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Statement by Nicholas Rostow, General Counsel, on Agenda Item 154: the International Criminal Court, in the Sixth Committee, October 23, 2003

Mr. Chairman,

My delegation would like to welcome the Vice Chairman [Tal Becker (Israel)] to the chair this morning. His presiding over our deliberations is a notable event.

U.S. opposition to the Rome Statute of the International Criminal Court remains clear and unchanged. We therefore cannot and do not join consensus on this resolution embracing the ICC.

Our principal concerns fall within the following broad categories:

First, the United States is concerned about the danger of politically motivated prosecutions. Nothing about the structure of the ICC gives us comfort that it will avoid political trials or that its power is adequately constrained by checks and balances. Indeed, it is in an institution of unchecked power.

Second, as we stated before this body last year, the ICC has serious problems in the related areas of jurisdiction and due process, including with respect to multiple jeopardy. The ICC does not require consent or comity, which are essential operating principles of international law, to exercise jurisdiction.

Finally, the Rome Statute provides insufficient opportunity for Security Council oversight, and it suggests that the Assembly of States Parties is competent to define aggression, a matter left to the Security Council by the UN Charter. For all these reasons, among others, the United States cannot support the ICC. At the same time, the United States is committed to accountability for war crimes, genocide, and crimes against humanity. The United States has a record that is second to none in holding its own officials accountable for such crimes, as well as in supporting properly constituted international war crimes tribunals from Nuremberg to the International Criminal Tribunals for the Former Yugoslavia and Rwanda today – and, in training all members of our Armed Forces in their obligations under international law and holding them accountable. Properly understood, therefore, our lack of support for the ICC reflects our commitment to the rule of law, not our opposition to it.

In addition, we would like to reiterate our support for excluding from ICC jurisdiction, personnel from non-parties to the Rome Statute with respect to acts or omissions connected with their participation in UN missions. The United States has contributed to

maintaining peace and security around the globe. Contributing personnel to UN authorized or established efforts demonstrates a commitment to international peace and security that, as you all know, can involve hardship and danger to those involved in peacekeeping. As standard, bilateral UN status-of-forces agreements provide for the exclusive jurisdiction of the sending state over its military personnel, we see no reason why the entire world should not respect the jurisdictional principles contained in these UN agreements.

In addressing this subject, the Security Council has exercised the authority granted by Article 16 of the Rome Statute of the ICC. We do not agree with those who argue that the language and negotiating history of this article show that it was intended to address specific, ongoing cases only. Security Council resolutions 1422 and 1487 represent compromises that respect the strongly held views of those who support the ICC and the equally strongly held views of those that do not. Such respect is important to maintain.

As we have often said, 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.

Thank you, Mr. Chairman.

[This statement is available at: http://www.un.int/usa/03_192.htm]