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THE PERMANENT MISSION OF SOUTH AFRICA TO THE UNITED NATIONS

STATEMENT BY H.E. AMBASSADOR KHIPHUSIZI J. JELE PERMANENT REPRESENTATIVE OF SOUTH AFRICA ON BEHALF OF MEMBER STATES OF THE SOUTHERN AFRICAN DEVELOPMENT COMMUNITY (SADC) BEFORE THE SIXTH COMMITTEE OF THE 52ND GENERAL ASSEMBLY, REGARDING AGENDA ITEM 150: ESTABLISHMENT OF AN INTERNATIONAL CRIMINAL COURT

NEW YORK - 21 OCTOBER 1997

(Check against delivery)

Mr. Chairman,

It gives me great pleasure to speak on agenda item 150, entitled "Establishment of an international criminal court" on behalf of the member States of the Southern African Development Community (SADC), which comprises: Angola, Botswana, the Democratic Republic of the Congo, Lesotho, Malawi, Mauritius, Mozambique, Namibia, the Seychelles, Swaziland, the United Republic of Tanzania, Zambia, Zimbabwe and South Africa.

After listening to the statements made by Heads of State and Ministers of Foreign Affairs during the general debate of the 52nd session of the General Assembly which took place from 22 September to 7 October 1997 as well as those made here this afternoon, we are convinced that the establishment of an international criminal court remains one of the most important items on the agenda of the United Nations.

Mr. Chairman,

The creation of a permanent international criminal court to try individuals accused of acts of genocide, war crimes and crimes against humanity has been on the agenda of the United Nations for almost fifty years. Unfortunately, the onset of the cold war relegated this idea to the background. With the end of the cold war, however, the idea has once more come strongly to the fore and over the last four years real progress has been made in bringing this lofty ideal to fruition. For their part, the Member States of the SADC have consistently advocated the early establishment of such a court during their active participation in both the Ad Hoc Committee and the Preparatory Committee on the Establishment of an ICC. We are convinced that the creation of such a permanent court will, besides meeting out punishment to the perpetrators of such heinous crimes, also act as a strong deterrent to their possible commission in the future. In order to foster a better understanding of the proposed court within our respective countries, a number of SADC consultative meetings were held over the last two years, during which time the possible implications and benefits which may arise as a result of the

establishment of such a court were considered. Moreover, these meetings have resulted in the consolidation of common positions amongst SADC States on some of the articles of the draft Statute. It is important to note that at these meetings, the contributions of all role players, including academics and non- governmental organizations, has been actively canvassed.

The last such meeting of SADC States was held in Pretoria from 11 to 14 September 1997 and culminated in the adoption of ten basic principles of consensus. The principles agreed upon were:

- 0_ Support for the early establishment of an international criminal court;
- 1_ The ICC should be effective, independent and impartial and should operate within the highest standards of international justice;
- 2_ The court should be complementary to national criminal justice systems in cases where such trial procedures may not be available or may be ineffective. Moreover, States should not attempt to shield the accused from justice;
- 3_ The ICC should be responsible, sensitive and give special consideration to victims, particularly women and children;
- 4_ The ICC should be unfettered by the veto of the Security Council;
- 5_ The independence of the prosecutor must be guaranteed by the Statute and should have the necessary powers to initiate investigations and prosecute ex-officials;
- 6_ The ICC must enjoy the maximum co-operation of all States, including non State Parties where possible;
- 7_ The court should have inherent jurisdiction over the crimes of genocide, crimes against humanity and serious violations of the laws and principles applicable in armed conflict. In addition, aggression should also be included within the jurisdiction of the court if consensus can be so reached;
- 8_ The opt-in mechanism ought to apply in respect of treaty based crimes; and finally
- 9_ Human rights must be fully respected in all aspects of the ICC Statute, particularly those relating to the rights of the accused and the right to a fair trial.

Whilst by no means intending to be an exhaustive list, the ten principles mentioned above are those which we hope to see included in the Statute of the court and are, in our view, essential to the effective establishment and functioning of such an international criminal court.

Mr. Chairman,

After noting the progress made by the Ad Hoc Committee and subsequently, the Preparatory Committee on the Establishment of an International Criminal Court, the General Assembly adopted, by consensus, resolution 51/207 of 17 December 1996 which, inter alia, decided that the Preparatory Committee should meet for a total period of nine weeks during 1997 and 1998 in order to complete the drafting of a widely acceptable consolidated text of a convention, to be submitted to the diplomatic

conference. More importantly, the resolution decided further that a diplomatic conference of plenipotentiaries shall be held in 1998, with a view to finalizing and adopting a convention on the establishment of an international criminal court.

Thus far, the Preparatory Committee on the Establishment of an ICC has met for only four of those nine weeks, but during that time much progress has been achieved. Work has been undertaken on topics such as the definitions of crimes, principles of criminal law, complementarity, as well as trigger mechanisms. Whilst we note that other topics require considerable discussion, we are confident that the Committee will be in a position to complete its mandate by the time the diplomatic conference is scheduled to begin. We cannot, therefore, agree with those who have indicated a preference for postponing the conference to a later date, since such postponement is in our view unnecessary and secondly, would result in a loss of momentum for this most important project.

As to the diplomatic conference itself, allow me once again to express, on behalf of all the members of the SADC, our sincere appreciation to the Government of Italy for offering to host the diplomatic conference in Rome during June and July 1998. We note that six weeks have been set aside for its duration. Bearing in mind the fact that the classic diplomatic conferences of the past have been of a similar duration, we are of the view that provided the necessary political will is present, the Statute of the court can be adopted at that time. In addition, whilst recognizing the obvious need for flexibility during the proceedings at the diplomatic conference, we do, however, wish to highlight the importance of the need to structure the debate in such a manner to ensure the optimal use of time by all delegates.

One of the goals in the establishment of such a court must be the universal adherence by all Member States to its Statute. For this reason, it is imperative that we encourage the widest participation possible at the diplomatic conference in Rome. We therefore welcome the decision by the Secretary-General, pursuant to General Assembly resolution 51/207 of 17 December 1996, to establish a Trust Fund for the participation of developing countries in the Preparatory Committee and in the diplomatic conference. We note further that seven Member States have made contributions to the Fund, which enabled 11 developing States to send representatives to meetings of the Preparatory Committee. We are convinced that more delegations would have made use of the Trust Fund if it had also been able to provide for cost of living expenses in attending these Preparatory Committee meetings. In view of the fact that the Diplomatic Conference will be taking place away from United Nations Headquarters, we appeal to all States to contribute generously to this Fund to ensure that delegations from all Member States can attend the conference.

Mr. Chairman,

We have reached an important stage in the history of the United Nations. A window of opportunity now exists to bring a permanent international criminal court into existence before the turn of the century. Member States must redouble their efforts to ensure the

diplomatic conference in Rome can complete its work successfully. Future generations will not look kindly upon us if we hesitate or fail in this task.

I thank you Mr. Chairman.