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CHECK AGAINST DELIVERY

Statement by Nicholas Rostow, General Counsel, U.S. Mission to the United Nations, at the Fifty-seventh session of the United Nations General Assembly, Sixth Committee, on the International Criminal Court, October 14, 2002

The reasons for U.S. opposition to the Rome Statute as finally adopted are well known. I shall restate the fundamental points today.

First, however, let me reiterate that the United States does not seek to undermine the International Criminal Court. We respect the right of states to become parties to the Rome Statute if they wish. At the same time, our decision not to be a party also should be respected.

Our position has three principal parts.

First, the United States is concerned about the danger of politically motivated prosecutions. Examples of investigations or prosecutions based on political agenda, not evidence and neutral prosecutorial judgment, abound. The structure of the ICC makes such unacceptable proceedings possible. A prosecutor's office, housed in a democratically responsible political branch of government, perforce is democratically accountable in a system of checks and balances. This situation will not exist in the ICC.

Second, as we stated before this body last year, the ICC has problems in the related areas of jurisdiction and due process. The power of this international tribunal is independent of consent. While sovereigns have the right to try non-citizens who have committed offenses against their citizens or on their territory, the United States has never recognized the right of an international organization to do so absent consent or a UN Security Council mandate and Security Council oversight. The ICC lacks all three.

In addition, the Rome Statute raises, but does not satisfactorily answer, due process concerns. These include issues of multiple jeopardy, definitions of crimes, and problems of evidence and testimony when the Court has to harmonize various legal systems and languages.

Finally, the ICC is not part of the UN Charter system. The Rome Statute provides insufficient opportunity for Security Council oversight. And, the Assembly of States Parties is wrestling with the definition of aggression, a matter left to the Security Council by the UN Charter.

For the all these reasons, among others, the United States cannot join consensus.