**Statement of the Prosecutor of the International Criminal Court, Fatou Bensouda, on concluding the preliminary examination of the situation referred by the Union of Comoros: “Rome Statute legal requirements have not been met”**

June 11, 2014

International Criminal Court

<http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/pages/otp-statement-06-11-2014.aspx>

On 14 May 2013, a referral was received by my Office from the authorities of the Union of the Comoros, a State Party to the Rome Statute.  The same day, I announced the opening of a preliminary examination "with respect to the 31 May 2010 Israeli raid on the Humanitarian Aid Flotilla bound for [the] Gaza Strip.''

Following a thorough legal and factual analysis of the information available, I have concluded that there is a reasonable basis to believe that war crimes under the jurisdiction of the International Criminal Court ("ICC" or the "Court") were committed on one of the vessels, the Mavi Marmara, when Israeli Defense Forces intercepted the "Gaza Freedom Flotilla'' on 31 May 2010. However, after carefully assessing all relevant considerations, I have concluded that the potential case(s) likely arising from an investigation into this incident would not be of "sufficient gravity" to justify further action by the ICC.  The gravity requirement is an explicit legal criteria set by the Rome Statute.

Without in any way minimizing the impact of the alleged crimes on the victims and their families, I have to be guided by the Rome Statute, in accordance with which, the ICC shall prioritize war crimes committed on a large scale or pursuant to a plan or policy.

In the final analysis, I have, therefore, concluded that the legal requirements under the Rome Statute to open an investigation have not been met and I am announcing that the preliminary examination has been closed.

My Office's assessment of the situation referred by the Comoros was based on open and other reliable sources, which we subjected to our strict practice of independent, impartial and thorough analysis.

Under the Rome Statute, the referring State, in this case, the Union of the Comoros, has the right to request the Judges of the ICC to review my decision not to proceed to open an investigation, pursuant to article 53(3)(a) of the Statute.

I have made it clear in the past and I will repeat it here: my Office will execute its mandate, without fear or favour, where the Court's jurisdiction is established; and will vigorously pursue those – irrespective of status or affiliation – who commit mass crimes that shock the conscience of humanity.  We will do so with unyielding commitment to end impunity for mass crimes and in total independence, but we can only do so in strict conformity with the Rome Statute legal framework.

**Background**

The Union of the Comoros has been a State Party to the ICC since 18 August 2006. The Court may therefore exercise jurisdiction over Rome Statute crimes committed on the territory of Comoros or by its nationals as of 1 November 2006.

On 14 May 2013, the Office of the Prosecutor received a referral on behalf of the authorities of the Comoros with respect to the 31 May 2010 Israeli interception of a humanitarian aid flotilla bound for the Gaza Strip. On the same day, the Prosecutor announced that her Office had opened a preliminary examination of the referred situation. On 5 July 2013, the Presidency assigned the situation to Pre-Trial Chamber I.

Of the eight vessels in the flotilla, only three were registered in States Parties. The Court has territorial jurisdiction under article 12(2)(a)of the Rome Statute ("State of registration of that vessel") over crimes committed on board these three vessels, registered respectively in the Comoros (the Mavi Marmara), Cambodia (the Rachel Corrie) and Greece (the Eleftheri Mesogios/Sofia). Cambodia and Greece are States Parties to the ICC since 11 April 2002 and 15 May 2002, respectively. The situation forming the subject of the referral began on 31 May 2010 and encompasses all alleged crimes flowing from the interception of the flotilla by the Israeli forces, including the other related interception of the Rachel Corrie on 5 June 2010.

The Office analysed the supporting materials and documentation accompanying the referral along with, among other things, the reports published by the four commissions that have previously examined the 31 May 2010 incident. It should be recalled that the Office does not have investigative powers at the preliminary examination stage. Not having collected evidence itself, the Office's analysis in the report must not be considered to be the result of an investigation. The Office's conclusions may be reconsidered in the light of new facts or evidence.

The Office of the Prosecutor of the ICC conducts independent and impartial investigations and prosecution of the crimes of genocide, crimes against humanity and war crimes. The Office of the Prosecutor is currently conducting eight investigations: Uganda; Democratic Republic of the Congo; Darfur, Sudan; Central African Republic; Kenya; Libya; Côte d'Ivoire and Mali. The Office is also conducting preliminary examinations relating to the situations in Afghanistan, Colombia, Georgia, Guinea, Honduras, Iraq, Nigeria and Ukraine.