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Address to the Assembly of States Parties

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Madam President of the Assembly,
Mr. President Khama,
Excellencies,
Ladies and Gentlemen,

I have the honour to present to the Assembly my 9th and last report as the Prosecutor of the International Criminal Court. Let me first congratulate you, Madam President, on your appointment, a recognition of your and the Estonian commitment to the Rome Statute. I also wish to thank your predecessors, Prince Ra'ad Zeid Al-Hussein, Mr. Bruno Stagno Ugarte and Mr. Christian Wenaweser.

More than eight years ago, I received an enormous responsibility: as the first Prosecutor I was mandated to implement for the first time the Rome Statute, a novel legal design to prevent and punish atrocities; the first permanent supranational criminal justice system, based on the complementary roles of national judiciary and a permanent international court.

As the Prosecutor, I was given the responsibility, subject to judicial review, to identify when and where to trigger the jurisdiction of the Court, and the independence to investigate the most serious crimes and their perpetrators, whoever they are. Article 27 of the Statute bars any immunity for Heads of States.

This unprecedented independence and competence was a deliberate decision agreed upon in Rome in 1998 and ratified by the 78 States Parties that appointed me in 2003. States learned from reality. "Never again" had been an unfulfilled promise. Thirty years after the Holocaust, the international community had no effective policy to stop the Khmer Rouge. Twenty years

later, it could not prevent the cold blood executions of Srebrenica, and neglected the machete-and-rape-driven genocide of Rwanda and the death of millions during the Congo wars.

States also knew that the age-old problem of mass atrocity had transformed as perpetrators acquired new technological capabilities. In the Internet era, organizations that commit massive crimes respect no borders: weapons, finances and political support are always international.

The Rome Statute system was the innovative response that the world was looking for centuries to establish order; it is respectful of a plurality of sovereign states but ensures the punishment and prevention of crimes through a Court of last resort.

Madam President,

The Office of the Prosecutor has a critical role in the functioning of such an interdependent system: to identify situations under the jurisdiction of the Court and trigger its intervention, it is the gatekeeper. The Prosecutor has two competing duties: the Office shall not intervene when states conduct genuine proceedings but shall intervene when states are unable or unwilling to fulfil their obligations.

In 2003, there were many fears and misunderstandings about such independent Prosecutor. To dissipate them I promised that the Office would “undertake a participatory dialogue both in the policy-setting process and in the actual implementation of its policies.” Clear operational standards were established.

The Office published its policy paper in September 2003, defining how it would implement its mandate. Let me highlight three key areas.

First, complementarity. States' genuine proceedings are an indicator of the Court's achievement. I quote from the 2003 Policy paper: "*the absence of trials by the ICC, as a consequence of the effective functioning of national systems, would be a major success*" and the Office would, "*take action only where there is a clear case of failure to take national action.*"

This policy has been applied consistently. There were no national proceedings when the Office triggered the Court's jurisdiction in four States Parties: Uganda, the Democratic Republic of Congo, the Central African Republic and Kenya. There were none following the UN Security Council referrals in Darfur and Libya, or the acceptance of jurisdiction by the Côte d'Ivoire. This respect for national efforts is also apparent from the preliminary examinations conducted in Colombia, Guinea and Georgia, as well as in the Office's policy to invite the territorial States to refer the situations before using *proprio motu* powers.

A second fundamental policy described in the 2003 policy paper, is to focus investigations on those who bear the greatest responsibility for the most serious crimes in accordance with the evidence collected.

This policy has also been consistently implemented: none of the 26 individuals facing justice before the International Criminal Court are low level perpetrators, all the cases before the Judges have been against the top leaders of the organizations involved in the commission of the crimes, including three Heads of State when the evidence collected pointed at their criminal responsibility. In compliance with the Office's duty to focus on

gender crimes and crimes against children, the Office's first case exposed how boys and girls were abused as child soldiers; trained to kill, to rape and to be raped. Each subsequent case has highlighted a further aspect of gender crime. In each situation, there were hundreds or thousands of persons killed and/or raped, and in many, millions were displaced. The cases before the Court are indeed the most serious crimes of concern to the international community.

The third key policy adopted in 2003 and further refined later was to maximize the Office's "contribution to the prevention" of future crimes, to better protect victims from violence. No international court, no domestic jurisdiction will ever end crimes by itself; local and international communities, political leaders, State representatives, police and armies should also work in the "shadow of the Court." As UN Secretary-General Ban Ki Moon said in Kampala: the ICC casts an increasingly long shadow, which those who would commit crimes against humanity have clearly come to fear.

The standardization process continues in consultation with all stakeholders. The Office has issued policy papers on the "Interest of Justice", "Victims Participation", "Preliminary Examinations", and is working on others. It has developed an internal operational manual that guides the activities of each member of the Office, it is conducting periodic 'lessons learned' exercises and is adjusting to the rulings of the Chambers. A 'Nine Year Report' outlining all its activities to date will be finalized shortly.

Madam President,

The Rome Statute system is working, its existence is no longer at risk. Investigations advance, the entire network of cooperation is performing. Judges are ensuring fair trials and deciding on the individual responsibility of

the accused. The fear of a frivolous Prosecutor, abusing the powers granted by the Statute was replaced by the challenges created by a serious institution. The States Parties of the Rome Statute have to adjust to these new challenges. I see two potential grave risks ahead.

The first risk is a Court with no independence. Independence should not be taken for granted. National or parochial interests are providing incentives to control the Court. Reality has demonstrated that the Office's independent decisions have triggered conflicts of interests for States. Leaders who are using crimes to retain power have criticized the Court and managed to mobilize some international support to this end. States Parties have struggled to prioritize their commitment to international justice over more immediate economic or political interests. Such diverse and sometimes conflicting interests exist within national governments, between country experts, legal advisors and conflict managers. Some of them may, at times, perceive the Rome Statute as an unnecessary constraint and try to limit its powers. They have incentives to control the Court through the undue expansion of States' oversight. These are accepted diplomatic practices but will destroy the Rome Statute System. Without independence the International Criminal Court has no value.

I thank States Parties for the absolute independence that they have given me during my tenure. Until today, I had the resources I needed to fulfil my duties including the contingency fund for unexpected situations such as Libya. I also thank the Assembly for the stance it adopted last year by amending the Independent Oversight Mechanism mandate in a manner fully respecting the independence of the Office of the Prosecutor. As established by the Statute, OTP staff is only accountable to the Prosecutor.

The second risk is that of an isolated Court. A Court that produces legal debates, but is ignored in the management of massive violence. Reality shows that some of the leaders sought by the Court threatened to commit more crimes to retain power, blackmailing the international community with a false option: peace or justice. The efficiency of the Court will depend on how political leaders and conflict managers react to such blackmails. To contribute to peace and security, the Office of the Prosecutor, has to hold the legal limits, it cannot be blackmailed. The Office's mandate is to investigate the facts with impartiality and apply the law with integrity. Since the failure to appease criminal leaders in Munich in 1938 there has been a need to rethink how to negotiate conflicts more efficiently.

These two competing risks, intruding on or isolating the Court, have both been managed. Support for ending impunity is growing. The Rome Statute has been operational for more than 8 years and seen the ratification of 42 additional states, including all South America and Europe and most of the Oceania and Sub Saharan Africa. Tunisia started the "Arab spring" adopting the Rome Statute only two weeks after the fall of the old regime. It sent a clear message: there is no turning back to abuse of power. The recent accessions of Bangladesh and the Philippines show a promising trend in the Asian region. Non-States Parties such as Qatar and Rwanda as well as regional and international organizations including the AU, the EU, the OAS, the Arab League and the UN are actively working with the Court to end impunity in different situations. Kofi Annan and Thabo Mbeki, representing the AU, as well as President Compaoré, all included justice in their conflict management agenda in Kenya, Sudan and Guinea. The EU continually supports our work and invites my Office to participate in internal trainings or to brief the Political and Security Committee. The OAS appointed the Spanish Judge Baltasar Garzón as part of its Mission to Support the Peace Process in

Colombia. The Arab League organized a fact-finding commission to support the intervention of the Court in Palestine. In 2005, the UN Security Council referred by 11 votes the Darfur situation to the Court after a discussion lasting three months. This year, the Security Council unanimously, including the affirmative vote of 5 Non-States Parties – China, India, Russia, USA and Lebanon – referred the situation in Libya to the Court following few days discussion.

All over the world armies are adjusting their operational standards, training and rules of engagement to make them compatible with the Rome Statute. This is the way to control violence.

Madam President,

Let me conclude.

The Office of the Prosecutor is composed of 288 staff from 81 countries, each of them committed to the mission of the Court. Their work and dedication has allowed us to continuously increase the efficiency of the Office, which performed beyond its assumptions over the last three years. They conducted the investigation in Libya in less than three months. They work under stress, in risky environments. The loss of Alain Kongolo Lubamba, a staff member who died in a plane crash while landing at Kinshasa airport, reminds the staff of their vulnerability, especially when three other staff members' lives were saved because they were not allowed to board the same plane.

Registry personnel supported us over the years. They make a difference. When a child witness arrives in The Hague, the smile of the Court's drivers makes a difference.

The system of complementarity and cooperation created by the Rome Statute has evolved into an operational network. In each of your countries, public servants and members of the civil society are part of the network. National judges in Colombia are conducting proceedings into massive crimes. Diplomats in New York are discussing referrals of situations to the Court. Judges in Africa are striving to execute ICC arrest warrants. Each of them is contributing to move the Rome Statute forward.

Together we are protecting the rights of the 2.3 billion persons who live in the territories of State Parties. But there are many other citizens from all over the world who are requesting the intervention of the Court. Just last week, Tawakkul Karman, 2011 Nobel Peace Prize laureate, visited the Office asking for an investigation into Yemen.

What is new is that victims are not alone. This Assembly shows that the killing of one hundred millions persons during the 20th century was not in vain. A new global order based on law is coming. Seventy years ago the crime of genocide did not exist. Today we are discussing how States and the Court are enforcing the new concept of crimes against humanity and genocide. In the 21st century the Assembly is leading the international community to protect every citizen in the world.

Thank you for giving me the privilege to serve as the Prosecutor.