria stated that the prime responsibility for a justice that was all inclusive, and devoid of politicization, selectiveness, and double standards, rested with Member States. Any discussion in the corridors of the United Nations should be done in line with the United Nations Charter, he said, adding that the selective treatment of the events in his country demonstrated a double standard that prevailed in certain international fora and exploited the suffering of Syrian people, setting a dangerous precedence in international relations.

In contrast, a number of delegations expressed an ardent defence of the Court and the tribunals, stressing that they had brought justice to countless victims and underscored the need for accountability as an essential building block of reconciliation and durable peace. While not perfect, said Switzerland's delegate, the Court "proves that we do have the means to fight impunity". He also underscored the importance of a consistent referral policy and follow-up to relevant resolutions by the Security Council, noting that his call to refer the situation in Syria to the Court — which had the support of more than 60 States — should be seen in that light.

The representative of Cambodia said it was fundamental to explore how international justice could better interact with domestic justice systems. In the wake of his country's devastating civil conflict, the Government and the United Nations had established a hybrid tribunal, known as the Extraordinary Chambers. That experience had shown that while domestic action was needed, the parameters of what international justice could realistically achieve should also be carefully examined.

Tunisia's delegate was among those who praised the creation of the Court, agreeing that its establishment had ushered in a new era of accountability. However, that step must be backed by others, designed to prevent crimes and to compel States to respect their obligations. He, therefore, proposed the creation of an international constitutional court, modelled on the International Criminal Court, through which national laws, constitutions or elections that ran counter to international law could be challenged.

Throughout the meeting, several speakers also questioned the methodology of the thematic debate itself. In that vein, the representative of Albania said his delegation deplored the whole manner in which the event had been shaped, saying that its aim seemed to be finger pointing at the International Criminal Tribunal for the Former Yugoslavia, denigrating the Tribunal's work, diminishing its legacy and questioning its verdicts.

Rodney Charles (Trinidad and Tobago), Vice-President of the General Assembly, made brief closing remarks.

Also speaking today were the representatives of Egypt, Chile, Pakistan, Brazil, Indonesia, United Republic of Tanzania, Australia, Trinidad and Tobago, South Africa, Uruguay, Botswana, Japan, Thailand, Cuba, Jamaica, India, Lichtenstein, Bolivia, Venezuela, New Zealand, Ecuador and Iran.

A representative of the International Development Law Organization also participated.

### Background

The General Assembly met today to conclude its consideration of the thematic debate on the "Role of International Criminal Justice in Reconciliation". For more information, please see Press Release [GA/11355](#).

## Statements

OSAMA ABDELKHALEK MAHMOUD ( Egypt) said that, by being offered an opportunity to tell their story, “victims may overcome trauma if the injustice done to them has been recognized publicly”. Such measures had to be accompanied by national reconciliation measures to address corruption cases such as the recovery of illegally transferred assets. International cooperation in that field was also critical. Nevertheless, he noted, “reality is more complex”. Investigations of international tribunals focused on leadership accountability; however, immediate victims of crimes often wished to see all perpetrators tried. Some would, therefore, argue that the contribution of international trials on reconciliation was a modest one, and that there should be space for additional legal response. International criminal justice should be measured by its own performance, and by its actual ability to facilitate solving problems and its impact on the ground.

The realities of current world affairs, he continued, reflected that international criminal justice, which appeared to be in a state of transition, would remain relevant in the future as much as today. However, there also was an increasing search for alternative responses and a growing debate about its effectiveness. In that regard, the International Criminal Court should pursue a balanced approach that avoided politicization and selectivity in its work. Focusing on only one region — Africa — may give the wrong impression that serious crimes were only committed on that continent. Accountability for the crime of aggression should also be operationalized soon. It was fundamental to explore how international criminal justice could interrelate more effectively with domestic justice systems. “We should embrace the idea that international criminal justice is not a tool to fill justice gaps at the domestic level, but an instrument to strengthen domestic justice efforts,” he said.

PAUL SEGER ( Switzerland) said that as much as he welcomed the debate, he had concern about the manner in which the discussion had been prepared. As for the international criminal tribunals and ad hoc courts, while not perfect, they had brought justice to victims and had underscored the need for accountability as an essential building block of reconciliation and durable peace. The International Criminal Court, as the only international criminal justice institution that was permanent, was at the centre of the fight against impunity and, thus, was capable of promptly, credibly and effectively investigating and prosecuting severe human rights and humanitarian law violations. The Court’s existence, he pointed out, “proves that we do have the means to fight impunity”, but its effectiveness required robust political and diplomatic backing, particularly support for arresting and surrendering fugitives.

Also crucial, he said, was respect for the Court’s decisions, “even when we do not agree with all of them”, noting that casting doubt on a court’s credibility undermined the judicial process itself. Further, the United Nations could and should do more to support international criminal justice, underscoring the importance of a consistent referral policy and follow-up to relevant resolutions by the Security Council. In that regard, his call to refer the situation in Syria to the International Criminal Court, which had the support of more than 60 States, must be seen in that light. Concluding, he highlighted two lessons from the past 20 years: reconciliation and addressing victims’ essential needs could not be achieved by judicial means alone, but required also victims’ right to the truth, to reparations and guarantees of non-recurrence; and criminal justice at the international level must be ensured at the national level, as well.

OCTAVIO ERRAZURIZ ( Chile) said that international justice was an important contributor to international security, the rule of law, as well as reconciliation. He supported the role of the International Criminal Court in Serbia and Rwanda, where it operated under the conviction that crimes against humanity as a whole, could not and should not go unpunished. Underscoring the role of the international community, he said the General Assembly as it relates to victims, reparation and especially reconciliation, was ultimately a factor that promoted universal peace.

He went on to say that post-conflict societies grappled with many things, such as truth, reparations, the process of healing and the rule of law. In that regard, reconciliation should not be a “utopian goal”, but rather it should be viewed as an end to the cycle of violence. The Court was an effective instrument that

contributed to that process. Highlighting the recent ratifications of the Rome Statute, he said they signified the growing universality of the Court. The cornerstone of the Rome Statute was its principle of complementarity. At the same time, because the universality of the Court continued to be a major challenge, he encouraged the international community to continue to work towards making it more universal.

MASOOD KHAN ( Pakistan) said that the days of “might is right” were over. The current international justice system was a product of the international community’s collective experience that justice was essential for civilization and international law was “at the heart” of a rule-based community. The international justice system was expected not just to deliver justice, but also to heal the wounds of war. In spite of that heavy burden, the role of the tribunals had been highly satisfactory as they advocated that no one was above the reach of international law. Paying tribute to United Nations tribunal staff for their hard work and professionalism, he said that they were responsible for setting a comprehensive precedence and contributing to international law and jurisprudence, which would shape the future of global justice.

He reiterated that the purpose of international law was to foster security rather than to sanction or fuel reprisal. Highlighting the “teething problems” the tribunals had faced in implementation and inadequate cooperation, he called for additional support and reinforcement. He lauded the cooperation of Rwanda, Bosnia and Herzegovina, and Serbia for their continual cooperation to the tribunals. Cooperation was responsible for stabilizing the situation in other areas, as well, such as in East Timor, Sierra Leone and Lebanon. Emphasizing the principle of complementarity, he called for national criminal justice systems to be strengthened in order to prosecute and punish perpetrators. In addition, national leadership and ownership were important where tribunals were widening down. However, problems would linger “if individualism of guilt painted the entire society with the same brush”, he said.

MARIA LUIZA RIBEIRO VIOTTI ( Brazil) said the Nuremberg and Tokyo International Military Tribunals were pioneering attempts to place war crimes under international judicial scrutiny. Regrettably, even after the cry of “never again” had been heard in the aftermath of the Second World War, mass atrocity crimes persisted. Brazil, as a Security Council member during the 1993-1994 biennium, had joined the consensus that led to the creation of the Rwandan and Former Yugoslavia Tribunals, whose roles in bringing to justice those accused of heinous crimes must not be underestimated. The establishment of the International Criminal Court was also a historic achievement and Brazil had been committed to it since its creation.

Addressing the Court’s role in reconciliation, she said it was essential to bear in mind two elements: recognition of the primacy of national jurisdiction mechanisms; and the importance of trying to ensure national ownership. The more a process developed on the basis of inclusive consultations, the better societies fared in achieving justice, reconciliation and truth. In that context, she regretted that the two cases referred by the Council to the Court had been stained with “judicial accountability a la carte”, by which certain categories of people had been exempted from the Court’s jurisdiction for political reasons, a precedent that was morally wrong and contravened international law. Also, the Court should not take on the financial burden of such referrals alone, as the Rome Statute outlined that such expenses could be met with United Nations funds.

DESRA PERCAYA ( Indonesia) said that accession to the Rome Statute remained a priority and had been embodied in Indonesia’s National Plan of Action on Human Rights for 2011-2014. Underscoring that the principle of complementarity was one of the cornerstones of the Rome Statute’s architecture, he stressed that national courts should be given the primary role in the prosecution of human rights violations, and that giving States the responsibility to investigate and prosecute perpetrators of human rights violation would help solidify adherence to the principle of the rule of law. That conviction was rooted in his country’s experience of living more than 30 years under an authoritarian regime. “Yet Indonesia, I am proud to say, is now a thriving democracy,” he said. In the last 10 years, Indonesia had strengthened its Constitution and put in place a system that allowed for proper checks and balances and respect for human rights. The press and civil society were also encouraged to develop into important and functioning elements of democracy.

Commenting on some doubts that had been expressed about Indonesia’s transition from

authoritarian rule to a democratic one, he said: “Our democracy is not a perfect one, but our determination to preserve and nurture it is unquestionable.” He reiterated the need for strong national capacity to implement principles of justice and the rule of law. The United Nations should play a critical law in coordinating the international efforts aimed at helping States to develop their own legal institutions. Moreover, development and improvement of legal institutions must naturally be in conformity with each nation’s history, culture and way of life, without prejudice to internationally recognized principles of transparency and inclusiveness.

PALITHA KOHONA ( Sri Lanka) said international tribunals and other mechanisms must take into account ground realities, sensitivities and limitations. Externally imposed tribunals were unlikely to succeed in a highly charged domestic environment. “A tribunal will not achieve justice, if it only succeeds in kindling resentment, popular discord and anger,” he said. Moreover, current international criminal justice was very much centred on a Western historical and cultural mindset. “It only pays lip service to the cultural backgrounds of the rest of the world,” he stressed, adding that accountability — particularly retributive justice — appeared to be the first choice in general to facilitate reconciliation. There were other paths to that laudable goal, he said and they must take into account local sensitivities, political pressures and cultural nuances.

Sharing the experience of his country, which had suffered from a 27-year-long terrorist-imposed conflict, he said that his Government had initiated a domestic mechanism to address all aspects of the conflict, including any alleged violation of international standards. Unfortunately, excessive external pressure was then exerted on Sri Lanka to conclude the process of investigating those allegations to the exclusion of all else, even though similar situations in other countries had taken much longer. In its national processes, the country had emphasized restorative justice, in keeping with its religio-cultural background and political sensitivities. For example, despite being able to take punitive legal action against many ex-terrorist cadres, the State had chosen the option of rehabilitation and restoration to the community. Vast resources had also been allocated to rebuilding destroyed infrastructure so that economic life would return to normalcy as quickly as possible.

TUVAKO N. MANONGI (United Republic of Tanzania) fully subscribed to the “essence” of international criminal justice. As a party to the Rome Statute, his country had hosted the Rwanda Tribunal, and currently, the International Residual Mechanism in Arusha. He recognized the value of other forms of transitional justice mechanisms — namely, reparation, truth and reconciliation, mediation and institution-building — noting, in particular, the effectiveness of reconciliation, as had been seen in South Africa in 1995.

Indeed, “different conditions call for different approaches”, he said, observing that while the post-apartheid South African situation required a truth commission, the criminal penalties applied by the Security Council against the perpetrators of genocide in Rwanda and the former Yugoslavia offered a “fitting” response. Noting the importance of ensuring that justice was achieved while peace was maintained, he reiterated the need to strengthen the mechanisms for fighting impunity and urged all States to join the Rome Statute. He also urged the Court to uphold the principle of complementarity and conduct its work with greater impartiality. Finally, an integrated approach was needed to help States rebuild their national judicial systems.

JULIA O’BRIEN ( Australia) said that accountability processes were a means for restoring dignity to victims, which empowered them and helped to rebuild communities. Criminal law judgments deterred those who sought to divide communities by denying that atrocities had occurred, as well as those leaning towards carrying out similar actions. Together with truth-seeking mechanisms and reparation programmes, criminal processes also played a critical reconciliation role, defusing the motivation of victims to seek vengeance and re-establishing rule of law. She understood that the international community faced challenges in applying international criminal justice.

In that, she said support should be built for the International Criminal Court and the ad hoc international and mixed tribunals. Given the budget crisis facing the Extraordinary Chambers in the Courts of Cambodia, she called on Member States to consider the gravity of the crimes being adjudicated and the

expectation of the Cambodian people, and to take urgent action to ensure completion of the Extraordinary Chambers' work. Equally important was to respect judicial independence and judgments. Decisions must be based on the merits of a case, while at the same time, judicial institutions should not be immune from criticism. However, criticism motivated by disagreement with a judgment undermined the judges' independence and rule of law. She added that she did not share many of the views expressed so far and would have preferred a broader range of perspectives on the panel.

KOKI MULI GRIGNON (Kenya) said that although her delegation fully supported international criminal justice initiatives, it strongly objected to the politicization of the Court and, in particular, the Office of the Prosecutor, noting the Court's selective application of universal jurisdiction and the Security Council's selective referrals. Warning against a narrow and rigid interpretation of the role of the international criminal justice system in reconciliation, she urged that an all-inclusive and carefully calibrated system with clear benchmarks and achievable standards — which did not focus solely on meting out individual punishment — be adopted. The Office of the Prosecutor had not lived up to its mandate of strengthening national judicial systems, she added, noting that the international criminal justice system should endeavour to complement national and regional efforts.

Moreover, she stated, achievement of international criminal justice must be undertaken in a manner that did not exacerbate an already fragile peace. It should instead focus on building bridges and bringing communities together. "Punitive vengeance in the name of justice cannot be a means to reconciliation; it instead festers quietly until ... it explodes," she stressed. Further, the International Criminal Court's prosecutor could not, without Member States' concurrence and acquiescence, investigate and prosecute nationals, especially in cases where Member States had not referred the cases to the Court in the first place, as was the case of Kenya. Indeed, Member States should be allowed to return such cases for trial under the national juridical and legal systems. That would reconfirm the primacy of States' responsibility and enrich the jurisprudence of the international criminal justice system while, at the same time, strengthen national legal systems. In that regard, she reminded delegates that the Court was a "court of last resort".

RODNEY CHARLES (Trinidad and Tobago) said that the International Tribunals for both Rwanda and the former Yugoslavia had ensured that a culture of accountability replaced one of impunity. As their work drew to a close, Member States must ensure that the International Residual Mechanism was adequately resourced. At the same time, the promotion of international criminal justice was not the sole domain of the United Nations. Each State must be mindful of its obligations in that regard. The Court, despite its detractors, had made significant strides in its investigative, prosecutorial and judicial work and had gained confidence across much of the international community. It must be provided with the requisite resources to effectively discharge its functions.

Hoping for increased cooperation with the Court with regard to outstanding arrest warrants, he called on all States to accede to the Rome Statute, thereby ensuring prosecution for the most serious crimes. Existing courts and tribunals, and the establishment of new ones, had made it possible to reinforce several international law concepts. Moreover, it had been possible to prosecute many individuals, including former presidents, who had been unable to use sovereign immunity as a defence. "This is the hallmark of international criminal justice, where no one is deemed to be above the law," he stated. Moving into the next era, achievements must be preserved and the United Nations must continue to promote the process as a means to protect the vulnerable from falling prey to unimaginable atrocities.

THEMBILE JOYINI (South Africa) said that justice without reconciliation was unsustainable, and reconciliation without justice was "but a dream". In that context, transitional justice offered a deeper, richer vision of justice by addressing the need of the victims and assisting in moving towards a process of reconciliation. Indeed, transitional justice should not be understood as promoting a culture of impunity.

International criminal justice, he said, had played an important role in post-conflict situations, striving to put an end to grave violations of human rights, promoting national reconciliation, and supporting the rule of law and the restoration of peace. The Rome Statute's principle of complementarity provided States an excellent vantage point from which they could ensure that justice was done, while at the same time enabling

them to seek a lasting peace that could only come from reconciliation. It was the role of the Court and the special tribunals, he stressed, to ensure that justice was done for the sake of reconciliation and long-lasting peace.

JOSÉ LUIS CANCELA (Uruguay), associating with countries party to the Rome Statute in its region, said that substantive headway had been made in raising global awareness about international criminal justice. “Reconciliation is a fundamental value without which communities could not aspire to peace and co-existence,” he said. There had been a “qualitative leap” that occurred with the establishment of the International Criminal Court and the Inter-American Human Rights Court, among others. Those Courts, along with the growing awareness of the responsibility to protect, showed that serious crimes of international law would not go unpunished.

Strict compliance with the standards of the system and due process were necessary, he continued. Highlighting cooperation and support for justice initiatives ranging from efforts on a national level to international treaties, he expressed hope that the International Criminal Court would soon be universally recognized as the body fit to deal with crimes that fell within its jurisdiction.

RAYMOND SERGE BALÉ (Republic of the Congo) said that justice was a guarantee of peace and balance between the governed and the governors. However, it was no longer solely a national attribute. Considering that international criminal justice was now considered an essential element of peace and necessary for combating impunity, he raised questions about the extent to which it could be a substitute for national reconciliation. As a representative of a State that was a member of the African Union — whose position on such matters was well known — he said that there were, indeed, several challenges facing the International Criminal Court, which sprung from “misunderstandings” on legal principles.

He pointed out that, in 2011, the Court had taken a decision regarding the cooperation of States with arrest warrants for accused African Heads of State. Some countries had justified their lack of cooperation by the existence of legal privileges and immunities. In that regard, he said, misunderstandings existed between article 27 of the Rome Statute and the African position. Nevertheless, the position of the African Union did not represent a violation of its responsibilities under the Rome Statute. He cited, as an example of best practices, the establishment of South Africa’s Truth and Reconciliation Commission, which had demonstrated the “clever alternatives” that international criminal justice could find. International criminal justice systems could never replace national reconciliation, he added, noting that reconciliation could not be possible on the basis of justice alone. Instead, it “needed other ingredients” and depended on the social and political situation in particular countries.

CHARLES NTWAAGAE (Botswana) said history bore witness to the fact that many perpetrators had come and gone “in this brutal world”, unleashing untold suffering and pain to millions of people. Nations had turned against each other with impunity, killing and annihilating other races in what could best be called ethnic cleansing and, at worse, genocide. All of that was done in the name of racial supremacy and hatred. He, therefore, welcomed the advent of the International Criminal Court, which had effectively delivered justice and promoted rule of law and respect for human rights. He called on all nations, not only to support the global criminal system, but also to respect its voice and verdicts.

He said that while appreciating the politically charged atmosphere in which the Court operated, it continued to serve as a deterrent and contribute significantly to peace restoration and reconciliation. Through successful prosecution, it was able to redress victims’ plight while ensuring that those bearing the greatest responsibility for the crimes did not go unpunished. The drafters of the Rome Statute had in full view the ultimate goal of promotion of rule of law as an essential ingredient for human rights protection and peace “cultivation”. The Statute’s complementarity principle demonstrated the Court’s readiness to give way to national criminal justice systems. Finally, the permissibility of the Security Council to grant an interim stay of prosecution should not be perceived as an opportunity to undermine the Statute.

JUN YAMAZAKI (Japan) said that as the leading contributor to the International Court of Justice, his country welcomed the Court’s increased capability in dealing with grave crimes. Noting the expectation for

international criminal justice to cut the vicious cycle of revenge and prevent further violence through accountability, he pointed to the example of the Extraordinary Chambers in the Courts of Cambodia, where proceedings were reported daily in that country, attracting more than 100,000 people to the courtroom and helping the country to establish a society where justice prevailed.

He said that, although the tribunals had enjoyed increased credibility, over the past two decades challenges had emerged. For example, the process was not always accepted as just by all parties. To ensure that justice contributed to reconciliation, impartiality and due process must be respected throughout the process. The international community as a whole should unite to combat impunity and promote reconciliation. In that regard, the Security Council had an important role to play in supporting the International Criminal Court, especially when it referred a case to it. Given the significant contributions of the tribunals, he regretted the financial difficulties facing some, and urged all States to cooperate and support them.

CHAYAPAN BAMRUNGPHONG ( Thailand) said that the United Nations' commitment to the promotion of justice and the fight against impunity was evident with the first ad hoc tribunal in 1993 in Yugoslavia and the establishment of the International Criminal Court. "We should be proud to be a part of the generation that strives for further justice," he said, adding that violations needed to be properly investigated and appropriately sanctioned. Efforts by the United Nations had resulted in greater awareness of rule of law and the fight against impunity, and he affirmed Thailand's support for the establishment of the Court and the principles in the Rome Statute, which corresponded to the Thai Constitution.

While yet not a party to the Rome Statute, he said Thailand was determined to work with and better understand the efforts of the Court. Moreover, in June 2011, his country's Minister for Foreign Affairs met with the Court as a sign of cooperation that Thailand would continue to learn from and support its efforts to bring about justice. Given the combined efforts of the international community, perpetrators of the most serious crimes would be held accountable and victims would have redress of abuses. The common goal for international criminal justice should be to prevent mass scale crimes, begin the process of reconciliation, and ensure that horrific crimes never be repeated.

TANIERIS DIEGUEZ LA O ( Cuba) supported the establishment of an effective and impartial international criminal justice system, complementary to national justice systems and free of subordination to political interests. The General Assembly was the democratic and representative organ of the United Nations, she said, emphasizing that it was an appropriate forum for State parties to express views and decide on the international criminal system. Unfortunately, the international criminal justice system had shortcomings because of its relations with the Security Council, which had the power to suspend investigations. In addition, she said the Court's definition of a crime of aggression, which was limited to the use of armed force, did not meet Cuba's expectations.

For more than 50 years, she stated, Cuba had undergone various forms of aggression from its "northern neighbour", which had caused thousands of deaths and economic loss. The "ambiguous" definition of crime of aggression used by the Court did not clearly acknowledge the gravity and scale of Cuba's situation. The use of force in a way that was incompatible with the United Nations Charter was in itself a violation of the Charter. It was essential for the integrity of national criminal justice systems to be preserved, as well as the international criminal justice system to be impartial and free of political interest. That should in no way limit the role of the Court in a judicial process. Furthermore, she emphasized it was important to respect the general principles of international law and the free consent of each State to decide whether to be party to a treaty or not.

SHORNA-KAY RICHARDS ( Jamaica) commended the tribunals for the neutral and impartial framework which they had established to protect one of the key foundations of fair trial proceedings: that of the right to be presumed innocent until proven guilty. The tribunals had shown that political leaders of countries were not exempt or immune from being tried for the most heinous crimes. Indeed, "the tribunals have tried persons from across the entire spectrum of national life, from presidents to generals to foot soldiers to civilians". The special legacy of the tribunals was, therefore, that there was no impunity for war



crimes, crimes against humanity and genocide.

In particular, she congratulated both tribunals on their effective balancing of the need for expeditiousness in trial proceedings with the need to protect the rights of the accused and the interest of victims and witnesses, without whom the pursuit of justice would come to a grinding halt. The focused and impartial manner in which the tribunals had discharged their mandates had created a strong and sure foundation for sustained reconciliation, she added, reaffirming her delegation's support to their successor, the International Mechanism for Criminal Tribunals.

RIADH BEN SLIMAN (Tunisia), stating that the thematic debate was an opportunity to reaffirm respect for the rule of law and justice, underscored the importance of formulating inclusive national strategies to confront genocide, war crimes, crimes against humanity and grave violations of human rights. This would, in turn, detect past crimes, assign responsibility and address the needs of victims. Further, in no way should amnesty be granted to officials responsible for such violations, nor should they be granted immunity through domestic judicial processes. Stressing his country's support for the International Criminal Court, he said that the Court's establishment had ushered in a new era and had illuminated the need for more efforts to crystallize a clear vision for accountability. The Court provided victims and their families with the opportunity to gain first-hand knowledge of the truth and for States to press ahead with transitional justice. Thus, it was important to provide the Court with the necessary resources.

A number of challenges faced the Court, he continued, emphasizing that it was important for the Security Council to avoid the implementation of double standards. While a fundamental step had been taken in the creation of the Court, that step must be backed by other actions to prevent crimes before their occurrence and to compel States to respect their obligations. He, therefore, proposed the creation of an international constitutional court, modelled on the International Criminal Court, through which national laws, constitutions or elections that ran counter to international law could be challenged. That court would be able to consider grave violations of international law, and its establishment would help States to abide by their obligations, he said.

MANJEEV SINGH PURI (India) said that publicly vindicating human rights norms and punishing the guilty helped to prevent future atrocities in conflict and post-conflict situations. Individual accountability for massive crimes should not only be seen as an essential part of preventive strategies, but also helped to arrest the culture of impunity. Accountability, as an essential element of the international criminal justice system, should not only reflect a desire for justice, but should also meet the important objective of reconciliation as part of post-conflict peacebuilding.

It was also necessary, he went on to say, that the international justice system be supplemented by substantial post-conflict economic assistance and social rehabilitation. It was absolutely necessary that sufficient resources be made available for building institutions and State structures. Resources for the work of the international justice system alone would not suffice. Further, the rule of law should be strengthened at the international level by avoiding selectivity, partiality and double standards, as well as by freeing the international criminal justice system from the clutches of political considerations.

CHRISTIAN WENAWESER (Lichtenstein), emphasizing a victim-centric approach to the development of peace and justice, said that reconciliation would not be possible when perpetrators of the most heinous crimes still lived side by side with their victims. It was unacceptable that the General Assembly President had chosen not to give voice to some of the victims and groups such as the Mothers of Srebrenica during the debate. He then addressed the strides made in the last two decades by the international criminal justice system, noting that the fact there was no longer impunity for the most serious crimes reflected how the United Nations did not condone amnesty. Recognizing the primary role for national jurisdiction in war crimes, international courts had a role to play only when national courts were unable to ensure justice.

The groundbreaking tribunals of the last two decades had not been ideal, he said, and history would judge them. Challenges persisted, such as a lack of cooperation, including on the part of States parties,

with the Court, particularly in the area of arrest. Furthermore, States parties had an obligation to enhance the understanding of the Court and not merely treat it as an institution in The Hague, but an entity whose work actually had something to do with the work at the United Nations. He called on the Security Council to examine its follow-up methods, constituency and other aspects of referrals as it was difficult to explain why certain situations were referred to the Court while others of similar seriousness were not.

He then urged the Security Council to refer Syria to the Court. In the absence of the Council's willingness to do so, the Syrian opposition could refer the situation to the Court under article 12, paragraph 3 of the Rome Statute. Lastly, he said the United Nations Secretariat should continue to cooperate with the Court and to consistently apply its policy of avoiding non-essential contacts with Court inductees.

FERIT HOXHA ([Albania](#)) said he deplored the whole manner in which the debate had been shaped, and expressed strong reservations about the real motives for holding it, as its aim seemed to be finger-pointing at the International Criminal Tribunal for the Former Yugoslavia (ICTY), denigrate the Tribunal's work, diminish its legacy and question its verdicts. What had been heard in the statement by the President of Serbia, he said, was an assortment of accusations, first against everything the ICTY had done and then against almost every non-Serb in the region, "appalling and proof of what this event is all about".

It was difficult, he continued, to recall any similar United Nations event that had been organized with such lack of transparency. The list of invitees, unknown until the last day, was questionable, but more regrettably, the voice of the victims had been excluded. Addressing the nature of the panels as "ICTY bashing", he recalled one of the rare balanced scholars of the event, Janine Clark, who spoke about the alleged organ-trafficking issue — an issue that the ICTY had investigated and had found no proof, no witnesses, no bodies and no leads.

For over two decades, he said, the ICTY had served the Balkans as an impartial legal body to deliver justice and end impunity, as well as be a record-keeper of unspeakable atrocities of war. Acknowledging the Tribunal's contribution to peace and reconciliation, he stressed that "we owe to the ICTY, as well as to all the tribunals, respect — respect for both safeguarding impartiality and for delivering justice". Putting the merits of the Tribunal into question in pursuit of whatever specific political agenda, was, at best, an untruthful assessment of the Tribunal's work, and at worst, a great threat to the ongoing reconciliation process in the region.

SEA KOSAL ([Cambodia](#)) said that justice-related issues had attracted greater attention on the international agenda as a result of the growing demand for accountability. He then pointed out that from 1975 to 1979, in Cambodia, "not a single person was spared from the ravages brought upon our countries during the Khmer Rouge regime". The socioeconomic structure, education and health-care systems, and all cultural and religious institutions had been destroyed in one of the worst human tragedies of the twentieth century, and in terms of percentages, of all genocide in modern history. To bring justice to the victims, his Government had requested United Nations assistance to establish a hybrid tribunal in 1997 to try senior leaders and those most responsible for those crimes. He detailed for the meeting the "substantial progress" achieved by the Extraordinary Chambers in the Court of Cambodia since it became operational in 2006.

It was fundamental, he stated, to explore how international justice could better interact with domestic justice systems. While domestic action was needed to ensure the sustainability of judicial progress, the parameters of what international justice could realistically achieve should be carefully examined, including its impact on perpetrators and victims. A proper balance should be sought between approaches to justice and to peace and stability. The success of the Extraordinary Chambers had contributed to the rule of law legacy and capacity-building within the Cambodian judiciary, and it had inspired confidence in the domestic judicial system and public outreach. It had also promoted collaboration between international and national staff. He reiterated his Government's full commitment to ending impunity for the atrocities perpetrated against the Cambodian people, as well as its firm commitment to working closely with the United Nations and all stakeholders to ensure that the Extraordinary Chamber achieved its goals.

CLAUDIO GUILLERMO ROSSELL ARCE ([Bolivia](#)) expressed concern with certain challenges

facing the International Criminal Court, including a lack of political will and compliance of certain countries with arrest warrants. The judicial mechanism of the international criminal system would have to complement its efforts through cooperation between national and international bodies. It was essential that the international criminal system ensured the right of reparation to the largest number of victims. He called for increasing the trust fund of the victims to better respond to their needs.

Principal bodies, such as the General Assembly and Security Council, he said, must act as instruments to achieve more concrete goals and contribute to international peace and security. Ratification of the Rome Statute was truly crucial for the universality of its implementation. He questioned whether the system was one of privilege, which allowed States to vote on but not be subject to judicial bodies. It was essential to strengthen the links and relationships among countries. He emphasized the importance of the international criminal justice to reconciliation and to provide “all the necessary means to all necessary ends”, and stressed the need to ensure that civilians were protected from being caught up in the violence of war crimes.

ALFREDO FERNANDO TORO-CARNEVALI ( Venezuela) said that the international justice issue had to be dealt with openly and inclusively. The principles which inspired the Nuremberg Trials were fundamental in establishing international criminal law. The ideal of international law had been reactivated in the last decade of the 1990s with the Tribunals of former Yugoslavia and Rwanda. Venezuela acknowledged the important work being undertaken by institutions in trialling those guilty of war crimes and crimes against humanity. At the same time, the role of the international criminal justice system, especially the International Criminal Court, could be improved.

It was, he said, essential for the Court to achieve truth commissions in such a way that national reconciliation, which allowed societies to make headway towards unity, was ensured at the same time that it prevented impunity. Processes of national reconciliation that included fact-finding methods and administration of justice were positive factors in the achievement of peace, as long as those methods were exercised by standards of independence and impartiality. Political circumstances should also be taken into account. In 2003, Afghanistan signed the Rome Statute. Yet, what had happened there had not warranted a single investigation. However, in Libya, the same prosecutors jumped at trialling the political leaders of that country in the interest of great Western Powers. He warned against all forms of selective justice, which undermined the needs of a truly objective international system, devoid of political interests.

ALEXANDRA LENNOX-MARWICK ( New Zealand) said that, although the discussion was largely focussed on international mechanisms, it was important not to lose sight that, ultimately, it was States that had the primary responsibility to prosecute serious crimes committed in their territory or by their nationals. That commitment required appropriate national laws. International criminal justice mechanisms existed as a complementary and necessary safety net of accountability. In that regard, accountability mechanisms played an immensely important role in rebuilding communities after the destruction wrought by atrocities.

Over the last two decades, she continued, there had been great advances in the field of international criminal justice, most notably with the creation of the International Criminal Court. Even so, there were still considerable challenges, such as ensuring that efforts to promote accountability were consistent; honouring commitments by supporting international courts and ad hoc tribunals through to the conclusion of their mandates; and carefully judging the timing of the application of international criminal justice initiatives. “We are confident that working together, with pragmatism and fresh thinking, we can tackle these challenges and build ever-more robust systems,” she said. In that regard, it was essential for the global community to remain focused on ensuring a system of international criminal justice that, “without fear or favour”, served and brought justice to the victims of atrocities.

DAFFA-ALLA ELHAG ALI OSMAN ( Sudan) said that a number of facts had been raised relating to the international tribunals, which the United Nations must face, including expenses and the need to grant a greater role for national mechanisms. In addition, a number of delegations had criticized the conclusions of those courts and had expressed reservations, the most important being that the courts depended on subjective interpretations based on presumptions out of step with justice. He said that his country refused

the extension of universal jurisdiction as a tool to be used by one State against another, stressing that the principle should be limited to the narrowest possible range, including only the most serious crimes agreed upon internationally.

The principles underlying participation in the Rome Conference, he said, were not disputed. "We all support the achievement of justice as long as that preserves the sovereignty of people and their will," he stated. However, that had not been taken into account in current practice. The citizens of a certain country should not be excluded from being brought to justice because of the political weight of that State. There were legitimate questions to be answered including, among others, why most of the cases before the International Criminal Court were from Africa. He also questioned how the Security Council could be allowed to determine the fate of people at a time when some of its permanent members endeavoured to exploit their veto prerogative in order to punish some, and "turn a blind eye" to others.

Linking a political body with a judicial body undoubtedly led to the politicization of justice, he continued. It was, therefore, crucial to emphasize the importance of national and regional mechanisms in bringing about reconciliation in a way that promoted the stability and prosperity of peoples. He warned that the United Nations should not be drawn into the quagmire of international political conflicts. Instead, he called for the achievement of justice without selectivity or double standards and urged that the global criminal justice system should serve the entire international community, and not only narrow interest.

PATRICIO TROYA ( Ecuador ) said that it was a State's primary responsibility to prosecute the most serious crimes. The International Criminal Court was the only means through which victims of serious crimes that came under its jurisdiction could express their voices. The Court had been able to make important progress by prosecuting violations of human rights, as shown by the Thomas Lubanga case. Ecuador, therefore, called for maximum cooperation on the part of the international community so that the Court could fulfil its mandate. It was against any type of political interference in the work of the Court; in cases in which the Security Council had referred situations to the prosecutor, the Council must act without political bias or double standards that were not justifiable under any circumstances.

In addition, he said, the cases before the Court continued to create a financial burden, while there was an unnecessary delay in complying with the stipulations of the Statute regarding finances. The Secretary-General and the General Assembly should take the necessary steps to include in the budget of the United Nations financial contributions to the budget of the Court. There should also be real international criminal justice, with jurisdiction to punish all the most heinous crimes; in that respect, he called for the operationalization of the crime against aggression by 2017.

REZA DEGHANI ( Iran ) said that because the international community recognized the need to establish international courts to prosecute and punish perpetrators of horrific international crimes, it was essential that the process remain neutral, independent, apolitical and avoid double standards. Complementarity was a fundamental legal principle that gave priority to internal justice systems which carried a greater weight as they were based on traditions and accepted practices. Through internal justice systems, rule of law could better prevail in society and crimes could be deterred, investigated, prosecuted and punished with a view to strengthen peace and order.

The crime of aggression was the "mother of all international crimes", and the manner in which the International Criminal Court tackled that issue could broadly affect the campaign against impunity. The first review conference of the Rome Statute was a great opportunity to develop an efficient legal system to deal with perpetrators of such crimes. However, that opportunity was lost due to the reluctance of some Security Council members. The review conference did manage to define the crime of aggression which was a step forward and a move that would serve as a reminder to States who employed force and threats of force against others that their deeds would not be left without strict responsibility. Questioning how the atrocities committed by Saddam Hussein and his sponsors during eight years of imposed war against Iran could go unpunished, he expressed concern that such a stance would likely send a "bad message" to those who had "vicious plans" to launch an aggressive attack in the region.

KOUSSAY AL-DAHAK ( [Syria](#)) underscored that the prime responsibility for a justice that was all inclusiveness and devoid of politicization, selectiveness, and double standards, rested with Member States. In his country at the moment, there was a need and obligation to extradite individuals who incited violence and promoted discord and strife. Every day, Syrians were dying and there was a need to “bring to book” the Heads of Governments of States who funded and provided weapons and trained and facilitated the passage of mercenaries in various parts of the world. The practices of these Governments targeted Syria’s infrastructure. Military equipment was being transferred from Libya into Syria with the knowledge of several Governments.

It was unacceptable, he said, that Syrians should be killed by weapons and bombs manufactured in Switzerland, which was the depository State of the Geneva Conventions. Addressing the comments made by the Liechtenstein delegation, he suggested that that delegation take into account the will of the Syrian people, and should address the process by which the so-called opposition Government had been formed — which did not represent the Syrian people or the Syrian opposition. That had been attested by the media and the social media.

Any discussion in the corridors of the United Nations should be done in line with the United Nations Charter, he stated. No people should accept a Government that had been manufactured abroad. Selective treatment of the events in his country demonstrated a double standard that prevailed in certain international fora and exploited the suffering of Syrian people, setting a dangerous precedence in international relations. He reiterated that all those who had the resolve of the Syrian people at heart call for the immediate halt of violence, a comprehensive national dialogue to allow Syrians to express themselves through a means of polling stations free of external influence.

PATRIZIO CIVILI, an observer of the [International Development Law Organization](#), said that long-lasting reconciliation should be locally based and predicated on justice for victims. Among other things, the full respect for the independence and impartiality of the International Criminal Court and the building of the national judiciary were indispensable elements of international criminal justice. Indeed, domestic systems needed to work effectively. All too often, international assistance for the rule of law focused on the security sector, resulting in national judicial systems being neglected.

That challenge, he went on to say, was especially evident in gender-based crimes, sexual slavery, trafficking and rape. In addition, cultural and social barriers, stigma and lack of awareness made women’s access to justice for gender-based crimes very difficult. Many laws inherently discriminated against women, and many judicial systems still did not treat gender-based crimes as an offense. Nevertheless, locally owned justice systems in line with international standards had proven to be the most effective path. States must take responsibility for strengthening the rule of law domestically; however, making the International Criminal Court’s complementarity system work effectively also remained important.

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