

## **Resolution ICC-ASP/7/Res.3**

*Adopted at the 7<sup>th</sup> plenary meeting, on 21 November 2008, by consensus*

### **ICC-ASP/7/Res.3**

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

*The Assembly of States Parties,*

*Mindful* that each individual State has the responsibility to protect its population from genocide, war crimes, and crimes against humanity, that the conscience of humanity continues to be deeply shocked by unimaginable atrocities in various parts of the world, and that the need to prevent the most serious crimes of concern to the international community, and to put an end to the impunity of the perpetrators of such crimes, is now widely acknowledged,

*Convinced* that the International Criminal Court (“the Court”) is an essential means of promoting respect for international humanitarian law and human rights, thus contributing to freedom, security, justice and the rule of law as well as to the prevention of armed conflicts, the preservation of peace and the strengthening of international security and the advancement of post-conflict peacebuilding and reconciliation with a view to achieving sustainable peace, in accordance with the purposes and principles of the Charter of the United Nations,

*Convinced also* that there can be no lasting peace without justice and that peace and justice are thus complementary requirements,

*Convinced further* that justice and the fight against impunity are, and must remain, indivisible and that in this regard universal adherence to the Rome Statute of the International Criminal Court is essential,

*Welcoming* the Court's central role as the only permanent international criminal court within an evolving system of international criminal justice,

*Taking note with appreciation* of United Nations General Assembly resolution 63/21 of 11 November 2008, concerning the International Criminal Court, and previous relevant United Nations General Assembly resolutions,

*Stressing* the importance of effective and comprehensive cooperation and assistance by States, international and regional organizations, so that the Court can properly fulfil its mandate,

*Appreciating* the invaluable assistance that has been provided by civil society to the Court,

*Welcoming* the events held at United Nations Headquarters and in The Hague to celebrate the tenth anniversary of the adoption of the Rome Statute,

*Conscious* of the importance of equitable geographical representation and gender balance in the organs of the Court,

*Mindful* of the need to encourage the full participation of States Parties, Observers and States not having observer status in the sessions of the Assembly of States Parties and to ensure the broadest visibility of the Court and the Assembly,

*Conscious* of the risks faced by personnel of the Court in the field,

*Desirous* of assisting the Court and its organs, notably through management oversight and other appropriate action, in performing the duties assigned to them,

## A. Rome Statute of the International Criminal Court and other agreements

1. *Welcomes* the States that have become a Party to the Rome Statute of the International Criminal Court since the sixth regular session of the Assembly and *invites* States that are not yet parties to the Rome Statute to become so as soon as possible;
2. *Decides* to keep the status of ratifications under review, and to monitor developments in the field of implementing legislation, inter alia, with a view to facilitating the provision of technical assistance that States Parties to the Rome Statute, or States wishing to become parties thereto, may wish to request from other States Parties or institutions in relevant areas;
3. *Welcomes* the report of the Bureau regarding the implementation of the Plan of action for achieving universality and full implementation of the Rome Statute,<sup>1</sup> *endorses* the recommendations of the report, and *requests* the Bureau to continue to monitor its implementation and to report thereon to the Assembly during its eighth session;
4. *Stresses* that the integrity of the Rome Statute must be preserved and that treaty obligations emanating therefrom must be fully adhered to, *encourages* States Parties to the Rome Statute to exchange information and to support and assist each other to that end, particularly in situations where its integrity is being challenged, *reminds* States of the importance of upholding the spirit of the Statute, and *also urges* the States under an obligation to do so to cooperate with the Court in the fulfilment of its mandate;
5. *Welcomes* the States Parties that have become a Party to the Agreement on the Privileges and Immunities of the International Criminal Court, and *calls upon* States Parties as well as non-States Parties that have not yet done so to become parties to this Agreement as a matter of priority and to incorporate it in their national legislation as appropriate;
6. *Recalls* that the Agreement on the Privileges and Immunities of the International Criminal Court and international practice exempt salaries, emoluments and allowances paid by the Court to its officials and staff from national taxation and *calls upon* States that have not yet become parties to this Agreement to take the necessary legislative or other action, pending their ratification or accession, to exempt their nationals employed by the Court from national income taxation with respect to salaries, emoluments and allowances paid to them by the Court, or to grant relief in any other manner from income taxation in respect of such payments to their nationals;
7. *Reiterates* the obligations of States Parties to respect on their territories such privileges and immunities of the Court as are necessary for the fulfilment of its purposes, and *appeals* to all States which are not party to the Agreement on the Privileges and Immunities of the International Criminal Court in which the Court's property and assets are located or through which such property and assets are transported, to protect the property and assets of the Court from search, seizure, requisition and any other form of interference;
8. *Welcomes* the entry into force of the Headquarters Agreement between the International Criminal Court and the host State<sup>2</sup> on 1 March 2008;

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<sup>1</sup> ICC-ASP/7/19.

<sup>2</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Fifth session, The Hague, 23 November-1 December 2006* (International Criminal Court publication, ICC-ASP/5/32), part III, resolution ICC-ASP/5/Res.3, annex II.

## **B. Institution-building**

9. *Takes note* of the statements presented to the Assembly of States Parties by the senior representatives of the Court, including the President, the Prosecutor and the Registrar, as well as by the Chair of the Board of Directors of the Trust Fund for Victims, the Chair of the Committee on Budget and Finance, and the Chair of the Oversight Committee on permanent premises;

10. *Notes* with satisfaction the fact that owing, not least, to the dedication of its staff, considerable progress continues to be made in the Court's analyses, investigations and judicial proceedings in various situations which were referred to the Court by States Parties and the United Nations Security Council;<sup>3</sup>

11. *Takes note* of the experience already gained by other relevant international organizations in solving operational challenges similar to those encountered by the Court and, while reiterating its respect for the independence of the Court, *invites* the Court to take note of best practices of other relevant international organizations and tribunals;

12. *Emphasizes* the importance of electing the most highly qualified judges in accordance with article 36 of the Rome Statute;

13. *Takes note* also of the continued operation and further enhancement of its field presence, and *encourages* the Court to continue to optimize its field presence and contacts with affected communities in order to strengthen its effectiveness and ensure the Court's continued relevance and impact in countries in which it carries out its investigations;

14. *Continues to encourage* applications to the list of counsel established as required under rule 21(2) of the Rules of Procedure and Evidence with a particular view to ensuring equitable geographical representation and gender balance, as well as legal expertise on specific issues such as violence against women or children, as appropriate;

15. *Welcomes* the detailed report submitted by the Court to the Assembly of States Parties on the different legal aid mechanisms before the international criminal jurisdictions<sup>4</sup> and *recommends* that the Court should continue to identify any efficiencies that can be achieved in its legal aid scheme, including by ensuring that the provision of legal aid is commensurate with the level of activity at each stage of proceedings, and by regularly evaluating the respective roles of the Office of Public Counsel for the Defence (OPCD) and defence teams;

16. *Invites* the Court, taking into account the comments of the Committee on Budget and Finance,<sup>5</sup> to present to the Assembly at its eighth session an updated report on the legal and financial aspects for funding victims' legal representation before the Court, together with a further report considering alternatives to the formula currently used by the Court for calculating indigence, to include, inter alia, the consideration of the desirability of establishing absolute thresholds of asset holdings above which legal aid would not be provided, and *invites* the Court to engage in constructive dialogue with States Parties on this issue in a timely manner, allowing for a proper review by the Committee on Budget and Finance at its twelfth and thirteenth sessions;

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<sup>3</sup> United Nations Security Council resolution 1593 (2005).

<sup>4</sup> ICC-ASP/7/23.

<sup>5</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Seventh session, The Hague, 14-22 November 2008* (International Criminal Court publication, ICC-ASP/7/20), vol. II, part B.2., paras. 128-129.

17. *Also welcomes* the report of the Bureau on family visits for detainees,<sup>6</sup> *recalls* the recommendations of the Committee on Budget and Finance,<sup>7</sup> *bears in mind* the subsequent submission of the Report of the Court titled “Report of the Court on family visits to indigent detained persons,”<sup>8</sup> *recognizes* that detained persons are entitled to receive visits and that specific attention should be given to visits by family members, while also *recalling* that, according to existing law and standards,<sup>9</sup> the right to family visits does not comprise a co-relative legal right to have such visits paid for by the detaining authority;

18. *Notes* that further discussions are necessary in order to facilitate a policy decision on the issue of financial assistance for family visits to persons detained on remand by the Court, as well as, in case of the adoption of such a policy, the specific conditions for its implementation, *invites* the Court to engage in a constructive dialogue with States Parties on this issue in a timely manner, allowing for a proper review by the Committee on Budget and Finance at its twelfth and thirteenth sessions and for a decision to be taken at the eighth session of the Assembly, and *requests* the Bureau to remain seized of the matter;

19. *Notes* the important work of independent representative bodies of counsel or legal associations, including any international legal association relevant to rule 20, sub-rule 3, of the Rules of Procedure and Evidence;

20. *Commends* the important work of the New York Liaison Office of the Court, which enables regular and efficient cooperation and exchange of information between the Court and the United Nations and the effective conduct of the Bureau as well as the New York Working Group, and *expresses* its full support for the work of the Office, and *recommends* that the Court provide a comprehensive and detailed information at the eighth session of the Assembly of States Parties on the functioning of the New York Liaison Office as a part of the report on the activities of the Court;

21. *Recommends* that the Court consider the desirability and feasibility of establishing, at African Union Headquarters in Addis Ababa, Ethiopia, a small representation common to all parts of the Court, and *requests* the Registrar to report to the Assembly of States Parties on this question, including its budgetary implications, drawing upon experiences and lessons learned from existing offices of the Court in New York and in the field;

22. *Welcomes* the presentation of the fourth report of the Court to the General Assembly of the United Nations;<sup>10</sup>

23. *Recognizes* the important work done by the Secretariat of the Assembly of States Parties, *reiterates* that the relations between the Secretariat and the different organs of the Court shall be governed by principles of cooperation and of sharing and pooling of resources and services, as set out in the annex to resolution ICC-ASP/2/Res.3, and *welcomes* the fact that the Director of the Secretariat of the Assembly of States Parties participates in the meetings of the Coordination Council when matters of mutual concern are considered;

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<sup>6</sup> ICC-ASP/7/30.

<sup>7</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Seventh session, The Hague, 14-22 November 2008* (International Criminal Court publication, ICC-ASP/7/20), vol. II, part B.2., paras. 66-69.

<sup>8</sup> ICC-ASP/7/24.

<sup>9</sup> Such as the United Nations Standard Minimum Rules for the Treatment of Prisoners (approved by Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977); the United Nations Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by General Assembly resolution 43/173 of 9 December 1988; and, at regional level, Recommendation Rec(2006)2 of the Committee of Ministers on the European Prison Rules adopted by the Committee of Ministers of the Council of Europe on 11 January 2006; Committee for the Prevention of Torture Imprisonment Standards (CPT/Inf/E(2002)1-Rev.2006).

<sup>10</sup> United Nations document A/63/323.

24. *Welcomes* the efforts undertaken by the Court to implement the One Court principle, including by coordinating the activities of the Court among its organs at all levels, while respecting their necessary independence under the Statute, and *encourages* the Court to undertake all necessary efforts to fully implement the One Court principle, inter alia, with a view to ensure full transparency, good governance, and sound management;

25. *Welcomes* the Bureau's report on the Strategic Plan,<sup>11</sup> *endorses* the recommendations contained therein, *welcomes* the efforts of the Court to further develop the Strategic Plan on the basis of the document entitled "Revised strategic goals and objectives of the International Criminal Court for 2009 – 2018,"<sup>12</sup> *welcomes also* the substantial progress made by the Court in the implementation of the Strategic goals and objectives, *welcomes further* the progress made in developing a strategy for victims, *notes* that significant work remains to be done in developing the different areas of the Plan, in particular with regard to the strategy for victims, *reiterates* the need to continue to improve and adapt outreach activities and *encourages* the Court to further develop and implement the Strategic Plan for Outreach<sup>13</sup> in affected communities, *reiterates further* the importance of the relationship and coherence between the strategic planning process and the budgetary process,<sup>14</sup> *recommends* that the Court continue the constructive dialogue with the Bureau on the strategic planning process, in particular, the development and finalization of the strategy for victims and other priority issues identified in resolution ICC-ASP/5/Res.2, and *requests* the Court to submit to the next session of the Assembly an update on all activities related to the strategic planning process and its components;

26. *Reminds* the Court of its obligation under the Statute, in the recruitment of staff, to seek equitable geographical representation and gender balance and the highest standards of efficiency, competency and integrity, as well as to seek expertise on specific issues, including, but not limited to, trauma and violence against women or children;

27. *Stresses* the importance of the dialogue between the Court and the Bureau of the Assembly of States Parties with regard to ensuring equitable geographical representation and gender balance in the recruitment of staff members, *welcomes* the report of the Bureau,<sup>15</sup> *endorses* the recommendations of the report, and *recommends* the Bureau to continue to engage with the Court to identify ways to improve equitable geographical representation within the existing model, without prejudice to any future discussions on the suitability, or otherwise, of the current model, as well as to remain seized of the issue of geographical representation and gender balance and to report thereon to the ninth session of the Assembly;

28. *Notes* that the Court has invited the United Nations General Assembly to consider amending the Pension Scheme Regulations for judges of the International Court of Justice, the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda in order to ensure that no former judge of any of these courts receives a pension while also serving as a judge of the International Criminal Court;

### **C. Cooperation and implementation**

29. *Welcomes* the efforts undertaken by the Court to foster cooperation with States, international and regional organizations and civil society and *stresses* that effective cooperation remains essential for the Court to carry out its activities;

30. *Calls upon* the Court to continue to promote the full implementation of the Relationship Agreement between the International Criminal Court and the United Nations;

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<sup>11</sup> ICC-ASP/7/29.

<sup>12</sup> ICC-ASP/7/25, annex.

<sup>13</sup> ICC-ASP/5/12.

<sup>14</sup> ICC-ASP/7/29.

<sup>15</sup> ICC-ASP/7/21.

31. *Expresses its gratitude* for the Secretary-General's efforts to strengthen cooperation between the United Nations and the Court;
32. *Expresses its appreciation* to the Secretary-General and the Secretariat of the United Nations for their support in facilitating the resumed sixth session of the Assembly and the event to mark the tenth anniversary of the adoption of the Rome Statute, both held at United Nations Headquarters, and *looks forward* to continuing such cooperation regarding future sessions and events of the Assembly;
33. *Acknowledges with appreciation* the continued cooperation between the Court and the United Nations system, as evidenced by the hosting of a trial by the Special Court for Sierra Leone, and by several supplementary arrangements established within the framework provided by the Relationship Agreement between the Court and the United Nations;
34. *Welcomes* the implementation of the Cooperation Agreement between the Court and the European Union, as well of the other agreements of the Court and the Office of the Prosecutor, *looks forward* to the early conclusion of a cooperation agreement with the African Union, and *invites* other relevant regional organizations to consider concluding such agreements with the Court;
35. *Appeals* to all States in which personnel of the Court are deployed and to all others on which such personnel may rely to ensure the safety of, and to prevent attacks against, personnel of the Court and to provide cooperation and judicial assistance aimed at facilitating the conduct and fulfilling of their mandate;
36. *Acknowledges* the crucial role played by journalists, media professionals and associated personnel to inform the international community on the Court's activities, and *stresses* the necessity for States and other parties to an armed conflict to protect such persons as civilians, provided that they enjoy such status under International Humanitarian law;
37. *Recalls* that the ratification of the Rome Statute must be matched by national implementation of the obligations emanating therefrom, notably through implementing legislation, in particular in the areas of criminal law, criminal procedural law and judicial cooperation with the Court, and in this regard *urges* States Parties to the Rome Statute that have not yet done so to adopt such implementing legislation as a priority;
38. *Takes note* of the ongoing activities of international organizations and agencies, as well as other organizations, including non-governmental organizations, in the promotion of international criminal justice, and the support provided to the Court;
39. *Notes* the potential contribution that inter-governmental cooperative initiatives can, upon request and when legally feasible, play in the effective enforcement of international criminal justice through, for example, the rapid identification, collection and preservation of the most perishable type of information relating to crimes under international law;
40. *Encourages* States, particularly in view of the fundamental principle of complementarity, to include the crimes set out in articles 6, 7 and 8 of the Rome Statute as punishable offences under their national laws and to ensure effective enforcement of those laws;
41. *Emphasizes* the need for States Parties and those States under an obligation to do so to cooperate with the Court in such areas as preserving and providing evidence, sharing information, securing the arrest and surrender to the Court of persons for whom arrest warrants have been issued and protecting victims and witnesses, and *strongly encourages* States, international and regional organizations as well as civil society to intensify their support to the Court in its efforts to that end, as appropriate;

42. *Encourages* States Parties to continue to express diplomatic and political support for the Court and for cooperation with the Court;

43. *Calls upon* States to enter into arrangements with the Court concerning, inter alia, protective measures for witnesses, including witness relocation, victims, their families, and others who are at risk on account of testimony given by witnesses and sentence enforcement;

44. *Welcomes* the report of the Bureau on Cooperation,<sup>16</sup> *takes note* of the activities of the Bureau's focal point on cooperation in identifying ways for implementing the recommendations of the previous Bureau's report,<sup>17</sup> and *encourages* the Bureau to continue to work on cooperation in close coordination with the Court and report on significant developments to the Assembly of States Parties at its next session;

#### **D. Assembly of States Parties**

45. *Takes note* of the latest report on the activities of the Court to the Assembly of States Parties;<sup>18</sup>

46. *Calls upon* States, international organizations, individuals, corporations and other entities to contribute timely and voluntarily to the Trust Fund to allow the participation of least developed countries and other developing States in the annual session of the Assembly of States Parties, and *expresses its appreciation* to those that have done so;

47. *Calls upon* States, international organizations, individuals, corporations and other entities to contribute voluntarily to the Trust Fund for Victims, and *expresses its appreciation* to those that have done so;

48. *Welcomes*, in light of resolution ICC-ASP/4/Res.3<sup>19</sup> on the Regulations of the Trust Fund for Victims, the steps taken to implement the Regulations, *notes* that there is currently no need to amend the Regulations, which still remain to be fully implemented, and *decides* to reassess such implementation in due course, for example, after the Court has made its first order of reparations;

49. *Expresses its appreciation* to the Board of Directors of the Trust Fund for Victims and the Secretariat of the Trust Fund for Victims for their continuing commitment towards easing the suffering of victims, and *encourages* the Secretariat to continue to strengthen its ongoing dialogue with the Registry and the international community, including donors as well as civil society, who all contribute to the valuable work of the Trust Fund for Victims, so as to ensure the highest standards of transparency and visibility in respect of the procedures and activities of the Trust Fund;

50. *Emphasizes* the importance of endowing the Court with the necessary financial resources, and *urges* all States Parties to the Rome Statute to transfer their assessed contributions in full and by the deadline for contributions, or, in the event of pre-existing arrears, immediately, in accordance with article 115 of the Statute, rule 105.1 of the Financial Regulations and Rules, and other relevant decisions taken by the Assembly of States Parties;

51. *Calls upon* States, international organizations, individuals, corporations and other entities to contribute voluntarily to the Court, and *expresses its appreciation* to those that have done so;

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<sup>16</sup> ICC-ASP/7/18.

<sup>17</sup> ICC-ASP/6/21.

<sup>18</sup> ICC-ASP/7/25.

<sup>19</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Fourth session, The Hague, 28 November - 3 December 2005* (International Criminal Court publication, ICC-ASP/4/32), part III, resolution ICC-ASP/4/Res.3, paragraph 2.

52. *Takes note* of the report of the Bureau on the arrears of States Parties<sup>20</sup> and *decides* that the Bureau should continue to monitor the status of payments received throughout the financial year of the Court, consider additional measures to promote payments by States Parties, as appropriate, and continue to engage in dialogue with States Parties in arrears;
53. *Requests* the Secretariat of the Assembly of States Parties to inform States Parties periodically of States that have recovered their voting rights following payment of their arrears;
54. *Acknowledges with appreciation* that the consolidated digital version of the Financial Regulations and Rules, in all six official languages of the Assembly, has been made available on the website of the Court;
55. *Welcomes* the work by the Bureau and its two informal working groups and *invites* the Bureau to create such mechanisms as it considers appropriate and to report back to the Assembly of States Parties on the result of their work;
56. *Also welcomes* the efforts of the Bureau to ensure communication and cooperation between its subsidiary bodies and *invites* the Bureau to continue such efforts;
57. *Takes note* of the important work done by the Committee on Budget and Finance, and *reaffirms* the independence of the members of the Committee;
58. *Recalls* that, according to its Rules of Procedure,<sup>21</sup> the Committee on Budget and Finance shall be responsible for the technical examination of any document submitted to the Assembly that contains financial or budgetary implications, *emphasizes* the importance of ensuring that the Committee on Budget and Finance is represented at all stages of the deliberations of the Assembly of States Parties at which such documents are considered, and *requests* the Secretariat, together with the Committee on Budget and Finance, to continue to make the necessary arrangements;
59. *Decides* that the Committee on Budget and Finance shall hold its twelfth session from 20 to 24 April 2009 and its thirteenth session from 14 to 22 September 2009;
60. *Takes note* of the report of the Special Working Group on the Crime of Aggression,<sup>22</sup> and *notes* that the Special Working Group will conclude its work during the resumed seventh session of 9 to 13 February 2009 in order to be in a position to submit proposals for a provision on aggression, in accordance with article 5, paragraph 2, of the Statute and with resolution ICC-ASP/1/Res.1, to the Assembly for its consideration at the Review Conference;
61. *Decides* that proposals for amendments to the Rome Statute to be considered at the Review Conference should be discussed at the eighth session of the Assembly of States Parties in 2009, with a view to promoting consensus and a well prepared Review Conference;
62. *Recommends* that, in addition to a focus on amendments that may command very broad, preferably consensual support, the Review Conference should be an occasion for a “stocktaking” of international criminal justice in 2010, *notes* the desirability for the Review Conference to focus on a limited number of key topics, and *notes* in this regard the progress report of the focal point distributed at the sixth session of the Assembly of States Parties;<sup>23</sup>

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<sup>20</sup> ICC-ASP/7/26.

<sup>21</sup> ICC-ASP/2/10, annex III.

<sup>22</sup> ICC-ASP/7/ SWGCA/1\*.

<sup>23</sup> ICC-ASP/6/INF.3.



63. *Decides* to make a change to the terms of reference of the trust fund established by paragraph 1 of resolution ICC-ASP/2/Res.6 to allow least developed countries and other developing States to draw on the fund so as to enhance the possibility of such States to participate in the activities of the Review Conference;

64. *Further requests* the Bureau to continue the preparations of the Review Conference including, with regard to scope, financial and legal implications, as well as practical and organizational issues;

65. *Recalls* that, according to article 112, paragraph 6, of the Rome Statute, the Assembly of States Parties shall meet at the seat of the Court or at the Headquarters of the United Nations;

66. *Recalls* that, according to paragraph 63 of resolution ICC-ASP/6/Res.2, the Assembly shall hold its eighth, ninth and tenth sessions in The Hague, New York and The Hague, respectively, and *decides* to continue the consideration of venues of future sessions of the Assembly;

67. *Decides* to hold its eighth session from 18 to 26 November 2009 in The Hague.

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