Permanent Mission of the Republic of Namibia to the United Nations
360 Lexington Avenue, Suite 1502, New York, NY 10017
Tel: (212) 685-2003 • Fax: (212) 685-1561 • E-mail: namibia@un.int

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STATEMENT
BY
H.E. MR. WILFRIED I. EMVULA
AMBASSADOR & PERMANENT REPRESENTATIVE
OF THE REPUBLIC OF NAMIBIA TO THE UNITED NATIONS

AT

THE GENERAL DEBATE
OF
THE 10TH SESSION
OF THE ASSEMBLY OF STATES PARTIES
TO THE ROME STATUTE OF
THE INTERNATIONAL CRIMINAL COURT (ICC)

NEW YORK
14 DECEMBER 2011

Madam President,

Namibia is pleased to have an opportunity to address this Assembly on the occasion of its tenth session. Allow me to congratulate you like others who spoke before me, on your appointment as you steer the work of this Assembly during this 10th Session, and assure you of my delegation's full support and cooperation.

Namibia became a Party to the Rome Statute in the genuine conviction that this permanent Court is the best hope of the international community, to end impunity for the most heinous violations of human rights and humanitarian law.

Despite the good intentions which followed the establishment of the UN in 1945, and the elaboration of commendable human rights standards, as the foundation for sound international relations, conflicts continue in a number of States leading to the mass violations of human rights standards.

The adhoc tribunals set up to deal with violations in the former Yugoslavia, Rwanda have served their purposes, but because of their adhoc nature were found to be inappropriate for dealing with emerging crises in many other countries. This necessitated the articulation of more effective mechanisms to deter violations by punishing perpetrators, hence the establishment of the ICC.

Madam President,

We are also mindful that the Court was established to complement national jurisdictions in the investigation and prosecution of crimes which fall within the Rome Statute and that States Parties bear the primary responsibility to enforce the Rome Statute. For diverse reasons, many states have still not fully implemented the principle of complementarity with the Court in ensuring that criminals do not escape prosecution on account of unavailability of facilitative legal mechanisms in their jurisdictions.

Namibia commends what the Court has achieved thus far and underscores the critical importance of providing assistance to the Court, in the stages subsequent to the commencement of trials.

The Court is dependent on various forms of co-operation from States parties, in order to enforce its decisions in matters such as the execution of arrest warrants, collection of evidence etc. where the Court exercises primary jurisdiction.

Co-operation in the execution of arrest warrants remains elusive in a number of situations, yet it is critical to the proper functioning of the Court, because without bringing the suspects before the Court, the effectiveness of the Court in suppressing impunity would be undermined.

Other forms of co-operation in the processes leading to the proper conduct of proceedings, notably the protection of witnesses and victims are important, but their implementation impact on the technical capacity of requested States to render such co-operation to the Court. Despite the establishment of a trust fund to assist states in meeting the cost of relocating witnesses and victims, in Namibia we remain concerned that we may not be in a position to provide effective physical protection to those who need protection because of our population density and other geographical characteristics of our country.

In addition, we have no general comprehensive legislation in place to extend protection to victims and witnesses in criminal cases. While the incidence of criminal victimization is generally low, we expect that in cases which involve serious allegations of crimes under the Statute, the threat of victimization will be higher. This would require comprehensive legal and logistical measures to be put in place, to render reliable and effective protection that is commensurate with international expectations.

Although a number of suspects have been surrendered to the Court for trial, some indictees remain free despite repeated appeals at this and other fora for States to render the Court the necessary co-operation in the execution of these arrest warrants.

Madam President,

This Assembly needs to reflect on the reasons why there has been co-operation on some arrest warrants and non-co-operation in others. Most of the arrests warrants executed were a result of the co-operation of the Governments of situation countries. It is also significant that the indictees surrendered do not hail from the ranks of the sitting Government and that co-operation was therefore expected. The challenge is how to secure state co-operation when officials of a sitting Government are indicted.

Developments in Darfur and Libya confirm that the prospect of holding a head of state liable for crimes under the Rome Statute might justify concerns about its implications for the stability of the State and possible threats to international peace and security. It is against this background that Article 16 of the Rome Statute was adopted to enable the Council to reflect on the impact of the indictment on the security situation in the country and how the indictment has impacted on the prospect

of ending the conflict. Article 16 is therefore a useful arsenal in the hands of the Council to mitigate the impact of its action in referring a situation to the ICC.

Madam President,

We would like to see more understanding and appreciation for the efforts of the African Union which requested the Security Council to defer further investigations in the Darfur situation and the execution of arrest warrants in respect of those indicted, in order to improve the chances of promoting peace in Darfur.

The Rome Statute has conferred powers on the Security Council to enforce the maintenance of international peace and security by taking appropriate measures to restore international peace and security, where this is threatened. Referral of a situation under Article 13(b) of the Statute is intended to incentivise parties to the conflict to resolve their differences and to hold to account, those guilty of violations of international human rights and humanitarian standards. The prospect of being held individually accountable for international crimes, and extension of liability to the highest political level in a State, is an incentive for leaders to assess their roles and to be constructive in resolving conflicts.

We expect the Council to exercise its role in a serious and non-political manner in respect of situations, which may require its intervention.

Recent events in some countries where the Security Council acted give us concern that these powers could be used to create or worsen situations of insecurity, which might lead to widespread human rights abuses.

Madam President,

It is important that the exercise of discretion by the Prosecutor pursuant to a referral by the Security Council should not be perceived to be a vindication of the position of the party who emerged victorious from the conflict, and that only atrocities by the defeated party would be acted upon. Events in Libya and Coite Ivoire give us concerns that there may not be even-handedness in dealing with those accused of having committed crimes.

The recent transfer of former Ivorian President Laurent Ggagbo to the Court without including possible perpetrators from the other party in the conflict may re-inforce a feeling that the ICC is presiding over a process where only the victor would enjoy justice, by having punished those who are alleged to have committed crimes against

supporters of the victor. We hope that the Prosecutor would also act against perpetrators of crime from the ranks of the sitting Government.

Madam President,

We are concerned with the inaction of the Security Council on the situation in Darfur. The Council must remain seized with the situation and must consider all positive proposals for a resolution of the problem, especially from regional groups such as the AU.

The Assembly would recall that the concerns of some African States about the implications of the Council's inaction in the AL Bashir deferral, led to the adoption of a number of resolutions by the AU, not to co-operate with the ICC on matters such as the execution of arrest warrants.

The inaction of the Security Council also prompted the AU to actively explore regional avenues for trying indictees on the African continent through institutions such as the African Court on Human and Peoples' Rights, which could be empowered to try serious crimes of international concern. This course of action would not be necessary if this Court was perceived to act even-handedly.

The concerns of countries which border on or have close economic, political and geographical ties with Governments where certain officials of the sitting Government have been indicted must be appreciated, in the context of the assessment of the implications of executing arrests warrants for the security of the nations concerned.

We urge an honest and realistic appraisal of the responses of some of the States Parties to the execution of the arrest warrants.

Madam President,

Namibia remains committed to co-operate with the Court in appropriate cases, but we also appeal to other stakeholders to play their part and thus help us all to shoulder our responsibilities.

Namibia takes her political and legal responsibilities towards the AU seriously and would factor the decisions of its organs in our assessment of relations with the ICC. The relationship of the ICC and the AU is important and problems encountered must be resolved in a constructive manner so that co-operation with the Court can be more forthcoming. In this regard, we welcome the recent visit of the President of the Assembly to the AU headquarters to strengthen the Court's relationship with the AU.

Finally, Madam President, some reflections on the election of the next Prosecutor of the Court. We have followed the process of the selection of the candidate and have underscored the need to ensure that the candidate selected, enjoys the widest possible support from States Parties, and has the relevant experience qualities to exercise his/her discretion independently.

We therefore welcome the appointment of Ms. Fatou Bensouda of The Gambia as the next ICC Prosecutor. I wish to congratulate the State Parties on the confidence and support of her candidature, as demonstrated by her unanimous selection and endorsement as sole candidate for this position. I take this opportunity to wish Ms. Bensouda a successful tenure as Prosecutor of the ICC.

I thank you.