

**Tenth session**

New York, 12-21 December 2011

**Report of the Bureau on the Plan of action for achieving
universality and full implementation of the Rome Statute of
the International Criminal Court****Note by the Secretariat**

Pursuant to paragraph 16 of resolution ICC-ASP/9/Res.3, of 10 December 2010, the Bureau of the Assembly of States Parties hereby submits for consideration by the Assembly the report on the Plan of action for achieving universality and full implementation of the Rome Statute of the International Criminal Court. The present report reflects the outcome of the informal consultations held by the New York Working Group of the Bureau.

I. Introduction

1. At its fifth session, the Assembly of States Parties adopted, by consensus, the Plan of action of the Assembly of States Parties for achieving universality and full implementation of the Rome Statute of the International Criminal Court (hereinafter "the Plan of action").¹
2. At its ninth session, the Assembly welcomed the report of the Bureau on implementation of the Plan of action,² endorsed the recommendations contained therein and requested the Bureau to continue to monitor implementation of the Plan and to report thereon to the Assembly during its tenth session.³
3. At its third meeting, on 1 March 2011, the Bureau of the Assembly appointed Ms. Oana Florescu (Romania) as facilitator for the Plan of action.
4. The Plan of action calls upon States Parties to proactively promote universality and full implementation of the Rome Statute through bilateral and regional relationships by, inter alia, convening and supporting seminars and other events, disseminating information about the Court, providing technical and financial assistance to States wishing to become party to the Rome Statute, providing information to the Secretariat of the Assembly of States Parties ("the Secretariat") and cooperating with the Court. Furthermore, the Plan of action calls upon the Secretariat to support States in their efforts to promote universality and full implementation of the Statute by acting as a focal point for information exchange, within existing resources, including by collecting and ensuring dissemination of such information. It also requires the Assembly, through its Bureau, to keep the Plan of action under review.

¹ *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* (ICC-ASP/5/32), part III, ICC-ASP/5/Res.3, para. 2, and annex I.

² ICC-ASP/9/21.

³ *Official Records ... Ninth session ... 2010* (ICC-ASP/9/20), vol. I, part III, ICC-ASP9/Res.3, para.16.

5. The Plan of action has been under consideration by the New York Working Group of the Bureau. In addition, consultations have taken place in The Hague in order to keep delegates, Court officials, members of civil society and other interested parties based in the Netherlands up to date on the progress in the discussions on the Plan of action and to receive their suggestions, comments and recommendations.

II. Informal consultations

6. On 7 June and 3 August 2011, the facilitator convened two open meetings in New York. Representatives of States Parties, of non-States Parties to the Rome Statute, the Secretariat, international organizations, the Court and civil society were invited to participate in the discussions. The participation of many interested actors in the deliberations on the Plan of Action in New York contributes to the achievement of both objectives of the Plan of action: universality and full implementation of the Rome Statute. The facilitator also held informal consultations with numerous actors in different forums.

7. The informal consultations focused on the mandate and programme of work of the facilitator, the status of ratification and implementation of the Rome Statute, the content of the Plan of action and the progress achieved since the adoption of the Plan. The facilitator noted that the Secretariat of the Assembly had been designated as the focal point for information exchange with regards to the Plan of Action. Although the Secretariat sent its annual note verbale⁴ requesting States to provide information on actions undertaken to promote the ratification and full implementation of the Rome Statute, the rate of response had been low. In 2011 only 13 States Parties and two regional organizations⁵ responded and since 2007 only 58 States Parties had responded. She encouraged all States Parties that had not yet done so to provide the requested information.

8. In addition to the open meetings, the facilitator held many bilateral consultations with representatives of States, members of civil society, international organizations and the Secretariat.

9. No amendments to the provisions of the current Plan of action were suggested.

III. Updates on activities by States Parties

10. The previous facilitator indicated that Slovakia and Trinidad and Tobago had co-organized a meeting for the Caribbean Community (CARICOM) Permanent Missions during the ninth session of the Assembly. The representative of Trinidad and Tobago noted that his State had pledged to promote ratification of the Statute, ratification of the Agreement on Privileges and Immunities of the Court (APIC) as well as the adoption of implementing legislation among CARICOM States Parties. To that end, Trinidad and Tobago had co-organized on 16 and 17 May, together with the Commonwealth Secretariat and with the assistance of the Secretariat of the Assembly, a regional seminar for the CARICOM region in Port of Spain, Trinidad and Tobago. The accession of Grenada to the Rome Statute was also announced at the Port of Spain seminar.

11. Attention was drawn to several other States' pledges with regard to universality. Efforts to that effect had included support of a workshop in Malaysia and would also include a seminar with States of the Bolivarian Alliance for the Peoples of Our America Group (ALBA) to encourage ratification and full implementation of the Rome Statute. States Parties had also conducted universality work in the Asia and Pacific region, mentioning the meeting of Asian-African Legal Consultative Organization which organized a Meeting of the Legal Experts on the Rome Statute in Putrajaya, Malaysia in July 2011. With the accession of Maldives to the Rome Statute on 21 September 2011, the total number of States Parties from the Asia and Pacific region has increased to 17.

⁴ ICC-ASP/10/S/PA/07, dated 7 February 2011.

⁵ Australia, Bolivia, Botswana, Chile, the Commonwealth Secretariat, Czech Republic, the European Union, Finland, Greece, Madagascar, Mauritius, Mexico, Republic of Serbia, Suriname and Sweden.

IV. Updates on activities by the Court

12. As the “external face of the Court”⁶, the President represents the Court as a whole in interaction with States Parties and non-States Parties, international and regional organizations and global civil society with a view to prioritizing and enhancing the effectiveness of universality related efforts.

13. In 2011 the President of the Court visited Southeast Asia with the purpose of urging States in the region to consider joining the Rome Statute. In the Philippines, the President informed that he had signed the instrument of ratification, which would be sent to the Senate for concurrence. The Philippines Senate then endorsed the ratification of the Rome Statute in August and the Philippines subsequently deposited the instrument of ratification with the United Nations.

14. President Song also visited Brunei Darussalam and Malaysia, where he held meetings with high officials. Subsequently, the Malaysian Cabinet adopted a unanimous decision on accession to the Rome Statute, however Malaysia has yet to deposit the instrument of accession. On 9 March 2011, while in Kuala Lumpur, President Song gave a keynote address at the Asia-Pacific Parliamentary Consultation on the Universality of the Rome Statute, organised by the Malaysian Parliament and Parliamentarians for Global Action (PGA). The bipartisan delegation from the Maldives announced that, inspired by the discussions at the event, they were going to de-block the accession procedure in their country.

15. In May 2011, the Court co-organized the Regional Seminar on the Court, with the League of Arab States, the State of Qatar and the Court in Doha, Qatar. At this seminar, the President of the Assembly and Court officials called for Arab States to become parties to the Rome Statute. Only three members of the League of Arab States were States Parties. It was also recalled that States could participate in the work of the Court and cooperate with it prior to ratification. The Registrar had launched an appeal for Arab lawyers to join the list of counsel licensed to practice before the Court.

16. In July 2011, President Song held bilateral meetings with senior representatives (mainly attorney-generals or law ministers) of more than ten non-States Parties – mainly from the Asia-Pacific but also Africa and GRULAC – in the margins of the Commonwealth Law Ministers Meeting in Sydney, Australia. The President of the Court co-hosted with the Asian-African Legal Consultative Organization and the Government of Malaysia a Meeting of the Legal Experts on the Rome Statute in Putrajaya, Malaysia on 19 and 20 July 2011. President Song visited also Mozambique in August 2011 to participate in the Annual General Meeting of the Southern African Development Community Lawyers’ Association, and used the opportunity to encourage Mozambique to ratify the Rome Statute.

17. The vice-presidents of the Court, Judge Hans-Peter Kaul and Judge Fatoumata Dembele Diarra visited Thailand and Cameroon respectively, where they met with high officials and delivered the keynote address at a conference on the ICC in Bangkok and Yaoundé in January and June 2011, respectively.

V. Updates on activities by the facilitator

18. As it has been the practice of previous facilitators, the role of the facilitator on Plan of action for achieving universality and full implementation of the Rome Statute is to encourage States, in conjunction with other actors, to organize and participate in seminars and events aimed at promoting awareness and understanding of the mandate and work of the Court.

19. The facilitator continued the practice, launched in New York, of organizing a series of seminars, panel discussions and events focusing on the Rome Statute. In this regard, her activities focused on one of the regions least represented in the Assembly, namely Central Asia. To that end, she had organized a working luncheon for States in Central Asia, which was attended by representatives from Kazakhstan, Uzbekistan, Tajikistan and Turkmenistan. Together with a representative of the International Committee for the Red Cross, she had

⁶ ICC-ASP/9/34, annex.

discussed the latest developments relating to the Court, challenges in ratification and implementation of the Statute, and its relationship to international humanitarian law.

20. She had also held a number of bilateral meetings with representatives of south-east Asian States. Among the issues discussed were the importance of universality in ensuring that the Court becomes a global institution and the difficulties these states encounter in amending national legislation in order to ratify the Rome Statute, as well as the political challenges that hinder the ratification process. Some Asian states raised the issue of unavailability of adequate information on resources and activities relating to the ratification and implementation of the Rome Statute.

21. In addition to these meetings, the facilitator held numerous bilateral meetings with members of civil society, international organizations, academia, the International Committee of the Red Cross (ICRC) and the Secretariat.

VI. Challenges.

22. Delegations identified the following key areas as needing further attention:

(a) Technical assistance and difficulties in amending national legislation in order to ratify the Rome Statute;

(b) Political challenges that hinder the ratification process; and

(c) Unavailability of adequate information on resources and activities relating to the ratification and implementation of the Rome Statute.

In this regard, the activities of the Secretariat, which will - within existing resources - compile available resources and potential donors and post this information on the Court's website for easy access by States, is key in addressing the last two challenges.

VII. Findings

23. At the informal consultations held in June and August, the facilitator encouraged the States Parties engage actively in the promotion of the Statute, its universality and full implementation. The importance of pursuing actions in this regard in all international forums, as well as in their bilateral, regional and multilateral relations was stressed.

24. The issue of the Agreement on Privileges and Immunities (APIC) has been raised in both informal meetings of the New York Working Group on the Plan of Action. The low number of ratification was noted and it was suggested that ratification of this instrument could be promoted side-by-side with ratification of the Statute. The Plan of action addresses both universality and full implementation of the Statute, and thus simultaneous demarches for ratification of both instruments could be envisaged. Although the number of parties to the APIC is far less than the parties to the Statute, it was mentioned that promotion of its ratification may, in fact, prove easier than ratification of the Statute.

25. The facilitator had undergone also bilateral discussion on the inclusion of a reference on the Agreement on the Privileges and Immunities of the Court in the Plan of Action and reported that States Parties had responded positively to this suggestion. The facilitator put forward several options to include a recommendation on promoting the ratification of the APIC. One option could be insertion as a recommendation in the Report of the Bureau on the Plan of Action or, as another option, the inclusion as one of the recommendations in the Plan of Action. Should the latter option be chosen, it could be included as a stand-alone paragraph or in the paragraph enumerating topics on which States Parties are encouraged to report to the Secretariat. There was a brief discussion on these options, with some States Parties suggesting that the former option would be more suitable at the moment.

26. Following the discussions at the meeting of 5 August, it was decided that the Bureau Report on the Plan of Action should recommend, for the future, the inclusion of a reference on the importance of ratifying the Agreement on the Privileges and Immunities of the Court in the Plan of Action.

27. With the recent ratification of the Rome Statute by Cape Verde on 10 October 2011, as at 1 January 2012 there will be 119 States Parties to the Rome Statute.

VIII. Recommendations

A. To the Assembly of States Parties

1. To continue to monitor closely the implementation of the Plan of action.

B. To States Parties

2. To continue to promote, as far as possible, the universality and full implementation of the Rome Statute in their bilateral, regional and multilateral relationships;
3. To continue their efforts to disseminate information on the Court at the national and international level, including through events, seminars, publications, courses and other initiatives that may raise awareness about the work of the Court;
4. To continue to provide the Secretariat with updated information relevant to the universality and full implementation of the Rome Statute, including current contact information on national focal points;
5. To continue to organize, in conjunction with other stakeholders, seminars in different regions and to disseminate information about the Court's work and the provisions of the Rome Statute.;
6. To continue to provide, wherever possible, technical and financial assistance to States wishing to become party to the Statute and to those wishing to implement the Statute in their national legislation; and
7. To continue to cooperate with the Court so that it can fulfill its functions accordingly.

C. To the Secretariat of the Assembly of States Parties

8. To continue to support States in their efforts to promote universality and full implementation of the Rome Statute by acting as a focal point for information exchange and by making available updated information on this matter, including on the website of the Court;
9. To compile information on all available resources and potential donors, and post it on the Court's website for easy access by States; and
10. To prepare a matrix to serve the purpose of enhanced information sharing between potential recipients and donors of technical assistance.
