

**Statement by the Chinese Observer Delegation
at 17th Session of the Assembly of States Parties
to the Rome Statute of the International Criminal Court**

General Debate

The Hague, 6 Dec 2018

Mr. President,

On behalf of the Chinese Observer Delegation, I wish to make the following remarks.

It has been 20 years since the adoption of the Rome Statute. This not short span of passing time calls for a need to further reflect on the experiences in and lessons from the work of International Criminal Court (ICC), in particular various challenges faced by the Court, some of which are being raised by States here in the Assembly. While there are different takes on those challenges, it is undoubtedly imperative for the ICC to fully listen to all legitimate concerns expressed by all State in the interest of building its own much-needed legitimacy and authority.

First of all, my Delegation wishes to refer to a pending issue with broad potential implications not only for ICC but also for the international legal order, i.e. the dispute over the interpretation and application of the rules on immunity. In relevant decisions in dealing with the relationship between the rules of general international law on immunity and relevant clauses of the Rome Statute, in particular the relationship between Article 27 and Article 98 of the Rome Statute, those lines of reasoning and interpretations by different Pre-Trial Chambers or

different judges of the ICC are worryingly inconsistent. The State concerned has appealed against the disputed decision. Furthermore, there is an initiative to ask the UN General Assembly to request the International Court of Justice to issue an advisory opinion on immunity-related questions. We fully share the legitimate concerns expressed by States and understand their efforts in seeking a solution in this regard. To respect the immunities of State officials, in particular the immunities of the heads of State and Government and other qualified senior official under international law, is of great significance for maintaining the stability of relations between States. The rules on immunity as confirmed in Article 98 of the Rome Statute should be effectively observed in the judicial practice of the ICC, with the aim of achieving a balance between pursuing justice and maintaining peace and stability.

It is our consistent position that the ICC should also be guided by the principles of general international law when making decision on its jurisdiction by applying its own rulebooks: the Rome Statute and the supporting instruments. In particular, high caution should be exerted when non-States Parties are involved. In this regard, we noted with concern that last September, a Pre-Trial Chamber has over-extended the Court's jurisdiction to a non-State Party for those conducts that predominantly or essentially occurred in the concerned non-State Party' territory. This decision is a result of expansive interpretation of both the elements of the alleged crimes and the jurisdictional clause of the Rome Statute, i.e. the Art 12 (2) (a). Looking back to the history of negotiation of the Rome Statute, it is clear the Art 12 (2) (a) serves as not only a source for, but also a brake on, the jurisdiction of ICC, i.e. to eschew the so called universal jurisdiction that had been proposed but finally rejected during the negotiation, and to ensure only the most clearly established

type of jurisdiction would be exercised by the Court. The case concerned, however, doesn't meet the clearly established standard, and the judicial overreach exemplified by this PTC decision is untenable on legal grounds and not in the interest of the legitimacy and credibility of the ICC.

Regarding the issue of the crime of aggression, we wish to reiterate our long standing position that activities of the ICC in relation to the crime of aggression should not undermine the unique responsibility of the UN Security Council in making determination of acts of aggression as clearly mandated by the UN Charter. According to the UN Charter, the existing collective security mechanism places the Security Council at its core in partnership with other statutory bodies of UN, that is the basic framework within which the Court's jurisdiction over the crime of aggression operates. Furthermore, in applying the amendments on the crime of aggression and the relevant decision of the Assembly regarding the activation of the jurisdiction on crime of aggression, the ICC should also be guided by the rules of general international law, in particular the principle that a treaty does not create obligations for a third State without its consent, and shall refrain from extending its jurisdiction to nationals of non-States Parties, nationals of States parties that have not yet accepted the amendments, or relevant activities that occur in the territory of the above-mentioned States.

Finally, we note that in October last year, as prompted by the concerns raised by Observer States including China, the Bureau adopted a decision that re-confirms the rights of Observer States to participate in the deliberation of the Assembly, including but not limited to plenary debates, formal meetings and informal consultations, including those held by working groups and other subsidiary bodies with general membership. We appreciate this corrective action and hope this decision be implemented faithfully and fully to ensure the openness, transparency and

inclusiveness of the deliberation of the Assembly.

Thank you, Mr. President.