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Remarks to the 21st Diplomatic Briefing

*The Hague
8 November 2011*

Excellencies,

Ladies and Gentlemen,

As indicated by the President, the activities in the Courtroom are progressing. The Lubanga decision is coming, and today, the last testimony in the Katanga/Ngudjolo trial is starting. The progress in the latter trial shows that the Court is increasing its efficiency with each case.

At this meeting, however, I would like to highlight some other Court decisions, which go beyond the responsibility of individuals; decisions that affect the management of conflicts. States can learn how Court decisions offer possibilities.

The Chamber's decision for the confirmation of charges against Callixte Mbarushimana could have an enormous influence on the demobilization of the FDLR.

The confirmation of charges hearing in the Kenya cases was followed by all the Kenyans. They see that very senior public figures have to provide explanations to the judges. The ICC judges become public figures in Kenya and the judicial process is perceived as fair and is seen as crucial for preventing future violence in this country.

Let me focus on the incumbent Prosecutor's decisions on Darfur, Libya and Côte d'Ivoire that could have impact on the ground, on the way that States involved manage conflicts and on the budget.

In Darfur, the Court issued arrest warrants against Ahmad Harun and Ali Kushayb for the crimes committed against 4 million civilians during 2003/4. After, the Court includes such attacks in the arrest warrants against President Al Bashir. The Office completed the collection of evidence that exposes the responsibility of one individual who is in the chain of command between President Al Bashir and Ahmad Harun. The Office will present a new case before the end of the month. I will brief the UN Security Council on 15 December.

In Côte d'Ivoire, the Court again contributes to stability. Three weeks ago I visited Côte d'Ivoire, and I met with the authorities, the opposition parties, the Truth, Dialogue and Reconciliation Commission and civil society. We requested cooperation and we confirmed our duty to investigate crimes allegedly committed by all the parties of the conflict. The Prime Minister will be present at the coming ASP to show the commitment of the country with such impartial approach. This does not mean that the Office will present all cases at the same time; rather, the Office will follow a sequential approach.

The Office was closely following the alleged crimes committed since December 2010 during its preliminary examination phase, facilitating the planning of a series of short and very targeted investigations.

In Libya, the current focus of the Office's investigations is twofold: firstly, it continues the collection of evidence against Saif Al-Islam Gaddafi and Abdullah Al-Senussi in preparation for their eventual trial. It is up to the UN Security Council and States to ensure that they face justice for the crimes for which they are charged. Secondly, the Office is continuing its investigations into gender crimes in Libya. Preliminary evidence collected so far indicate that hundreds of women were raped and the involvement of high ranking officials in the commission of gender crimes including sexual violence and rapes.

The death of Muammar Gaddafi has not changed the activities of the Office. The Pre-Trial Chamber considered that *"Muammar Gaddafi and Saif Al-Islam are both mutually responsible as principals to the crimes"* and most of the witnesses refer to activities that include both of them. Even if witnesses can only speak about the actual role of Muammar Gaddafi, the Office still has to conduct the interviews in order to find exonerating evidence against the other.

Further investigations could also be necessary for other crimes allegedly committed by the different parties in Libya since 15 February 2011. Here, the Office will take in consideration that the new Libyan authorities are in the process of preparing a comprehensive strategy to address crimes, including the circumstances surrounding the death of Muammar Gaddafi. In accordance with the Rome Statute the Court should not intervene if there are genuine national proceedings. The Commission of Inquiry will moreover present a report in March 2011. The Office will be prepared to present a comprehensive report on the crimes allegedly committed by the different parties in Libya since 15 February 2011 and the existence of genuine national proceedings, during its third briefing to the UN Security Council in May 2012. In this sense, around €1.2 million required in the current budget for this third investigation could be removed from the normal budget and presented in an annex.

Excellencies,

Ladies and Gentlemen,

Let me provide some general references to cost efficiency. Mme Registrar will inform you more precise about the budget of the Court.

The public policy of the Office of the Prosecutor, confirmed by its Policy paper of September 2003, has been to focus its investigations and prosecution on those bearing the greatest responsibility for the most serious crimes, based on the evidence collected.

This policy is based on statutory scheme limiting the Court's jurisdiction to the most serious crimes of concern to the international community, ensure a high impact on the prevention of future crimes and promote cost efficiency.

The Office can handle concurrently several situations while respecting its limited resources; the budget would have to be duplicated or triplicated with an expansive prosecution policy.

The debate about a Court case driven or resource driven was solved by the adoption of the contingency fund. That creative solution allows the Office this year to carry out its investigation into the unforeseen Libya situation.

The Office presented a budget proposal amounting to €31.8 million for 2012. This comprised €5.36 million for the 2012 case assumptions in the situation of Libya, referred to the Court by the UN Security Council earlier this year, and an amount of €26.4 million for the "other cases" already before the Office prior to the Libya referral (Uganda, DRC, CAR, Darfur and Kenya). Accordingly, the Office was able to present a 0.5% below zero nominal growth budget compared to the 2011 budget for the "other cases".

The Office is faced, for the first time, with the possibility that investigations cannot proceed due to resource constraints. The CBF proposal would entail a change to the previously agreed structures, and will transform the decision making. Some cases will not be investigated because budgetary constraints. Changing the model of the Court from a case driven to a resource driven one, is more than a budget issue, it is a legal and strategic question.

To conclude, let me take advantage that so many Ambassadors are present here, to respectfully present some problems in our debates in The Hague Working Group.

The Working Group is having discussions dealing with governance; these are of crucial importance to the Office.

The Office considers that the oversight role of the ASP should be consistent with the Statute in accordance with which the Prosecutor is accountable but independent to the ASP; and the staff of the OTP is accountable only to the Prosecutor and not to the ASP or its subsidiary bodies.

In the discussions on the Independent Oversight Mechanism, the Office held the view that the suggested "three pronged" approach circumvents the ASP resolution and has no legal basis in the Statute.

Discussions should be based on legal merits. The Office is prepared to present additional information at the appropriate time.

Thank you