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**Statement of the Chinese Observer Delegation at the  
General Debate in the 16<sup>th</sup> Session of the Assembly of  
States Parties to the Rome Statue of the ICC**

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(New York, 7 December 2017)

Mr. Vice President,

It is a great honor to address this meeting on behalf of the Chinese observer delegation. The Chinese delegation would like to express our thanks to the president and the prosecutor of the International Criminal Court for their reports. I also wish to extend my congratulations to the newly elected president of the Assembly Mr. O-Gon Kwon, six judges of the Court and members of the Bureau.

Mr. Vice President,

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China has always supported law-based efforts to fight against and punish grave crimes that threaten international peace and security, and we expect that the International Criminal Court plays a constructive role in this regard. Since the establishment of the Court 15 years ago, the number of States Parties to the Rome Statute has increased to 123, relevant rules and regimes of the Court have been improved on a gradual basis, the number of situations and cases falling within its jurisdiction has been increasing continuously, and the international influence of the Court has also expanded. However, the Court's interpretation and application of important rules give rise to controversy from time to time, and the impartiality of the preliminary examination, investigation, prosecution and trial of the Court was subject to questioning on many occasions. In view of the difficulties in its cooperation with States, and the fact that some States Parties raised to withdraw from the Rome Statute, there is an urgent need for the Court to learn its lessons from these developments, and take concrete actions to enhance its authority and credibility. In

this connection, I would like to take this opportunity to make the following observations:

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First, the Court should take a balanced approach in advancing its values and policies. It is necessary for the Court to strike a balance between its two core values, namely, peace and justice. Justice should not be pursued at the expense of peace and reconciliation process in conflict areas. At the same time, as a product of the coordination of various legal systems, the Rome Statute is an embodiment of legal pluralism. By taking into full account the approaches of various legal systems in interpreting and applying the Rome Statute, it would be conducive for the Court to ensuring fair trial, and obtaining broader support and recognition.

Second, the Court should adhere to uniform and consistent application of the Rome Statute. The confidence of States Parties in the Court depends on the predictability and certainty in the application of the Rome Statute. It is our common expectation that the Court interprets and applies the Rome Statute in an objective and unified manner. This is the essence of the rule of law and any practice of “double standard” and “selective justice” is a

contravention to it. All States Parties shall be equal before the Rome Statute. The Court is required to apply the Rome Statute equally to all States and all case parties in dealing with both situations and cases, including preliminary examination, investigation, prosecution, trial and reparation. It is also essential for the Court to interpret and apply the Rome Statute and other relevant rules of international law integrally in all its Chambers and all cases based on consistent jurisprudence of international criminal justice.

Third, the Court should act in accordance with law in defining the relationship between the Rome Statute and rules of general international law. The Rome Statute shows respect to the application of rules of general international law. First of all, it regards general international law as an important source of applicable law of the Court. For instance, Article 10 of the Statute provides, “[n]othing in this part shall be interpreted as limiting or prejudicing in any way existing or developing rules of international law for purposes other than this Statute”; Article 21 stipulates, “[t]he Court shall apply, where appropriate, applicable

treaties and the principles and rules of international law". Secondly,

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on the relationship between the obligations under the Rome Statute and those under general international law, the Statute emphasizes that general international law shall not be violated. For instance, Article 98 provides that the Court may not proceed with a request of cooperation of a State which would require the requested State to act in contrary to its obligations vis-à-vis a third state under international law or a particular treaty. It is important for the Court to strictly follow the rules set out in the Rome Statute in handling the relationship between the Rome Statute and general international law.

Regrettably, this is not the case in the past judicial practice of the Court. For instance, the Court seems to have put one-sided emphasis on the "irrelevance of official capacity" in Article 27, but ignored or erroneously interpreted and applied the rules of customary international law on the immunity of heads of State which is actually confirmed in Article 98 of the Statute. This has triggered extensive controversy. We noticed that the Court pointed out in a decision issued in July this year that no rules of customary

international law could be identified to exclude the immunity of heads of State. It remains to be seen whether this is a correction of the Court's previous decisions which held that the Rome Statute precludes the rules of general international law on the immunity of heads of State. In this respect, China believes that the Assembly can consider designating it as an agenda item for discussion with a view to achieving consensus.

Fourth, the Assembly of States Parties should address the issue of the Amendment on the Crime of Aggression cautiously. For the moment, although the objective conditions for States Parties to decide on the exercise of jurisdiction over the crime of aggression have been met, the controversies triggered by the Amendment have not been settled. On the one hand, it involves the relationship between the Court and the Security Council. The exclusive power of the Security Council to determine the existence of the act of aggression is a cornerstone of the collective security system, and shall not be diminished except with an amendment to the UN Charter. The Amendment on the Crime of Aggression, which allows the Prosecutor to investigate crimes of aggression without a

determination by the Security Council on the existence of the act of aggression, will practically undermine the integrity and authority of the UN Charter as the basis of international legal order. The Court and the Security Council share responsibilities and complement each other in preventing and punishing grave crimes which threaten international peace and security. We look forward to forging a partnership featuring win-win cooperation between the Court and the Security Council based on mutual respect, which is in the interest of both sides.

On the other hand, with respect to the jurisdiction of the Court, quite a few States, including China, are of the view that, for a State that has not accepted the Amendment or is not a Party to the Rome Statute, the Court should not exercise jurisdiction over acts of aggression committed by that state's nationals or on its territory. That is requisite for international law as "state-based consent law", and is in line with rules of international treaty law and the intention of negotiating states of the Statute and the Amendment.

China has noticed that, in accordance with the resolution adopted

in the last session of the Assembly of States Parties, the facilitation aiming at clarifying certain controversial issues, such as the scope of jurisdiction on the crime of aggression, was held in New York. Regrettably, in contrast to the openness and transparency of the negotiation of the Kampala Amendment, non-States Parties were excluded from the facilitation. China believes that the “activation” of the jurisdiction over the crime of aggression should be based on broad consensus. Haste does not bring success. The premature activation of the Court’s exercise of jurisdiction over the crime of aggression will not be beneficial for the universality of the Statute or the authority of the Court.

Fifth, the Assembly of States Parties should ensure the right of Observer States to participate in meetings according to established rules. China has noticed that the Bureau adopted a decision in October this year, confirming the rights of Observer States to participate in the Assembly of States Parties, plenary debates, formal meetings and informal consultations held by working groups and other subsidiary bodies with general membership. In fact, these rights have not only been written into the Rome Statute



and the Rules of Procedure of the Assembly of States Parties, but also been confirmed in the decision adopted in the first session of the Assembly of States Parties. However, it has not been effectively implemented in practice. The recent decision of the Bureau should have put right the relevant practice, but it seems that it over-emphasizes the exception that the subsidiary bodies are entitled to exclude Observer States while playing down the principle that Observer States are entitled to participate in the debates, meetings and consultations.

We believe that a sound Assembly of States Parties of the Court should be a mechanism of openness, inclusiveness and transparency. The imposed limitation on the participation of Observer States is unnecessary and would be adverse to the long-term development of the Court. China hopes that the decision could be observed and implemented in good faith and in a complete manner in the future.

Mr. Vice President,

The establishment of an independent, just, effective and universal international criminal judicial institution is the desire of the international community, including China. We hope that the Court will play an active role to achieve this goal, be more prudent and pragmatic in its work, and make its contribution to the fight against grave crimes and the promotion of rule of law and international peace and security.

Thank you, Mr. President.