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**STATEMENT
BY**

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**PERMANENT MISSION OF THE
REPUBLIC OF KENYA TO THE UNITED NATIONS**

**AGENDA ITEM 78
REPORT OF THE INTERNATIONAL CRIMINAL COURT**

**70TH SESSION OF THE
UNITED NATIONS GENERAL ASSEMBLY
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Check against delivery

Mr. President

Kenya acknowledges the adoption of resolution A/70/L.47 entitled the Report of the International Criminal Court. We express our gratitude to the Coordinator for steering the lengthy negotiations.

At the outset we must recall the independent and separate nature of the relationship between the International Criminal Court and the United Nations. Save for the Relationship Agreement between the United Nations and the International Criminal Court, there is no structural relation between the two institutions. As the only General Assembly resolution that deals with the relationship of the two institutions, this resolution should therefore address the most pressing challenges to the benefit of the both partners and should neither be used to convert the General Assembly into an Assembly of Parties to the Rome Statute nor used to balkanize the UN membership into diametrically opposed groups on matters related to the Rome Statute.

Mr. President

Treaties are binding in principle only on state parties. According to the Vienna Convention on the Law of Treaties, the obligations of non-party States differ from those of State Parties. That is precisely why in many aspects, the Rome Statute makes different provisions for state parties and for non-states parties.

My delegation is frustrated by the process and the outcome of our negotiations this year. As one of the two African States parties who actively participated in this year's negotiations, Kenya notes that this technical rollover is largely attributed to the lack of flexibility of position adopted by some members and the rejection of the views of other members; even when these views were clearly informed by treaty law and practice.

Consequently, Kenya is of the considered opinion that the proposal given by a member State on the obligations of non-States Parties was consistent with international law, its interpretation and its application. Therefore, during the negotiations the request by this member State, should have been accepted without any challenge whatsoever. Accordingly, we recognize and applaud the commitment of delegations that put in extra effort in trying to bridge this gap.

Mr. President

There is a worrying trend where powerful States who have little or no regard to the primacy of the principles of international law seek to, when and where it suits them, skew the interpretation and implementation of international law and practice as we know it. As we have said before in this forum, might does not make right.

The Rome Statute system must unshackle itself from this group of States who represent an ethos and jurisprudential paradigm that represents only one segment of the Assembly of States Parties, who claim and exhibit proprietorship over the ICC and who have hijacked the Court's operational mandate thereby creating a distorted institution.

Mr. President

We want to see a resolution that is consistent with international law and further that truly addresses the most pressing challenge facing the two institutions namely the financing of the Security Council referrals. The General Assembly should not be prevented from exercising its mandate on this matter as it is fully empowered to do so by the Charter of the United Nations. In realization of the very urgent need to shift our emphasis to issues of seminal importance, we request that going forward, Member States consider changing their focus to best reflect the realities on the ground.

We want to see an interpretation and implementation of the Rome Statute that treats all member States equally without artificial divisions and categorizations that depict one group as owners and gallant defenders of the ICC and the other group as the subjects of the ICC for which the ICC was established. This deeply pathological state of affairs has to be brought to heel. This artificial dichotomy between gallant defenders and lowly subjects, has not achieved much, and there is need to see radical change of heart and mind, and reformation to ensure a level playing field for all States. Indeed the survival of the ICC very well depends on our forward movement in this regard.

In this vein, African States have tried to engage constructively with the International Criminal Court with little success. Our individual and collective efforts to initiate and develop an enabling environment for constructive dialogue with the ICC, has met with marginal success, if not utter failure. While we remain fully committed to the fight against impunity, we are concerned that any attempts to discuss and interrogate our issues publicly and transparently, continues to be met with stiff resistance under the guise of protecting the independence of the Court and its organs.

As members our actions should ensure that the ideals enshrined in the Rome Statute are realized in a manner that the original drafters and authors envisaged. More importantly, our actions should ensure that this resolution is negotiated, interpreted and implemented in a manner that is consistent with the law whilst recognizing the social, cultural, economic and political realities that world faces today.

Mr. President

In conclusion, peace and justice is what we all seek. Kenya is an unstinting champion of both. We believe in peace and justice. But, Mr. President, peace and justice cannot be found on a deeply flawed institution that creates false hope among millions of people who have had their human rights abused and lives destroyed by ruthless individuals and powerful, global and national powers.

Kenya thus calls for a complete overhaul of the negotiation process, the philosophical outlook and outcomes of this Resolution. We hope that we will be able to embark on a better process in the future and to agree on a text of improved quality and greater relevance.

I thank you for your kind attention.