



Assembly of States Parties

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Retreat on the Future of the International Criminal Court*

Action Points

From 16 to 18 October 2011, a group of three dozen senior policy-makers (see attached list) participated in a retreat on the future of the International Criminal Court (“the Court”), organized in Triesenberg, by the Government of Liechtenstein with the support of the Liechtenstein Institute on Self-Determination at Princeton University. The participants at the retreat, which was held under Chatham House rules, considered the major political challenges to be faced by the Court and the Assembly of States Parties (“the Assembly”) in the coming years: main challenges for the Assembly; implementation of the Rome Statute and cooperation with the Court’s requests; role of the Court in the international system; and promoting the universality of the Rome Statute.

The informal and interactive discussion resulted in a list of proposed action points that would require consideration and follow-up by the actors identified therein.

Challenges for the Assembly

Suggested actions for States Parties:

1. Think creatively about diplomatic and political support **activities outside the Assembly**, given its limitations in this respect. Create mechanisms to enhance and coordinate **diplomatic support** for the Court outside of the formal Assembly context, e.g. through the creation of a network at ministerial level.
2. Improve the **dialogue** between the Assembly and the Court, either by making better use of the Study Group on Governance or by creating an additional platform.
3. Continue improving the **relationship between the Assembly and the Court** and achieve the right balance between judicial independence and administrative accountability, including by conducting a proper legal analysis of the issues involved and taking into account the Court’s unique nature.
4. Improve **understanding for the Court** and its mandate among States, including among those that do not primarily deal with the Court’s issues (e.g. Security Council delegates), and among other stakeholders.
5. Devise a strategic **budget policy**, looking beyond the immediate needs and outside the context of negotiating a specific annual budget; this includes a discussion of policy issues (including in the light of earlier Assembly’s decisions, e.g. on legal aid, reparations, outreach), practical measures to improve the budget process (such as a possible switch to a two-year budget) as well as discussion of the costs arising from Security Council referrals.

* Liechtenstein, 16-18 October 2011.

6. Strengthen the support given to the President of the Assembly by the Bureau, by ensuring an active engagement from the Bureau members; consider electing the entire Bureau at such a moment that it presides over each Assembly session it prepares.
7. Analyze the lessons learned from the **Search Committee** process for the next Prosecutor and apply them in the future.
8. Consider new ways of encouraging the nomination of the best possible candidates for the **election of judges**, including by learning the lessons from the CICC Independent Panel for Nominations. Review Rome Statute criteria such as list A/B and the “qualifications required ... for appointment to the highest judicial offices”.
9. Explore **incentives for domestic judges** to consider an international career, including by offering “training” courses preparing for work in an international judicial body.
10. Make better use of the **omnibus resolution** as a tool for political support for the Court, including by streamlining and restructuring the text.
11. Consider reviewing the cumbersome rules for the **recruitment** of staff and for secondment of gratis personnel with a view to promoting the hiring of the best professionals.
12. Reconsider the number, length and **timing of the sessions of the Assembly**, as well as their content (e.g. thematic discussions, inviting high-level representatives or relevant United Nations officials, etc.).
13. Consider procedures to allow for **inter-sessional decision making** of the Assembly in exceptional and urgent situations, given the limited number of the Assembly's sessions per year.

Suggested actions for the Court and States Parties:

14. Continue and deepen the dialogue on ensuring **efficient proceedings** while protecting essential procedural balances (currently held in the context of the Study Group on Governance). This should lead to improvements through practical measures on implementation, but could also lead to changes to the Rules of Procedure and Evidence or, likely at a later stage, even the Rome Statute. Proposals for such changes should be elaborated with input from the Court itself, (possibly in collaboration with contracted experts), while not necessarily as a result of a consensus within the Court itself.
15. Work to promote better relations with the **African Union**, including by continuing to pursue the establishment of a Liaison Office in Addis Ababa.
16. Improve the **exchange of information between New York and The Hague**, by both Court officials and among delegates; provide training for delegates.
17. Consider creating new **training** opportunities for potential new judges and Court officials as well as government officials and staff of relevant organizations dealing with the Court's matters (e.g. by encouraging renowned universities and research institutions to establish an academy” for continuing education in international criminal justice).

Suggested actions for the Court:

18. Ensure that the provisions of the Rome Statute, the **Rules of Procedure and Evidence** and other applicable laws are applied consistently by different Chambers and other organs of the Court.
19. Conduct a **lessons-learned** exercise once the first trial has reached completion.
20. Take steps to improve States Parties' confidence that the Court is diligently handling **decisions with cost implications** and work to enhance transparency in this respect.
21. Encourage continuing **professional development** for all officials, including senior and elected officials, e.g. through organized “legal studies” or similar peer-based mechanisms, possibly in coordination with the suggested “academy” (para. 17).

Implementation and Cooperation

Suggested actions for States Parties:

22. Establish a peer review mechanism to **assess implementing legislation and the general level of cooperation** as reported by States Parties themselves (c.f. OPCW, UNCAC review processes), bearing in mind the need to respect the judicial prerogatives of the Court in the areas of cooperation and non-cooperation.
23. Elaborate **guidelines on limiting contacts** with persons indicted by the Court with a view to delegitimizing such persons (see e.g. similar guidelines by the Office of the Prosecutor and the United Nations Secretariat) and contribute to the marginalization of fugitives in bilateral and multilateral contacts.
24. Make “Implementation and Cooperation” a standing **agenda item** of the Assembly that is regularly discussed.
25. Consider establishing a **Working Group** on Implementation and Cooperation, focused on sharing experiences.
26. Formally adopt the **procedures on non-cooperation** agreed by the Bureau;
27. Improve and streamline **political and diplomatic support** for the Court, including by prioritizing international criminal justice topics within Foreign Ministries and Ministries of Justice (where appropriate, the Court's issues should be among the top three speaking points at minister's meetings). Respond more forcefully and systematically when situations arise that undermine the Court, such as visits of indicted persons to States Parties, or inappropriate contacts by United Nations officials.
28. Systematically **use all relevant fora to support the Court**, in particular in the context of relevant thematic work of the United Nations Security Council or the General Assembly or in the context of regional organizations; consider tracking such interventions to encourage them even further.
29. Promote the adoption of **implementing legislation** on cooperation with the Court, thereby giving domestic judicial authorities a greater role in cooperation and thus ultimately de-politicizing the execution of arrest warrants;
30. Consider concluding voluntary **cooperation agreements** with the Court, including on relocation of witnesses and provisional release.
31. Improve relations with the **African Union**, in particular at the political level, capitalizing on recent events, and strengthening the voice of the Court's supporters in Africa.
32. Consider convening the Court-specific **expert meetings in their regional organizations**, following the example of COJUR ICC in the European Union.
33. Use the United Nations General Assembly's **2012 High-level Meeting on the Rule of Law** to promote the Court, bearing in mind the tenth anniversary of the entry into force of the Rome Statute.

Suggested actions for the Court:

34. Ensure that **cooperation requests** are formulated in such a way that they take into account national procedures, requirements and capabilities.

The Court in the international system

Suggested actions for States Parties:

35. Engage in a discussion on the **relationship between the Court and the United Nations Security Council**, with a special focus on referrals of the Council to the Court. To this effect, a checklist of factors to be taken into account in relevant decision-making processes could be useful

36. Encourage **empirical research** on the effects of the Court's investigations, in particular its deterrent effect.
37. **Mainstream Court-related matters** across all relevant branches of their national administration, thereby assisting the mainstreaming of the Court-related matters at the international level.
38. Redouble efforts on promoting capacity-building of domestic judiciaries with a view to strengthening the principle of **complementarity**, including in the context of the Assembly (e.g. by holding a thematic debate on complementarity instead of the general debate; "complementarity" as standing agenda item); capitalize on recent World Development Report, which links transitional justice to security and development.
39. More strongly involve and sensitize the **development community**, within and outside the United Nations system (e.g. World Bank, UNDP, OECD, etc.).
40. Continue the discussions on the compatibility of **peace and justice**, beginning in more informal frameworks.

Suggested actions for the Court:

41. Improve the provision of **information about the Court** for outside actors, including by making its website more informative and user-friendly and by providing more targeted information (e.g. Court's fact sheets for conflict mediators, fact finding commissions, etc.).

Suggested actions for the Security Council:

42. Consider the adoption of general **criteria for referrals and deferrals** in order to enhance the perception of consistent and predictable decision-making.
43. **Follow up on referral decisions** through appropriate action to promote cooperation with the Court and enforcement of arrest warrants.

Universality

Suggested actions for the Court, States Parties and civil society:

44. Devise a **comprehensive strategy** for pursuing universality, with a stronger role for the Assembly, clear priorities, and a dynamic and contextual approach that allows to react to current political developments; highlighting in particular the benefits of membership (such as prevention, protection of territory, solidarity with victims).
45. Clarify the respective **role of different actors** such as Court officials, the President of the Assembly, regional organizations, Parliamentarians for Global Action and the NGO Coalition for the ICC and increase coordination between them, including through a central clearing house for exchange of information led jointly by the Presidencies of the Assembly and the Court.
46. Create a joint **database on universality**, containing up-to-date information on the status of discussions within each country.
47. Consistently raise the ratification of the Rome Statute (and its amendments) in relevant **bilateral contacts**.
48. Analyze **obstacles for ratification** and how to overcome them, in particular with the support of domestic stakeholders, bearing in mind the need to distinguish lack of political will from lack of technical capacity.
49. Produce **publications** in the language of target countries (in particular Arabic, Spanish, Russian, Portuguese).
50. Continue the **dialogue with all non-States Parties**, including and in particular those that have expressed strong reservations against the Rome Statute system.
51. Consider to appoint "Goodwill Ambassadors" or **Special Envoys** for the purpose of promoting universality.

Suggested action for the UN Secretary-General:

52. Consider establishing a **focal point** for Rome Statute universality at the United Nations (e.g. UNHCHR).

Annex

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