South Africa

General Debate

Speaker: H.E. Ms. Maite Emily Nkoana-Mashabane, Minister of International Relations and Cooperation

South Africa will not be silent in the face of the serious flaws in the Court’s interpretation of the Statute. The ICC is in critical need of immediate support and South Africa hopes that the ASP will do what it must do to restore confidence in the ICC, and that the Court will help capacitate members as well as regional courts to ensure that the ICC will be a court of last resort.

Supplementary Items Debate (Proposals South Africa)

Some delegates and officials of the Court have expressed concerns that addressing the subsequent matters could have the effect of undermining the independence of the Court. SA is of the view that the States Parties remain the authentic interpreters of such threats and doesn’t see any reason why the ASP should not have a say in these matters, which impact on the Court’s ability to apply its primary objectives.

There are no clear procedures that guide the implementation of the discussed articles. The relationship between article 27 and article 98 needs to be clarified, as well as the implementation of article 97. SA experienced a violation of the fundamental rule of the right to be heard, and has observed a blurring of political and judicial processes. There have also been apparent inconsistencies in the decisions of the Pre-Trial Chambers of the Court in the Malawi and DRC cases.

Arrest of a head of state pursuant to Rome Statute obligations may result in a violation by a State of customary law. SA has treaty obligations towards the African Union which impede the arrest of a head of state. The conflictive nature of these articles was already foreseen in the drafting process of the Statute. Legitimacy of the Court requires that clarity be obtained as to the nature and scope of the provisions of article 98 and 97, since other State Parties may find themselves in a similar position. The legal position of the Pre-Trial Chambers if unclear and incoherent at worst. South Africa proposes the establishment of a panel of experts to clarify these issues.