



Permanent Mission of South Africa
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Statements and Speeches

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**Statement by Mr. Sabelo Sivuyile Maqungo, on behalf of African Member States to the International Criminal Court Statute before the General Assembly
New York, 9 October 2006 (Agenda Item 72)**

Madam President,

We wish to convey our gratitude to the President of the International Criminal Court for his Statement to this General Assembly. We welcome the report of the Secretary-General on the International Criminal Court, which elucidates the developments at the International Criminal Court since we last met. We congratulate Saint Kitts and Nevis and the Comoros for their ratification of the Statute of the International Criminal Court and encourage other States to take a stand against impunity by ratifying the ICC Statute.

Madam President,

The 28 African States that have ratified the ICC Statute continue to be fully supportive of the work of the International Criminal Court. We as developing countries are acutely aware of the importance of strengthening multilateralism and by extension multilateral institutions such as the ICC as a means to advance our common goals. The International Criminal Court has already in its short existence proved its indispensable role in the multilateral arena in ensuring the respect for the rule of law and contributing to the end of impunity for the most serious international crimes such as genocide, crimes against humanity and war crimes. We welcome the cooperation extended by the ICC to the Special Court of Sierra Leone with regard to the Trial of Mr. Charles Taylor. We commit to continue to ensure that the ICC has the resources to carry out its responsibility by doing our best to pay our assessed contributions on time and in full and generally cooperating with the Court.

Madam President,

The horrors of crimes against humanity committed in the former Yugoslavia, Sierra Leone and the genocide committed in Rwanda brought to the fore the sad fact that sometimes national justice systems are just not enough to deter or prosecute the most serious crimes to the international community and therefore, there is a need for the international community to augment these national justice systems when they are unable or unwilling to act. Consequently, ad hoc tribunals were established to deal with the need for justice arising from the international crimes committed in the former Yugoslavia, Rwanda and Sierra Leone respectively. The establishment of the ad hoc tribunals taught us however that their use was limited to enforcing retributive justice and did little to deter the commission of crimes. It was from these lessons that the ICC was then established so that it may serve as both a deterrent and a means of ending impunity. We take this opportunity to again encourage the Court to make plans for holding hearings in the

area where the crimes have been committed as this would enhance the deterrent effect of the Court and justice will be seen to be done.

We commend the United Nations and in particular the Secretary-General for the support given to the establishment of the international criminal court, consistent with its own, purpose, elaborated in its Charter "to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained." The Court continues to be in need of the United Nations' support and specifically the Liaison Office of the ICC that is now being established in New York. We request the United Nations to assist the Liaison Office of the ICC in its efforts to establish itself in New York within the United Nations Headquarters.

Madam President,

Let us now turn to the vexing debate on the role of the Court in peace processes. To understand the role of the Court we have to look to the Statute establishing it. In establishing the International Criminal Court States deliberately chose to make the Court complementary to national justice systems and not concurrent, as was the case with the ad hoc Tribunals. Furthermore, States decided that the Court will not be vested with the means to enforce its decisions but would have to rely upon States for enforcing arrests and imprisonment. The result of that architecture is that the Court is only an effective judiciary organ but operationally very dependent upon the cooperation it receives from States. Therefore the Court and States in a complementary relationship constitute the international justice system that is the International Criminal Court. The report of the Secretary-General mentions that there are three situations before the International Criminal Court, namely, Democratic Republic of the Congo, Uganda, and Darfur, Sudan. The ICC is involved in these areas on the basis of the invitation of the States concerned or on the basis of a referral by the United Nations Security Council and not because it imposed itself on the States. We fully support the response of the International Criminal Court to the legitimate invitation by the government of the Democratic Republic of the Congo and the government of Uganda respectively, who have requested the Court's assistance in ending impunity due to their national systems being unable on their own to investigate and prosecute the international crimes committed in their territory. Furthermore, in terms of the authority given to it under the ICC Statute, the United Nations Security Council referred a situation to the International Criminal Court, namely, Darfur in Sudan for investigation and prosecution. The Court has in accordance with the Statute binding upon it and its member States duly responded also to this referral. We remain however cognisant that notwithstanding the Court's positive response to the referrals, it shall not be able to prosecute anybody until the States concerned deliver the individuals indicted to the Court. Therefore, the Court remains a tool of primarily of the States concerned consistent with the manner in which it was intended in its Statute.

Madam President,

In our scrutiny of the building blocks of the ICC, it seems to us that the Court itself does not determine the role it plays in a peace process but rather it is States that determine the role of the Court. The Court is a tool of accountability that can be activated by States when they are of the view that accountability is necessary in a given situation. We are mindful that the Prosecutor of the ICC is authorised to initiate investigations on his own motion, we support the approach he has thus far taken to act only upon the basis of a referral from States rather than on the basis of his own initiative, particularly, at this early stage of the Court's existence. It is therefore up to those entities that activated the Court to deactivate it in accordance with its Statute on the basis of the complementarity rule at any time when accountability by the ICC is no longer a tool of their preference. We are confident that, consistent with the ICC Statute, the Court would defer to national justice systems when complementarity is appropriately invoked before the Court.

Madam President,

Let us now turn to the important area of the responsibility of State Parties to the ICC Statute and by extension the international organisations to which we belong. We take this opportunity here as 28 ratifying African States of the ICC to reiterate the call we made last year to the African Union to conclude a relationship agreement with the International Criminal Court in the same manner as the United Nations has done. The Constitutive Act of the African Union has recognised the need to deal with crimes against humanity, war crimes or genocide and therefore a cooperation mechanism with the Court would be consistent with the Principles of the AU. Furthermore, we call upon States and private donors to give support to the Victims Trust Fund of the Court in order to ameliorate the suffering of victims. It shall also be necessary that we make a list of the areas of cooperation that the ICC will need and establish mechanism of how we as States will extend to the Court such cooperation individually, jointly and through intergovernmental organisations.

Madam President, we wish to welcome the positive developments emanating from the United States, which has withdrawn the restrictions imposed upon States that have declined to sign the so called "article 98 agreements" granting immunity to US nationals and government employees from ICC jurisdiction. These developments place all States of goodwill on the same correct side of respect for the rule of law and open avenues for increased cooperation with the US in the area of strengthening international and national criminal justice systems.

Finally, Madam President, we wish to indicate our support of the decision by the International Criminal Court Assembly of State Parties to alternate its meetings between the Hague and New York and appeal to the United Nations to take all available steps to accommodate the sixth Assembly of State Parties of the ICC at the United Nations Headquarters in New York.

Thank You.