



## Assembly of States Parties

Distr.: General  
29 November 2019

Original: English

---

### **Eighteenth session**

The Hague, 2-7 December 2019

### **Report of the Bureau on complementarity**

I.	Background.....	2
II.	General findings.....	2
III.	The President of the Assembly of States Parties, and the Secretariat .....	4
IV.	The Court .....	6
V.	Broader efforts of the international community .....	6
VI.	Conclusion .....	9
Annex I:	Draft resolution language for the omnibus resolution .....	10
Annex II:	Draft language for inclusion in the annex on mandates of the omnibus resolution .....	12
Annex III:	Summaries of 2019 meetings.....	13

## I. Background

1. At its 7 February 2019 meeting, the Bureau re-appointed Australia and Romania as *ad country* focal points for the topic of complementarity. As such, Australia and Romania are focal points in both The Hague Working Group and the New York Working Group in the lead-up to the eighteenth session of the Assembly.

2. At the seventeenth session of the Assembly, States Parties resolved to continue and strengthen, within the appropriate fora, effective domestic implementation of the Statute to enhance the capacity of national jurisdictions to prosecute the perpetrators of the most serious crimes of international concern.<sup>1</sup> Consequently, the subsidiary bodies of the Assembly and the organs of the Court were essentially given the following mandates: The Bureau was requested to “*remain seized of this issue and to continue the dialogue with the Court and other stakeholders on complementarity, including on complementarity-related capacity-building activities by the international community to assist national jurisdictions, on possible situation-specific completion strategies of the Court and the role of partnerships with national authorities and other actors in this regard, and also including to assist on issues such as witness and victims protection and sexual and gender-based crimes*”.<sup>2</sup>

3. The Secretariat of the Assembly of States Parties (“the Secretariat”) was mandated to, within existing resources, continue to develop its efforts in facilitating the exchange of information between the Court, States Parties and other stakeholders, including international organizations and civil society, aimed at strengthening domestic jurisdictions, and to invite States to submit information on their capacity needs for the consideration of States and other actors in a position to provide assistance, and to report on the practical steps taken in this regard to the eighteenth session of the Assembly.<sup>3</sup> The Court, while recalling its limited role in strengthening national jurisdictions, was encouraged to continue its efforts in the field of complementarity, including through exchange of information between the Court and other relevant actors.<sup>4</sup>

## II. General findings

4. The Rome Statute creates a system of criminal justice designed to ensure that there is no impunity for the most serious crimes of concern to the international community as a whole due to the unwillingness or inability of States themselves to investigate and prosecute the perpetrators of these crimes. This system is based on the principle of complementarity as enshrined in the Statute, which means that the Court will intervene only when States are unwilling or unable to genuinely carry out the investigation or prosecution of these crimes.

5. It is generally understood by States Parties, the Court and other stakeholders that international cooperation, in particular through rule of law development programmes aimed at enabling domestic jurisdictions to address war crimes, crimes against humanity and genocide, may contribute to the fight against impunity for such crimes. Such cooperation has been described as “positive complementarity” or complementarity activities. National ownership is essential and a requirement to engage in, and ensure the success of, such activities.

6. Financial contributions to development programmes and to civil society can play an important role in promoting complementarity. A number of countries have allocated development cooperation resources to promote the strengthening of national judicial capacity to address Rome Statute crimes.

---

<sup>1</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Seventeenth session, The Hague, 5-12 December 2018* (ICC-ASP/17/20), vol. I, Part III, ICC-ASP/17/Res.5, para 123.

<sup>2</sup> *Ibid.*, para. 128 and annex I, para. 14 (a).

<sup>3</sup> *Ibid.*, para. 129 and annex I, para. 14(b).

<sup>4</sup> ICC-ASP/17/Res.5, para. 131.

7. In 2019, a number of meetings and consultations on the issue of complementarity were held with relevant stakeholders, including States, all organs of the Court as well as with representatives of civil society and international organizations. All informal consultations within The Hague Working Group were also open to Observer States, non-States Parties and civil society organizations. A brief summary of these consultations is provided below and the summaries thereof are available on the Assembly website (see annex III).

8. At the first meeting on complementarity, held on 22 February 2019, the co-focal points outlined a draft program of work for 2019 which had been circulated on 14 February 2019. At that meeting, they also chaired an informal information session on the topic “*Article 17 of the Rome Statute and issues of admissibility including an overview of jurisprudence and recent situations*”, which was presented by two representatives from the Office of the Prosecutor (OTP). Recalling jurisprudence from the Appeals Chamber, there was a discussion on the ‘two-step inquiry’ under Article 17, which involves determining first whether the national authorities are active in relation to the same case, and only if so, whether this activity is vitiated by a lack of genuineness. There was a discussion of the OTP’s approach to assessing complementarity in practice, and it was noted that this was a dynamic process which might evolve over time.

9. On 4 April 2019, the focal points organized a seminar on the topic “*Completion strategies across the ICC’s activities*”, at which representatives from international criminal courts and tribunals and civil society made presentations. During the seminar it was highlighted that completion in the broad sense means that the Court must make an effective contribution to long term justice. It was noted that while the ad hoc tribunals and the Court are different (given the ICC’s permanent nature), the main challenge for the Court was to successfully transfer responsibility over time to national authorities that are willing and able to handle the situations. This represented an important part of the Court’s contribution to complementarity. It was also noted that the Court, although a permanent institution, has a temporary nature in a situation country. In that context, it was said that the Court has to focus on delivering justice and creating a situation where justice can be delivered nationally over the long term. In this regard, public information and transparency were of crucial importance in building respect for the Court’s work within the local community. It was pointed out that financial pressure should not be the main force to guide the Court’s efforts but can help in priority setting and developing cost effective approaches.

10. At the second meeting, on 31 October 2019, representatives of the OTP, the Office of Public Counsel for the Defence (OPCD), and the Secretariat briefed States. The OTP representative presented an overview on activities on complementarity. He noted the twin aspects of the term complementarity, recalled the limited role of the Court in efforts to encourage and offer support to national proceedings and noted that the OTP’s interaction with national jurisdictions was a key aspect enabling it to prioritize its own work: by identifying opportunities to defer to national proceedings with respect to particular situations/cases in order to avoid the need for ICC intervention. He also noted the relationship between complementarity and the notion of ‘completion’ strategies. He recalled the recent Strategic Plan of the OTP and the commitment to providing a paper outlining the OTP’s approach towards complementarity, as well as to set out a policy paper on completion issues.

11. The Principal Counsel, Office of Public Counsel for the Defence (OPCD) presented Defence perspectives on complementarity. He indicated that the OPCD and the Office of Public Counsel for Victims (OPCV), both independent offices within the Court had, together with the International Criminal Court Bar Association (ICCBA), submitted a recommendation to States Parties that a focal point for the Defence and the Prosecution be appointed, in order to have a balanced view of the role of both sides.

12. The Secretariat provided an update on the implementation of the mandate contained in resolution ICC-ASP/17/Res.5,<sup>5</sup> in which it indicated that it had received requests from four States Parties, and informed the working group that the Secretariat was liaising with

<sup>5</sup> ICC-ASP/17/Res.5, para. 129 and annex I, para. 14 (b).

international and regional organizations, States Parties and civil society regarding the requests for technical assistance prior to putting the States concerned in contact with them.<sup>6</sup>

13. The co-focal points sought a discussion of the way forward, including in light of discussions on the “Matrix over possible areas of strengthening the Court and Rome Statute System”.<sup>7</sup> They noted that, in the Matrix, the complementarity facilitation was identified as the forum for discussion on certain topics, and that the draft Terms of Reference for the Independent Expert Review identified issues to be considered by the experts in Cluster 3 (Preliminary examinations, investigations and prosecutions). Further, the draft text of the resolution on Review of the Court, which was under discussion and yet to be settled at the time of writing, identified “the relationship between national jurisdictions and the Court” as a priority for 2020. The co-focal points invited States to consider which topics could be addressed in the complementarity facilitation as a priority for 2020, and which elements should be included in the omnibus resolution for the nineteenth session.

14. As *ad country* focal points for complementarity and within the limits of their mandate, Australia and Romania also participated at seminars organized throughout the year by the civil society or international institutions: for example, the “*Sixth Technical Seminar on cooperation between the International Criminal Court and situation countries*” (24 January, ICC) and “*Strengthening Domestic Capacity to Prosecute International and Transnational Crimes in Africa*” (18 March, TMC Asser Institute and Cassese Initiative).

15. Romania organized, together with the EU Genocide Network and the European Commission, a conference to celebrate the fourth “*EU Day against Impunity for genocide, crimes against humanity and war crimes*” (Eurojust’s premises, 23 May 2019), with the objective of underlining the importance of national investigations and prosecutions of the most heinous crimes, to recognize the common efforts of the EU Member States and the European Union in enforcing international criminal law, to commemorate victims of these atrocities and underscore their role in criminal proceedings, and to draw attention to and reinvigorate the EU-wide commitment to the continuing and efficient fight against impunity for these crimes. During the first semester, while holding the rotating Presidency of the EU Council, Romania kept high on the relevant EU agenda the issue of complementarity and stimulated a deeper dialogue between the two institutions, within the overall efforts of further mainstreaming support for the Court in the EU’s policies.

16. Finally, at the seventeenth session of the Assembly of States Parties, Australia and Romania as co-focal points both supported a side-event hosted by the International Center for Transitional Justice (ICTJ) and the International Bar Association (IBA), which focused on the role and impact of hybrid tribunals and specialized chambers, particularly their positive impact on the domestic justice system of post-conflict States. Australia also supported a side event hosted by Africa Legal Aid (AFLA) entitled “*Complementarity in Action: Bringing Yahya Jammeh to Justice in Ghana*”.

### III. The President of the Assembly of States Parties, and the Secretariat

17. The Assembly of States Parties is the custodian of the Rome Statute system. While the Assembly itself has a very limited role in strengthening the capacity of domestic jurisdictions to investigate and prosecute serious international crimes, it is a key forum for matters of international criminal justice. Combating impunity at both the national and the international levels for the most serious crimes of concern to the international community as a whole is the core objective of the Statute.

18. The President of the Assembly, H.E. O-Gon Kwon, has consistently highlighted the importance of the principle of complementarity in various fora. At the 20 September 2019 Inaugural Conference on “*Governance of International Courts and Tribunals: Ensuring Judicial Independence and Accountability*”, the President recalled the stocktaking exercise

<sup>6</sup> See paras. 24-26 of this report for fuller details.

<sup>7</sup> Prepared by the Presidency of the Assembly following the 13 June 2019 Bureau retreat that focused on “Meeting the challenges of today for a stronger Court tomorrow”.

carried out during the 2010 Review Conference, wherein the Conference held four plenary panel discussions on key issues that required the attention of States Parties, including a plenary panel dedicated to the topic “*Taking stock of the principle of complementarity: bridging the impunity gap*”.

19. The President spoke at the Annual Conference of the International Bar Association, held in Seoul, Republic of Korea, from 22 to 27 September 2019. He recalled that the principle of complementarity, the bedrock of the system, leaves the primary responsibility for addressing Rome Statute crimes in the hands of national jurisdictions. He noted, however, that only half of the 122 States Parties had adopted the necessary national implementing legislation to ensure they have the capacity to investigate and prosecute these crimes at the domestic level. The President stressed that, for complementarity to be effective, States need to incorporate the Rome Statute crimes as well as other general principles of international criminal law into their respective national penal codes.

20. At an Ambassadorial Working Luncheon on the ICC, held in Seoul, Republic of Korea, on 29 October 2019, the President emphasized the principle of complementarity, and noted that ratification should not be interpreted as a concession of sovereignty. He recalled that the Court investigates and prosecutes cases only when States are unwilling or unable to do so genuinely. One of the cornerstones of the Rome Statute system is that it recognizes the primary jurisdiction of States to investigate and prosecute atrocity crimes. He stated further that it is important to note that the Court is a Court of last resort – it is intended to complement, not to replace, national jurisdictions. This humble yet powerful proposition is one of the main appeals and strengths of the Rome Statute system: that together, States Parties in cooperation with the Court, can and will fight against impunity.

21. Similarly, at a side event of the seventeenth session of the Assembly, on “*Challenges and opportunities for the universality of the Rome Statute system: Strategies and best practices tailored to the Asia-Pacific region*”,<sup>8</sup> the President reiterated that ratification should not be interpreted as a concession of sovereignty. The principle of complementarity means that the Court is not intended to substitute domestic criminal justice systems, but rather complements them.

22. At other international events, the President similarly highlighted that under the principle of complementarity, it is the responsibility of the State having jurisdiction to investigate or prosecute the crimes within the jurisdiction of the Court, and that the Court’s role is complementary.

23. The President has continued to promote and raise awareness of the principle of complementarity. A full appreciation of the complementary nature of the jurisdiction of the Court could lead to greater acceptance of the Court and an increase in the number of States Parties, leading to universality.

24. The Secretariat of the Assembly has continued to carry out its outreach, information-sharing and facilitating function. Consistent with past practice and when appropriate, the Secretariat has coordinated with the co-focal points in carrying out these activities. Pursuant to the mandate of the Assembly to the Secretariat, on 22 March 2019 the Secretariat, via note verbale ICC-ASP/18/S/09,<sup>9</sup> conveyed to States Parties a “Complementarity Platform for technical assistance”,<sup>10</sup> which is aimed at facilitating links between States Parties requesting technical assistance and actors in a position to assist national jurisdictions in their efforts to strengthen capacity to investigate or prosecute Rome Statute crimes. The Secretariat invited States Parties to indicate their technical legal assistance needs by completing the Complementarity Platform. Once the Secretariat received a request, it coordinated with possible capacity building providers.

25. In 2019, the Secretariat received requests from four States Parties relating to a broad range of areas, including victims and witnesses (protection, training, advice, including

<sup>8</sup> Co-hosted by the Governments of the Netherlands, the Republic of Korea and Parliamentarians for Global Action.

<sup>9</sup> [https://asp.icc-cpi.int/en\\_menus/asp/complementarity/Documents/ICC%20complementarity.Note%20Verbale.ENG.pdf](https://asp.icc-cpi.int/en_menus/asp/complementarity/Documents/ICC%20complementarity.Note%20Verbale.ENG.pdf)

<sup>10</sup> [https://asp.icc-cpi.int/en\\_menus/asp/complementarity/Documents/ICC%20complementarity%20template%20platform%20EN.pdf](https://asp.icc-cpi.int/en_menus/asp/complementarity/Documents/ICC%20complementarity%20template%20platform%20EN.pdf)

psychological support and the establishment of a specialized body/unit); security support; strengthening legal representation; implementing legislation; technical capacity for prosecutors and staff; judicial infrastructure; gathering and documenting of evidence; and administrative justice modernization. The Secretariat is currently liaising with relevant international and regional organizations, States and civil society in connection with the requests received. The Secretariat encouraged States Parties to view the Platform as an important step in the State-driven process of complementarity, and where relevant, to assess their capacity-building needs at the national level, and to respond to the questionnaire contained in the Platform. It was only when there was active participation by a greater number of States that the objectives of the facilitation and the Platform could be achieved.

26. Given that this function has been established within existing resources, there are limits to what can be achieved. The Secretariat will continue to facilitate the exchange of information between relevant States and stakeholders through liaising directly with them and via its complementarity internet portal.

## IV. The Court

*The following information and views in this Part IV were provided by the Court.*

27. The Court does not involve itself directly in building domestic capacity for the investigation and prosecution of the most serious international crimes. From a judicial point of view, complementarity has a specific meaning relating to the admissibility of cases before the Court pursuant to article 17 of the Statute. This remains exclusively a judicial issue. Initiatives by State Parties to strengthen national jurisdictions to enable them to genuinely investigate and prosecute the most serious crimes of concern to the international community as a whole should respect the judicial and prosecutorial independence of the Court in relation to the admissibility of specific cases before it.<sup>11</sup>

28. Nevertheless, the Court and its different organs currently engage in activities which may contribute to enhancing the effectiveness of national jurisdictions' capacity to prosecute serious crimes. Each has different roles to play in different situations. These efforts can contribute to decreasing the overall financial and capacity burden placed on the Court in the long term, as strengthening of national capacities can have an impact on the case load of the Court.<sup>12</sup>

29. In particular, the Court has extensive investigative and prosecutorial experience and expertise from various aspects of judicial proceedings gathered throughout its activities in 11 situations under investigation and 10 situations under preliminary examination. It has continued to provide its views on the requirements of the Rome Statute, and share these experiences and best practices with its interlocutors, as well as amongst relevant networks of practitioners. The promulgation by the Office of the Prosecutor of various policy papers may also contribute to providing guidance on issues of relevance to investigative and prosecutorial efforts at the domestic level. On occasions, on a cost-neutral basis, the Court has also assigned staff with specific expertise to join in training which focus on addressing the Rome Statute crimes at a national or international level. Furthermore, within the framework of the Rome Statute, in particular article 93, paragraph 10, the Court may, upon request, share information with and assist national jurisdictions in their related investigations. Vice versa as reiterated by the States Parties in the omnibus resolution, the Court has been called on to benefit from the experiences and lessons learned by States and other international criminal law institutions that have themselves investigated and prosecuted Rome Statute crimes.

---

<sup>11</sup> Report of the Bureau on stocktaking: Complementarity, Taking stock of the principle of complementarity: bridging the impunity gap (ICC-ASP/8/51, paras.3, 6-7).

<sup>12</sup> Ibid., para.43.

## V. Broader efforts of the international community

30. **Africa Legal Aid (AFLA)** AFLA issued a comprehensive report on its consultations with justice actors in post conflict and at risk countries on “*Emerging Trends on Complementarity in Africa*”. AFLA also convened a Symposium on “*Lessons from the Gbagbo and Blé Goudé Case and ICC Review*” in The Hague where, among other issues, the complementarity gap in Cote d'Ivoire was addressed. AFLA will convene a Side Event at the eighteenth session entitled: “*Gambia: Accountability for Crimes against Humanity Including Sexual Violence from the Yahya Jammeh Era*”.

31. In 2019, the **Coalition for the International Criminal Court (CICC)** organized and supported activities promoting the understanding and seeking the robust realization of the principle of complementarity. In that regard, the CICC hosted a Regional Strategy Meeting for the Asia-Pacific Region in Kuala Lumpur, Malaysia, to ensure full attention and support to this fundamental pillar of the Rome Statute system. The CICC additionally organized three workshops with Venezuelan civil society organizations, in April, May, and October, to discuss a range of issues on international justice and the Preliminary Examination, including future prospects for implementation.

32. In the Americas region, the CICC participated at a hearing at the Ecuadorian Parliament in February, to discuss the ratification of the Kampala amendments and reflected on their domestic implementation. The CICC additionally participated in a workshop organized by the International Committee of the Red Cross (ICRC) and the Bolivian Judicial Academy (Escuela de Jueces del Estado) in Sucre, Bolivia, delivering a training on the ICC and the Rome Statute system, and providing guidelines on its contributions to the Bolivian process of implementation of the Rome Statute.

33. In the Europe region, the CICC and some of its member organizations active in Ukraine, sent in September 2019, a letter to H.E. Volodymyr Zelenskyy, President of Ukraine, asking the Ukrainian government to immediately ratify and ensure the domestication of the Rome Statute. The CICC welcomes the expansion of the mandate of the European Union’s special representative for human rights, which now makes a more explicit reference to the EU’s decision on the ICC aimed at advancing universal support for the Rome Statute.

34. The **Asser Institute**, the **Cassese Initiative** and the **Nuremberg Academy** organized, from 18 to 22 March 2019, the high-level seminar entitled “*Strengthening Domestic Capacity to Prosecute International and Transnational Crimes in Africa*”. This seminar is a follow-up on a course held in February 2018 and builds on the knowledge and skills gained during the first session, further strengthening the justice sector in French-speaking African countries facing challenges in the administration of justice. The seminar addressed judges and prosecutors from countries under ICC investigation or neighbouring countries, including Burkina Faso, Côte d'Ivoire, Democratic Republic of the Congo, Mali and Niger. The participants benefitted from international law lectures and training in the fields of International Criminal Law (ICL), Transnational Criminal Law (TCL) and International Humanitarian Law (IHL), combined with practical sessions. The 2018 and 2019 seminars are part of the project concerning the establishment of a permanent training school aims at facilitating sharing of knowledge and best practices and enhancing national magistrates’ ability to implement ICL and IHL and to carry out fair proceedings in compliance with international law.

35. The **EU Genocide Network**, a forum of national authorities competent for core international crimes, organized two plenary meetings at Eurojust in The Hague. The first meeting, held in May, was dedicated to the topic of EU financial instruments for improving national capacity in the field of investigating and prosecuting core international crimes and to the presentation of the EASO Exclusion Network. The second meeting, held in November, focused on possibilities and opportunities for prosecuting foreign fighters for war crimes, crimes against humanity and genocide, next to terrorism-related offences. Further, the fourth EU Day Against Impunity on 23 May was organized by the Romanian EU Presidency, the Genocide Network, Eurojust and the European Commission with the aim of promoting national investigations and prosecutions of the most heinous crimes among the decision makers and general public.

36. The EU Genocide Network and Eurojust also hosted a one-day practitioner workshop in cooperation with International Federation for Human Rights (FIDH), European Center for Constitutional and Human Rights (ECCHR) and REDRESS on “*Improving access to justice for victims of international crimes in Europe*”. The Genocide Network cooperates with the European Judicial Training Network (EJTN) and the EU Agency for Law Enforcement Training (CEPOL) in developing and facilitating the implementation of specialized training programmes for national practitioners involved in the fight against impunity. In September at the International Nuremberg Principles Academy, a training programme for Judges and Prosecutors from EU Member States was delivered together with the EJTN, and focused on the investigation and prosecution of core international crimes in the EU and the impact of refugees. In December, a webinar for law enforcement was delivered together with CEPOL.

37. **Human Rights Watch** continued to press for domestic prosecution of crimes committed during Guinea’s 2009 stadium massacre, and to raise concerns regarding measures that could undermine the Special Jurisdiction for Peace in Colombia. The organization also expressed concern over shortcomings in the Democratic Republic of the Congo’s military justice system; encouraged progress in the Central African Republic’s Special Criminal Court; and participated in the April 2019 seminar on ICC completion strategies. The organization called for the early development of completion strategies for ICC situations under investigation that identify where national jurisdictions, the Court, and other partners can build domestic capacity to prosecute international crimes.

38. The **International Bar Association (IBA) ICC & ICL Programme** convened and participated in numerous meetings and consultations to exchange views, updates and strategic ways forward on fair trials and equality of arms in international and domestic contexts. In September 2019, Assembly President O-Gon Kwon and former ICC President Judge Sang-Hyun Song spoke to over 5,000 IBA members at the IBA Annual Conference in Seoul, highlighting the important role of states and domestic legal systems in seeking accountability for serious crimes.

39. In October 2019, the IBA ICC & ICL Programme convened an Experts’ Roundtable bringing together diplomats, Court officials, counsel and civil society on the topic ‘Seeing justice through: long-term issues in international justice’. The roundtable addressed a number of areas in which domestic legislation was particularly significant for ensuring the protection of human rights of ICC accused persons. The programme also launched a Discussion Paper titled ‘Provisional release, release at advanced stages of proceedings, and final release at international criminal courts and tribunals’. This report discusses, amongst other topics, the relevance of applying ICC’s standards and practices to institutions holding trials for international crimes, following approval by an international court.

40. As part of its mission to promote complementarity for the investigation and prosecution of international crimes, the **International Center for Transitional Justice (ICTJ)** provided its expertise to help increase access to justice through participation of victims in processes and solutions after massive human rights violations in a number of countries, including Côte d’Ivoire, victim compensation in Colombia, proceedings before the International Crimes Division in Uganda, and cases taken up by the Truth and Dignity Commission in Tunisia. The ICTJ’s work to advance criminal accountability in Syria has and will continue to be centred around the two international mechanisms established by the United Nations to collect evidence and document human rights violations. In addition, ICTJ built a coalition of States, international organizations and civil society committed to equal access to justice for all and sustainable peace and development by setting up the Working Group on Transitional Justice and SDG 16+ to identify the contribution of transitional justice to the establishment of the rule of law, access to justice, prevention, and development with the aim of advising policymakers on how to better incorporate transitional justice in their strategies. Most recently, ICTJ has finalized a comprehensive report on prosecution guidelines and policies and how these can serve as a shield for prosecutors in the face of undue influence, pressure, or interference. The report “*Guiding and Protecting Prosecutors: Comparative Overview of Policies Guiding Decisions to Prosecute*” will be discussed during a side event at the 2019 Assembly of State Parties, in The Hague, in partnership with the International Nuremberg Principles Academy.



41. The **International Nuremberg Principles Academy** intensified its activities in the field of capacity building. Together with the United Nations International Residual Mechanism for Criminal Tribunals (UNIRMCT), the Academy held a seminar for 26 magistrates from francophone African countries in Abidjan. A two-week Summer Academy for young professionals from crisis and conflict countries was held in both English and French in Nuremberg in August. The Academy covered all costs of the participants. Together with the Wayamo Foundation, the Academy organized the seventh workshop for twenty prosecutors and a group of military and civilian investigators in Abuja as part of the “Strengthening Justice and Accountability in Nigeria” workshop series.

42. **Justice Rapid Response (JRR)** continued to provide practical tools for States to apply the principle of complementarity. JRR worked closely with local authorities, providing them with highly specialized expertise to strengthen their capacity to investigate and prosecute international crimes. In the following contexts, case-based mentoring has enabled JRR experts to provide highly tailored capacity-building support to local authorities. In Uganda, JRR has been working closely with all actors within the International Crimes Division, providing mentoring on the investigation of sexual and gender-based violence, witness protection and psychosocial-support. JRR also began collaborating with the Special Jurisdiction for Peace in Colombia, providing mentoring support including on victim participation and restorative justice. JRR worked with The Gambia Truth and Reconciliation Commission to strengthen its capacity to investigate, including through the provision of forensic expertise.

43. **Parliamentarians for Global Action (PGA)** organized three high-level regional seminars to advance implementation, support cooperation with the Court, and strengthen the capacity of domestic accountability mechanisms: Latin America Working Group on International Justice (Uruguay), Pacific Islands Roundtable (Vanuatu) and Working Group on the Fight Against Impunity in Africa (The Gambia). As a result, more than 120 parliamentarians committed to joint and country-specific action points toward complementarity in 34 States, with three Latin American and two African states currently reviewing complementarity legislation. PGA also conducted field missions to advance Rome Statute implementing legislation in Ukraine and Morocco, held bilateral meetings, and provided technical and legal assistance, including an enhanced model implementation package that encompasses provisions for cooperation on financial investigations, freezing, and seizure of assets.

44. **Women’s Initiatives for Gender Justice** continued to work with civil society in the Democratic Republic of Congo (DRC). In South Kivu, a “*Practical Guide on Sexual and Gender Based Crimes*” was developed based on the ICC OTP “*Policy Paper on Sexual and Gender Based Crimes*” to inform civil and military prosecutors. Women’s Initiatives for Gender Justice consulted over 500 survivors of sexual violence from 24 countries and more than 30 International Criminal Law experts on what makes violence sexual to inform the ‘Civil Society Declaration on Sexual Violence’, adopted in September 2019, a guide for practitioners on how to interpret the crime of “other forms of sexual violence”, a Rome Statute crime.

## VI. Conclusion

45. The above highlights the importance of continued efforts, within the appropriate fora, in strengthening national capacity for investigating and prosecuting Rome Statute crimes, bearing in mind the limited contributions that can be made by the Assembly and its Secretariat, as well as the Court itself in that regard. Ensuring that national judicial systems are able to deal with the most serious crimes of concern to the international community is vital for making the Rome Statute system work, ending impunity for these crimes and preventing their reoccurrence.

46. In this context it is recommended that the Assembly adopt the draft provisions on complementarity contained in annex I to this report. Finally, it is also recommended that the Assembly consider also making complementarity an agenda item to be discussed at future sessions.

## Annex I

### Draft resolution language for the omnibus resolution

*Reaffirming* its commitment to the Rome Statute of the International Criminal Court and its determination that the most serious crimes of concern to the international community as a whole must not go unpunished, and *underlining* the importance of the willingness and ability of States to genuinely investigate and prosecute such crimes,

*Welcoming* the efforts and achievements of the Court in bringing those most responsible for the crimes under the Rome Statute to justice and thus to contribute to the prevention of such crimes and *noting* the jurisprudence of the Court on the issue of complementarity,

*Recalling* that the application of articles 17, 18 and 19 of the Rome Statute concerning the admissibility of cases before the Court is a judicial matter to be determined by the judges of the Court,

*Recalling further* that greater consideration should be given to how the Court will complete its activities in a situation country and that possible completion strategies could provide guidance on how a situation country can be assisted in carrying on national proceedings when the Court completes its activities in a given situation,

1. *Recalls* the primary responsibility of States to investigate and prosecute the most serious crimes of international concern and that, to this end, appropriate measures need to be adopted at the national level, and international cooperation and judicial assistance need to be strengthened, in order to ensure that national legal systems are willing and able genuinely to carry out investigations and prosecutions of such crimes;
2. *Resolves* to continue and strengthen, within the appropriate fora, effective domestic implementation of the Rome Statute, to enhance the capacity of national jurisdictions to prosecute the perpetrators of the most serious crimes of international concern in accordance with internationally recognized fair trial standards, pursuant to the principle of complementarity;
3. *Welcomes* the international community's engagement in strengthening the capacity of domestic jurisdictions and inter-State cooperation to enable States to genuinely prosecute Rome Statute crimes;
4. *Also welcomes* efforts by the United Nations, international and regional organizations, States and civil society in mainstreaming capacity-building activities aimed at strengthening national jurisdictions with regard to investigating and prosecuting Rome Statute crimes into existing and new technical assistance programmes and instruments, and *strongly encourages* additional efforts in this regard by other international and regional organizations, States and civil society;
5. *Welcomes*, in this regard, the adoption of the 2030 Agenda for Sustainable Development<sup>1</sup> and *acknowledges* the important work being undertaken with regard to promoting the rule of law at the national and international levels and ensuring equal access to justice for all;
6. *Stresses* that the proper functioning of the principle of complementarity entails that States incorporate the crimes set out in articles 6, 7 and 8 of the Rome Statute as punishable offences under their national laws, to establish jurisdiction for these crimes and to ensure effective enforcement of those laws, and *urges* States to do so;
7. *Welcomes* the report of the Bureau on complementarity, and *requests* the Bureau to remain seized of this issue and to continue the dialogue with the Court and other stakeholders on complementarity, including on complementarity-related capacity-building activities by the international community to assist national jurisdictions, on possible situation-specific completion strategies of the Court and the role of partnerships with

---

<sup>1</sup> United Nations General Assembly resolution 70/1.

national authorities and other actors in this regard; and also including to assist on issues such as witness and victims protection and sexual and gender-based crimes;

8. Also *welcomes* the information by the Secretariat of the Assembly of States Parties on the progress in giving effect to its mandate to facilitate the exchange of information between the Court, States Parties and other stakeholders, including international organizations and civil society, aimed at strengthening domestic jurisdictions; *welcomes further* the work that has already been undertaken by the Secretariat and the President of the Assembly, and *requests* the Secretariat to, within existing resources, continue to develop its efforts in facilitating the exchange of information between the Court, States Parties and other stakeholders, including international organizations and civil society, aimed at strengthening domestic jurisdictions, and to invite States to submit information on their capacity needs for the consideration of States and other actors in a position to provide assistance, and to report on the practical steps taken in this regard to the nineteenth session of the Assembly;

9. *Encourages* States, international and regional organizations and civil society to submit to the Secretariat information on their complementarity-related activities and *further welcomes* the efforts made by the international community and national authorities, including national capacity building activities to investigate and prosecute sexual and gender-based crimes that may amount to Rome Statute crimes, in particular the continued efforts on the strategic actions to ensure access to justice and to enhance empowerment of victims at national level, recalling the recommendations presented by the International Development Law Organization<sup>2</sup> during the fourteenth session of the Assembly;

10. *Encourages* the Court to continue its efforts in the field of complementarity, including through exchange of information between the Court and other relevant actors, while *recalling* the Court's limited role in strengthening national jurisdictions and *also encourages* continued inter-State cooperation, including on engaging international, regional and national actors in the justice sector, as well as civil society, in exchange of information and practices on strategic and sustainable efforts to strengthen national capacity to investigate and prosecute Rome Statute crimes and the strengthening of access to justice for victims of such crimes, including through international development assistance.

11. *Takes note* of the "Matrix over possible areas of strengthening the Court and the Rome Statute System", dated 11 October 2019, prepared by the Presidency of the Assembly, as well as the Terms of Reference for the Independent Expert Review, and *notes* that the Bureau may consider complementarity issues identified therein, among others.

---

<sup>2</sup> International Development Law Organization paper entitled "Complementarity for sexual and gender-based atrocity crimes", November 2015.

## Annex II

### **Draft language for inclusion in the annex on mandates of the omnibus resolution**

With regard to **complementarity**,

(a) *requests* the Bureau to remain seized of this issue and to continue the dialogue with the Court and other stakeholders on complementarity, including on complementarity-related capacity-building activities by the international community to assist national jurisdictions, on possible situation-specific completion strategies of the Court and the role of partnerships with national authorities and other actors in this regard; and also including to assist on issues such as witness and victims protection and sexual and gender-based crimes;

(b) *requests* the Secretariat to, within existing resources, continue to develop its efforts in facilitating the exchange of information between the Court, States Parties and other stakeholders, including international organizations and civil society, aimed at strengthening domestic jurisdictions, and to invite States to submit information on their capacity needs for the consideration of States and other actors in a position to provide assistance, and to report on the practical steps taken in this regard to the nineteenth session of the Assembly;

## Annex III

### Summaries of 2019 meetings

#### A. Informal consultations on complementarity

##### 1. Informal information session – 22 February 2019

Topic: *Article 17 of the Rome Statute and issues of admissibility including an overview of jurisprudence and recent situations.*

[https://asp.icc-cpi.int/en\\_menus/asp/complementarity/Documents/HWG.complementarity1.summary.11Apr19.2000.cln.pdf](https://asp.icc-cpi.int/en_menus/asp/complementarity/Documents/HWG.complementarity1.summary.11Apr19.2000.cln.pdf)

##### 2. Seminar – 4 April 2019

Topic: *Completion strategies across the ICC's activities*

[https://asp.icc-cpi.int/en\\_menus/asp/complementarity/Documents/4April%20Seminar%20Completion%20Strategies%20Summary%2016May2019%201803.pdf](https://asp.icc-cpi.int/en_menus/asp/complementarity/Documents/4April%20Seminar%20Completion%20Strategies%20Summary%2016May2019%201803.pdf)

##### 3. Meeting of the facilitation – 31 October 2019

Topic: *Update on activities on complementarity*

[https://asp.icc-cpi.int/en\\_menus/asp/complementarity/Documents/Compl2.summary.25Nov2019.pdf](https://asp.icc-cpi.int/en_menus/asp/complementarity/Documents/Compl2.summary.25Nov2019.pdf)