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Statement by Ambassador Alejandro D. Wolff, U.S. Deputy Permanent Representative, on the draft resolution on the Report of the International Criminal Court, in the General Assembly, November 26, 2007

Mr. President,

The concerns of the United States about the Rome Statute and the International Criminal Court are well known. They include the ICC's claimed authority to assert jurisdiction over nationals of states not parties to the Rome Statute, including U.S. nationals, and the lack of adequate oversight of the ICC's Prosecutor, who may initiate cases without first seeking approval of the Security Council. Accordingly, the United States disassociates itself from consensus on this resolution.

In spite of these concerns, the United States made genuine efforts to work with the resolution's sponsors to find common ground. Over the past three years, we have stated clearly, consistently, and repeatedly that we respect the rights of other states to become parties to the Rome Statute, and we have asked in return that other states respect our decision and right not to become a party. Our efforts to find common ground reflect our belief that while parties and non-parties to the Rome Statute have different views about the ICC, they should nonetheless be able to work together in a spirit of mutual respect and cooperation to advance their common interests in promoting accountability for genocide, war crimes, and crimes against humanity.

We are disappointed and surprised to find again this year that the sponsors of this resolution do not appear prepared to move forward in this spirit.

Again this year, the sponsors have declined to include language in the resolution that expresses respect for, or even recognition of, the decisions of some states not to become parties to the Rome Statute. The sponsors of the resolution apparently view such a basic expression of respect as inconsistent with their aspiration of universal membership for the ICC, as if it is, in fact, somehow illegitimate for a state to choose not to become party to the Rome Statute. By their actions, they have made clear that the pragmatic modus vivendi that we have been seeking to promote is simply not working.

As a historical matter, we find some irony in this current emphasis on universality. During the Rome Conference the United States worked tirelessly to convince delegations of the wisdom of an approach to the ICC that would have permitted more states to join the Court. This appeal was rejected in favor of a narrower approach embraced by a smaller group of like-minded states.

As a practical matter, we find this position to be counterproductive. The ICC is unlikely ever to attain universal membership. Yet the same ICC supporters who refuse to express respect for the decisions of non-parties unabashedly seek assistance for the ICC from non-parties, and seek support of non-parties for assistance to the ICC by the United Nations and other international organizations. They seem to think that the relationship with non-parties can be a one-way proposition, in which ICC parties only take and give nothing in return.

Such an unbalanced approach is untenable. Meaningful assistance from non-parties is far less likely to be forthcoming, and cooperative efforts to advance the fight against impunity are made far more difficult, so long as ICC supporters continue to disrespect the positions of non-parties. We will get further together by agreeing to disagree about the ICC and cooperating on matters of common interest than we will through the continuation of efforts by ICC parties to convert those states who have legally and legitimately exercised their right not to join.

We also note with concern the statement in the resolution encouraging states parties to the Rome Statute to take the interests, needs for assistance, and mandate of the ICC into account when relevant matters are being discussed in the United Nations. To the extent that by this statement the General Assembly seeks to encourage a particular group of member states to influence the deliberations or decisions of other organs of the United Nations, we consider it an inappropriate interference in the work of those organs.

More generally, we are concerned by the suggestion that, as a matter of general principle, it is the responsibility of the United Nations to facilitate the work of the ICC. In this regard, we note the claim of the President of the ICC that the so-called “enforcement pillar” of the Rome Statute, which includes the arrest and surrender of suspects and the protection of victims and witnesses, “has been reserved to States and, by extension, international organizations.” This seems to us to misperceive the relationship between the ICC and the United Nations.

It is, of course, true that in some cases the work of the ICC and the work of the United Nations may be complementary. We note in this regard the decision of the Security Council to refer to the ICC the situation in Darfur. But this will not necessarily be true in every case. It is for the Security Council to decide whether there are circumstances in which assisting the ICC in enforcing its decisions will advance the Council’s efforts to address threats to international peace and security. In such cases, the relevant question is whether assisting the ICC will advance the Security Council’s mandate and interests, not whether such assistance will advance the ICC’s mandate and interests. Particularly where assistance sought by the ICC may involve difficult and dangerous tasks that ICC states

parties are unwilling or unable to carry out on their own, there will be reasons to question whether the Council should agree that the United Nations should shoulder such burdens.

We welcome the addition of language in this year's resolution that requests the Secretary-General to report on assistance the United Nations has provided to the ICC and, in particular, on the expenses incurred in connection with such assistance and the reimbursements received for such expenses. This report will provide overdue and much needed transparency with respect to such assistance. We expect that it will include information about assistance to the ICC provided by UN peacekeeping and other field missions as well as assistance provided by the UN Secretariat in New York and elsewhere in the United Nations system, and will address the nature, extent, and costs of such assistance, as well as the reimbursements received by the UN. We note in this regard that General Assembly resolution 58/318 provides that all expenses incurred by the United Nations in connection with such assistance shall be paid in full to the Organization. This decision underscores the importance of respecting the separate status of the two organizations. We look forward to receiving the Secretary-General's report and intend to review it carefully. Accordingly, in conjunction with this resolution, we are writing to the Under Secretary General for Management to underscore our interest in a thorough review of these issues.

We regret that this resolution has become a source of divisiveness rather than an opportunity to build bridges between parties and non-parties to the ICC. We remain sincere in our desire to develop a cooperative approach to promoting international criminal justice, and in our hope that ICC supporters will join us in such efforts.