

**Statement by Mr. Hu Bin, Head of the Chinese Observer
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of Treaty and Law, Ministry of Foreign Affairs of China,
18th Session of the Assembly of States Parties
to the Rome Statute of the International Criminal Court**

General Debate

The Hague, 3 Dec 2019

Mr. President,
Your Excellencies,
Ladies and Gentleman,

The Chinese Delegation has been attentively observing the deliberations in this Assembly on the activities of the International Criminal Court. We note one overarching theme lucidly revealed in the general debate that ICC is “an instrument of international law” and needs “continual improvement”. Furthermore, we are in agreement to a cogent explanation about “Justice”, the laudable goal of ICC, as eloquently presented by Honorable Judge President Eboe-Osuji in his statement delivered yesterday, “ Justice is a process, a complex and shifting balance among many factors”. These two points constitute the common ground upon which the Chinese delegation would like to share its views and concerns with this Assembly in a constructive manner. We share the sentiments against the approach of unilateralism bullying.

It is our consistent view that ICC should operate in the framework of international law, demonstrating highest standard of practicing the principle of rule of law, not only acting in strict compliance with the Rome Statute but also, most importantly, in the view of Non State Parties, be guided by the principles and rules of general international law, in particular in areas or for matters not covered by Rome Statute or where

Non-State Parties have legitimate different views with the ICC system. And in pursuit of justice, balanced consideration should be given to the efforts by relevant States in restoring peace and to the importance of upholding the principle of state sovereignty, the fundamental principle enshrined in the UN Charter. With this basic position and in view of the activities of ICC in last year examined here, my delegation presents the following specific comments:

First, we call upon the ICC to adopt a rigorous approach when considering exercise of its jurisdiction, as required by the principle of complementarity and by the general international law when a Non-State Party is concerned. According to the principle of complementarity, the Court, unlike national courts, has no self-sustained primary jurisdiction, rather, the jurisdiction of the Court is delegated by State Parties under the conditions set out in the Rome Statute. Expansive approach can hardly be compatible with the complementary and delegated nature of the Court's jurisdiction. Furthermore, the principles under general international law, inter alia, those governing the lawfulness and reasonableness of extraterritorial application of jurisdiction also cast doubts on the expansive approach in the interpretation of Rome Statute to the effect to over-extending the Court's jurisdiction to alleged activities that predominantly took place in a Non-State Party. In addition, as any judicial organ could face the risk of being abused, it is our firm belief that the rigorous approach is the indispensable safeguard to protect the Court from the risk of being abused.

Second, we continue to share the concerns on the controversies caused by jurisprudence of ICC on the rule of immunity under general international law. The rule governing the immunities of State officials, in particular the immunities of the heads of States and Governments and other qualified senior officials under general international law, is of great significance for maintaining the stability of international relations and constitutes a cornerstone for the current international order. Concerns have already been cogently expressed, both within and outside of ICC system, in particular by Africa countries,

regarding several controversial judgements denying immunity by various Chambers of the Court, for the weaknesses of those judgements including, inter alia, their not well-grounded-reasoning and, in particular, lack of consistency among each other's reasonings, therefore lacking the most basic feature in building the authority of the Court's jurisprudence. As a Non-State Party, we are sympathetic to the legitimate call of African Countries for further action to resolve the controversy within ICC system. Meanwhile, we reserve our position that the rule of immunity remains as a matter of general international law, the authoritative interpretation of which should only come from UN system with the most universal participation of States in the deliberation.

In conclusion, it is expected that ICC system reflects on the observations raised by all parties and improve its performance with the view to living up to the inherent requirement of the principle of rule of law.

Thank you, Mr. President.