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Remarks to the 20th Diplomatic Briefing

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Excellencies
Ladies and Gentlemen,

It is an honour to address you once again at this 20th briefing of the Court to the diplomatic community. This is the sixth briefing I give during my mandate, and it is with some pride that with each briefing, there are further judicial and institutional developments to highlight, showing the Court to be an increasingly mature judicial institution.

The President and the Prosecutor have already highlighted the landmark unanimous Security Council decision referring the situation in Libya to the Court and I will not dwell on the political and judicial implications of this, but I do want to briefly raise the issue of the costs of such referrals. Operative Paragraph 8 of Security Council resolution 1970 "recognizes that none of the expenses incurred in connection with the referral, including expenses related to investigations and prosecutions in connection with that referral, shall be borne by the United Nations and that such costs shall be borne by the Parties to the Rome Statute and those States that wish to contribute voluntarily." I am proud to see that the Court is becoming an accepted tool to bring about a speedy end to violence and a measure of justice in situations of gross abuses of the basic principles of humanity. In order to consolidate this increasing trust in the Court, however, it must be able to deliver effective and speedy investigations and trials, and must therefore be sufficiently resourced. As such, the Court will be making a request to access the contingency fund to cover the costs of this unforeseen development. I will also approach the President of the Assembly to ensure that either he or I also seek the voluntary contributions of non States Parties, as foreseen in Resolution 1970. Surely, those countries that vote in favour of referring a situation to the Court must also be willing to bear the burden of some of the costs related to such a decision and this may be a pertinent subject for a structured dialogue between the ASP and the Security Council.

Another strong sign that the Court is an increasingly accepted institution is the voluntary appearance of the six persons subject to a summons to appear in the Kenya situation. The appearance of three of the suspects occurred yesterday and that of the other three is occurring

this afternoon. It is significant that rather than hiding under a blanket of denying the legitimacy of the Court, these six individuals have come to The Hague and engaged with our institution in order to fight their case. Many of these individuals are high ranking officials and their trust in the Court and the fairness of procedure it offers is an encouraging sign. I also want to commend the Kenyan authorities for their cooperation in the notification of the summons to the six suspects, an act of cooperation which was undertaken speedily and effectively. It is well known that at least some of the Kenyan authorities are actively seeking to defer the situation in Kenya under Article 16, and to challenge the admissibility of the cases under Article 19 of the Statute. Suffice it to say that Articles 16 and 19 form an integral part of the Rome Statute, and that it will be up to the Security Council and the Chambers respectively to rule of the merits of such initiatives. In the meantime, I would ask the Kenyan authorities to continue to cooperate with the Court in the same constructive fashion has they did during the notification process.

These significant judicial developments are matched by institutional strengthening measures such as the commencement of the work of the Study Group of the Assembly which will look three clusters of crucial institutional issues related to the Assembly's responsibility to provide management oversight to the Presidency, Prosecutor and Registrar regarding the administration of the Court. I look forward to engaging in a frank and honest dialogue with the Assembly on these issues which I sincerely hope will result in a strengthened institution. In this respect, I want to highlight the importance of a coherent and structured oversight system so that the mandates of the different oversight bodies are aligned, and each given the duties that best match their competence.

A central pillar of the current oversight system of the Assembly is the Committee on Budget and Finance which sits twice every year for one week sessions, and deals with a broad range of issues ranging from analysing the proposed programme budgets, to reviewing the policies of the Court on matters as diverse as human resources and field offices. Whether this broad mandate will be retained is a decision for States and they will have the benefit of the mapping study undertaken by the OIOS in the context of the Independent Oversight Mechanism facilitation. In the meantime, the 16th session of the Committee will begin next week, and I very much look forward to working with the Committee and assisting it in its work.

The April session of the Committee traditionally focuses on human resources, as well as reviewing the performance of last year's budget. In this respect, we will be presenting to the Committee the overall implementation rate of the Court for its 2010 budget, which including the Review Conference and actual Contingency Fund expenditure, was 100.4 per cent, or a total of €104.0 million against an approved budget of €103.6 million. As such, for the first time in its history the Court fully exhausted the programme budget and accessed the Contingency Fund. The main factor in this was the additional resources required to support simultaneous trials from January 2010, and the resources needed to cover the new Kenya situation. Among the major programmes, the Registry was the one most affected by simultaneous trials, and thus incurred an overspend of 105.3 per cent.

The Court's performance on the 2010 budget is another signal that the institution has matured and its budgetary predications more accurate. I would call on States to take note of this fact when discussing the 2012 budget this year. Of particular worry in this respect are a number of cost drivers and externalities which will push our budget up, such as capital replacements, IPSAS implementation, salaries for an increased number of judges, legal aid and possibly the rent of the interim premises. I am working hard to minimise the impact of some of these, such as legal aid where I have proactively commenced an internal review of the legal aid system to see whether further efficiencies can be achieved. Others, such as the cost of the interim premises, are simply not within my jurisdiction.

I want to briefly rest on this issue, which is currently being discussed by the Bureau of the Assembly. As you know, the Host State made a financial bid in 1998 where it pledged to provide free of cost premises to the Court for a period of 10 years. This period expires on the 1 July 2012 and the Court will only move in its permanent premises by the end of 2015. The Assembly has decided that it wishes to keep under discussions the issue of whether the Assembly of States Parties or the Host State should pay for the rent of the interim premises, which amounts to €6, 2 millions a year, detention premises excluded. I want to stress two points here. First, this is a discussion amongst States, and the Court takes no view as to the merits of the each party's views on the matter. The Court does, however, look forward to a prompt resolution of the matter, and

has requested clear guidance from the Bureau so that it may look at managing the budgetary implication of such a decision. Second, should the decision be that the Assembly bears the burden of this cost, I want to stress that such a cost cannot be absorbed by the Court, and will result in a budget increase for 2012. I am mindful that some states have zero growth as an aim for the Court's budget for 2012, but externalities such as the rent have to be excluded from any baseline used for the discussions. The Court needs to be funded adequately in order to be able to fulfil its mandate, and States have the responsibility to objectively review its budget and provide the resources necessary to run the investigations and trials before the Court. The Court's responsibility is to ensure that those investigations and trials are effective, efficient and fair, and you can rest assured that we take this responsibility seriously. I know states will take theirs equally seriously. In any event, I know I will have further occasion to exchange views with you on this topic, and look forward to the discussions later in the year.

Another aspect of the registry's work which will be discussed with the CBF is that of human resources. Throughout 2010, the Court continued to work towards the achievement of its human resources strategy, and progress was made in a number of key areas. Recruitment activities were on target and the number of staff leaving the Court was lower than in previous years. Internal candidates filled about one third of vacant posts, which represents an increase over 2009 and is indicative of career development opportunities that exist for Court staff. Staff welfare and development were supported through ongoing activities and learning programmes and performance management was further strengthened throughout the Court. Several new human resource related policies were promulgated or are nearing finalization, such as the performance appraisal rebuttal process and the code of conduct for staff. The conditions of service of the Court's internationally-recruited professional field staff were improved.

Challenges for the future remain of course. As a permanent institution, the Court has yet to define a comprehensive career development framework; policy development in the area of human resources management should usefully be accelerated; access to training and developmental opportunities continues to be seen as limited by staff. Within these challenges, however, also lies opportunity: the opportunity for the Court to achieve stability and maintain

internal flexibility while providing for employment security and advancement for its well-performing staff.

Let me now turn to the important matter of cooperation between the Court and states, I want to note initially that the Special Fund for witness relocations for states to donate funds for the purposes of funding cost neutral relocations to third states is up and running, and has over €1 million in it. The Court has already been able to use some of the funds on *ad hoc* cases, but what is very much needed now are African States Parties who agree to enter into a cost-neutral witness relocation agreement with the Court, financed by this Special Fund. I will be doing bilateral briefings with targeted embassies, and if any interest is shown, my Office is ready to begin substantive discussions with the relevant authorities.

Another aspect of cooperation which is often overlooked is that of cooperation with the defence. You will all receive a model framework agreement on interim release. The presumption of innocence and the human rights principle that the deprivation of liberty pending trial should be an exception are important safeguards that guarantee the fairness of judicial procedure which in turn is an important tool in protecting the Court from accusation of politicisation. Suspects may not be able to return to their country of nationality pending trial, and alternative arrangements need to be in place so that judges are in a position to practically enforce these important rights. As such, I ask you to please press your capitals to seriously consider entering into one of these agreements with the Court.

I would also ask you to consider positively requests for cooperation from the different defence teams, which have either reached you directly from the defence teams, or that have been routed through the Registry. I would note here that in my capacity as Registrar, I have a specific responsibility in that matter. Pursuant to Rule 20 of the Rule of procedure and evidence, the Registrar is to organise the staff of the Registry in a manner that promotes the rights of the defence consistent with the principle of fair trial as defined in the Statute. One aspect of this is assisting where necessary the deference teams in obtaining cooperation from States, so that they may compete on even footing with the Office of the Prosecutor. I would note, however, that whilst the Prosecutor has specific powers under the Rome Statute to request for the cooperation of States in facilitating his investigations and prosecutions, the defence's legal basis for seeking

such assistance is more precarious. I am convinced, however, that given the importance of maintaining the equality of arms in the judicial proceedings, you will assist me in facilitating the work of defence teams as you do for the prosecution.

Another way that the Registry has been facilitating the work of defence teams is to give them equal access to the services we provide in the field, through our field offices. I wanted to highlight today that a strategic review of the Registry work in the situation countries has been completed and we are in the process of shifting our resources to service areas of greater need. For instance, the Registry has opened a field office in Kenya using the resources redistributed as a result of the closure of the Abeche field Office. Moreover, for 2012 further efficiencies will be created as result of the redistribution of resources from the Kampala Field Office to Kenya and DRC to support the increased workload in those areas. The effective management of field offices remains high on my agenda and I will continue taking up the issue with the CBF during this session as well as in the August session, in particular with respect to the issue of the strategic coordination capacity at the field level, through the proposed Registry Field Coordinators. These positions are essential in order to ensure that the risks inherent in our field offices are managed adequately and that these offices can properly represent the Registry in the countries of situation.

One message related to field offices I want to stress here is that these are not optional additions to the work of the Court. These are essential tools for the Court and the judges to be able to contact, involve, protect and reach out to the communities they are delivering justice to. The Court needs to be in the field to protect witnesses, to explain to affected communities the proceedings and to engage victims so that they may participate actively in the proceedings.

As our presence in the field evolves following the judicial cycles, the jurisprudence of the Court is also evolving in respect of victim participation, and I want to bring to your attention a recent decision by Pre Trial Chamber II which rejected a motion from counsel for victims to be represented in the Kenya Case *Ruto et al* during the initial appearance hearing. Aside from the fact that these victims are not yet accepted by the Chambers as participating victims, the Single Judge also noted that the issues which the victims proposed to raise go beyond the scope and

purpose of the initial appearance hearing, which is limited to informing the suspect of the charges and his/her rights and setting a date for the confirmation hearing.

Whilst on counsel, I would also wish to provide you an update, as promised at the least diplomatic briefing, on the matter of Mr. Bemba's defence fees. You may remember that the Registry had decided, based on Mr. Bemba's lack of cooperation, to stop funding the legal team, unless good will is shown within a renewable period of three months. In a decision of 12 November 2010, made public on 7 December 2010, Trial Chamber III endorsed the conditions set by the Registry for the continuation of advance of fees, but extended the test-period to six months and decided that the decision to stop the advance of fees would be taken by the Chamber, instead of the Registry. The six months period ends in May. I will keep you apprised of developments.

I want to conclude by updating you on the status of implementation of the Court's Public Information Strategy that was endorsed by the Assembly in December. In line with this, special efforts have been made to expand upon and improve the Court's engagement with representatives of legal and academic communities worldwide.

With regard to the legal communities, we have extended the "Calling African Female Lawyers" campaign to continue encouraging African women to apply to practice before the ICC representing either defendants or victims. As you might probably recall the campaign was jointly launched with the International Bar Association (IBA) in May 2010. At the beginning of the campaign, 12 African women were on the List of Counsel and 5 African women were on the List of Assistants to Counsel. After 17 events organised in 16 countries in only seven months, the List of Counsel, created and maintained by the Registrar of the Court, now includes a total of 32 African women and the List of Assistants to Counsel presently includes a total of 22 African women. In addition to its core objective, the campaign has provided a unique opportunity to reach out to the legal communities in African countries. In light of this success the PIDS plans to hold several events during this year.

Another key objective of the strategy is to increase cooperation with the academic communities. Two important steps have been taken in this respect. We have established an annual Moot Court Competition on the substantive and procedural aspects of the law and jurisprudence applicable to

the ICC in English and Spanish. In cooperation with partners, competitions amongst national universities have been organized in various countries and arrangements have been done to ensure that final rounds will take place in the Courtroom in April and June respectively. First steps to ensure the expansion of the Moot Court into other languages in 2012 have been initiated.

Also, we have initiated the implementation of a project aiming at including education on international criminal law and as part of it the International Criminal Court in faculties of law of four situation-related countries. The project is funded by the European Commission and other donors and counts with the help of universities that have already the ICC as part of their official curricula. Professors of faculties of law of key universities in the selected countries will be trained and in the process educational materials will also be developed. A web portal will be established to provide support and assistance to the Universities and to make available the educational materials.

There are many more aspects of the work of the Registry which I would want to cover today, but time is not on my side and as such, I have prepared for you our usual fact sheet which includes the facts and figures related to our work. I will now hand the floor to the Secretariat of the Assembly of State Parties.

Thank you.