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Statement of the United States of America

by Ambassador Stephen Rapp

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International Criminal Court  
Ninth Session of the Assembly of States Parties

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Thank you Mr. President,

On behalf of the United States observer delegation, I am honored to address this session of the Assembly of States Parties, the first since the Review Conference in Kampala. Although the United States is not a party to the Rome Statute, we sent a large delegation to Kampala. As an observer delegation, we participated actively in the stocktaking exercise, in the many important and stimulating side events, and in the substantive discussions of amendments to the Rome Statute. We were the only non-party State to make a pledge in Kampala. Along with the States parties, we remain grateful to the Government of Uganda for the extraordinary hospitality it extended to our delegation, as it did to all participants in the Review Conference. And of course the achievements of Kampala owe a debt to the strength, sensitivity, and skill provided by the President, Ambassador Christian Wenaweser.

Much of the discussion about Kampala has focused on the amendments that were adopted by the Review Conference. They were the result of compromise, which naturally few if any delegations consider to be perfect. My delegation has previously alluded to its concerns, including at the conclusion of the Kampala conference and in its statement to the General Assembly on October 29; although we continue to believe these issues will need to be addressed, we want to focus our comments here on the other key agenda item in Kampala—assessing the achievements of international justice to date and the challenges ahead, with a view toward strengthening the global system of accountability for genocide, war crimes, and crimes against humanity.

The task going forward, Mr. President, is to transform the broad principles of justice reaffirmed in Kampala into a program of action, drawing on the dedicated efforts of States parties and also of non-party States with a common commitment to justice and accountability.

Mr. President, among the principles reaffirmed in Kampala, one warrants special mention—the overarching importance of victims and communities affected by, in the words of the Rome Statute preamble, “unimaginable atrocities that deeply shock the conscience of humanity.” As we work to fulfill the stocktaking commitments undertaken in Kampala – whether through States Parties discharging obligations to cooperate with the Court or through efforts to support positive complementarity—we must ensure that we do so in a manner that honors the righteous demand for justice by those against whom atrocities have been perpetrated.

What does this mean in concrete terms?

First, states should take urgent and concerted steps to ensure that victims and other witnesses who are at risk because of their potential testimony in cases before the ICC or before other courts adjudicating atrocity charges, as well as others who are imperiled through their association with such witnesses, are fully protected from harm. States will need to do this indirectly and directly: working to empower national authorities to play this role and taking timely measures to protect witnesses in countries that are not yet willing or able to do so themselves. In some instances, we must protect witnesses from persons who abuse positions of power and who are bent on thwarting truthful testimony by, for example, seeking to bribe or threaten witnesses and their loved ones.

Mr. President, the international community has honored the uniquely important role of frontline human rights defenders and has rallied to protect defenders when they are in danger because of their advocacy. My government believes that we must similarly galvanize our efforts to ensure the effective protection of those whose participation is absolutely necessary in the successful pursuit of criminal justice -- including the men, women and even children who bear witness against suspects charged, in the words of Justice Robert Jackson, the US chief prosecutor at Nuremberg, with committing “wrongs ... so calculated, so malignant, and so devastating, that civilization cannot tolerate their being ignored.”

Second, it is cause for grave concern that individuals who are the subject of existing ICC arrest warrants or summonses have remained at large, year after year, without fear of reckoning or account. Mr. President, this state of affairs challenges the Court's efficacy and betrays victims' confidence. All too often, suspects who enjoy extended impunity have continued to exact murderous and rapacious violence. We *must* not allow this to continue.

Third, while working to ensure that the ICC successfully concludes the prosecutions it has already begun, we must recognize that its lasting impact will turn in large measure on the degree to which justice in The Hague is complemented and carried forward by national courts. Last month we commemorated the 65<sup>th</sup> anniversary of the opening of the Nuremberg trials, without which it is scarcely possible to imagine the trials underway in The Hague, Arusha, Phnom Penh, and elsewhere. Nuremberg is not only our inspiration and foundation for prosecuting the perpetrators of atrocities; it also continues to teach us important lessons about what it means to *succeed* in the challenging pursuit of international justice. One of the most important lessons of Nuremberg is that, for international prosecutions to have a lasting and real difference in the daily lives of people, they need to be followed by national trials in places where the perpetrators can be judged by the people whose humanity they betrayed.

And so, Mr. President, the United States believes that one of the signal achievements of Kampala was that it elevated our attention to "positive complementarity." We now know that it is not enough to *hope* that international courts will catalyze domestic justice; we must actively *work* to assist States ravaged by violence to strengthen their own systems of protection and accountability. This is why the United States tries to support rule-of-law capacity-building programs in states that are emerging from internal conflicts, as we have done and continue to do in Colombia, for example.

Recent months have brought an important test of our commitment to this principle—and an opportunity to realize its aims. The Government of the Democratic Republic of the Congo—which, along with Norway and the United States, co-sponsored a side event on positive complementarity in Kampala—has recently proposed the establishment of specialized mixed chambers within its civilian judiciary, which would have jurisdiction over Rome Statute offenses. The United States government welcomes the DRC's initiative, which recognizes the value that foreign judges, sitting alongside Congolese jurists, can bring during a transitional period.

Mr. President, last week I had the honor to participate in an international workshop hosted by the DRC government in Kinshasa to explore how such chambers might best be designed with a view to combating impunity. Although the details of this proposal remain to be developed, my government is firm in its commitment to work with the DRC and other partners to establish a strong and effective civilian war crimes chamber, just as we have worked with the DRC to improve its military justice system.

We owe this much to governments, like that of the DRC, that seek our assistance in meeting the formidable challenge of lawless violence. We owe to it to the men, women, and children who, after enduring savage depredations we can hardly bear to imagine, have the right to demand the justice they have been promised. But finally, we owe to all of humankind to make the institutions of international and national justice so effective that individuals will be deterred from committing acts of genocide, war crimes, and crimes against humanity.

Thank you.

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