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**8ème session de l'Assemblée des États parties
au Statut de Rome de la Cour pénale internationale**

18 - 26 novembre 2009

Débat général

Déclaration de

l'Ambassadeur Jürg Lindenmann

Chef de la délégation suisse, Vice-Directeur de la Direction du droit international public,
Département fédéral des affaires étrangères

La Haye, le 19 novembre 2009

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**8th session of the Assembly of States Parties
to the Rome Statute of the International Criminal Court**

18 - 26 November 2009

General Debate

Statement by

Ambassador Jürg Lindenmann

Head of the Swiss Delegation, Vice-Director of the Directorate for International Law,
Federal Department of Foreign Affairs

The Hague, 19 November 2009

Mr President,

2009 has been an important year for the Court, as it marked the opening of the first trial in its history and the confirmation of charges in two other cases. Switzerland is pleased to note that the Court is now entering a new phase of its existence. The significant progress observed in the course of the year is the fruit not only of the unremitting work of the Court and of its staff but also of the cooperation that has taken place between the Court and certain States. As we know only too well, the success of the Court and of its activities depends to a very great extent on the cooperation of States.

Nevertheless, we can only but express our concern about the eight arrest warrants still awaiting execution, some of which date back several years. My delegation wishes to emphasise that the full cooperation with the Court is part of the international obligations incumbent upon States pursuant to the Rome Statute and of those which derive from the United Nations Charter. It is therefore our responsibility as States to fulfil our obligations and thus to enable the Court to fulfil the mandate which we have entrusted to it.

Mr President,

The Court operates in conditions that are unique to an international judicial institution. It performs its activities in an international context which by its very nature is highly political. This is a difficulty with which national jurisdictions are not confronted, and one which the Court has faced with assurance in the first years of its existence. Since its establishment, the Court has several times examined and ruled on some highly sensitive matters. The decisions that it has taken in these first years of its existence bear witness, in our view, to the very high standards of fair trial that it sets as well as to its independence and to its impartiality. The Court has demonstrated that it is not influenced by the various pressures to which it is subjected daily and that it intends to apply the law as its mandate demands – no more and no less. This is the very role of justice: make decisions based on the law and remain steadfast in the face of protests of those who wish to control it. Justice will *displease* all those who have committed and who continue to commit abuses of power. Judging by certain reproaches made recently, the Court is beginning to have precisely this effect. In our view this is a sign that justice is being done. My country is pleased with this development, which in our view reflects the aspirations of the States present in Rome in 1998. In the light of these observations, Switzerland is convinced that the Court is playing and will continue to play an invaluable role in the fight against impunity and the prevention of crimes, battle in which we are all involved and to which we are all committed.

Mr President,

Despite this very positive development, several more pessimistic views have been expressed in the past year. Some have criticised an alleged selectivity of the situations and of the cases that are being brought before the Court today. Why this situation rather than another? Why this person rather than another? In this context, my delegation wishes to stress that the Court has to ensure that it is in a position to explain not only what it is doing but also what it is not doing. Moreover, we wish to stress that it is normal, and indeed desirable, to criticise an institution of such international importance, *provided that* the criticism is constructive and serves the purpose of making the institution even better,

even more effective and more legitimate. However, we are concerned that in certain instances the allegation of selectivity is merely a *pretext* designed to undermine the credibility of the Court. If this is the purpose of the criticism, those voicing it must seriously ask themselves if they wish to go down in history as those who defended the perpetrators of the most serious crimes rather than as those who defended the victims of these crimes.

In response to the constructive criticisms of selectivity, my delegation wishes to stress that a certain degree of selectivity will remain inevitable as long as two essential conditions for the success of the system established in Rome remain unfulfilled. The first condition is the universality of membership of the Rome Statute. The second is the effectiveness of the principle of complementarity. When all States will have adopted the Statute and when nobody will be able to escape from national justice on any pretext whatever, the question of the selectivity of the situation or of the person will no longer arise. As in other cases, it is the responsibility of the States parties to work for universal membership of the Statute and to facilitate its implementation within national judicial systems.

Mr President,

Today we face another responsibility. That of ensuring the success of the 2010 Review Conference in Kampala. This conference will be a very important event for the Court and for its future activities. We, the States, bear the heavy responsibility of ensuring that possible amendments to the Rome Statute do not in any way harm the Court or affect our common goals, which are the elimination of impunity and the prevention of the most serious crimes throughout the world. This responsibility is perhaps even greater than that which we faced more than ten years ago in Rome. This time our decisions will have a direct impact on the system and on the institution that we have created. The eighth session of the Assembly of States parties is therefore particularly important because it is the last formal meeting before this event. Our preparatory work for this first conference started during the first session of the Assembly of States parties in 2002 and it reaches its culminating point today. It is more essential than ever that we discuss the points to be dealt with in Kampala, in order to ensure that ideal conditions for fruitful negotiations are created. During our discussions, it is imperative that we maintain the Rome *acquis* and that we do not lose sight of the goals that guided us at the time that the Statute was being drafted. We owe this to the Court, which has shown in the first years of its existence that it is equal to the task that has been entrusted to it. And we owe it above all to the victims of the most serious violations.

Thank you Mr President.