

Statement on Behalf of the United States of America

16th Session of the Assembly of States Parties

December 8, 2017

Thank you, Mr. President.

The United States strongly supports justice and accountability for war crimes, crimes against humanity, and genocide, including through support of domestic accountability efforts. We appreciate the efforts of the ICC and the Parties to the Rome Statute to pursue these objectives. At the same time, recent developments in connection with a request by the Office of the Prosecutor to open an investigation into the situation in Afghanistan raise serious and fundamental concerns that we wish to register today.

The United States rejects any assertion of ICC jurisdiction over nationals of States that are not parties to the Rome Statute, absent a UN Security Council referral or the consent of that State. Dating back to the 1990s, the United States has consistently objected to any exercise of jurisdiction by the ICC over U.S. personnel. We affirm this continuing position of the United States Government, and object to the request by the Office of the Prosecutor for authorization from the Court to pursue an investigation of alleged actions by U.S. personnel in the context of the conflict in Afghanistan. As the United States has previously stated, we will regard as illegitimate any attempt by the Court to assert the ICC's jurisdiction over American citizens.

I'd like to briefly elaborate on some of the concerns of the United States.

As an initial matter, and as we have consistently emphasized, the United States is not a party to the Rome Statute and has not consented to any assertion of ICC jurisdiction, nor has the Security Council taken action under Chapter VII of the UN Charter to establish jurisdiction over U.S. personnel. It is a fundamental principle of international law that a treaty is binding only on its parties and that it does not create obligations for non-parties without their consent. The Rome Statute cannot be interpreted as disposing of rights of the United States as a non-Party without U.S. consent.

The United States respects the decision of those nations that have chosen to join the ICC, and in turn, we expect that our decision not to join and not to place our citizens under the court's jurisdiction will also be respected.

Additionally, we are concerned about any ICC determination--as required by the Rome Statute's core principle of complementarity--on, for example, the genuineness of U.S. legal proceedings without United States consent. The principle of complementarity fundamentally limits the ICC's exercise of jurisdiction to those cases in which a State is genuinely unwilling or unable to comply with its duties, such as those under the Geneva Conventions, to investigate and prosecute war crimes, genocide, and crimes against humanity. Just as we have not consented to jurisdiction over our personnel, we have not consented to the ICC's evaluation of our own accountability efforts.

In raising these concerns, we are at the same time committed to accountability.

The United States has undertaken numerous, vigorous efforts to determine whether its personnel have violated the law and, where there have been violations, has taken appropriate actions to hold its personnel accountable. The United States is deeply committed to complying with law, and has a robust system of investigation, accountability and transparency that is among the best in the world. Indeed, we note the irony that in seeking permission to investigate the actions of U.S. personnel, the Prosecutor appears to have relied heavily upon information from investigations that the United States Government itself decided to make public. We question whether pursuing this investigation will make other countries less willing or able to engage in similar examinations of their own actions and to be transparent about the results. Furthermore, our efforts to hold ourselves to the highest standards of accountability and public transparency must not be misunderstood as an invitation for the ICC to review those efforts.

By intervening at this meeting, we are expressing our long standing, continuing, and principled objections. We registered these objections throughout the course of the negotiations in the 1990s. We registered these objections following the entry into force of the Rome Statute. And we repeat these objections today. Further, we have long believed and stated that justice is most effective when it is delivered at the local level. In this regard, we don't believe that moving to open an investigation by the ICC would serve the interests of either peace or justice in Afghanistan.

The United States stands as a strong ally in the fight to end impunity. Earlier this week, we joined many of you in commemorating the accomplishments of the International Criminal Tribunal for the Former Yugoslavia, an institution we have supported since day one as an important way to help ensure justice for the victims of atrocities committed during the Balkans conflict. Our support for such efforts dates back to Nuremberg and Tokyo. We were one of the most vocal supporters for the creation of tribunals to try those most responsible for atrocities committed in Rwanda and Sierra Leone. And we continue to support a number of hybrid, regional, and domestic efforts to ensure accountability for atrocity crimes, from Guatemala to Syria to Kosovo to South Sudan. The International Criminal Court can play an important role alongside these efforts by exercising its power judiciously within the limits of international law.