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Report of the Secretariat on complementarity

Note by the Secretariat

Pursuant to paragraph 9 of resolution RC/1 of the Review Conference and paragraph 47 of resolution ICC-ASP/9/Res.3, of 8 June 2010 and 10 December 2010, respectively, the Secretariat of the Assembly of States Parties hereby submits for consideration by the Assembly its report on complementarity. The present report reflects the activities undertaken by the Secretariat in the implementation of 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.

I. Introduction

1. By resolution RC/1 entitled “Complementarity”, the Review Conference tasked the Secretariat of the Assembly of States Parties (“the Secretariat”),

“...in accordance with resolution ICC-ASP/2/Res.3, and, within existing resources, 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, and *requests* the Secretariat of the Assembly of States Parties to report to the tenth session of the Assembly on progress in this regard”.

2. By resolution ICC-ASP/9/Res.3, the Assembly of States Parties (“the Assembly”), reaffirmed this mandate. The President of the Assembly designated a focal point for complementarity within the Secretariat, as well as a staff member to provide support in New York for this task.

3. The Secretariat has adopted a two-track approach to the implementation of its mandate and, in this regard, has made contact with a wide range of actors in the field of complementarity, as well as established an Extranet on complementarity.

II. Activities with respect to actors in the field of complementarity

4. The Secretariat has developed a matrix of the main actors in the field of complementarity, who include, among others, the European External Action Service, the United Nations, and civil society organizations, such as the Coalition for the International Criminal Court, Case Matrix Network, Human Rights Watch, International Center for Transitional Justice, Open Society Justice Initiative and Parliamentarians for Global Action. The actors with whom the Secretariat has held discussions have expressed a strong interest in working with the Secretariat in the implementation of its mandate. The Secretariat is likewise keen to work with them, since they are either capable of transferring knowledge

and technical skills to States, or have the capacity to organize the transfer of such capacity and skills, which would ultimately benefit a State in building its capacity to investigate and prosecute Rome Statute crimes. Some of the actors are increasingly mainstreaming international justice into their development assistance programmes.

5. As far as practical implementation of the mandate, the Secretariat has facilitated the exchange of information between new States Parties and a complementarity actor, the Case Matrix Network:

(a) In the first instance, the Secretariat held meetings with a representative of the Office of the President of the State concerned, provided information on its mandate and how it proposed to implement it, and sought information from that State on the areas in which it assessed that technical capacity building might be needed in order to implement its obligations with respect to Rome Statute crimes. The areas identified include the revision of existing national legislation; the implementation of the Agreement on Privileges and Immunities of the International Criminal Court and other subsidiary agreements; strengthening the mutual legal assistance regime, which could possibly be expanded to also include surrender; witness protection; and

(b) In the second instance, the Secretariat met with a visiting delegation of some judges and the Registrar of a specialized tribunal for international crimes established by the State Party concerned, and informed them of the Secretariat's mandate and its proposed actions. These interventions and observations reinforced the activities of complementarity actor, and facilitated further knowledge transfer.

6. The Secretariat will continue to build on and work with the complementarity actors with which it has had discussions, and with States. Furthermore, the Secretariat will participate in the Greentree retreat in New York in December 2011, where it will strengthen its contacts with the relevant complementarity actors, with a view to further practical work in this area.

III. Activities with respect to the Court, and international and regional organizations

7. In accordance with the mandate of the Review Conference regarding the Court, the Secretariat discussed with the organs of the Court how it might carry out its mandate in collaboration with them, e.g. with respect to needs identified in situation and other countries. The Secretariat has discussed with the Office of the Prosecutor the possibility of collaborating on complementarity activities in situation countries, e.g. Côte d'Ivoire, Guinea.

8. As regards the United Nations, the Secretariat has had preliminary discussions with the United Nations Rule of Law Unit, in order to discuss how it might discharge its mandate in collaboration with the specific actors involved in capacity building.

9. Furthermore, the Secretariat has discussed with the European Commission the mainstreaming of the complementarity element in its rule of law development cooperation.

IV. Complementarity Extranet

10. The second aspect of the implementation of the Secretariat's mandate is the establishment of a complementarity Extranet. In consultation with the facilitators for complementarity, the Secretariat has elaborated a structure for a complementarity Extranet, which will provide information on events relating to complementarity, identify the main actors and their relevant activities, and facilitate contact between donors and recipients. The Secretariat is of the view that this method will reach a broad scope of actors and enable donors and recipients to be aware of the needs of States for strengthening their capacity to investigate and prosecute Rome Statute crimes, as well as the relevant technical assistance available.

11. On 2 August 2011, the Secretariat issued a press release¹ informing of the establishment of the Extranet. In the intervening period, the Secretariat has consulted with complementarity actors, and sought their views and comments on the proposed structure, which have been useful in revising the structure. The Extranet is expected to be operational in the near future, including the guidelines for the submission of information for posting.

12. The Secretariat has invited the actors in its matrix to submit information which they might wish to have posted on the Extranet. The Secretariat is exploring with the Coalition for the International Criminal Court ways and means of putting in place an appropriate filter mechanism for information submitted.

¹ Press release ICC-ASP-20110802-PR707, dated 2 August 2011.