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*Statement to the United Nations Security Council on the situation in the Libyan Arab
Jamahiriya, pursuant to UNSCR 1970 (2011)*

New York
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Check on delivery

Mr. President,

1. I am honored to present my third briefing on the activities of the Office of the Prosecutor in furtherance of UN Security Council Resolution 1970.

2. In our first report we emphasized the importance of the Security Council's consensus in the adoption of Resolution 1970. We also announced that we would request arrest warrants in the following weeks. The Security Council's consensus has greatly enhanced the cooperation received and allowed us to present a first case in a few months.

3. In our second report, we explained that the arrest warrants issued by the Judges on 27 June unveiled the crimes committed against civilians in Tripoli and other areas under the control of Gaddafi. The Judges concluded that in order to stop the crimes and protect civilians it was necessary to arrest the three individuals identified as the most responsible: Muammar Gaddafi, Saif Al-Islam Gaddafi and Abdullah Al-Senussi. The Office informed that if the Libyan authorities decided to prosecute the same individuals for the same crimes under investigation by the International Criminal Court, they should submit an admissibility challenge and it would be for the ICC Judges to decide.

4. Today, I inform the Council that the Libyan authorities have arrested Saif Al-Islam Gaddafi and have presented such a challenge. The application was filed on 1 May and notes that *"On 8 January 2012, the Libyan Prosecutor-General commenced an investigation of serious crimes (including murder and rape) allegedly committed by Saif Al Islam Gaddafi during the 2011 revolution (including in the period between 15 February to 28 February 2011) and that "The Libyan Government is committed to attaining the highest international standards both for the conduct of its investigations and any eventual trials."* Libyan authorities also said that Saif Al-Islam has been kept in adequate conditions of detention, provided with sufficient and good quality food, given access to ICC lawyers and the option of retaining a domestic lawyer of his choosing. Saif also received visits from the ICRC, NGOs and family members. He has been provided with proper medical and dental care, and not been subject to physical abuse.

5. Following the submission of the Libyan admissibility challenge, the Pre-Trial Chamber requested observations from different parties to the proceedings, as well as from the UN Security Council. Rule 59 of the ICC Rules of Procedure and Evidence provides that those who have referred a situation, in this case the Security Council, must be notified of the challenge, and may in response make representation on the jurisdictional challenges. The Registry has transmitted the notification through a Note Verbale to the UN Secretary General.

6. This is the first time in the short history of the International Criminal Court that a

7. Let me be clear. There are no doubts on the legal principles. The Rome Statute is based on the primacy of national proceedings. As mentioned on numerous occasions in relation to Darfur and other situations, the Office will not evaluate the Libyan judicial system as a whole. The Office will check the factual situation in accordance with the Statute's requirements that include the intervention of an independent and impartial judiciary. The Security Council may decide to present observations, but this is a judicial issue that will be decided by the Judges of the Pre-Trial Chamber.

Mr. President,

8. Abdullah Al-Senussi was also arrested on 17 March 2012 by Mauritanian authorities. He is subject of extradition requests from France and Libya, as well as a request for surrender from the ICC. Mauritania shall decide.

9. My Office continues to collect evidence in relation to a second case in Libya on gender crimes committed against both men and women. The UN Commission of Inquiry's findings confirmed the commission of these crimes. My Office is mindful of the sensitivity surrounding rape in Libya, and has adopted a strategy to limit exposure of victims by focusing on obtaining evidence from doctors and soldiers. The investigation is progressing.

10. The report of the UN Commission of Inquiry issued on 2 March 2012 presents a comprehensive view of the crimes committed in Libya. There are thousands of allegations of crimes committed by Gaddafi forces and thousands of individuals allegedly involved in such crimes who are in detention, many of them still not under the jurisdiction of the national authorities and allegedly subjected to mistreatment or torture by rebel forces. There are allegations as well of crimes committed against civilians in Tawergha, and questions remain to be answered about the circumstances of the death of Muammar Gaddafi.

11. Additionally the UN Commission of Inquiry found that NATO did not deliberately target civilians in Libya. Of a total of 25,944 air sorties and 7,642 air-to-surface weapons employed, the Commission cited evidence with respect to five air strikes that reportedly produced civilian casualties.

12. The Office of the Prosecutor takes due note of the UN Commission of

13. The Government of Libya has committed to a comprehensive strategy to address all crimes and end impunity in Libya. While the Government faces challenges on many fronts, this comprehensive strategy must remain a priority if the Government is to show that impunity will no longer be tolerated. This strategy must address as a priority the transfer to the central authorities and the screening of thousands of detainees, the investigation of allegations of crimes by these detainees where warranted, to ensure justice for the victims, and the release of those against whom there is no basis for investigation. At the same time, all unofficial and unacknowledged detention centers should be dismantled and all possible steps should be taken to curb mistreatment or torture. The Government of Libya expressed its commitment to conduct targeted investigations and prosecutions to address the most serious crimes committed by all sides. The Government of Libya has adopted a Transitional Justice Law that created a Fact-Finding and a Reconciliation Commission that could contribute to strengthening the rule of law in the country.

14. My Office's mandate is to investigate those who bear the greatest responsibility for the most serious crimes under the jurisdiction of the International Criminal Court while respecting genuine national proceedings. So, the Office will monitor Libya's national proceedings closely. My Office is also gathering information about the activities outside Libya of high-level Gaddafi officials who were allegedly involved in Rome Statute crimes and who reportedly continue to seek to destabilize the situation of Libya.

Mr. President,

15. I would like to conclude by emphasizing again the importance of the adoption by consensus of Resolution 1970, which defined the need to do justice in Libya to ensure peace and security. Such consensus was also expressed during my previous briefings and in the recently adopted Resolution 2040, which states that the Council is *"Looking forward to a future for Libya based on national reconciliation, justice, respect for human rights and the rule of law, Recalling its decision to refer the situation in Libya to the Prosecutor of the International Criminal Court, and the importance of cooperation for ensuring that those responsible for violations of human rights and international humanitarian law, including attacks targeting civilians, are held accountable, [and] Stressing that national ownership and national responsibility are key to establishing sustainable peace and that it is the primary responsibility of national authorities to identify their priorities and strategies for post-conflict peace-building."*

16. This commitment to justice and the rule of law plays a crucial role in the

17. My Office remains committed to working with the Government of Libya and with this Council to maintain this common effort and to ensure that justice for all of the victims of Libya is achieved.

Thank you.