

*Address by His Excellency Ambassador Gilberto Vergne Saboia
Head of the Delegation of Brazil
To the V Session of the Assembly of States Parties
To the Rome Statute of the International Criminal Court
(The Hague, 24 November, 2006)*

(check against delivery)

Mr. President,

May I begin by congratulating you for the efficient leadership with which you have discharged your delicate task. Your colleagues in the Bureau of the Assembly of States Parties also deserve our gratitude for contributing for the success in conducting the intersessional work and the preparation of the ASP's current Session. The presence in The Hague of two Vice-Presidents has improved the flow of information and the coordination of work between New York and the seat of the ICC, together with the role played by the two Working Groups.

I wish also to express appreciation for the statements made at the opening of the current Session by Judge Philippe Kirsch, President of the ICC, the Prosecutor and the Registrar.

Mr. President,

It has been a long and arduous journey since the adoption, in 1998, and entry into force, in 2002, of the Rome Statute of the ICC. Today, 102 States are gathered around the principle that impunity must not remain unchecked and that a system of international justice is possible. In the last four years the International Criminal Court has steadily established itself in The Hague, started investigations, issued arrest warrants, and judicial proceedings are under way. This testifies to the vitality of this institution, which has now reached a stage of full functionality and has become a reference worldwide. While all these achievements have been possible only due to the support provided by States Parties, much work remains to be done, and is foreseen for the immediate future, that is equally dependent on the continued commitment to the ideals of the Statute and on the concrete, practical involvement of the international community with the activities of the Court. Brazil, as an early supporter of the ICC and its mandate, wishes to take this opportunity to, once again, reaffirm that commitment.

My Government considers the International Criminal Court, and the One Court principle it embodies, key elements in the emergence of a system of international justice, deemed by Brazil as highly necessary in today's world. Genocide, crimes against humanity and war crimes are offenses of international concern which still shame mankind at an age when we would like to believe ourselves wiser than our ancestors. In order to win the fight against impunity and bring these atrocities to an end, the ICC and its mandate are our best tools. The fact that the Office of the Prosecutor presently carries out investigations into three different situations – Darfur, North of Uganda and Congo/Ituri – and that five arrest warrants were issued in one, and that proceedings are already taking place in the Preliminary Chamber in another, are evidences not only of the Court's efficacy but of the essential need we have of it. Other situations and cases already being planned for will, regrettably, prove this point even further. On an optimistic note, however, we take heart in President Kirsch's comment, during his Report to the General Assembly of the United Nations, indicating that, according to several sources, the International Criminal Court has had a preemptive impact against possible war crimes, mass violations of human rights and violations of humanitarian law in different parts of the world.

Peace and Justice have always been two of the most difficult pursuits of mankind. The establishment of the Court has brought forth a new and decisive instrument for the defense of human rights and the promotion of the rule of law, taking us closer to the achievement of those values. The desirable conjunction of those two goals may, however, lead us into difficult contradictions and dilemmas. In this respect, the challenge for the ICC, assisted by the States Parties, will be to find a balance between the concepts of Peace and Justice that will not jeopardize basic principles of the Rome Statute. On one hand, perpetrators of serious crimes defined in the Statute must no longer be able to expect impunity. On the other, the mandate of the Court should be a contribution towards Peace. Facing this hard challenge, we may, however, find comfort in the fact that the provisions of the Statute offer adequate and sufficient guarantees against any possible abuses and that the Court will not be used to pursue illegitimate political objectives.

Among those safeguards lies the principle of complementarity. The Court is complementary to national systems. Under the principle of complementarity, only situations that have not been the object of due legal process by national authorities are admissible before the Court, which may intervene only when a national State has proved itself unable or unwilling to conduct such process in a genuine manner. This principle makes interdependence between the Court and States a requirement. If I may quote the Prosecutor himself: "As a consequence of complementarity, the number of cases that reach the Court should not be a measure of its efficiency. On the contrary, the absence of trials before this Court, as a consequence of the regular functioning of national institutions, would be a major success." The

International Criminal Court should, therefore, be considered a last resort, after national courts have failed. And States will succeed in this responsibility through the implementation of the Rome Statute in their national legislations.

Mr. President,

In the view of the Brazilian Government, the spirit of partnership between the International Criminal Court and the Security Council of the United Nations is as important as it is desirable. In this view, the referral of the Darfur situation by the Council was a major step. Brazil has on several occasions expressed the importance it attributes to the role of Justice in establishing peace and ending violence in that region. As important, nevertheless, is the preservation of the integrity of the Court's mandate, as well as of its jurisdiction, and certain aspects of the Council's referral Resolution on Darfur have raised concern in that respect. The spirit of cooperation between the Council and the Court might, by the same token, be extended to financial matters: cost sharing in the investigations of the Darfur situation, for example, would have been an encouraging signal. Nevertheless, we must commend the tireless efforts of the Office of the Prosecutor that has managed to carry out missions to Khartoum and to several neighbouring countries, facing difficult conditions on the ground which have jeopardized investigations. Brazil deeply regrets the persistence of the conflict and encourages Sudan to continue its cooperation with the Court.

The ability of the ICC to fulfill the high functions mandated to it by the States Parties depends upon the support and cooperation made available to the Court not only by those same States, but by the international community as a whole. The ICC needs the effective support and cooperation of governments, as well as that of international and regional organizations, be it on high political levels, be it through the assistance in its day-to-day tasks and actions, and, above all, in the fulfillment of its judicial decisions.

Our common international endeavor to uphold human rights, to promote international justice and the rule of law worldwide can only be strengthened through the expansion of the universality of the Rome Statute and of the ICC. Brazil, therefore, welcomes those States that have ratified the Statute since the previous Session of the Assembly of States Parties – Saint Kitts and Nevis and Comoros - and encourages all States that have not yet become parties to the Statute to ratify or accede to it.

Turning to more internal matters, it has been encouraging to witness and to collaborate in the progress that has been made on a number of issues that touch directly on the functioning of the Court. If the Court is an important tool in the fight against impunity, this tool must be kept in good order so as to be effective. The good work so far accomplished by the subsidiary organs of the Bureau, the Working Groups of The Hague and New York, tackling difficult issues, such as the Strategic Plan, Premises of the Court, the setting up of the New York Office, the Headquarters Agreement, bears proof of the commitment of States to the cause of the Court and of their fruitful collaboration with the Court and with the Host Country. That notwithstanding, much work still remains to be done in those same areas and that is our job in this Assembly.

Among other tasks assigned to this Assembly, one of a more general scope, and in that very sense, of the utmost importance, is the continuation of the work on the complex issue of the definition of the crime of aggression, as mandated by the Rome Statute in its Article 5. This work requires careful consideration of controversial topics, such as what boundaries are to be drawn onto the concept of aggression itself and the conditions under which the Court shall exercise jurisdiction with respect to this crime. A good basis for this project has been laid out by the General Assembly of the United Nations, in 1974, in its Resolution 3314 (XXIX). Building on this foundation, Brazil welcomes the efforts so far undertaken, particularly during the last meeting of the Working Group, last June, at the "Woodrow Wilson School" of Princeton University. Much yet remains to be done, during this Assembly and, in a more intensive way, at the reconvened Session next January. The results of all this work will represent a major contribution not only in the context of the Rome Statute but in the realm of International Law as a whole.

Another important subject for the future of the ICC is the Review of the Rome Statute. Article 123 stipulates that seven years after its entry into force, the Secretary-General of the United Nations shall convene a Review Conference to consider any amendments to the Statute. Many grave matters will be at stake then, including the list of crimes within the jurisdiction of the Court - hence the importance and urgency, just mentioned, of the work on the crime of aggression. The preparations for the Review Conference will, therefore, require careful and thorough attention by the Assembly of States Parties in the few years to come. By the same token, this will be an opportunity for renewal and progress. Brazil wishes to commit itself wholeheartedly to this project.

This same level of commitment, Brazil wishes to apply to the day-to-day activities that assure the proper functioning of the Court in its entire complexity. Such full participation will only be achieved with full implementation of the principle of equitable geographical representation in the Court's cadre. In the Assembly of States Parties, Brazil seeks to continue its engagement, both in the subsidiary organs of the Bureau and in the Bureau itself.

Mr. President, Ladies and Gentlemen, Dear Colleagues,

Thank you.