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Seventeenth Diplomatic Briefing

Statement

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English Version

*Check upon Delivery*

Excellencies, Ladies and Gentlemen,

As the President said, States have the opportunity to transform the Kampala Review Conference into a major milestone. The next Assembly will be a great moment for you to finalize your plans and exercise your collective responsibilities.

How to do it is of course the responsibility of States. As the President said, it would be improper for the Court to take any position on amendments to be decided by States. As the Prosecutor, my Office's contribution is a public Prosecutorial Strategy and a report on the activities of the last three years that you will receive before the end of the year, taking in consideration the consultation process conducted, including meetings in New York, The Hague and yesterday in Geneva. The Prosecution is presenting its own plans in order to increase predictability and to help stakeholders to produce their own plans. Our Prosecutorial Strategy is our independent contribution to the Court Strategic plan. It focuses on our activities but also present areas where we can work together.

Let me now quickly update you on the **Prosecution activities:**

#### The Democratic Republic of the Congo (DRC)

In **DRC 1**, *Prosecutor versus Thomas Lubanga Dyilo*, we concluded the presentation of our evidence and we are now waiting for the Appeal Chamber to make a decision. The issue is if Judges can include new facts at this stage of the proceedings based on Regulation 55(2).

In the **DRC 2** case, we are ready to go to trial. A few days ago, Mathieu Ngudjolo's Defence requested a postponement of three months to the beginning of the trial. This is under the consideration of the Judges.

#### Central African Republic

As you know, we appealed the decision ordering interim release of Jean-Pierre Bemba. We understand the concerns of the States.

The Prosecution's position is based on the facts: there has been no change of factual circumstances in the case. Most of the circumstances cited by the decision are pre-existing and have been cited previously by the same judge as either grounds for continued detention or irrelevant to an application for release.

On 3 September, the Appeals Chamber decided to grant suspensive effect to the Prosecutor's Appeal.

On 4 September, Pre-Trial Chamber II decided to postpone the hearings with States on Mr. Bemba's conditional release until the Appeals Chamber has ruled on the appeal.

In the meantime, preparations for trial continue. Today, we are presenting our amended document containing the charges, a trial brief and all our incriminating evidence.

### Darfur, the Sudan

During the Abu Garda confirmation hearing, we presented two witnesses who were victims of the attack. For the OTP, attacks against peacekeepers are very serious crimes, with a huge impact. My Office will ensure investigations of crimes against peacekeepers. Somalia is the example of the consequences of the withdrawal of peacekeepers.

Let me turn to our **preliminary examination activities**, a key aspect of the complementarity regime.

Our experience shows that making transparent preliminary examination activities will increase the predictability of the Court, the cooperation of the different stakeholders and the preventative impact of the Rome Statute in general.

We have examples of the importance of such a transparent approach in our current preliminary examinations in Colombia, Kenya, Côte d'Ivoire, Afghanistan, Georgia, Palestine and just recently Guinea. Let me give a few examples.

Regarding Kenya, I met on 3 July with a Government delegation from Kenya, led by Justice Minister Kilonzo. They informed me that, in order to prevent a recurrence of violence during the next election cycle, those most responsible for the previous post-election violence must be held accountable. They are committed to ending impunity, and committed themselves to refer the situation to the Court if efforts to conduct national proceedings fail.

The African Union Panel of Eminent African Personalities, chaired by Kofi Annan, submitted to the OTP a sealed envelope containing a list of persons allegedly implicated and supporting materials collected by the Waki Commission. The leadership of Kofi Annan is essential for my Office. He

explained how for instance in Kenya there is no opposition between a truth commission and justice. He presented a three-pronged approach: ICC prosecuting those most responsible; national accountability proceedings for other perpetrators; and reforms and mechanisms such as the Truth, Justice and Reconciliation commission.

With the leadership of the Kenyan authorities, these three tacks should complement each other. I will meet with President Kibaki and Prime Minister Odinga tomorrow to discuss the upcoming steps in investigating and prosecuting those most responsible. I will explain to them what my duties are.

A second aspect that I want to highlight, and which is also included in our Prosecutorial Strategy, is our policy to increase reactivity to upsurges of violence potentially falling within the jurisdiction of the Court in order to promote timely accountability efforts at the national level and to maximize the preventative impact of our work.

What happened in Guinea, a State Party to the Rome Statute since 14 July 2003, is a good example. The Office has taken note of serious allegations surrounding the events of 28 September 2009 in Conakry in accordance with my duties under Article 15. We publicly informed on 14 October that we were monitoring those allegations and just six days later, Foreign Affairs Minister Alexandre Cécé Loua travelled to the Court and met with Deputy Prosecutor Fatou Bensouda. We have requested written information from the Guinean Government on the crimes and on modalities put in place for conducting national investigations and prosecutions of those responsible.

Finally, it is critically important, if we want to further reinforce the preventative impact of the Court activities, to implement the pending arrest warrants.

After 5 years, it is time to do a serious effort to arrest Joseph Kony and the other LRA commanders sought by the Court. They are continuing to commit crimes. First in Uganda, then in DRC, and now in the Sudan.

The only way to stop Joseph Kony is by arresting him and surrendering him to the ICC. Outstanding arrest warrants have to be executed.

We still have one suspect at large in the DRC, Bosco Ntaganda. The worst allegations of gender crimes during the last years were about crimes allegedly committed by troops under Bosco Ntaganda's command. Bosco Ntaganda should be arrested, there is no excuse. All States, including the DRC's

neighbours, should facilitate his arrest. I am going to the area next week, in particular to Kigali, to see what can be done.

The Judges' decisions are closing doors; as the doors are closed, no windows can be opened. This is what we need to discuss. How States will make operational their commitment to enforce the Court's decisions.

Excellencies, Ladies and Gentlemen,

Let me focus briefly on my **managerial role**. From the perspective of the OTP, the CBF recommendations raise no concerns. Our focus should remain on cost efficiency, how to do more with the same resources. The OTP has requested no new posts, although our activities greatly increase. In fact, we reduced our requests: the 2009 budget has assessed that the vacancy rate would be 10 %; our vacancy rate is actually much lower: it is below 4%. However we requested a small adjustment. We estimated a vacancy rate of 8%, meaning that we are absorbing a 4%.

There are two key aspects of our cost efficiency: flexibility and standardization. Our teams and our field office will continue to be organized in a flexible manner; the OTP will rotate personnel in accordance with the needs; we must not rigidify our structures.

We will also ensure that our staff increases its efficiency following common standards. We issued the Regulations of the Office of the Prosecutor, we finishing detailed documents on our main policies and we are completing a detailed operational manual. To ensure efficiency, our staff will be trained and evaluated based upon the Office's standards. Our new senior legal advisor is in charge of this process. She has more than 20 years of experience as prosecutor in Durban, South Africa. She was managing an office with more than 700 persons. She will be very good to ensure this standardisation of the Office.

Cost effectiveness depends on the services to be provided by the Registry and in the cooperation that we receive from States. We are grateful for the security, the transportation and the support provided by the field offices staff. We depend on them to conduct our investigations on the field. We are in the process of finding a common understanding on the services to be provided by the Registry to the OTP. We are also working with the Presidency to harmonize better the work of the Court and to produce a clear report on governance. We are committed to the "One Court" principle. We are mindful of our responsibility to build an institution.

Let me conclude. In a few years the Rome Statute Court has become a reality. The Court is doing its judicial work and other stakeholders are ensuring that the Rome Statute is respected. The President of the Court is making efforts to ensure harmony between the Court and the UN. Let me quote the UN Secretary-General in his recent report on enhancing mediation and its support efforts of 8 April 2009: *“Ignoring the administration of justice [...] leads to a culture of impunity that will undermine sustainable peace. Now that the International Criminal Court has been established, mediators should make the international legal position clear to the parties. They should understand that, if the jurisdiction of the International Criminal Court is established in a particular situation, then, as an independent judicial body, the Court will proceed to deal with it in accordance with the relevant provisions of the Rome Statute and the process of justice will take its course”*.

This is also confirmed by the recently released report of the AU High Level Panel on Darfur, under the chairmanship of former President Thabo Mbeki. President Mbeki requested more accountability in Darfur. The report encourages more activities to ensure that there is no impunity for crimes committed in Darfur. It fully respects the role of the ICC as an independent, judicial institution. The report neither challenges the evidence collected, nor does it question the arrest warrants issued against Ahmad Harun, Ali Kushayb and President Al Bashir. The report does not challenge the ultimate role of the ICC Judges in deciding on those cases.

The report proposes an additional solution to fight against impunity in Darfur, the creation of a hybrid court to complement the action of the ICC. It is not an alternative to the ICC. It is meant to address those cases that the ICC will not deal with. Of course, these hybrid courts, if established, would face the huge challenge of actually prosecuting members of the army and police inside the Sudan, who benefit from *de jure* and *de fact* immunity, and with the huge challenge of protecting witnesses.

The leaderships of Secretary-General Ban Ki-Moon, President Thabo Mbeki and former Secretary-General Kofi Annan are remarkable demonstrations of progress of the Rome Statute system. It is a good moment for the Kampala review conference.