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of the International Criminal Court

Commemoration of the International Criminal Justice Day:
The International Criminal Court, the United Nations, and the Way Forward

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Excellencies, ladies and gentlemen,

Today we commemorate the Day of International Criminal Justice, which marks the day when the Rome Statute was adopted in 1998. I want to express my gratitude to Italy, currently holding the presidency of the European Union, for hosting this event. Regional organizations, including the EU, can offer valuable support to the Court, and to the collective efforts of States Parties in support of our common fight against atrocity crimes.

Today's event focuses on the relationship between the International Criminal Court and the United Nations and marks the tenth anniversary of the Relationship Agreement between the UN and the ICC. The ICC was negotiated in the framework of the UN, and the Court is a reflection of the common resolve and the mood of the international community in 1998. I would here like to pay tribute to those men and women who showed initiative in getting negotiations started and who took leadership roles during these negotiations. The ICC contributes to the overall goal of the United Nations to work towards a more peaceful world where atrocities do not happen or, if they do, unconditional accountability for such crimes is ensured.

The ICC was created as an independent organization. At the same time, it is only logical that the Court has maintained a direct link to the UN since its inception. The October 2004 Relationship Agreement provides for a "mutually beneficial relationship whereby the discharge of respective responsibilities of the United Nations and the International Criminal Court may be facilitated". This may be most important in the Court's everyday work in the field, where the UN provides a range of services and facilities to the Court, such as field security services, and assists in providing technical support on issues concerning the testimony of witnesses in cases before the Court. The Court reports annually to the UN General Assembly, and the ICC's Prosecutor reports periodically to the UN Security Council on situations that the Council has referred to the Court.

The relationship between the UN and the Court is also vitally important for the Assembly of States Parties to the Rome Statute of the ICC. Half of the ASP's activities are carried out in New York by diplomats accredited to the UN, and the Agreement permits the use of UN facilities for meetings of the ASP, the Bureau, and other subsidiary bodies – a provision that the ASP is especially grateful for this year, as the UN will host the Assembly session this December.

Another key UN relationship for the Court is with the Security Council, which has the important ability to refer situations to the Court acting under its powers pursuant to Chapter VII of the UN Charter, as foreseen by article 13(b) of the Rome Statute. This is particularly important because the Council can refer situations to the ICC that occur in non-States parties – the only way at times for justice to be delivered when atrocity crimes happen. The Council has used this power on two occasions (to refer the situation in Darfur, Sudan, in 2005, and to refer the situation in Libya in 2011). These referrals were important for the maintenance of international peace and security and for ensuring accountability for atrocity crimes. While the Council does provide some follow-up to its referrals, hearing periodic reports by the Prosecutor about progress achieved, it is also clear that there are several weaknesses in the way situations are referred to and followed up by the Council. Most prominently, the referrals do not bind non-States parties – aside from the State at issue – to cooperate with the Court; they prohibit the UN from bearing any of the financial costs of the referral; and sadly, there has been no agreement to refer additional situations, as a result of which there has been no accountability for crimes.

I hope that the Security Council will continue to make referrals to the Court, while being sure to empower the Court properly to do its job. I am confident that States Parties in the Council and outside will continue to strengthen ICC referrals and will prefer them to, for example, the creation of new *ad hoc* mechanisms. I also hope that the international community will be even more ambitious and that the permanent members of the Council can agree to the proposal to refrain from using the veto for resolutions addressing the commission of Rome Statute crimes.

At the same time, the Day of International Criminal Justice provokes broader assessment. Each and every year, especially in connection with the Day of International Criminal Justice, we ask ourselves where we stand with the bold undertaking of a permanent international criminal court. Today, some argue that the circumstances and our vision for the world were different in 1998 and that maybe we were a bit more optimistic than we are now. However, the role assigned to the ICC – to ensure accountability for what the Rome Statute describes as “the most serious crimes of concern to the international community as a whole”, crimes that “threaten the peace, security and well-being of the world” – is as relevant and pressing now as it was in 1998.

The Court has been built up. It is independent, as it has shown on many occasions, not always to the liking of those directly concerned. Building up this Court has taken a massive effort and considerable resources. The yearly budget of the ICC now stands at over €121 million (€121,656,200). The budget negotiations, though difficult, have until now resulted in additional funds to support the Court's activities, because there is need for this institution and also because alternatives would be much more expensive. Regional initiatives to establish institutions similar to the ICC and proponents of further *ad hoc* judicial mechanisms can no doubt benefit from examining the ICC's budget figures and the experience of those who have been working to set it up. Considering that the ICC has issued three verdicts so far, it is evident that the delivery of international criminal justice does not come for free, but that these costs are affordable if shared by all stakeholders and if the delivery of justice is not fragmented between different institutions with similar mandates.

The States Parties, the primary stakeholders, must be continuously aware that it is our common task to take good care, and to ensure administrative oversight, of the ICC. It was

established as a permanent court, and we need to keep investing our energies. In the words of Martin Luther King, Jr., “Every step toward the goal of justice requires sacrifice, suffering, and struggle”.

So what can we do to support the Court now? The essential task for States is to give the Court our political support – now, and in the years to come. First, the support of the international community can come through UN decision-making. In this context, political support seems to be there – General Assembly resolutions show strong support for the Court, and issues of rule of law and justice have become a mainstream part of the Security Council’s work. The fact that the Council has increasingly been able to refer to the Court’s work in its resolutions and presidential and press statements is indeed welcome. It is evident that the Council has recognized the contribution of the Court to the fight against impunity and to international peace and security. In some instances, for example in the Democratic Republic of the Congo, the Central African Republic and Mali, UN peacekeepers have received the mandate to support international justice and to cooperate with the ICC.¹ Additionally, delegates in Geneva have been working actively to mainstream ICC related issues into the Universal Periodic Review process. But General Assembly ICC resolution negotiations are becoming more and more difficult with every passing year, a sign that the role of justice in ensuring lasting peace is not acknowledged by all.

Second, we need political support at the national level, as demonstrated through cooperation with the Court. The Assembly has been consistently focusing on issues of cooperation, including protection of witnesses, temporary release and other issues. The Court’s situations and cases often involve very complex political situations, and we must address these situations with maturity and open spirit. States Parties that have faced challenges in cooperating with the Court have called for a candid discussion among all parties about the difficulties. We have conducted this process in an inclusive manner, promoted by my office and the ASP’s focal points on non-cooperation. Over the past years, my office has carried out exhaustive efforts, to address instances of non-cooperation. My office, together with the Court, has also been calling for consultations with the Court, as provided in the Rome Statute article 97, when a State Party experiences difficulty to cooperate.

Third, we also need continued support from the UN system itself. An example of such support comes from the Secretary-General’s “Guidance on contacts with persons who are the subject of arrest warrants or summonses issued by the International Criminal Court.” This, *inter alia*, limits the contact of UN officials with persons who are the subject of ICC arrest warrants to those which are “strictly required for carrying out essential United Nations mandated activities”. I welcome in this regard the practice established by the UN of informing the ICC prosecutor and the President of the Assembly, of any such upcoming meetings. The guidance established by the Secretary-General is especially noteworthy since States Parties themselves have not been able to agree on their own policy of avoiding non-essential contacts.

Fourth, we need to work to strengthen domestic capacity to adjudicate Rome Statute crimes. The Court was founded on the principle of complementarity – that it is the primary responsibility of States to prosecute atrocity crimes themselves, and that the Court will only intervene where States are unwilling or unable to do so themselves. The ICC’s activities have

¹ S/RES/2147; S/RES/2149; S/RES/2164

given encouragement to, and put pressure on, States to investigate atrocity crimes in their national courts. But we need to ensure that all States have the capacity to prosecute atrocity crimes. On this issue we should work hand-in-hand with UN actors, in the general framework of strengthening the rule of law.

Finally, we must take a critical look at how we work as the Assembly of States Parties. We must be sure to provide the Court with the best and the brightest elected staff, including the Prosecutor and the Judges. An opportunity presents itself through judicial elections this December at the annual Assembly session. We should be sure to nominate and elect the most highly qualified candidates, those who are willing, able and fit to assume office when called to service by the Court. In addition, the ASP now benefits from the assistance of an Advisory Committee on the Nominations of judges, which is mandated to “facilitate that the highest-qualified individuals are appointed as judges of the ICC”. I hope that States Parties are guided by the assessment of the Advisory Committee as they decide on how to cast their vote in the election.

Within the Assembly, a number of States Parties do make a significant effort to assist and improve the Court, through leading facilitations on topics that the Assembly deals with inter-sessionally. These processes could be streamlined by identifying concrete goals for every year. As the Assembly, we have to avoid tendencies of micro-management. Numerous facilitations and other processes require constant reporting by the Court and substantive resources that could be directed towards judicial activities.

Additionally, the experiences of last year show how difficult it is for the ICC to implement the ambitious plan set up by States in 1998. By definition, not all activities of a criminal court that operates in an intensely political atmosphere can be to everyone’s liking. In particular, the principle vested in the Rome Statute that it applies to all persons irrespective of official capacity has proven difficult to put in practice.

Some States are currently seeking to modify the Court’s legal framework. Besides earlier amendment proposals, new amendments to the Rome Statute were proposed last year. All of them are now being considered by the Working Group on Amendments in New York. These amendments should get fair and thorough consideration. I hope that the amendments to this complex legal document are done by consensus, as we did at the review conference in Kampala in 2010.

For some, the pace of judicial proceedings has been frustratingly slow. We need to ask ourselves to what extent this is because of the Court, and to what extent it is due to rules that States have established. Unlike with the *ad hoc* tribunals, the States have reserved for themselves the right to amend the Rules of Procedure and Evidence. This process should be dynamic. I encourage that, for all amendments to the legal framework of the Court, we should be sure that our actions are not geared towards influencing the course of ongoing proceedings.

Finally, twelve years after the Court's activities began, one has to ask where we stand in terms of its global reach, something that is of crucial importance if we want to benefit from its full potential. In terms of achieving universality, we are not doing badly –there are 122 States Parties and, despite all odds, each year new States are joining the Statute. There still remains a lot to do and we are of course all aware that some bigger players of the international community are reluctant to adhere to the Statute. I also hope that States Parties

will continue efforts to ratify or accede to the Kampala amendments, the Agreement on Privileges and Immunities of the Court, and to incorporate the Rome Statute into their domestic laws. We need to see progress in all regions on these issues.

The Court's success also depends on non-States parties. Allow me to bring a simple example: States Parties have endorsed the establishment of a liaison office with the UN in New York, and another with the African Union, in Addis Ababa, to maintain regular contacts with those organizations. The viability of these liaison offices largely depends on the good will of these host countries, such as to allow for proper accreditation of staff.

In all our efforts, we must not forget the victims of atrocity crimes. The Trust Fund for Victims established under the Rome Statute has earned the confidence of States Parties. Last year, during the Assembly session alone, pledges were made for over €6.5 million. I am hopeful that with this increased resource base, the Trust Fund will soon extend its activities beyond the two countries where it currently works.

Finally, I call on all who support the Court to show that support today through social media. The Court and my office have launched a global social media campaign "*Justice Matters*" to commemorate the Day of International Criminal Justice. Over the last month, representatives of States Parties were invited to join in by expressing their support to the Court through twitter and by submitting photographs to the 17 July Facebook page. This is one way of linking government actors, civil society and "a simple man in the street" to show that we do care and that we all share a common goal.