

Statement by the delegation of the Russian Federation (Observer State) at the Twelfth session of the Assembly of States Parties to the Rome Statute of the International Criminal Court

21 November 2012

Check against delivery

Madam President,
Your Excellencies,
Distinguished participants of the Assembly,

Establishment of the rule of law in international affairs is the corner stone of the foreign policy of the Russian Federation. There is no doubt that justice is a crucial element of the rule of law.

The Russian Federation as the state continuer of the Soviet Union was one of the originators of the first mechanisms of international justice by participating in the establishment of the Nuremberg and Tokyo Tribunals, as well as by participating in the elaboration of main legal instruments criminalizing international crimes – genocide, crimes against humanity and war crimes.

All these crimes became part of the Rome Statute of the International Criminal Court. The Russian Federation voted for the Statute at the Rome conference expecting the ICC, as the only permanent institution of international justice, to become an important factor of stability in international affairs that would not only punish the guilty but also prevent the commitment of new crimes as well as encourage States to reform their legal systems in order to effectively counter the most serious crimes under international law, which may be committed under their jurisdiction.

The International Criminal Court does not exist in a vacuum. It is of utmost importance that it becomes an organic part of the complex system of international institutions and mechanisms aimed at creating the most harmonious conditions for the development of international community. Such development is only possible in the atmosphere of peace and cooperation between all its members.

We are convinced that the most constructive contribution of the Court in this regard may be secured under the following fundamental conditions: full implementation of the principle of complementarity of the jurisdiction of the Court in relation to the jurisdiction of States; objectivity and impartiality of investigations and trials on the basis of true and carefully verified evidence and establishment of constructive cooperation with the United Nations and its Security Council.

The International Criminal Court has already undergone the process of institutional building and now that it has started the second decade of its work

the international community is expecting it to act in a mature and balanced way that would allow it to become a truly universal institution.

The Russian Federation is closely following the activities of the ICC. As a member of the Security Council of the United Nations the Russian Federation pays special attention to the investigations of the situations in Darfur and Libya that were referred to the Court by the decisions of the Security Council. In both cases Russia calls on the Court to investigate actions of all parties to the conflicts: it is important that the crimes allegedly committed by both pro-government and anti-government forces are investigated. We are still convinced that the investigation of the situation in Libya will not be complete without considering cases of disproportionate and indiscriminate use of force in the course of the operation lead by NATO countries that caused victims in civilian population.

In the context of these investigations the question regarding the decisions of the Court on the admissibility of cases in the ICC arises. The most indicative in this regard were two polar opposite decisions of the Court on the admissibility of cases of S.Gaddafi and A.Senussi that were adopted within the interval of four months. We expect the Court to show more consistency in the interpretation of such a key principle of the Rome Statute as the principle of complementarity.

As to the cooperation with the ICC on these situations, we would like to note that the resolutions of the Security Council referring the situations to the Court do not address the issue of immunity of state officials. In this regard we are convinced that in the absence of the explicit reference to that effect in the resolutions of the Security Council the abolishment or suspension of the application of norms of general international law regarding the immunity of the acting heads of states may not be presumed. We call on the Court to take this into consideration when working out the modalities of cooperation with States. We consider that ignoring this issue might not once put the Court in a difficult situation.

We would also like to highlight certain important aspects of our general approach to the issue of referral of situations to the ICC by decisions of the Security Council:

Firstly, according to the Rome Statute, for a situation to be referred to the ICC as well as for an investigation of a situation to be suspended a decision of the Security Council under Chapter VII is required. In this regard it is important not to water down the basic criteria that the Security Council's prerogatives under Chapter VII may be triggered only by the threat to international peace, breach of international peace or the act of aggression.

Secondly, the timing of referral is crucial. The undue hastiness or the undue delay may equally lead to the dubious results in terms of peaceful settlement of the situation and delivery of justice.

The Court is continuing investigations of all other situations under its consideration. All of them currently concern African countries. The issue of the deferral of the consideration of the cases in one of these situations has been put

before the Security Council. The Council has been unable to take a decision. We regret that the position of African States has not been heard and the mechanism of Article 16 of the Statute has not been engaged.

Putting in motion the interaction between the Court and the Security Council under Article 16 of the Statute is of crucial importance and not only in the above-mentioned context. As it is well known, the use of this mechanism is provided for in the "Kampala compromise" with respect to the exercise of jurisdiction of the Court regarding the crime of aggression.

In conclusion we would like to highlight a number of points with respect to the "Kampala amendment" of the Rome Statute.

We support the definition of aggression as provided for in this amendment as it is based on the 1974 resolution of the United Nations General Assembly.

At the same time we could not support the provision, which sets forth that the Court may decide to open an investigation regarding the crime of aggression in the absence of the qualification of an act of a State as such by the Security Council. According to the Charter of the United Nations, the right to decide whether a State has committed an act of aggression belongs to the Security Council of the United Nations. Since, as it is stipulated *inter alia* in the text of the amendment itself, the commitment of an act of aggression by an individual is not possible without engaging an act of a State, the right of the ICC Prosecutor to initiate investigation in the absence of such a decision of the Council only on the basis of the decision of the Pre-Trial Chamber will not be consistent with the Charter of the United Nations. We note that, according to the amendment, in such a situation the Security Council could take a decision under Article 16 of the Rome Statute. However, as we have had an opportunity to see such a decision may divide the Council. In this regard the question arises whether a case involving the crime of aggression could be considered effectively by the Court when the international community is divided on this issue. And the silence of the Council on such an issue would definitely be an evidence to that effect.

The issue of interpretation and application of the amendment of the Statute on the crime of aggression is a matter of great importance for the Russian Federation. In this context we are also interested in clarifying the issue as to whether the amendment will be applied to States Parties to the Statute that did not accept the amendment.

We believe that it would be right to go back to the discussion of these and other issues related to the implementation of the amendment in 2017, when the Assembly of States Parties is called to take the decision on the amendment.

Let me in conclusion express once again a hope that during the next session of the Assembly of States Parties all official languages of the ICC including the Russian and Chinese would be treated equally.

I thank you for your attention.