Security Council Open Debate on Security Council Open Debate on The Promotion and Strengthening of the Rule of Law in the Maintenance of International Peace and Security and the Role of the ICC, October 17th 2012, Security Council Chamber

Statement by Mr. Araud, *Permanent Mission of* France *to the United Nations*.

I associate myself with the statement that will be made by the observer of the European Union.

I would like to think Guatemala for having taken the initiative of organizing this debate.

We have heard, in the opening statements, how the International Criminal Court (ICC) has become an increasingly active player in the multilateral system. On 24 September, the General Assembly recognized, in its Declaration of the High-level Meeting of the General Assembly on the Rule of Law at the National and International Levels (General Assembly resolution 67/1), the central role of the ICC for all States. That is of course related to the growing number of States parties to the Rome Statute — 121 to date. It is interesting to see that the Court's work, which often targets very important persons, has not discouraged that trend towards universalization. The Court represents a guarantor of protection for all those who wish to definitively turn the page on atrocities. We welcome in that respect the announcements by Côte d'Ivoire and Haiti, who will soon be ratifying the Rome Statute. The signing of a partnership agreement between the International Organization of la Francophonie and the ICC will further enable such ratifications.

I would like to address the increasingly close and mature relations between the Security Council and the International Criminal Court. That is no surprise, as the ICC, a permanent court with a potentially global scope, is charged with intervening in times of conf lict. In that respect, the agendas of the two bodies overlap, whether on Afghanistan, the Democratic Republic of the Congo, Libya or Côte d'Ivoire.

The facts speak for themselves. The Office of Prosecutor Fatou Bensouda is carrying out preliminary studies, with enormous potential for prevention, in eight countries and on four continents. It is also carrying out investigations in seven countries. Seven of the countries concerned have been discussed by the Council during the past two years.

Nobody expected, however, such a swift evolution in the relationship between the Council and the ICC. It is worth recalling how it happened. Resolution 1593 (2005), on Darfur, contained the first referral by the Council to the Court. That was followed by the memorandum of understanding giving the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo a mandate to support the arrest of persons sought by the ICC upon the request of the Government. Presidential statements increasingly referred to the ICC, as did thematic resolutions, including those on the protection of civilians, children and armed conf lict, sexual violence, and the rule of law. There have been increasingly in-depth discussions between the Special Representative of the Secretary- General for Children and Armed Conf lict and the ICC. Then there was resolution 1970 (2011), adopted on 26 February 2011 under Chapter VII of the Charter, referring the situation in Libya to the ICC. That was a historic moment — a text adopted unanimously by the 15 members of the Council, including those that had not acceded to the Rome Statute. Lastly, there have been increasing references to the ICC in geographical resolutions, including the self-referral by the Offices of the Prosecutor in Côte d'Ivoire and Kenya and States' referrals, the most recent being resolution 2071 (2012), on Mali.

Besides those documents, which now represent in themselves a significant body of law, both the Council and its subsidiary organs have effectively dealt with requests for cooperation from the ICC.

I am thinking of the lifting of the travel ban on Thomas Lubanga and, more recently, Laurent Gbagbo by the sanctions committees so that they could be transferred to The Hague.

Of course, there are disagreements and gaps. The first and most obvious is the lack of referral to the Court of a situation like that in Syria. As France declared in March 2012 to the Human Rights Council, the extent and nature of the atrocities committed in Syria and the apparent lack of willingness of the Syrian authorities to prosecute the perpetrators of those crimes warrant a Council referral to the Prosecutor under article 13 (b) of the Statute. Silence has never served peace or justice. The inability of the Council to demonstrate its unity against mass crimes is, rather, an incitement to the Syrian authorities to pursue the path of violence.

I take this opportunity to recall that the French Minister for Foreign Affairs, Mr. Laurent Fabius, has called for the establishment of a code of conduct between the permanent members of the Council by which they would undertake collectively not to use the veto in situations where massive crimes are committed.

The second gap, which is more insidious, is the lack of monitoring by the Council of its own resolutions. It is not right that the Council, when it has made a referral to the Court, should fail to guarantee consistent political support for the Court and to react to instances of non-cooperation to which the Court draws our attention. It is not right for the Council to fail to apply the strict guidelines issued by the office of Ms. Bensouda on contacts with the accused.

Today's debate therefore offers an opportunity to move forward and think about concrete ways to make the interaction between the Council and the Court more efficient. How do we get more consistency and follow up, in particular with respect to arrests and instances of non-cooperation? How do we get more dialogue?
First of all, we must contribute more to the preventive role of the Court. That is what the Secretary General is doing when he recalls that justice must follow its course in all situations that have been referred to the Court and when he asks his representatives not to meet persons indicted by the ICC. That is what his Special Representatives, Ms. Zerrougui and Ms. Bangura, do when they refer to prosecutions against the perpetrators of child recruitment and sexual violence. If we really want to deter criminals and implement prevention, we must be more of a sounding board for the activities of the International Criminal Court.

Secondly, in the context of the sanctions regime, we could consider not only a more automatic listing of individuals who are the subject of an arrest warrant by the International Criminal Court, but also an exemption clause of the travel ban in cases transfer of an accused to The Hague. Let us consider it.

Finally, in the area of cooperation, the subjects are varied and range from requests for the freezing of assets to issues related to the planning of arrests. The Prosecutor and the President of the Assembly of States Parties, Ambassador Intelmann, whose presence in the Chamber I welcome today, have repeatedly called our attention to those issues. The representative of South Africa underscored in his statement the importance of dealing with non-cooperation cases.

We could no doubt better organize our dialogue in the informal working group on the model of what we have done in the past with the ad hoc tribunals. We could consider a change in the mandate of the informal working group on the ad hoc tribunals to give it a broader mandate.