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Mission of Estonia
to the United Nations



**Open Debate in the Security Council on Peace and justice, with a special focus on the role
of the International Criminal Court**

New York, 17 October 2012

**Statement by H. E. Ms. Tiina Intelmann, President of the Assembly of States Parties
to the Rome Statute of the International Criminal Court and Estonia's Ambassador-
at-large for the International Criminal Court**

Mr President,

I am speaking in my capacity as President of the Assembly of States Parties to the Rome Statute of the International Criminal Court and as Estonia's Ambassador-at-large for the International Criminal Court.

I would like to join others in thanking Guatemala for organizing this timely and indeed long-awaited debate, which provides an opportunity to examine the relationship between the Security Council and the ICC. In making this statement, Estonia aligns itself with the statement that will be delivered on behalf of the European Union.

The Council and the Court are not only connected through the relationship established by the Rome Statute but, first and foremost, through the common concern for crimes that, in the words of the preamble to the Rome Statute, “threaten the peace, security and well-being of the world”. By working to end impunity for the perpetrators of the most serious crimes of concern to the international community, the Court contributes to the prevention of such crimes. Justice is a fundamental building block for peace. Impunity for the most serious crimes can no longer be an option.

In recent years, issues of rule of law and justice have gained prominence in the Council, becoming part of the mainstream of Council discussions. The fact that the Council has increasingly been able to refer to the Court’s work in its resolutions, 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.

Though the Rome Statute system is first and foremost a consent-based arrangement, article 13 (b) of the Rome Statute enables the Security Council to refer situations to the Court, thereby extending the reach of the Court and making justice and accountability possible in States that are not parties to the Rome Statute. This is a great opportunity to bring to justice perpetrators of crimes that would otherwise go unpunished.

Security Council resolutions 1593 (2005) and 1970 (2011) took crucial steps in the fight against impunity by referring the situations in Darfur and Libya to the ICC. Recognizing these achievements, we must also be conscious of the challenges faced by the Court with respect to the two referrals, which are a subject of continuous discussion among States Parties. Allow me to share a few thoughts, bearing also in mind the possibility of future referrals.

The Security Council receives periodic reports from the Prosecutor concerning both situations it has referred to the ICC. Given their complicated nature, the Court and, indeed, the Council itself, would greatly benefit from a more efficient and vigorous follow-up of these situations, including using sanctions mechanisms of the Council. In particular, the Council could consider imposing sanctions against individuals who are sought by the Court, especially when there is already a sanctions committee in place covering an ICC situation country. There should also be coordination between the

sanctions committees and the ICC to ensure that frozen assets belonging to individuals can be claimed by the Court to finance the defense of these individuals before the Court and, ultimately, reparations to victims.

The Court would also benefit from a follow-up by the Council with regard to instances of non-cooperation. In this context, I would like to mention that the Assembly of States Parties has in place its own mechanisms to follow up on instances of non-cooperation by States Parties.

The referral of situations to the Court by the Security Council creates a financial burden which has hitherto been borne entirely by States Parties to the Rome Statute. This situation was not foreseen by the Rome Statute, which assumes, in its article 115, that the United Nations will reimburse the Court for the costs incurred due to Security Council referrals. The ICC is a small court with a relatively limited budget. Budget discussions amongst States Parties at the end of last year, shortly after the adoption of resolution 1970, showed that the present practice may not be sustainable.

Effective cooperation and assistance by all States, and international and regional organizations is essential for the ICC to fulfill its mandate as it was for the *ad hoc* international criminal tribunals previously set up by the Security Council. In future referrals, the Security Council might consider imposing an obligation to cooperate with the Court on all UN Member States, in order to make the Court's work in these cases more efficient and effective.

After 10 years of existence, the Court and States Parties to the Rome Statute are engaged in a lessons-learned exercise to make the ICC and the whole of the Rome Statute system more efficient. This includes a consistent focus on cooperation with the ICC, including the execution of the more than 10 outstanding arrest warrants. After two referrals of situations to the Court, it would be useful were the Security Council to establish a working group or a Rome Statute caucus examine the practice of past referrals, effectiveness of investigations stemming from them, and to look into the modalities of future referrals. Given the common goal of the Council and the Rome Statute of the fight against atrocity crimes, I am sure that both the Council and the ICC would benefit from such exercise.

States Parties to the Rome Statute stand for the integrity of the Statute. They also advocate for universal ratification of the Rome Statute since this the ultimate way to ensure accountability for international crimes. I therefore call upon all States which have not yet done so to ratify or accede to the Rome Statute.

Before concluding, Mr President, allow me to offer some thoughts about victims. Victims are at the center of the Rome Statute system. Successful investigations and prosecutions assist in restoring dignity to victims by acknowledging their suffering and help to create a historical record that protects against those who will seek to deny that atrocities occurred. Let us not fail those who have suffered from atrocity crimes and look to us for succor.

I thank you.