

**OPENING STATEMENT BY THE HON. MR A.C. NEL, MP, DEPUTY  
MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT,  
REPUBLIC OF SOUTH AFRICA**

**DURING THE GENERAL DEBATE: ELEVENTH MEETING OF THE  
ASSEMBLY OF STATES PARTIES OF THE INTERNATIONAL CRIMINAL  
COURT HELD IN THE HAGUE**

**14 – 22 NOVEMBER 2012**

Madame President,

Yesterday we gathered to commemorate the tenth anniversary of the entry into force of the Rome Statute, a decade of fighting impunity.

We were commemorating the contribution that the Court has made to a better world, a world that is, in the words of AE Housman sung so beautifully yesterday at the commemoration by the soprano Ms Sonja Volten, not a “land of lost content.”

For the first time in its history the world has had a permanent international court to prosecute the perpetrators of the gravest crimes known to mankind, crimes which by their very nature threaten the peace, security and well-being of the world.

The establishment of the Court was a vital contribution to the international peace and security architecture, premised on an understanding of the reciprocal relationship between peace and justice.

Madame President,

We were all heartened by the fact that Ms Fatou Bensouda was elected as Prosecutor by consensus. We hope that by the time this ASP concludes its business we would have elected a Deputy Prosecutor to support her, hopefully also by consensus.

South Africa appreciates the opportunity it was given to make a contribution in this regard within the Search Committee on behalf of the African States Parties.

Madame President,

We further welcome the Prosecutor’s commitment to strengthen the Court’s relationship with the African continent.

We note that she has devoted a considerable amount of time on the continent since her appointment.

We were especially heartened to hear her speak, also on a recent occasion in South Africa, of her great commitment to the victims of crimes and the protection of their interests.

We specially welcome her initiative to appoint a special gender adviser in her office in order to pursue gender crimes and crimes against children. This focus on the protection of the most vulnerable should be supported.

Madame President,

A permanent Court needs permanent premises. We therefore welcome the recent signing of a contract between the Court and the consortium that will construct a permanent premises for the Court.

The Court will also need the necessary financial resources to implement its mandate to fight impunity and promote the rule of law.

In a negative financial climate where Governments, including our own, are expected to do more with less resources, we are sensitive to the budgetary constraints faced by States Parties.

We note with appreciation the steps taken by the Court to make the most efficient use of limited resources.

We trust that States Parties will demonstrate wisdom and foresight and reach agreement on a budget that will give the Court the necessary resources to continue discharging its vitally important mandate effectively and efficiently.

In this regard, we also believe that the Court, when undertaking investigations and prosecutions in the implementation of Chapter VII referrals from the Security Council, does so on behalf of the whole of the international community.

In order for the Court to implement its mandate in support of the maintenance of international peace and security, it is necessary to explore the possibility of United Nations funding for situations referred to the Court by the Security Council.

In this regard, we must as States Parties continue to engage the important matter of the relationship between the ICC and the Security Council.

We are convinced that as long as the structure of the Security Council remains unrepresentative and undemocratic, its decisions will impact negatively on the ICC.

States Parties, individually and collectively, thus have the responsibility to support UN processes for early reform of the Security Council.

This point was emphasised by President Jacob Zuma during the High-level Meeting of the 67th Session of the General Assembly on the Rule of Law at the National and International Levels, I quote:

"[...], [W]e need to consider the fairness of the rules of international law.

We need to ask whether the international community can be said to be governed by a system in which all role players are accountable under law which is equally enforced and independently adjudicated. Secondly [...], we need to look at the composition of the UN Security Council, and how this may impact on the promotion of international law, and the rule of law in particular.

We are concerned that given the undemocratic and unrepresentative nature of the UN Security Council, its decisions will constantly be attacked for lack of legitimacy – regardless of the content of the decision.

It is common cause that the current configuration of the Council is unfair. It does not reflect the contemporary geo-political realities especially with respect to Africa. The African continent is both generally under-represented and specifically un-represented in the permanent category.

Adherence to the international rule of law will continue to elude us as long as the organ with the primary responsibility for the maintenance of international peace and security is unrepresentative and undemocratic."

President Zuma went on to add,

"Let me emphasise that South Africa remains committed to the global promotion of the rule of law, and will continue cooperating with the UN system to ensure success of the international human rights architecture."

South Africa continues to believe that an important tool in the fight against impunity is the building of national capacity to investigate and prosecute serious crimes of concern to the international community.

It is thus appropriate that complementarity is at the heart of the Rome Statute. It is for this reason that South Africa, together with Denmark, continues to promote complementarity-related activities.

Madame President,

We have also taken note of the important developments in the work of the ICC over the past year. We are particularly pleased that the Court issued its first judgment in the *Lubanga Dyilo* case. We have also noted that the trial in the *Katanga and Chui* case has been completed and we await the judgement of the Court. We congratulate the Court and its staff for the clear progress being made in implementing its mandate.

Madame President,

Since last year when we met in New York for the 10<sup>th</sup> session of the ASP the family of states committed to the fight against impunity has grown even further.

Two new states have become party to the Rome Statute. We welcome Vanuatu and Guatemala to the Rome Statute family and we look forward to working closely with them.

We also take the opportunity to encourage other states to join this ever-growing community.

Let us celebrate the tenth anniversary of the entry into force of the Rome Statute by recalling the immense contribution made by civil society and individuals in the preparation, finalisation and negotiation of the Rome Statute, a dynamic that we again saw at work during the Kampala Review Conference.

The task to defend humanity falls on the shoulders of all of us: States, the Court, other international organisations, organised civil society and on us as individuals.

Let us continue to wave the flag of compassion that was presented to the President of the Court, Judge Sang-Hyun Song, by the children of the Haagsche School Vereeniging yesterday as we commemorated the Court's decade of contributing to a better, more just world for them.

Thank you.