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16th Diplomatic Briefing of the International Criminal Court

Remarks of Judge Fatoumata Dembele Diarra
First Vice-President, International Criminal Court

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Excellencies,

Ladies and Gentlemen,

Welcome to the 16th Diplomatic Briefing of the International Criminal Court. President Song was looking forward to addressing you himself today. However President Bachelet of Chile will be coming to the Court this afternoon. Chile is on the brink of ratifying the Rome Statute and becoming the 109th State Party. President Song is eager to welcome her at this auspicious time. It is my pleasure to address you in his absence.

Since the last Diplomatic Briefing on 7 April, there have been a number of judicial developments. Just last week Mr. Abu Garda, the leader of a Darfur rebel faction, answered a summons to appear in court. The Prosecutor accuses him and two other suspects of war crimes related to the killing of African Union peacekeepers in Sudan. There is a document available for you in French and English with details on judicial developments since the last briefing and scheduled future judicial developments for cases currently before the Court. My comments today will not rehash these details.

With greater judicial activity, the work of the Court has drawn wider attention. So long as what we are doing is well understood, this is a good thing. Through diplomatic meetings, public information campaigns and outreach activities in the situation countries, the Court does what it can to ensure understanding. If our work is to contribute to reconciliation, affected communities must see justice being done. If the Court is to play a part in deterring atrocities, the broader international community must understand what it is.

Where the increase in attention to the Court's work combines with limited understanding of its mandate and functioning, there remain risks to the Court and the larger goals of the Rome Statute. These can take different forms. For example, now that cases are at trial, there could be heightened expectations of what the Court can do. If people expect that the Court can handle all cases of genocide, crimes against humanity and war crimes, this will inevitably lead to disappointment.

Of course the ICC is a critical component of the Rome Statute system. In those places where governments are unable or unwilling to try their own, victims of the worst crimes known to humanity are just as deserving of justice. And by offering the possibility to provide justice in these most difficult of situations, the very existence of the ICC can help promote local efforts. The possibility of ICC jurisdiction can encourage states to develop the will and capacity to establish credible alternatives to trials in The Hague.

It should never be forgotten that while a crucial component of the whole Rome Statute system, the Court remains only one part of it. Of course, the ICC does not have the capacity to handle all cases of genocide, crimes against humanity and war crimes. It was never the intention of the Rome Statute's framers that it should. Under the principle of complementarity, the Court only acts where States are unwilling or unable to genuinely investigate and prosecute crimes. If States ensure that they deal with crimes, the Court will not need to act. Indeed, such cases are not even admissible at the ICC. The Court embraces this limit. It is crucial that where national judicial systems can credibly investigate and fairly try alleged perpetrators of atrocity crimes, they do so. Domestic trials bring justice closer to the victims. They help to build national judicial capacity. And over time they can help to enhance the deterrent effect of prosecutions.

There are other limits on the Court's mandate. Apart from referrals from the Security Council, the Court only has jurisdiction over crimes committed on the territory of States Parties or committed by nationals of States Parties, which have all acceded to the Rome Statute voluntarily. By relying on these two classical determinants of jurisdiction, the Rome Statute actually reaffirms core principles of state sovereignty. Even where the Court has territorial jurisdiction, it only has the mandate and capacity to deal with the gravest crimes. Further, it is restricted only to crimes that took place after the Rome Statute came into effect on 1 July 2002.

These facts about the Court are not new to anyone in this room. But they are not always well enough understood in the broader diplomatic community. We are a judicial institution operating in a political world. You will recall all the work that went into ensuring the Court could operate without political influence. At the Rome Conference, states successfully banded together to ensure the Court's independence. It should be noted that this was particularly true of African States. With their experience of colonialism, African States were sceptical of investing power over the Court in the hands of a few countries. They rejected proposals to place the Court under the control of the United Nations Security Council. In a set of principles adopted in 1997, the Southern African Development Community declared that the Court should be independent and that the Prosecutor should be able to investigate crimes "without influence from States or the Security Council, subject only to appropriate judicial scrutiny." Further, the SADC stressed that "the independence and operations of the Court and its judicial functions must not be unduly prejudiced by political considerations." These principles were subsequently adopted by other African States, and embraced by many states from other parts of the world. The initiative succeeded, and these important principles were embedded at the very core of the Rome Statute.

With the Court's judicial activity increasingly drawing the eyes of the world, it is once again necessary to seek guidance from the influential SADC principles of 1997. We must keep politics separate from judicial proceedings. The Rome Statute created the possibility for a political body – the Security Council – to refer situations to the Court. In the case of Darfur, this is what happened in March 2005. Once a situation comes before the Court, justice will follow its course. States must accept that judges cannot and will not take political considerations into account. They make purely judicial judgements on purely judicial facts. There is no room for politics at the Court;

political issues belong in political forums. You will understand that we will not get involved in these debates.

We can try to disseminate simple facts about our mandate and work. But we rely on the states that created us to shield us from political winds. All of you can make a contribution by ensuring that the broader diplomatic community and the public at large understand fundamental facts about the Rome Statute system, as I have outlined today.

The endeavour launched in Rome has made tremendous progress. The Rome Statute has grown from a piece of paper to a functioning judicial system. The Court will continue to develop as the judicial institution of last resort for atrocities that must not be ignored. But it cannot succeed alone. Successful implementation of its mandate, on display now in our courtrooms, relies on your continued support.