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**OPENING STATEMENT
BY**

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**GENERAL DEBATE:
NINTH MEETING OF THE ASSEMBLY OF STATES
PARTIES OF THE INTERNATIONAL CRIMINAL COURT,**

**UNITED NATIONS HEADQUARTERS
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Mr President,

This ninth meeting of the Assembly of States Parties of the International Criminal Court will end on the day that we mark the 64th anniversary of the Affirmation of the Principles of International Law recognized by the Charter of the Nurnberg Tribunal by the UN General Assembly in Resolution 95(1) of 11 December 1946.

It takes place as we prepare to mark the 60th anniversary of the adoption, by the UN General Assembly, of Resolutions 488 and 489 of 12 December 1950 on Formulation of the Nurnberg Principles and on International Criminal Jurisdiction respectively.

We recall that these principles hold as follows:

Principle I states, "Any person who commits an act which constitutes a crime under international law is responsible therefore and liable to punishment." Principle II states, "The fact that internal law does not impose a penalty for an act which constitutes a crime under international law does not relieve the person who committed the act from responsibility under international law." Principle III states "The fact that a person who committed an act which constitutes a crime under international law acted as Head of State or responsible government official does not relieve him from responsibility under international law." Principle IV states: "The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him". Principle V states, "Any person charged with a crime under international law has the right to a fair trial on the facts and law." Principle VI states, "The crimes hereinafter set out are punishable as crimes under international law: (a) Crimes against peace: (i) Planning, preparation, initiation or waging of a war of aggression or a war in violation of

international treaties, agreements or assurances; (ii) Participation in a common plan or conspiracy for the accomplishment of any of the acts mentioned under (i). (b) War crimes; and (c) Crimes against humanity. Principle VI states, "Complicity in the commission of a crime against peace, a war crime, or a crime against humanity as set forth in Principle VI is a crime under international law."

It was therefore then indeed a moment of great historic significance when, earlier this year, we were able, at an excellently organised first Review Conference of the Rome Statute, hosted by the people and the government of Uganda in Kampala on the shores of the beautiful Lake Victoria, to adopt a definition of the crime of aggression.

It is a cause for celebration that, as the International Criminal Court enters its second decade of existence, it does so with this significant achievement that all of us, the Court, States Parties, observer States and civil society can be proud of.

The hard work of all participants in this process, but especially that of the President of the Assembly of States Parties and the Chair of the Special Working Group on the Crime of Aggression, must again be acknowledged.

Adopting this definition was an arduous and difficult process that took several years to achieve. The definition that was adopted early on the morning of 11 June 2010, bears the marks of its difficult birth and is not necessarily perfect in every sense. However, let us never lose sight of the fact that the adoption of the definition is a significant moment in a long and ongoing historical process by which humanity has attempted to limit, control and eventually outlaw war and aggression, and temper its reprehensible impact on society. Peace and justice are essential requirements for a stable international order, and once the definition of the crime of aggression forms part of the Rome Statute, it will be the first time since the end of the Second World War that a definition has been included in a treaty.

The deferral of the exercise of the Court's jurisdiction over the crime of aggression until a decision by a two-thirds majority of States Parties in 2017 to include the amendments providing for the crime of aggression in the Statute, should not become a dream deferred, but should generate the necessary momentum to ensure that this decision is taken in 2017.

The Constitution of the Republic of South Africa directs the security forces to pursue national security in compliance with international law, which includes the *ius ad bellum*. South Africa has always supported the inclusion in the Statute of a definition of aggression, in order to criminalise acts of aggression that have been outlawed by the Charter of the United Nations. We call on all States Parties to ratify the amendments on the definition of the crime of aggression as soon as possible, in order for the Court to exercise jurisdiction over this crime.

Mr President,

We should ensure that the momentum provided by the Kampala Review Conference be maintained. The next few years will be crucial for the consolidation of international criminal justice and the fight against impunity. In our view, complementarity provides the key to these efforts. South Africa has been privileged to have been involved in the Review Conference stocktaking exercise for positive complementarity, as a focal point, together with Denmark. This highlighted the need to advance the fight against impunity by strengthening the capacity of national jurisdictions to investigate and fight Rome Statute crimes, thereby enhancing the functioning of the Rome Statute system as a whole.

In this respect, assistance by States for each other's efforts in capacity building is crucial, as will be the efforts in this regard by other stakeholders. We therefore welcome the decision to establish a designated function within the Secretariat to facilitate the

exchange of information between States, the Court and other stakeholders. Furthermore, we are of the view that it would be appropriate to examine how complementarity fits into the framework of the development of the Rule of Law and to examine the possibility of entering into a dialogue with international and regional organisations with a view to ascertain how they can contribute to strengthening the Rome Statute system. It is now appropriate to develop a road map for our continued efforts in this regard.

Mr President,

South Africa is proud on the role that it, together with like minded nations in our region, has played in the negotiation and adoption of the Rome Statute. Allow me to reiterate that South Africa is committed both in terms of our international law obligations as well as our domestic law to co-operate fully with the Court. We believe that all with similar obligations should also do so.

We are also mindful that differentiated interpretations are given to the cooperation obligations, which serves to emphasise the necessity for a cooperation regime that is predictable and certain, and for a clear distinction to be drawn between legal obligations that are contained in the Statute, and other forms of cooperation. We therefore welcome a continued discussion of this issue.

Mr President,

At this juncture in the Court's life it is also appropriate to focus on the important issues of governance and oversight, issues that will directly impact on the efficiency and effectiveness of the Court at a time when its case load is consolidating and expanding. This Assembly's mandate to provide management oversight is therefore more important than ever before, and will be an ongoing dialogue. The proper execution of this mandate

is a *sine qua non* for healthy and balanced inter-organ relationships, and for the relationship between the Court and States Parties. Good governance, whether in the Court, in a State or in the international system, is about transparency, accountability and responsiveness. The ASP's mandate to exercise oversight over the administration of the Court is given in the Rome Statute.

Mr President,

South Africa reiterates its full respect for the independence of the Court. At the same time, we value the principles of transparency and accountability. Never should any of these principles be compromised.

It is our belief that the mandate of the Independent Oversight Mechanism, as presently drafted, is fully consistent with the Rome Statute, and we urge that it be adopted without delay.

Mr President,

The cutting edge of the fight against impunity and the heart of the work of the Court are the trials conducted before it. Several trials are currently under way, and while acknowledging the necessity for thorough investigation we encourage the successful completion of cases. Effective prosecution and conviction of the perpetrators of the most serious crimes known to mankind will be the strongest signal ever that impunity will not be tolerated. We have taken note of the situations under analysis by the Prosecutor. We are hopeful that the Office of Prosecutor will, with the requisite urgency, consider these matters and come to a decision, in order for the Court to be to the benefit of victims everywhere in the world.

Mr President,

At a time when the world is battling to recover from the worst financial crisis since the Great Depression, it goes without saying that governments will carefully scrutinise budgets and that this situation will also impact on the budget of the Court. However, we must bear in mind that the greater goal behind the promotion of international criminal justice is a fundamental value enshrined in the United Nations Charter: the attainment and preservation of international peace and security, an ongoing and long-term project that should not be sacrificed on the altar of short-term gain. Security nowadays increasingly relates to humans and their rights and interests. Impunity should be ended, and the rights of victims protected. In view of the Court's important relationship with States in Africa, we are of the view that appropriate funding should be provided to strengthen this relationship and establish the necessary structures in this regard. Let wise counsel prevail when we discuss the budget, let's keep the broader goal in mind.

Mr President,

Let me also take this opportunity to extend our sincere gratitude to civil society for their ongoing commitment and support for international criminal justice.

Mr President,

When the world's new security architecture was designed and built after the devastation of the Second World War, the premises where we meet today, the United Nations Headquarters, was designed and constructed. More than half a century onwards, it is undergoing extensive modernisation and reconstruction. This is a symbol of what has been happening to the international peace and security architecture over the last number of years. One of the foundations of this new edifice is the International Criminal Court. Let the Court continue to move boldly forward with this project and with serving humanity and may it draw strength and inspiration from the words of Chief Albert John Luthuli when he accepted the Nobel Peace Prize 49 years ago on 10 December 1961:

"May the day come soon, when the people of the world will rouse themselves, and together effectively stamp out any threat to peace in whatever quarter of the world it may be found. When that day comes, there shall be "peace on earth and goodwill amongst men", as was announced by the Angels when that great messenger of peace, Our Lord came to earth."

I thank you.