



**GENERAL DEBATE: INTERNATIONAL CRIMINAL COURT
THE REVIEW CONFERENCE OF THE ROME STATUTE
KAMPALA, UGANDA
31 MAY 2010**

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

Mr. President,

On behalf of the Government of South Africa, it is my honour to thank the Government of Uganda for hosting the Review Conference of the Rome Statute. We are certain that this beautiful setting will provide inspiration for a successful Conference. However, we should not forget that this Review Conference is taking place in Africa, a continent that has always supported the Court, and in Uganda, a situation country.

We would like to convey our sincere gratitude to the President of the Court, the Prosecutor, the Registrar and the staff of the Court for their efforts in advancing the important work of the Court.

We extend our appreciation also to the Secretariat of the Assembly for their hard work in preparation for this Conference. We wish to thank civil society organizations for their support for the Court and its work.

Mr President,

The Republic of South Africa is proud to have been one of the ardent proponents of the negotiation and adoption of the Rome Statute of the International Criminal Court in 1998, creating the first permanent international criminal tribunal to combat impunity for the most serious crimes of concern to the international community, namely crimes of genocide, crimes against humanity, war crimes, and let us not forget the crime of aggression.

At the time that negotiations for the Rome Statute were taking place, South Africa was in the process of finalizing its own democratic Constitution. Millions of South Africans suffered for generations the humiliation and human rights abuses associated with apartheid, and it is was thus gratifying that the crime of apartheid

was criminalized in Article 7(2)(h) of the Rome Statute as a crime against humanity.

As we celebrate this achievement, it is fitting that we recall how the apartheid regime engaged in aggressive wars and destabilized our neighbours, for their solidarity in the struggle to end apartheid.

Mr President,

For the first time in history the world has a permanent judicial institution aimed at fighting impunity for the perpetrators of the most serious crimes of concern to the international community, and it is proving to be effective. This Review Conference is the first opportunity, after 7 years of operation, to review the ICC and to influence its future direction.

Mr President,

This Review Conference will provide the historic opportunity to include in the Rome Statute a definition of the crime of aggression and the conditions under which the Court can exercise jurisdiction over this crime. ~~We should be mindful of~~ our historic responsibility to humanity in this regard: the Review Conference offers us the opportunity to criminalise the waging of aggressive war and so conclude a process that has its roots in the horrors of the Great War, almost a century ago. War in the international system was not new in 1914, but what was, was the untold human suffering inflicted by new weapon systems like artillery and the machine gun. To illustrate by an example close to home: during the Somme offensive of 1916, in the battle for Delville Wood in France, 121 officers and 3032 other ranks of the South African Brigade walked into the Wood; six days later only two officers and 140 other ranks walked out, the Wood having been reduced by artillery fire to a desolate wasteland and the men of the Brigade decimated.

We will also never forget the 616 brave men of 5th Battalion of the South African Native Labour Corps who died in 1917 when the SS Mendi sank off the Isle of Wight. Of them the poet SEK Mqhayi said:

Could we have sacrificed anything more precious?

What did it mean to sacrifice a village?

Was it not giving the bull calves of your homestead?

Sending those very ones who loved you as a nation?

As we all know, "the war to end all war", as it was described at the time, was a misnomer; the peace treaty that concluded it was appropriately described by one author as "the peace to end all peace". This irony was appropriately described by one of the war poets of the time, Harold Begbie, in his poem *Casus Belli*:

War for the end of War,

Fighting that Fighting cease,

Why do our cannon roar?

For a thousand years of Peace.

Because efforts to outlaw aggressive war and criminalise the actions of those who perpetrated it were unsuccessful, the world saw other great wars and numerous conflicts of lesser magnitude, leaving millions of soldiers and civilians, dead or maimed for life.

Due to the destructive power of modern weapons systems, a major conflict would be destructive far beyond the scale of the two world wars, and may put the survival of humanity and the planet in the balance.

One way to address this danger is through cooperative regimes for arms control and disarmament, in which South Africa is actively engaged. However, we firmly believe that the scourge of aggressive war must also be addressed by putting in place an effective system of individual criminal liability for acts of aggression, thereby giving full effect to the prohibition of aggressive war in the Charter of the United Nations. In this respect, our position is that the Court is an independent international judicial institution with the authority to make a determination that an act of aggression has occurred for the purpose of individual criminal responsibility.

Furthermore, it is our firm belief that the Court's jurisdiction over the crime of aggression should be as widely constructed as possible and not be a fragmented regime. The weight of history rests on our shoulders, we must not fail.

Mr. President,

It is in the same light that South Africa regards the other two proposals for amendments on the table at this Review Conference. Article 124 of the Statute was always intended to be a transitional provision and its deletion should be a routine matter.

The proposal to amend the Statute in order to extend the Court's existing jurisdiction over the use of certain weapons in international armed conflict to non-international armed conflict, should also be supported.

Mr. President,

This Review Conference will also provide the opportunity to do a proper stock-taking of Rome Statute system and its development since the establishment of the Court.

The complementarity system is the cornerstone of the Rome Statute. The Review Conference provides a unique opportunity to reflect on necessary improvements to this system. In order to fight impunity where it begins, it is our challenge to assist each other to strengthen national jurisdictions to effectively investigate and prosecute these crimes. Then justice will not only be done but be seen to be done. Voluntary activities to assist each other to strengthen national jurisdictions, what we refer to as “positive complementarity”, will surely signal to victims our commitment to truly fight impunity.

The values that inspire us as South Africans as we are building our new society are the rule of law and the protection and promotion of human rights, freedom, equality and democracy. These are also the values contained in the Rome Statute. The Rome Statute places the values of human life and dignity at its core, and aims at ending impunity and establishing the international rule of law. Its human-centeredness is nowhere better illustrated than in the progressive rights it accords to victims.

We remain acutely aware, that for the Court to operate effectively it is almost entirely dependent on States’ cooperation. We therefore need a certain and predictable cooperation regime.

One of the key elements of long-term peace and sustainability is strengthening the rule of law and access to justice. Equally important is the creation of mechanisms to manage and prevent conflict and ensure accountability. However, the task of establishing sustainable peace and justice is not only an academic

matter, we need to establish enduring peace with justice in a number of fragile situations. Therefore, the peace vs. justice paradigm is a false, or at least an unhelpful, paradigm, as the one cannot exist without the other. The real question is, how to make peace and justice mutually reinforcing. In the end it is the sequencing of the peace and justice processes that needs to be fine-tuned. Each conflict is unique. One size simply does not fit all.

Mr. President,

In conclusion, the battle against impunity will only be won once universal ratification of the Rome Statute has taken place. Therefore, we wish to call upon States that have not yet ratified the Rome Statute, to do so expeditiously.

Mr. President,

South Africa would like to express its ongoing commitment to the fight against impunity and our continuing support to this important institution.

Thank you.
