Mr. Chairman,
Mr. State Secretary,
Honorable guests,
Dear friends,

I would like to express my gratitude to Argentina, Belgium, Slovenia and the Netherlands for inviting me to participate in this side event relating to the initiative for a new multilateral treaty for Mutual Legal Assistance and Extradition for Domestic Prosecution of Crimes of genocide, crimes against humanity and war crimes (which I will refer to in brief as atrocity crimes).

In my previous role as Registrar of the International Criminal Tribunal for Rwanda, the ICTR, I was privileged to be part of an institution that was confronted with the task of bringing to justice persons accused of the most serious international crimes, crimes that in some cases defied comprehension. While discharging my functions, I gained firsthand experience of the necessity of an international judicial institution like the ICTR creating and maintaining
effective judicial cooperation with Member States. As we all know, the ICTR
does not have its own police force, so cooperation with Member States was
crucial to ensure that those indicted by the Tribunal were arrested and
transferred to the premises of the Court to face justice.

However, it was evident that the Tribunal would not have enjoyed such
cooperation with Member States without an adequate legal framework.
Obviously, political will and national structures are important, but without an
adequate legal framework to guide cooperation, it would have been difficult to
provide assurances of fair trials for the accused and victims alike. It is therefore
as a result of my experience with the ICTR that I consider state cooperation to
be key to any efforts to successfully investigate and prosecute atrocity crimes.

I am aware of the initiative to open negotiations for a new treaty that
would reinforce interstate judicial cooperation for the prosecution of atrocity
crimes. This is an important initiative and one that I fully support. I am
convinced that, to build a culture of prevention and promote lasting peace, we
must fight impunity for crimes committed, and establish a credible framework
that would help to bring the perpetrators of crimes of genocide and related
crimes to justice.

With the progressive development of international law and international
criminal law in particular, today it is accepted that States have an inherent
obligation to investigate and prosecute atrocity crimes. This obligation was
recently reaffirmed by the adoption and eventual entry into force of the Rome
Statute of the International Criminal Court. As we all know, the Rome Statute is
upheld by the complementarity principle, which requires States to
undertake investigations and prosecutions at the domestic level of persons
responsible for atrocity crimes. This obligation stems from the logical
assumption that national authorities should take lead in preventing and
punishing crimes that are committed at the national level. The international community can only intervene when national authorities are manifestly unable or unwilling to discharge this duty.

Despite the need - and indeed desirability - for domestic prosecution, it is evident that without a formal international legal framework, which has been agreed upon by States, it will be hard to ensure some key elements necessary for prosecutions, such as mutual legal assistance and, in some cases extradition. Experience has shown that the effectiveness of judicial interstate cooperation broadly depends on the existence of an applicable international mutual legal assistance and extradition treaty. For example, a reply to a request for assistance can be obtained much sooner and more efficiently when there is a formal legal basis for it. By concluding an international agreement, States reaffirm their commitment to establish a direct channel of communication and cooperation among one another to ensure that request for legal assistance, exchange of information in criminal matters or request of particular expertise is dealt with expeditiously.

During an expert meeting organized by Belgium, the Netherlands and Slovenia in The Hague in 2011, practitioners and legal experts from nineteen countries rightly concluded that the international procedural legal framework for mutual legal assistance and extradition for international crimes is incomplete and outdated. This conclusion was based on the reality that times and context have evolved since the existing instruments were adopted. For example, the United Nations Convention on the Prevention and Punishment of the Crime of Genocide of 1948 only mentions that genocide is not considered a political crime for the purpose of extradition. However, a closer scrutiny would indicate that the Convention is silent on matters related to mutual legal assistance between States in case of domestic prosecution. It is this kind of discrepancy
that provides a compelling argument for devoting our efforts to creating a legal regime that would reflects and address pertinent challenges of our time.

It is on this basis that I applaud the efforts and leadership of Argentina, Belgium, the Netherlands and Slovenia, who have proposed to open negotiations for a modern multilateral treaty regime to facilitate better practical cooperation between States investigating and prosecuting atrocity crimes. A new multilateral instrument would fill this legal lacunae and offer practical solutions. Such an instrument would benefit States in their investigation and prosecution of atrocity crimes, whether at a national or an international level.

Some States may feel that some of the provisions of a new treaty would not be necessary, legally speaking, for inter-state cooperation. But we all know that this is not a reason not to support the initiative. This initiative is also a question of political principles: are we concretely in favour of the fight against impunity for these atrocity crimes? Do we recognise that the primary responsibility for prosecuting them relies with national jurisdictions? Do we want that all States cooperate with each other in this fight? This treaty will be a concrete demonstration of our engagement. Supporting the initiative is also a clear political signal for that purpose.

I am pleased to note that an increasing number of like-minded States share the views of these countries that I have just mentioned. Indeed, I should emphasize that to achieve this objective we do not need to reinvent the wheel. The international community could draft the new treaty by duplicating the most modern procedural provisions adopted in recent treaties on mutual legal assistance dealing with other international or transnational crimes – such as the United Nations Convention against Transnational Organized Crime (UNTOC), and the United Nations Convention against Corruption.
Concerning a forum to open the negotiations, I think – as do the members of the core group - that a decision could be taken after a new strategic meeting that would convene all States to sign the new permanent declaration of support.

In concluding my remarks, I would like to reiterate my belief that the negotiation of a multilateral treaty regime is of fundamental importance and should therefore be dealt with as a matter of priority by the international community. As I have consistently reminded States, atrocity crimes are the most serious crimes of international concern, and all States have the obligation to investigate and prosecute them effectively. It therefore goes without saying that the adoption of a new treaty regime will enhance State cooperation and capability to effectively prevent and punish these crimes. Indeed, if States have an efficient and effective legal framework to punish these crimes, this will certainly go a long way towards reaffirming the complementarity principle which underpins the Rome Statute establishing the international Criminal Court.

Now is the time for action, not for more words. I strongly invite all States that are not yet co-sponsors of the permanent declaration to join the initiative now, and make the fight against impunity for atrocity crimes a reality.

I thank you for your attention.