

Eighth session

The Hague

18-26 November 2009

**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 3 of resolution ICC-ASP/7/Res.3, of 21 November 2008, the Bureau of the Assembly of States Parties hereby submits, for the consideration of the Assembly, its report on the Plan of action for achieving universality and full implementation of the Rome Statute. The report reflects the outcome of discussions held by the New York Working Group of the Bureau, pursuant to the mandate assigned to it by the Bureau at its fifth meeting, on 4 December 2008.

A. 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 seventh 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 eighth session.³

3. At its fourth meeting, on 9 February 2009, the Bureau of the Assembly appointed Mr. Marko Rakovec (Slovenia) 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.

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. As the Plan of action and the discussion on the issue of cooperation are in some respects interconnected, the facilitator for the Plan of action and the Bureau’s focal point on cooperation, Ambassador Yves Haesendonck (Belgium), under the aegis of The Hague Working Group, have been in consultation on the best way to advance the matter.

B. Informal consultations

6. The facilitator held informal consultations with numerous actors in different forums. On 26 March and 15 June 2009, the facilitator convened two open meetings in New York. Representatives of States Parties, of States not party to the Rome Statute, the Secretariat, international organizations, the Court and civil society were invited to participate in the deliberations, with a view to involving as many interested actors as possible. This broad participation contributes to the achievement of both objectives of the Plan of action: universality and full implementation of the Rome Statute.

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* (International Criminal Court publication, ICC-ASP/5/32), part III, resolution ICC-ASP/5/Res.3, para. 2, and annex I.

² ICC-ASP/7/19.

³ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Seventh session, New York, 18-26 November 2008* (International Criminal Court publication, ICC-ASP/7/20), vol. I, part III, resolution ICC-ASP/7/Res.3, para. 3.

7. The informal consultations focused on the presentation of the Plan of action, the mandate and programme of work of the facilitator, the status of ratification and implementation of the Rome Statute and the progress achieved since the adoption of the Plan of action. The facilitator drew attention to the provisions of paragraph 3 of resolution ICC-ASP/7/Res.3, in which the Assembly endorsed the recommendations contained in the report of the Bureau on the implementation of the Plan of action⁴ and requested the Bureau to continue to monitor the implementation and report to the eighth session of the Assembly. The facilitator recalled that the Secretariat had sent out a note verbale, dated 24 April 2009, requesting States to provide information relevant to the promotion of ratification and full implementation of the Rome Statute and that the responses received from States had been posted on the Court's website. He encouraged States that had not yet done so to provide the requested information to the Court. The facilitator requested delegates to provide further information on activities they had undertaken (if any) at national, regional or international level to promote the ratification and full implementation of the Rome Statute.

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

9. 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.

C. Updates on activities

10. One delegation stressed the importance of promoting universality of the Rome Statute within the Asian region, where participation was still very low. A brief summary was provided of a seminar jointly organized by the Asian-African Legal Consultative Organization (AALCO) and the Government of Japan in India on 18 March 2009, in which Judge Fumiko Saiga (Japan) of the International Criminal Court participated as the keynote speaker. At the seminar, speakers identified some of the difficulties encountered by States in the ratification and implementation of the Rome Statute, including the concern that the Court might infringe on State sovereignty, difficulties in amending domestic law to accommodate the Rome Statute and concerns relating to article 98, paragraph 2, of the Statute.

11. One delegation referred to a project undertaken by the Government of Italy, in collaboration with the United Nations Interregional Crime and Justice Research Institute (UNICRI), to prepare a manual of practice for the International Criminal Tribunal for the former Yugoslavia (ICTY) which was published on 28 May 2009.

12. Some delegations indicated that the European Union continued raising the issue of ratification and implementation of the Rome Statute in its bilateral meetings with States. The European Union is also funding Court-related activities of Parliamentarians for Global Action (PGA), based on a 2007-2010 agreed programme. They further indicated that the European Union had established a system of coordination points within the Office of the Secretary-General of the European Union to coordinate activities aimed at promoting universality of the Rome Statute.

13. One delegation informed the meeting that a two-day training seminar had taken place in Port of Spain (Trinidad and Tobago).

⁴ ICC-ASP/7/19.

D. Challenges

14. Delegations identified the following key areas as needing further attention:
- a) Difficulties in amending national legislation in order to ratify the Rome Statute.
 - b) Political challenges that hinder the ratification process.
 - c) Unavailability of adequate information on resources and activities relating to the ratification and implementation of the Rome Statute. It was suggested that the Secretariat, if possible, and within existing resources, compile all available resources and potential donors and post this information on the Court's website for easy access by States. In addition, it was suggested that the Secretariat explore the possibility of publishing hard copies of this information in the two working languages of the Court and distribute it to States. One delegation indicated that it had prepared a manual for the Rome Statute ratification process which could also be posted on the Court's website.

E. Further action

1. Unit within the Secretariat

15. The facilitator suggested that the meeting explore the possibility of establishing a small unit within the Secretariat, dedicated to promoting ratification and implementation of the Rome Statute. The facilitator explained that his proposal was based on the findings of the previous facilitator on this issue, contained in report ICC-ASP/7/19. In particular, he referred to:

- a) Paragraph 12, which states that additional efforts should be made to encourage new ratifications; and
- b) Paragraph 19, which states that coordination and information sharing among various actors still needed to be improved.

16. However, several delegations expressed doubt as to the necessity of establishing such a unit in view of the financial implications and the fact that most work on promoting universality of the Rome Statute is already being undertaken by civil society organizations. One delegation expressed the view that, if such a unit were to be established, it could be on a temporary basis. The view was also expressed that States Parties could do more in promoting universality of the Rome Statute and could work in parallel with civil society to that end. The possibility of mutual endeavours between the Court's outreach activities and the promotion of universality was also mooted. The facilitator held additional consultations on this issue, in particular with the Secretariat, and concluded that establishing a small unit would be premature at this stage, as the Secretariat was already acting as a focal point for facilitating technical assistance. The facilitator suggested preparing a matrix to serve the purpose of enhanced information sharing between potential recipients and providers of technical assistance.

2. Trust fund for the participation of least developed countries and other developing States

17. The facilitator suggested that another way of promoting universality of the Rome Statute would be to encourage the participation of States not yet party to the Statute in meetings relating to the International Criminal Court. He appealed to States to contribute to the trust fund for least developed countries and other developing States, in order to facilitate the participation of States not party to the Statute in, particularly, the Review Conference to be held in 2010.

3. Seminars

18. The facilitator suggested that States, in conjunction with other actors, should regularly organize and participate in seminars and events aimed at promoting awareness and understanding of the mandate and work of the Court. In this connection, he was liaising with some States Parties and the Court's Liaison Office with a view to launching, in New York, a series of seminars, panel discussions and events focusing on the Rome Statute, to be followed by similar seminars in different regions. He circulated a draft concept paper on this issue and sought the views of the Working Group (see annex to this report). Several delegations expressed support for the idea and welcomed the concept paper as a basis for future work in this regard. Some suggested possible improvements to the concept paper, such as the need to identify specific seminar objectives, based on the needs of each region or country, and the need to identify sources of funding for these seminars. The facilitator welcomed these proposals and indicated that specific modalities for each potential seminar would be worked out at a later stage when a group of interested States willing to participate in this project had been identified. The facilitator invited interested States, regional organizations and non-governmental organizations to notify him if they were interested in participating in this project.

19. On 19 May 2009, a seminar on the issue of international criminal justice and the role of the International Criminal Court was held at United Nations Headquarters, with the participation of the President of the Court, the President and Vice-Presidents of the Assembly and senior United Nations officials. It was a successful event which, hopefully, constituted the beginning of a series of such seminars. The Bureau, at its ninth meeting on 10 June 2009, recommended that its members should encourage the organization of similar seminars in different regions.

F. Findings

20. At the informal consultations held on 26 March and 15 June 2009, States Parties were encouraged to promote the universality and full implementation of the Rome Statute in all international forums, including in their bilateral, regional and multilateral relations. Promotion of the Rome Statute could include references to the work of the Court in official statements, agendas and documents, but also the convening of special sessions and events on the topic. In the multilateral field, initiatives taken by the European Union, the Organization of American States and the Community of Portuguese Speaking Countries were mentioned.

21. As the Court is a relatively new institution compared to some other courts, such as the International Court of Justice, the dissemination of information on its mandate and activities was considered fundamental for achieving both universality and full implementation of the Rome Statute. Further, it was suggested that States Parties and the Secretariat should continue their efforts to disseminate information about the Rome Statute, including the structure of the Court and its jurisdiction. It was noted that capacity building remained essential to ensure that government officials, members of parliament and the judiciary were fully aware of the work of the Court.

22. Although some States had provided the Secretariat with information relevant to the promotion of ratification or accession and full implementation of the Rome Statute, others had not yet done so. The information had been requested by the Secretariat through notes verbales. The replies received⁵ have been made available on the Court's website. Given the objectives of the Plan of action, States Parties should endeavour to make the information

⁵ Austria, Burkina Faso, Croatia, Czech Republic, Dominican Republic, Georgia, Greece, Lithuania, Malta, Mexico, Netherlands, Paraguay, Poland, Portugal, Serbia, Slovakia, Uruguay and the European Union.

widely available. The Secretariat should aim at making this information more easily accessible on the website.

23. As regards cooperation, it was emphasized that there were different actors providing assistance, including States Parties, international organizations, non-governmental organizations and other relevant entities, such as the International Committee of the Red Cross through its Advisory Service on International Humanitarian Law.

24. It was noted that the results of the Review Conference might be crucial in relation to future decisions on ratifying or acceding to the Rome Statute. Therefore, it was very important to allow for greater participation of all States in the deliberations on the preparations for the Review Conference. Contributions to the trust fund for least developed countries and other developing States should be made in order to facilitate the participation of States not party to the Rome Statute, in particular in the Review Conference to be held in 2010.

G. Recommendations

To the Assembly of States Parties

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

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 organize seminars in different regions and to disseminate information about the Court's work and the provisions of the Rome Statute (see annex to this report);
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 fulfil its functions accordingly.

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.

Annex

Process of global cooperation against impunity - towards universality and full implementation of the Rome Statute of the International Criminal Court

Proposed seminar series

A. Introduction and objective

1. Universal implementation of the Rome Statute of the International Criminal Court is imperative if we are to end impunity for the perpetrators of the most serious crimes of international concern, contribute to the prevention of such crimes, and guarantee lasting respect for and enforcement of international justice. The Plan of action for achieving universality and full implementation of the Rome Statute stipulates that States should make full use of the political, financial and technical means at their disposal to continue and strengthen their efforts to accomplish these objectives. The Plan of action calls on States Parties to build direct political and other contacts with relevant States, regional groups or regional organizations with the objective of fostering political will and support for ratification and full implementation of the Rome Statute.

2. States Parties' efforts should include convening and supporting seminars, conferences and other national, regional or international events aimed at promoting the ratification and full implementation of, and support for, the Rome Statute. Information about the Court and its role should be widely disseminated, and consideration should be given to inviting representatives of the Court or the Secretariat of the Assembly of States Parties to address national, regional and international events.

3. As the International Criminal Court tries its first cases and widens its investigations, it is becoming increasingly important to have an open and transparent discussion on its work. We need global cooperation to promote criminal accountability and end the policy of impunity for the most serious crimes. There are many misperceptions of the operation and mandate of the Court, and in order to promote the Court and its work we need to have an in-depth discussion on its procedures, its powers and on the work it has accomplished so far. With a view to achieving this, it is proposed to launch a series of seminars in different regions, so as to provide for a forum for such vital discourse.

B. Organization of the process

1. General

4. There would be a series of regional and subregional seminars organized in different regions under the title "Process of global cooperation against impunity - towards universality and full implementation of the Rome Statute of the International Criminal Court". Other seminars would be convened in the following months. Leading States should be identified for organizing seminars.

2. Issues to be addressed

5. The following general issues are relevant for discussion:

- a) Provisions of the Rome Statute (jurisdiction, admissibility of a case and applicable law, Pre-Trial Chamber, general principles of international criminal law, evidentiary procedures, due process, etc.);
- b) Situations and cases;
- c) Trial procedure (Lubanga trial, witness protection, victim participation, etc.); and
- d) Necessity for State cooperation and assistance with investigations and enforcement of decisions (implementation of arrest warrants, etc.).

6. Special attention should be given to aspects of the Court that are frequently misunderstood:

- a) The proprio motu powers of the Prosecutor (unaccountability versus independence);
- b) The complementarity principle (safeguards against politically motivated prosecutions);
- c) Peace and justice as mutually reinforcing elements;
- d) The relationship between the International Criminal Court and the United Nations; and
- e) Resources.

3. Timing

7. The process would be launched in New York in 2009, to be followed by seminars in various other regions in the first part of 2010, in the period preceding the Review Conference of the International Criminal Court (short-term process). Seminars in other regions would continue after the Review Conference (long-term process - several regional and subregional seminars). The timing depends primarily on resources donated.

4. Participation

8. The targeted audience should be persons that are involved in decision-making processes in a State. Usually, accession to an international treaty involves close cooperation between, and approval of all three power-sharing branches in a given State. Therefore, an effort should be made to invite senior officials from all three power-sharing branches in each country:

- a) Executive branch - one official from the Ministry of Foreign Affairs and one official from the Ministry of Justice;
- b) Legislative branch - as applicable, speakers from both houses of parliament; and
- c) Judiciary branch - president of the constitutional or supreme court.

9. Broad participation should be encouraged to include media, politicians and members of the general public, alongside lawyers, academics and civil society.

5. Speakers

10. There would be speakers from the organizing State, the Court and civil society (non-governmental organizations and universities). Emphasis should be on finding speakers from a region who could relate to the concerns and needs of the participants from that region and could engage in an exchange of experience.

6. Funding

11. Adequate funding would be essential in organizing these seminars. There would be an appeal to all States Parties and civil society to make contributions to finance this process. In the long term, a voluntary trust fund for the promotion of the universality of the International Criminal Court could be established by States Parties (via a decision of the Assembly) to finance these activities.

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