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### Report of the Bureau on complementarity

I.	Background and mandates .....	2
II.	Organisation of work .....	3
III.	Meetings and informal consultations on complementarity .....	4
IV.	General findings .....	8
V.	Conclusion and recommendations .....	8
Annex I:	Contributions from complementarity stakeholders .....	10
Annex II:	Draft resolution language for the omnibus resolution .....	16
Annex III:	Draft language for inclusion in the annex on mandates of the omnibus resolution .....	19

## I. Background and mandates

1. At its 24 January 2020 meeting, the Bureau re-appointed Australia and Romania as *ad country* focal points for the topic of complementarity. As such, Australia and Romania were focal points in both The Hague Working Group and the New York Working Group in the lead-up to the nineteenth session of the Assembly.

### *General mandates*

2. At the eighteenth session of the Assembly (“ASP18”), 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>

3. The subsidiary bodies of the Assembly and the organs of the Court were essentially given the following general mandates in relation to the issue of complementarity.

4. 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>

5. 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>

6. 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>

7. States, international and regional organizations, and civil society were encouraged to submit to the Secretariat information on their complementarity-related activities.<sup>5</sup>

8. Annex I to this report records contributions on complementarity-related activities of the President of the Assembly of States Parties, the Secretariat, the Court, and international community more broadly. The subsequent parts of this report reflect the work of the co-focal points on the topic of complementarity.

### *Review of the International Criminal Court and Assembly of States Parties*

9. In the context of the wider State Party-drive review process commenced in 2020, the Review Resolution<sup>6</sup> passed at ASP18 requested that, as a matter of priority, the co-focal points commence consultations and report back to the Assembly on the issue of “Complementarity, and the relationship between national jurisdictions and the Court”.<sup>7</sup>

10. On this priority issue, the Bureau working document entitled “Matrix over possible areas of strengthening the Court and Rome Statute system” (“Matrix”)<sup>8</sup> identified the following objective: “Strengthen the ongoing dialogue on the implementation and application of the principle of complementarity, providing further clarity and predictability, while

<sup>1</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Eighteenth session, The Hague, 2-7 December 2019* (ICC-ASP/18/20), vol. I, Part III, ICC-ASP/18/Res.6, para 127.

<sup>2</sup> ICC-ASP/18/Res.6, para. 132 and annex I, para. 14 (a).

<sup>3</sup> ICC-ASP/18/Res.6, para. 133 and annex I, para. 14(b).

<sup>4</sup> ICC-ASP/18/Res.6, para. 135.

<sup>5</sup> ICC-ASP/18/Res.6, para. 134.

<sup>6</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Eighteenth session, The Hague, 2-7 December 2019* (ICC-ASP/18/20), vol. I, Part III, ICC-ASP/18/Res.7.

<sup>7</sup> ICC-ASP/18/Res.7, para. 18.

<sup>8</sup> Dated 27 November 2019. Paragraph 2 of the Review Resolution notes the Matrix is a “starting point for a comprehensive dialogue on a review of the Court and its status as a living document”.

respecting prosecutorial and judicial independence”. Possible actions listed included: (1) identify ways to clarify and strengthen the interaction between the Court and national jurisdictions in implementing the complementarity principle; and (2) consider possible frameworks for operational cooperation between the Court/OTP and national authorities in investigation and prosecuting at the national level. Possible “instruments to be considered” included “dialogue on OTP Strategy and its implementation” and an ASP resolution.<sup>9</sup>

11. It should be noted that Cluster Three of the Group of Independent Experts (“Preliminary examinations, investigations and prosecutions”) were tasked with paying special attention in their Independent Expert Review (“IER”) to two issues identified in the “Matrix”, which were also identified as being relevant to the discussions being facilitated by the co-focal points: preliminary examinations (2.1) and completion strategies (2.6). Part way through the review process, the Chair of the Group of Independent Experts wrote to the President of the ASP to indicate they were considering complementarity “to the extent that it is relevant to preliminary examinations, prosecutorial and completion strategies”.<sup>10</sup>

12. The Review Resolution noted that the experts “shall endeavour to avoid overlap and seek synergies...lest their recommendations duplicate current activities undertaken by States Parties...some of which are of a political nature”.<sup>11</sup>

13. The co-focal points were also mandated to “examine any remaining issues to be addressed, with a view to identifying concrete measures to be taken”, noting that the Bureau and its working groups were requested to “remain seized of the overall review process and to make, in close coordination with the Court, all necessary preparations for the Assembly to consider the recommendations of the Independent Expert Review at its nineteenth session, with a view to taking further action as appropriate, while noting that the Court will also be responsible for considering those recommendations, within the Court’s statutory mandate.”<sup>12</sup>

#### *Sexual and gender-based crimes*

14. At ASP18, States Parties recognised “the importance of achieving accountability for all Rome Statute Crimes while recalling that there is no hierarchy between them” and encouraged the Bureau to “to engage with interested States Parties and other relevant actors to identify ways to support Court efforts in this regard with respect to sexual and gender-based crimes that amount to Rome Statute crimes, with a view to reporting thereon to the nineteenth session of the Assembly”.<sup>13</sup>

15. On 9 October 2020, the Bureau assigned this mandate to Australia and Romania as co-focal points for the topic of complementarity on the basis that their general mandate also extended to assisting “on issues such as...sexual and gender-based crimes”.

## **II. Organisation of work**

16. Due to the COVID-19 pandemic in 2020, the co-focal points – and other stakeholders – were necessarily limited in their capacity to carry forward their mandates, particularly on the Review process, to the extent that had been planned. The ongoing work of the IER, which touched on issues of direct relevance to the topic of complementarity, also required a staged approach to consultations so as to avoid overlap and seek synergies.

17. In late 2019, ahead of commencing review consultations in 2020, the co-focal points invited feedback on priority topics for discussion relevant to the topic of “Complementarity, and the relationship between national jurisdictions and the Court”.<sup>14</sup> Building on these consultations, on 11 June 2020 the co-focal points circulated a background paper highlighting, as a departure point for consultations, that it had been ten years since the Kampala Review Conference conducted a stocktaking exercise on the principle of complementarity.<sup>15</sup> The paper noted frequent debate and competing interpretations on the

<sup>9</sup> See (2.2) of the Matrix.

<sup>10</sup> Message dated 8 March 2020 to the Presidency of the Assembly from the Chair of the Independent Expert Review, Mr Richard Goldstone, emailed to States Parties on 29 May 2020.

<sup>11</sup> ICC-ASP/18/Res.7, para 5.

<sup>12</sup> ICC-ASP/18/Res.7, para 20.

<sup>13</sup> ICC-ASP/18/Res.6, para. 57.

<sup>14</sup> “Report of the Bureau on complementarity”, ICC-ASP/18/25, para 13.

<sup>15</sup> “Report of the Bureau on stocktaking: complementarity”, ICC-ASP/8/51.

topic, as well as calls by some for the ASP to take a clear position on complementarity. The co-focal points noted the relevant and ongoing work of the IER on related issues and sought feedback on a range of questions relevant to the co-focal points' priority topic, with a view to identifying key issues and possible areas of consensus. This was ahead of a meeting on the priority topic on 24 June 2020 and done with a view to facilitating the development of a roadmap to taking concrete actions at ASP20 (at the end of 2021, a timeline suggested in the "Matrix").

18. Following a panel discussion and meeting on the priority topic on 24 June, summarised below, the co-focal points concluded that further substantive consultations should await the release of the IER Report.

19. A further and final meeting to discuss the way forward was held on 6 November 2020, summarised below.

20. Separately, the co-focal points held one meeting on 5 November 2020 to carry forward the Bureau's mandate on sexual and gender-based crimes, summarised below.

### III. Meetings and informal consultations on complementarity

21. In 2020, a number of meetings and informal 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.

#### *First meeting: "Complementarity, and the relationship between national jurisdictions and the Court"*

22. A more comprehensive summary of the co-focal points' meeting on the priority review topic, held on 24 June 2020, has been distributed by the Secretariat and is available online.<sup>16</sup>

23. The informal consultations involved a panel of experts, which included Dr. Marieke Wierda,<sup>17</sup> Prof. Carsten Stahn,<sup>18</sup> and Dr. Rod Rastan.<sup>19</sup> Mr. Richard Goldstone was also present at the meeting, representing the IER experts from Cluster Three. As a departure point for consultations on the priority review topic, the aim of the meeting was to reflect on how the principle of complementarity had developed ten years on from the 2010 Kampala Review Conference, including what was working and what was not.

24. Dr Wierda noted that the 2010 Review Conference in Kampala highlighted "positive complementarity" as a central objective and one which gave a role to the ASP. She summarised a number of perceived "flaws" of complementarity, which did not necessarily need to be fixed, but were rather matters of interpretation that had generated complexities. Dr Wierda suggested complementarity should also be about the internalisation of the Rome Statute at a domestic level and that more could be done under this conception of "positive complementarity" to stimulate national jurisdictions to take some of the burden from the ICC and allow it to act where it could have the most impact. Dr. Wierda encouraged the ASP to take a more proactive approach to linking national authorities with organisations that could provide technical assistance.

25. In his presentation, Prof. Carsten Stahn noted that when talking about the application of complementarity towards domestic jurisdictions there was the legal technical concept in articles 17, 18 and 19 of the Statute, as well as a more systemic concept of complementarity reflected in the preamble of the Statute, which was related to the goals of the ICC. The latter referred to questions of the division of labour, coordination and cooperation between the ICC

<sup>16</sup> Available at: [https://asp.icc-cpi.int/en\\_menus/asp/complementarity/Pages/Resources.aspx](https://asp.icc-cpi.int/en_menus/asp/complementarity/Pages/Resources.aspx).

<sup>17</sup> Dr. Marieke Wierda is a Dutch lawyer specialised in human rights, international criminal law, rule of law and transitional justice. She is currently working as the Rule of Law Coordinator for the Dutch Ministry of Foreign Affairs. Dr. Wierda presented in her personal capacity.

<sup>18</sup> Prof. Carsten Stahn is Professor of International Criminal Law and Global Justice at Leiden University and editor of Leiden Journal of International Law. He is also the Program Director of the Grotius centre of International Studies in The Hague.

<sup>19</sup> Dr. Rod Rastan is a Legal Advisor in the Office of the Prosecutor at the International Criminal Court.

and domestic jurisdictions. Prof. Stahn suggested complementarity had become more “ICC-centric” rather than State centred, by focusing on the charges and outcomes rather than dialogue and process. Prof Stahn suggested three possible approaches to address the problem: (1) abandoning the “same person, same conduct” test and reflecting on the meaning of “genuineness” of State conduct; (2) relying on a more contextual approach to Article 17 of the Statute; or (3) applying a principle of “qualified deference” to provide greater deference to domestic jurisdictions in the determination of admissibility, while at the same time limiting possible manipulation of the Court. Prof. Stahn noted the best way to strengthen complementarity was through dialogue and consultation, suggesting a more structured forum inside the Assembly, such as an “ASP taskforce on complementarity”. He noted the Secretariat provided support of a technical nature, but that there were broader political issues of the systemic dimension of complementarity that needed to be addressed.

26. Dr Rastan (OTP) drew attention to the – still relevant – 2010 Report of the Bureau on “stocktaking complementarity”, which was submitted to Kampala as part of the broader stocktaking exercise.<sup>20</sup> Dr. Rastan recalled the two dimensions of complementarity set out in that report: on the one hand, the national authorities having the primary responsibility to investigate and prosecute crimes, and on the other hand, the Court complementing that existing system. Dr. Rastan observed that complementarity – thought of as a collective effort to combat impunity – was, in this sense, based on the idea of a system of cooperation and dialogue between the OTP and national authorities. On matters of forum determination, in particular, there was a wide scope for consultations with the national authorities due to the significant discretion of the ICC prosecutor in terms of case selection. Dr. Rastan highlighted the significance of the 10 year anniversary of the Kampala stocktaking exercise and the value of revisiting its conclusions and taking stock of developments in recent years, across different national jurisdictions as well as by international partners.

27. As noted in Part II above, in advance of the meeting, the co-focal points sent out to stakeholders a short background paper with a number of questions for consideration on the priority review topic. Responses received in writing, interventions at the meeting, and other consultations indicated a need for further dialogue with a view to achieving greater clarity and predictability in the interpretation and application of the principle of complementarity, particularly in respect of the relationship between national jurisdictions and the Court.

28. Some States Parties supported proceeding with a broader “stocktaking” exercise on complementarity (through a questionnaire or otherwise), with a view to drafting a possible ASP or States Parties’ position statement or resolution on the principle of complementarity. Some stakeholders cautioned against seeking to formalise views on the interpretation of the principle of complementarity, while some others noted the importance the IER findings before proceeding with such discussions.

29. Some States Parties suggested the co-focal points or ASP could enable more direct engagement between States Parties and the Prosecutor on complementarity issues, as well as facilitate dialogue and cooperation between States, civil society, and other organisations to strengthen national jurisdictions, without necessarily creating an intermediary body or increasing financial resources of the Secretariat of the ASP.

30. The OTP noted at the meeting that, as signalled in its last Strategic Plan, the OTP would be consulting with States Parties and other stakeholders on two forthcoming papers – one on the OTP’s approach to complementarity and another on completion strategies.

***Second meeting: “Implementing the ASP Bureau mandate on sexual and gender-based crimes”***

31. On 5 November 2020, the co-focal points in collaboration with the Co-Chairs (Canada and Sweden) of the Impact Group of the International Gender Champions (IGC) in The Hague and Women’s Initiatives for Gender Justice (WIGJ) facilitated a panel discussion to identify ways to support the Court’s efforts in respect of achieving accountability for sexual and gender-based crimes (SGBC) that amount to Rome Statute crimes.

<sup>20</sup> Report of the Bureau on stocktaking: Complementarity – Taking stock of the principle of complementarity: bridging the impunity gap (ICC-ASP/8/51).

32. Wayne Jordash, from Global Rights Compliance, spoke on the need for better clarity on what constitutes ‘acts of a sexual nature’ in the context of international criminal law and jurisprudence. He noted that the ICC’s Elements of Crimes (EoC) failed to provide any further guidance, offering only a circular definition. He highlighted the research of Global Rights Compliance on domestic and international law to identify how ‘acts of a sexual nature’ are defined as a matter of criminal law, with a view to discerning how the EoC could better define such acts with reference to national experience.

33. Naffie Sissoho Bangura, a State Counsel / Legislative Draftsperson for The Gambian Attorney General’s Chambers and Ministry of Justice, set out how national experiences in seeking accountability for SGBC in The Gambia could inform national prosecutions. She highlighted the benefits of a context based approach and the need for capacity building across a national jurisdiction, including through local media.

34. Niamh Hayes, from the OTP’s Gender and Children’s Unit, highlighted the importance of understanding what constitutes “sexual violence” in different jurisdictions. She cautioned that if efforts to label acts as sexual were driven by a survivor-centric approach then different jurisdictions would have a widely varied approach – survivors may not be in agreement. Ms Hayes highlighted the importance of not developing an approach in international criminal law and expecting it to filter down – there were innovations available from domestic jurisdictions. This underlined the importance of The Hague Principles of Sexual Violence<sup>21</sup> as providing a “footnote” for practitioners to cite domestic innovations on this issue. Ms Hayes highlighted the important role of judges in elaborating their reasoning on this issue to provide general parameters and noted the complexities that would arise in attempting to amend the EoC. She thanked the ASP for coordinating on the issue and taking it forward.

35. Some States Parties, recognising the importance of these discussions as well as the challenges and delays brought on by COVID-19 in 2020, expressed their support for the Bureau to continue consultations in 2021, with a view to identifying ways to support Court efforts in respect of achieving accountability for sexual and gender-based crimes (SGBC) that amount to Rome Statute crimes. These States Parties also expressed support for the ASP to renew omnibus language (possibly with some amendments) to encourage the Bureau to continue these consultations in 2021.

***Third meeting: “The way forward”***

36. On 6 November 2020, the co-focal points sought to draw together consultations held in 2020, noting the recent release of the Final Report of the IER, and seek views on the future direction taken by the co-focal points on complementary in 2021. This was without prejudice to any decisions taken at ASP19 on how the Bureau and its working groups should proceed in 2021 in respect of any consideration of the IER Report or implementation of its recommendations.

37. Ahead of the meeting, the co-focal points circulated a background paper setting out a possible way forward.

38. The co-focal points drew attention to the findings and recommendations of the Group of Independent Experts on preliminary examinations and prosecutorial and completion strategies – which to varying degrees consider the principles of complementarity and “positive complementarity” – and were relevant to their consultations on complementarity.

39. The co-focal points made the general observation that many of the findings and recommendations on complementarity in the IER report were relevant to OTP policy on preliminary examinations and completion strategies. Some were significant, while others went more broadly to the division of labour between the OTP and ASP.

40. The co-focal points noted they were conscious it would take time for relevant stakeholders to digest the IER Report and at the meeting they did not intend to substantively discuss the findings of the IER Report insofar as they relate to complementarity. The co-focal

<sup>21</sup> “The Hague Principles on Sexual Violence” are available on the Women’s Initiatives for Gender Justice website: <https://4genderjustice.org/>

points also noted ongoing discussions in relation to how the ASP might agree on a mechanism to progress review work in 2021.

41. The co-focal points suggested that – informed by facilitation discussions to date and the IER report – there appeared to be broadly four streams of work that co-focal points on complementarity could concurrently focus on going forward:

- (1) Continuing dialogue with the Prosecutor and OTP on the forthcoming (policy) papers on complementarity and completion, and any revisions to its existing policy papers, including on preliminary examinations, as appropriate. This dialogue would need to respect judicial and prosecutorial independence and discretion, as well as the reality that a new Prosecutor will take office in the course of 2021.
- (2) Subject to any general decisions on the implementation of the IER recommendations, initiating a broader “stocktaking” exercise in respect of the principle of complementarity, to build on the work of the IER with a view to a possible ASP or States Parties’ statement or resolution on complementarity by ASP20.
- (3) Reflecting further on the division of labour between the Court and ASP, with a particular focus on developing the structural role of the ASP as a forum for dialogue and cooperation on complementarity issues between the Court and States Parties, non-States Parties, civil society and other organisations, with due regard for any operational confidentialities and the distinct mandates and separation of powers under the Rome Statute.
- (4) Additional streams of work as necessary to take forward discussions on complementarity and the recommendations of the IER Report both in the complementarity facilitation and in other forums as decided by the ASP.

42. A number of States Parties welcomed the proposal to structure future consultations on complementarity in the way outlined. Some States Parties were supportive of a broader stocktaking exercise, particularly given the recent release of the IER recommendations, which warranted further analysis and consideration. It was noted that some IER recommendations touched on complementarity and “positive complementarity” issues.

43. Some States Parties sought more detail on the interaction between a stocktaking exercise and other streams of work, in particular the first stream involving the work of the OTP on certain publications. The point was made that efforts should not be duplicative but rather coordinated. Australia – as a co-focal point – responded that the four streams of work would inevitably flow together.

44. A representative of the OTP indicated a willingness of the OTP to engage across all streams, as had been the OTP’s practice on this topic. The representative noted the OTP’s policy papers were in advanced stages of development; the OTP would consult States Parties at the appropriate time, with due regard for the Prosecutor’s discretion and independence. The OTP was interested in States Parties’ views on the IER recommendations on complementarity as well. The representative furthermore noted that the facilitation does not only concern the OTP, and that it would be helpful to reflect on such other aspects in parallel, e.g., as it concerns the role of the ASP and States Parties to strengthen domestic jurisdictions.

#### ***Other activities***

45. Finally, at ASP18 in 2019, Australia and Romania as co-focal points on complementarity both supported two relevant side-events. The first event, entitled “The Hague Principle on Sexual Violence: understanding sexual violence for better accountability” was hosted by Women’s Initiatives for Gender Justice (WIGJ) and focused on how the Hague Principles could inform international law practitioners, including at the ICC. The second event, hosted by the International Center for Transitional Justice (ICTJ) and International Nuremberg Principles Academy, led to a productive discussion around national policies on the decision to prosecute.

## IV. General findings

46. 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.

47. 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.

48. 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.

49. In light of consultations held this year, the recent release of the IER Report, and the fact that it has now been 10 years since the Kampala Stocktaking exercise, the co-focal points are of the view that it is timely to engage in more structured discussions on the principle of complementarity. The aim of these discussions should be to achieve greater clarity and predictability in the interpretation and application of the principle of complementarity, particularly in respect of the relationship between national jurisdictions and the Court. It is important to also revisit the role of the ASP.

50. The co-focal points note that a number of delegations expressed support for working towards a possible ASP or States Parties’ position statement or resolution on the principle of complementarity, drafted on the basis of a broader stocktaking exercise. This exercise could draw together the discussions held already this year with an opportunity for States Parties, the Court, and other stakeholders to engage in dialogue on relevant aspects and recommendations of the IER Report, where appropriate. As some have pointed out, consultations and coordination with whatever mechanism takes forward the IER Report will be needed to demarcate clear parameters for such an exercise.

51. The co-focal points also recognise interest from States Parties to continue the dialogue between States Parties and the Office of the Prosecutor on complementarity issues, particularly given forthcoming papers on complementarity and related issues. Such discussions would need to respect judicial and prosecutorial independence and discretion.

52. On the issue of SGBC that amount to Rome Statute crimes, the co-focal points are of the view that the consultations held this year have revealed that there would be value in further consultations on the topic to engage interested States Parties and other relevant actors to identify ways to support Court efforts in this regard.

53. Finally, the co-focal points would also note that discussions this year have highlighted the possible synergies between this facilitation and the facilitations on cooperation and universality. The internalisation of the Rome Statute at a domestic level is particularly important to the goals of all three facilitations

## V. Conclusion and recommendations

54. The above, as well as contributions on complementarity from other stakeholders set out in Annex I, 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.

55. On the basis of consultations to date, there is broad support for the four streams of future work proposed by the co-focal points as set out in paragraph 41 above.

56. However, in recognition of ongoing discussions on a resolution to take forward the IER report and its recommendations, the co-focal points are of the view that provisions on complementarity in the draft omnibus resolution should not be overly prescriptive in respect of the mandate of the Bureau on complementarity or the nature of consultations on complementarity in 2021.

57. There is also support for the Bureau to continue to engage interested States Parties and other relevant actors to identify ways to support Court efforts with respect to SGBC that amount to Rome Statute crimes. Whether the co-focal points on complementarity are best placed to carry forward this work or another (possibly dedicated) focal point, is a decision that could be taken by the Bureau in 2021 in consultation with any mechanism established to take forward the IER report.

58. In this context it is recommended that the Assembly adopt the draft provisions on complementarity contained in annex II to this report.

## Annex I

### Contributions from complementarity stakeholders

#### I. The President of the Assembly of States Parties

*The following information and views in this Part I were provided by the Secretariat of the Assembly of States Parties on behalf of the President of the Assembly, H.E. O-Gon Kwon.*

1. 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.
2. The President of the Assembly, H.E. O-Gon Kwon, has consistently highlighted the importance of the principle of complementarity in various fora, including in his press releases where he defended the integrity of the Court by emphasizing that the Court is an independent and impartial judicial institution which operates in strict adherence to the provisions of the Rome Statute, and recalled that the ICC is complementary to national jurisdictions and recognizes the primary jurisdiction of States themselves.<sup>1</sup>
3. 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.
4. 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.

#### II. The Secretariat of the Assembly of States Parties

*The following information and views in this Part II were provided by the Secretariat of the Assembly of States Parties.*

5. In spite of this year's unforeseen difficulties and the increased workload of the Secretariat of the Assembly due to the COVID-19 pandemic, the Secretariat 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 via the "Complementarity Platform for technical assistance",<sup>2</sup> which aims 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. This Platform is designed for States Parties to indicate their technical legal assistance needs. Once the Secretariat receives a request, it coordinates with possible capacity building providers.
6. The Secretariat conveyed to the relevant stakeholders the pending requests received in 2019 from four States Parties relating to a broad range of areas, including victims and witnesses (protection, training, advice, including 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

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<sup>1</sup> ICC-ASP-20200325- PR1521 (25 March 2020), ICC-ASP-20200611-PR1527 (11 June 2020), ICC-ASP-20200902-PR1534 (2 September 2020).

<sup>2</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)

modernization. No requests for technical assistance were received from States Parties in 2020.

7. The Secretariat encourages 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. The objectives of the facilitation and the Platform can only be achieved with active participation by a greater number of States.

8. 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 platform.

### III. The Court

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

9. 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>3</sup>

10. Nevertheless, the Court and its different organs 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 the strengthening of national capacities can have an impact on the case load of the Court.<sup>4</sup>

11. In particular, the Court has extensive investigative and prosecutorial experience and expertise from various aspects of judicial proceedings gathered throughout its activities in the situations under investigation and 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. The Court's annual judicial seminar has provided valuable opportunities for an exchange of views and experiences between the judges of the Court and judges from national jurisdictions.

<sup>3</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>4</sup> *Ibid.*, para.43.

## IV. Broader efforts of the international community

*The following information and views in this Part IV were provided by individual civil society organisations as identified.*

12. **Africa Legal Aid (AFLA)** as part of its victim centred approach to rights and accountability has expanded its outreach to Mali to empower female victims of sexual violence in the 2012 civil conflict to pursue their rights and advance accountability. With years of experience on international criminal justice, AFLA is sharing African lessons on universalising international criminal justice with Asian stakeholders and has prepared a comprehensive baseline study to facilitate this exercise. This project follows from AFLA's engagement with Asian stakeholders on the Rome Statute system upon the invitation of the governments of Japan and the Netherlands, at a 2018 event held in Tokyo, to commemorate the 20th Anniversary of the Rome Statute.

13. The **Australian Centre for International Justice (ACIJ)** continued to press for genuine and effective investigations and prosecutions of allegations of war crimes by Australian Special Forces in Afghanistan in the period of 2005 to 2016. The organization engaged in public advocacy and education with a victims-oriented perspective, positioning domestic investigations and prosecutions within the wider Rome Statute system of international justice. The ACIJ coordinated a broad coalition of Afghan, Australian and international human rights and legal organizations to call for the public release of the report of an administrative inquiry into the war crimes allegations being conducted by the Office of the Inspector-General of the Australian Defence Force. The ACIJ continues to press for and find ways to identify where Australian authorities should build domestic capacity to prosecute international crimes, and increase access to justice for victims of international crimes through participation in legal processes and solutions.

14. In July 2020, the **Canadian Partnership for International Justice (CPIJ)**, a pan Canadian organization that brings together leading Canadian academics and non-governmental actors to contribute to strengthening access to justice for victims of international crimes, published an Expert Commentary on the Al Hassan case. This study analyzes some of the most salient aspects of this important case, including the relevance of this trial in the context of possible proceedings to be undertaken against other individuals before the Malian courts pursuant to the complementarity principle.

15. In the Europe region, the **Coalition for the International Criminal Court (CICC)** and some of its member organizations active in Ukraine sent a letter to members of the Parliament of Ukraine in September 2020 calling for the full alignment of Ukrainian legislation with international criminal and humanitarian law. On 17 September 2020, Draft Law 2689 "On amendments to certain legislative acts on the Enforcement of International Criminal and Humanitarian Law" was approved on the first reading with 271 votes in favour. The second reading is expected to take place by the end of 2020. CICC members in Ukraine have also called for the strengthening of national authorities' capacities to effectively investigate and prosecute international crimes, building on the creation of the specialized "Department for Supervision in Criminal Proceedings of the Crimes Committed in Armed Conflict" in October 2019.

16. In the Americas region, the CICC and its member organizations active in Peru participated in meetings in February 2020 with the Peruvian Ministry of Justice to provide input on a draft bill to implement the Rome Statute. In addition, the CICC organized two online workshops with Venezuelan civil society organizations, in May-June and October-November, to discuss a range of issues on international justice and the preliminary examination into the situation in Venezuela, including future prospects for implementation.

17. **The Asser Institute, the Antonio Cassese Initiative, the International Nuremberg Principles Academy and the African Institute of International Law** jointly organized a one-week seminar on the prosecution and adjudication of international and transnational crimes from 24 to 28 February 2020, in Arusha, Tanzania. This high-level seminar was attended by prosecutors and judges from French speaking African countries and was held in French. This seminar was part of the Asser Institute, Cassese Initiative, International Nuremberg Principles Academy's training programme on international criminal law (ICL)

and transnational criminal law (TCL). The goal of the programme is to support countries with a fragile or weak justice sector, ICC situation countries and countries facing challenges in prosecuting international and transnational crimes. In short, the training programme's aim is to assist judges and prosecutors in order to strengthen their capacity to prosecute and try international and transnational crimes; enhance their ability to protect human rights; ensure effective cooperation with the ICC and other international criminal tribunals; and increase cooperation among national judiciaries.

18. **The EU Genocide Network**, a forum of national authorities competent for investigating and prosecuting core international crimes, organized one plenary meeting in a format of a videoconference. The meeting in November<sup>5</sup> was dedicated to the prosecution of crimes committed in Libya and the interlinkage with other crime areas - terrorism, illegal migration, trafficking in human beings, torture and violations of sanctions regime. The fifth EU Day Against Impunity was marked in a digital form on 23 May and organized by the Croatian EU Presidency, the Genocide Network, Eurojust and the European Commission. The event focused on cumulative prosecutions of foreign terrorist fighters for core international crimes and terrorist-related offences.<sup>6</sup> The Genocide Network further supported endeavors of civil society in relation to improving victim's rights.

19. During 2020, the **International Federation for Human Rights (FIDH)** continued its work, in collaboration with its members and the ICC, in support of victims of international crimes to ensure access to justice in the Central African Republic, Côte d'Ivoire, Guinea-Conakry, and Mali. In Côte d'Ivoire and Mali, the challenge was to address amnesty laws. In Guinea-Conakry, FIDH and its members continued its national advocacy towards the opening of a fair and effective trial into the 28 September 2009 massacre. FIDH and its members closely followed the proceedings before the Special Jurisdiction for Peace in Colombia and published a note on the blind spots in the transitional justice process relating to ICC jurisdiction crimes. FIDH together with its national members and partners submitted an Article 15 communication to the ICC on international crimes allegedly committed against prisoners in Eastern Ukraine in September 2020, while continuing to advocate for the incorporation of international crimes into domestic law.

20. **Human Rights Watch (HRW)** has pressed for the domestic prosecution of international crimes committed during Guinea's 2009 massacre, crimes committed by British forces in Iraq, and crimes in the Democratic Republic of Congo. The organization monitored Colombia's Special Jurisdiction for Peace, encouraged progress by the Central African Republic's Special Criminal Court, and called on Ukraine to incorporate provisions related to prosecution of international crimes into domestic law. The organization highlighted to the Independent Expert Review the need for ICC completion strategies and the connection to efforts directed at domestic accountability capacity building and ways the OTP can catalyze domestic proceedings in some preliminary examinations.

21. The **International Bar Association (IBA)**, through its Hague Office, launched the Implementing Legislation Pilot Project in February 2020, to promote the enactment of effective legislation and the establishment of cooperation agreements in strategically selected target countries, and to ensure that national authorities fulfil their obligations to investigate and prosecute genocide, crimes against humanity and war crimes and to cooperate fully with the ICC. Activities included: mapping the current status of implementing legislation and cooperation agreements; consultations with, and providing information and technical assistance to, IBA members; and drafting a report with recommendations for States Parties on furthering domestic legislation and cooperation (forthcoming 2021). In November 2020, ICC Prosecutor Fatou Bensouda was a featured speaker during the IBA's Virtually Together Conference, which had 10,000 registered participants from 166 countries.

22. The **International Center for Transitional Justice (ICTJ)** promotes implementation of complementarity by offering timely analysis, creating spaces to advance global discussions, and supporting domestic jurisdictions. In Uganda, the ICTJ continued its efforts to inform victims about proceedings at the ICC and Uganda's International Crimes

<sup>5</sup> Conclusions of the meetings available here: <https://www.eurojust.europa.eu/judicial-cooperation/practitioner-networks/genocide-network>

<sup>6</sup> Video statements of the event available here: [https://www.youtube.com/watch?v=Ttj2ahVEY3c&list=PLeNV0AC0oBu\\_7MR\\_TysTHsgjTTxHmlcrD](https://www.youtube.com/watch?v=Ttj2ahVEY3c&list=PLeNV0AC0oBu_7MR_TysTHsgjTTxHmlcrD)

Division, including an event with the ICC in Gulu with civil society and victims' groups. In Colombia, the ICTJ provided critical support to the Special Jurisdiction for Peace, the Truth Commission, and Search Unit to ensure their effective operations and withstand domestic challenges. In the Syrian context, the ICTJ provided technical advice to the formal opposition in support of the justice demands of Syrian organizations and victims' groups and advocated for detainees' rights and release.

23. The **International Nuremberg Principles Academy** continued its activities in the field of capacity building for Francophone African countries and held a seminar for prosecutors and judges in Arusha (together with Asser Institute, Cassese Initiative, AIIL). The Academy also organized the 8th workshop of the "Strengthening Justice and Accountability in Nigeria" workshop series (together with Wayamo Foundation). The Academy launched a large-scale translation project to substantially increase the amount of ICL resources in the French language. The open-access material will be available online and free of cost on the Lexsitus website.

24. **Justice Rapid Response (JRR)** continued to offer a very practical solution to national accountability mechanisms to address capacity needs while maintaining strong local ownership of the process. JRR worked closely with local authorities providing them with highly specialized expertise to strengthen their capacity to investigate and prosecute international crimes. Case-based mentoring provided by JRR Roster experts has enabled States to benefit from tailored capacity-building support in a variety of areas, including international crimes' investigations and prosecutions, sexual and gender based violence (SGBV) and gender expertise, witness protection, psychosocial support, victim participation and representation and criminal analysis. Among current ICC preliminary examination or situation countries, JRR has broadened its ongoing support to the International Crimes Division in Uganda, by working with the Office of the Victims Counsel in relation to victim representation and participation in the Thomas Kwoyelo case. JRR also intensified its collaboration with the Special Jurisdiction for Peace in Colombia, providing mentoring support on SGBV investigations and investigations into crimes against children, restorative justice, witness protection and psychosocial support. Current discussions are also exploring the potential support in other ICC preliminary examination or situation countries

25. **Lawyers Without Borders Canada (LWBC)** continued to work with civil society in Colombia and Mali to support and empower victims of international crimes. In Mali, among other achievements, LWBC has organized the transport of victims and witnesses to the capital so that they can testify before the investigating judge of the "Pôle judiciaire spécialisé" (Specialized Judicial Division) - the Malian body responsible for investigating international crimes. Additionally, on the eve of the opening of the Al Hassan trial, LWBC facilitated the displacement of certain victims to Bamako to ensure they could follow the ongoing proceedings in The Hague. In Colombia, LWBC worked together with its partner CSOs in the follow-up, documentation and analysis of human rights cases originating from the Colombian internal armed conflict. The team has prioritized the identification of serious crime patterns as a strategy to push for greater application of the principle of complementarity through the sound implementation of the Peace Agreement.

26. The **Open Society Justice Initiative (OSJI)** continued to work with local civil society and some State partners in Central America, Eastern Europe and Asia to build cases for national prosecution and advocate reforms necessary to make genuine domestic prosecutions and trials possible. Together with Syrian partners, the Justice Initiative built cases for prosecution under universal jurisdiction in European states, advocated for more comprehensive forms of criminal accountability for Syrian atrocities in the longer term, and explored the merits of a possible treaty-based, pooled-jurisdiction tribunal for Syria. The Justice Initiative continued to monitor domestic grave crimes trials in Guatemala, as well as litigation in Kenya related to SGBC and police shootings. Together with TRIAL International, the Justice Initiative published briefing papers on the law and practice of universal jurisdiction on Rome Statute crimes in eight countries in order to enhance understanding of domestic systems of prosecutions. The reports include a comparison between domestic codifications of these crimes and the Rome Statute text. Further, the Justice Initiative assisted local stakeholders to think through the proposed design of possible new accountability mechanisms in countries including The Gambia, Yemen, and Ukraine, on the

basis of its handbook, *Options for Justice: A Handbook for Designing Accountability Mechanisms for Grave Crimes*.

27. **Parliamentarians for Global Action (PGA)** organized three high-level regional events to advance implementation of the Rome Statute, and strengthen the capacity of domestic accountability mechanisms: The high-level Annual Forum in Praia (Cape Verde); Consultations on the ICC and the improvement of domestic legislation (South Africa); and the 8th Middle East and North Africa (MENA) Parliamentary Working Group on the Fight Against Impunity to discuss implementation of the Rome Statute in Lebanon, Morocco, and Tunisia. PGA also addressed a high-level Roundtable on harmonizing the domestic penal law with international criminal and humanitarian law (Ukraine) which culminated in a successful first reading of draft law no. 2689. PGA held various virtual meetings with its members in Latin America and Africa, and provided technical and legal assistance, including an enhanced draft implementation law that encompasses provisions for complementarity, cooperation and all Rome Statute amendments. As a result, more than 80 parliamentarians committed to joint and country-specific action points toward complementarity in 40 States, with three Latin American, three African and one European country currently reviewing complementarity legislation.

28. In 2020, the **Ukrainian Legal Advisory Group (ULAG)** continued to cooperate with and advise the Department of War Crimes within the General Prosecutor's Office of Ukraine on issues pertaining to investigations and prosecutions of alleged war crimes and crimes against humanity committed in the course of the armed conflict on the territory of Ukraine. In July 2020, ULAG presented the analytical report "Principle of Complementarity: International Justice in Ukraine" which was followed by an expert discussion. In the report, the organization highlighted issues related to the practical application of the principle of complementarity in the situation of Ukraine; the overall intention and ability of the domestic legal system to ensure accountability for grave international crimes and the current approaches to pre-trial investigations which include: i) legal classification of the offences allegedly committed ii) competence and jurisdiction of the law enforcement authorities and particulars of supervision of such investigations iii) domestic courts' approaches to considering cases of alleged grave crimes. During the discussion, international and domestic experts noted the existing challenges and discussed ways to resolve them.

29. **Women's Initiatives for Gender Justice** focused on the rollout and implementation of *The Hague Principles on Sexual Violence*, a set of documents providing guidance for those engaged in addressing sexual violence, particularly "other forms of sexual violence" (Articles 7(1)(g) and 8(2)(b)(xxii), Rome Statute). A project was launched in Colombia to complement local initiatives to prosecute sexual violence by promoting a broader understanding of all forms of sexual violence among civil society, practitioners including from the Attorney General's office and the Special Jurisdiction for Peace (JEP). *The Hague Principles on Sexual Violence* were used in trainings for legal practitioners in Georgia and The Gambia.

## Annex II

### Draft resolution language for the omnibus resolution

[Note: elements from the ASP18 omnibus resolution relating to sexual and gender-based crimes have been included here given the Bureau's decision to assign this mandate to the complementarity co-focal points]

*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,

*Welcoming also* in this regard relevant contributions from the Court relating to sexual and gender-based crimes, such as the Office of the Prosecutor's Policy Paper on Sexual and Gender-Based Crimes,<sup>7</sup> as well as contributions from States Parties and other relevant actors, including initiatives for advancing the knowledge and understanding of such crimes, and convinced that these initiatives should be an integral part of strategic dialogues and actions to strengthen the Court and national courts in the fight against impunity, while fully respecting their judicial independence,

*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>8</sup> and *acknowledges* the important work being undertaken with regard to

<sup>7</sup> <https://www.icc-cpi.int/iccdocs/otp/OTP-Policy-Paper-on-Sexual-and-Gender-Based-Crimes--June-2014.pdf>.

<sup>8</sup> United Nations General Assembly resolution 70/1.



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. *Encourages* the Court to take note of the best practices of relevant international and *national* organizations, tribunals, and mechanisms related to sexual and gender-based crimes, including practices related to investigation, prosecution and training, in solving challenges related to crimes under the Rome Statute, including sexual and gender-based crimes, while reiterating its respect for the independence of the Court;

8. *Recognizes* the importance of achieving accountability for all Rome Statute crimes while recalling that there is no hierarchy between them, *encourages* the Bureau to engage with interested States Parties and other relevant actors to identify ways to support Court efforts in this regard with respect to sexual and gender-based crimes that amount to Rome Statute crimes, with a view to reporting thereon to the ~~nineteenth~~ **twentieth** session of the Assembly;

9. *Welcomes* the report of the Bureau on complementarity, ***takes note of the recommendations made on future consultations set out therein and without prejudice to any decision of the Assembly on future processes regarding the Report of the Independent Expert Review***, 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 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;

10. 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~~ **twentieth** session of the Assembly;

11. *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>9</sup> during the fourteenth session of the Assembly;

12. *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

<sup>9</sup> International Development Law Organization paper entitled "Complementarity for sexual and gender-based atrocity crimes", November 2015.

Rome Statute crimes and the strengthening of access to justice for victims of such crimes, including through international development assistance.

13. — *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.

## Annex III

### 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~~ **twentieth** session of the Assembly;

With regard to **proceedings of the Court**,

(c) *encourages* the Bureau to engage with interested States Parties and other relevant actors to identify ways to support Court efforts in this regard with respect to sexual and gender-based crimes that amount to Rome Statute crimes, with a view to reporting thereon to the ~~nineteenth~~ **twentieth** session of the Assembly;

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