



Assembly of States Parties

Distr.: General
9 November 2012

Original: English

Eleventh session

The Hague, 14-22 November 2012

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 4 of resolution ICC-ASP/10/Res.5, of 21 December 2011, 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 tenth session, the Assembly of States Parties (hereinafter "the Assembly") welcomed the report of the Bureau on the implementation of the Plan of action,² endorsed the recommendations contained therein and requested the Bureau to continue to monitor the implementation of the Plan and to report thereon to the Assembly during its eleventh session.³

3. At its tenth meeting, on 10 April 2012, the Bureau of the Assembly appointed Ms. Cristina Mezdrea (Romania) as facilitator for the Plan of action.

4. The Plan of action calls upon States Parties to proactively promote the 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 (hereinafter "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 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. Updates on efforts to promote universality and full implementation of the Rome Statute

A. Updates on informal consultations

6. The facilitator continued the practice of informal consultations with numerous actors in different fora. On 5 October 2012, the facilitator held one open informal meeting in New York. Representatives of the States Parties and of the States not party to the Rome Statute, as well as members of the Secretariat of the Assembly, the international organizations, the Court and the 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.

7. The informal consultations focused on the mandate and programme of work of the facilitator, the status of the ratification and implementation of the Rome Statute, the content of the Plan of action and the progress achieved since the adoption of the Plan. Following findings of the previous report on the Plan of action, the facilitator drew attention to the status of ratifications of the Agreement on Privileges and Immunities of the ICC (APIC) and encouraged States, in particular signatories, to take steps to ratify it. Latest developments, efforts and pledges by States in ratifying the amendments of the Rome Statute were mentioned. The facilitator recalled the annual note verbale⁴ of the Secretariat

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 ... Tenth Session ... 2011* (ICC-ASP/10/20), vol. I, part III, ICC-ASP10/Res.5, para.4.

⁴ ICC-ASP/11/SP/PA/12, dated 26 June 2012.

requesting States to provide information on actions undertaken to promote the ratification and full implementation of the Rome Statute, and emphasized that the rate of response had been low. In 2012 only 18 States Parties⁵ responded. She encouraged all States Parties that had not yet done so to provide the requested information.

8. In addition to the open informal meeting, the facilitator held 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 during the reporting period.

B. Updates on official meetings

10. Through high-level meetings and correspondence, the President of the Court engaged with tens of non-States Parties and encouraged their active consideration of the Rome Statute membership by raising awareness of the benefits and practical considerations of joining the ICC and clarifying misconceptions.

11. The President of the Court furthermore increased the coordination of universality efforts with the President of the Assembly, regional organizations, civil society organizations and States Parties, promoting an active exchange of information and referring queries and requests for assistance to actors best placed to respond. In this spirit, with the support of Australia, New Zealand and the Commonwealth Secretariat, the Court's principals participated in a round table meeting with Pacific Island States to discuss ratification and implementation of the Rome Statute in the region.

12. The universality efforts of the President of the Assembly included a visit to Cairo (Egypt) and Rabat (Morocco), where she met with leading parliamentarians, government officials, officials of the League of Arab States and civil society actors. In Rabat, the President took part in parliamentary consultations, organized by the Parliament of Morocco and Parliamentarians for Global Actions, which brought together parliamentarians from the entire region.

13. The President of the Assembly dedicated the United Nations General Assembly ministerial week to universality meetings with ministers of foreign affairs of Bahamas, Cote d'Ivoire, the Federated States of Micronesia, Jamaica, Monaco, Mozambique, Papua New Guinea, Somalia and South Sudan, the deputy foreign minister of Egypt and the Minister of Justice of Ukraine.

C. Seminar series

14. The previous facilitator indicated that Romania and the Secretariat of the Assembly had co-organized a panel discussion about the "*Plan of action on universality of the Rome Statute and implementing legislation: developments and resources*" during the tenth session of the Assembly. The President of the Court and the representatives of Trinidad and Tobago, the Commonwealth Secretariat, the International Committee for the Red Cross and Parliamentarians for Global Actions addressed the challenges of the universal ratification and implementation of the Rome Statute with a focus on the impact of the recently finalized model-law for common law countries. They emphasized that the model-law is accompanied by a guide of minimum requirements in regulating the principles of complementarity and cooperation with the ICC that States could adapt to the needs of the national legislation. Several speakers showed that one of the key challenges remains the need for strengthening the institutional capacity of States, in particular the professional training of magistrates and other Government officials. Some speakers pointed at the continuation of coordinating efforts to promote universality together with other rule of law - related processes, and called for a dynamic implementation of the Plan of action.

15. Australia, New Zealand and the Commonwealth Secretariat have continued efforts to support small Pacific Island States in achieving ratification and implementation of the

⁵ Albania, Australia, Burkina Faso, Chad, Colombia, Croatia, Ecuador, France, Germany, Greece, Italy, Lithuania, Malta, Mauritius, New Zealand, Samoa, Suriname and Zambia.

Rome Statute by hosting the Pacific Outreach Round Table in Sidney, on 16 February 2012. The President, the Prosecutor and the Registrar of the ICC, as well as the President of the Assembly delivered key messages and engaged substantively in the debates. The President of the Assembly followed up her participation in this seminar with a series of meetings with the representatives of Pacific States in New York. According to the report prepared by the organizers, the event was attended by representatives of States Parties and not Parties to the Rome Statute from the Pacific region which gave the opportunity to both provide information to assist Pacific States in their consideration of the accession and/or the development and adoption of implementing legislation, and to learn more about Pacific States' views on the Rome Statute system, as well as the challenges they face in considering accession and implementation. The aim of the co-hosts of the Round Table was to see what more can be done to address the status of the Pacific as one of the most underrepresented regions under the Rome Statute. The outcome report is available on the ICC website dedicated to the 10th anniversary of the Rome Statute. The event will be followed by a Round Table in New York.

16. Several events during 2012 were dedicated to raise awareness and better understanding of the amendments to the Rome Statute agreed in Kampala in 2010. Leading efforts have been carried on by Liechtenstein in promoting the ratification and implementation of the agreements by organizing workshops and discussion events with a wide range of stakeholders' participation. Discussions showed commitment from States Parties to ratify the Kampala amendments, and concrete pledges in this respect from several States were welcomed. Belgium actively engaged in this area as well, and held, in June 2012, an international workshop entitled "From Rome to Kampala", essentially devoted to the first two amendments of the Rome Statute adopted in Kampala, and their ratification process by States Parties.

17. In the context of celebrating this year the 10th anniversary of the Rome Statute, France, Germany, Netherlands, Spain, United Kingdom and other States indicated that hosted events to commemorate and discuss challenges and ways ahead of the ICC engaging also non-States Parties, academia, and civil society. Details of the respective events are posted on the ICC website dedicated to the 10th anniversary of the Rome Statute.

D. Pledges, assistance and cooperation

18. On the occasion of the High Level Meeting on the Rule of Law at national and international levels, organized under the auspices of the United Nations General Assembly, on 24 September 2012, fourteen States Parties⁶ and the European Union have pledged orally and/or in writing to support the ICC and its universality. The concrete pledges were dedicated to promote the ratification and implementation of the Rome Statute and the Kampala amendments, to promote the complementarity principle, to support awareness activities, including in joint projects with civil society, to offer assistance, including legal expertise, to States.

19. The Prime Minister of Haiti pledged during the same event the intention to ratify the Rome Statute and several human rights related international conventions. The announcement was welcomed by several States Parties and the European Union, including during the open debate of the United Nations Security Council held on 17 October 2012.

20. The United Nations Human Rights Council continued to make recommendations related to the ICC, in particular on the ratification of the Rome Statute, Kampala amendments and the APIC, during the last session of the Universal Periodic Review, held in May and June 2012, when the non-States Parties in focus were Algeria, Bahrain, India, Indonesia and Morocco. The next review session (October and November 2012) focuses on three non-States Parties: Pakistan, Sri Lanka and Ukraine. Many States pledged on the ratification of human rights related international conventions and some of them, including Mauritania, followed up by recently ratifying the International Convention on enforced disappearance and the Optional Protocol to the Convention on torture. This could be a good basis to continue engaging them towards the ratification of the Rome Statute.

⁶ Argentina, Austria, Costa Rica, Estonia, France, Georgia, Germany, Liechtenstein, Luxembourg, Netherlands, Nigeria, Slovenia, Sweden, Switzerland.

21. The civil society plays a crucial role in the awareness-raising on the Court, the increased ratification of the Rome Statute, promoting the adoption of national implementing legislation, the complementarity principle and the principle of cooperation between the Court and States Parties. The NGOs continued their regional and country-based approach in promoting the universality of the ICC. The Coalition for the ICC and the Parliamentarians for Global Action comprehensively informed about their activities.

22. In addition, the activities and the cooperation of international organizations merit mention.

23. The Commonwealth Secretariat continued its active role in supporting the Court throughout its membership. After adopting the model law aimed at implementing the Rome Statute within Commonwealth States and the practical guide to prosecuting the crimes under the Rome Statute⁷, they engaged in awareness activities with countries from the Caribbean and Pacific regions.

24. The European Union (EU) continues to include in its political dialogue with non-States Parties the universality of the ICC. The statements delivered by the EU High Representative addressed the ratification and implementation of the Rome Statute on various occasions during the reporting period. The EU is currently implementing the 2011 revised Action Plan to follow up on the Decision⁸ on the International Criminal Court that contains concrete measures to support the universality and integrity of the Rome Statute aiming at: establishing the EU focal point for the Court within the European External Action Service; following-up constantly on the implementation of the ICC clauses in agreements with third countries; realizing regular bilateral demarches to encourage ratification of or accession to the Rome Statute and related instruments such as, in particular, the Agreement on Privileges and Immunities of the ICC; contributing with technical and financial means by mobilizing expertise, including from Member States and NGO's. Technical assistance could be provided through different channels: secondment and exchange programmes of experts, technical consultations between EU and target countries, EU development programmes, civil society activities funded by the EU and its Member States.

25. During the reporting period, the President of the Court and the Office of the ICC Prosecutor concluded cooperation instruments with the Organisation Internationale de la Francophonie (OIF) and the Inter-American Commission on Human Rights, respectively. The OIF is engaged in strengthening and developing cooperation in promoting international criminal law among the member and observer States⁹. The agreement between the ICC and the Inter-American Commission on Human Rights provides for exchange of information on decisions, resolutions, judgements, reports and documents that would allow both institutions to fulfil their mandates.

III. Findings and challenges

26. During the reporting period, the membership of the ICC amounted to 121 with Guatemala ratifying the Rome Statute on 2 March 2012. The step was welcomed and commended by many stakeholders in the context of the 10th anniversary of the Rome Statute and on the occasion of the ICC - related debate initiated by Guatemala in the UN Security Council on 17 October 2012.

27. The perspective of the ICC regional membership representation continues to be on focus and several highlights are worth mentioning. Only few States are missing for a full representation of the Central American region. In El Salvador various actors have intensified their appeal for ratification of the Rome Statute, but no visible steps have been made by the authorities. A good signal was received from Haiti with the Prime Minister pledging on 24 September 2012 the intention to ratify the Rome Statute and several human rights conventions. Despite that the African group is the most represented¹⁰ region in the

⁷ <http://www.icc-cpi.int/Menus/ICC/Legal+Texts+and+Tools>.

⁸ EU Council Decision 2011/168/CFSP on 12 July 2011.

⁹ As of October 2012, 51 out of 75 member and observer States of the OIF are parties to the Rome Statute, Vanuatu being the most recent one to join.

¹⁰ 33 out of 121 States Parties.

ICC, there are still 21 States to become Party, out of which 12 are signatories of the Rome Statute. Egypt and Morocco are among the signatories and, in both countries, there is an ongoing debate concerning the ratification. On 26 September 2012, the Government of Côte d'Ivoire, signatory State, as well, has agreed on two bills in order to allow the ratification of the Rome Statute, which are now before Parliament to be adopted. The Asia-Pacific region remains the most underrepresented, and efforts by States Parties, international organizations and civil society were enhanced in order to promote better awareness and understanding of the Rome Statute and address challenges for its ratification and implementation. Among the Eastern European countries, Ukraine is signatory but not yet Party to the Rome Statute and the Presidents of the Court and of the Assembly engaged in dialogue with high rank officials of Ukraine in The Hague and New York respectively. The main impediment to the ratification by Ukraine remains the constitutional framework that needs adjustments to allow the Rome Statute provisions to be integrated domestically.

28. The process of ratification of the amendments to the Rome Statute adopted in Kampala was accomplished by Liechtenstein, Samoa and San Marino (only with respect to Article 8 amendment) during 2012. Positive and active engagements for ratification before 2017 were received from various countries during awareness campaigns and events led by Liechtenstein. At the informal consultations held in New York on 5 October 2012, the facilitator raised the issue of encouraging and supporting future States Parties to ratify jointly the Rome Statute and the Kampala amendments as part of the efforts to promote universality of the Rome Statute in its entirety.

29. The Agreement on Privileges and Immunities of the ICC (APIC) was ratified by Bosnia and Herzegovina and Switzerland in 2012. During informal consultations, the facilitator commended these two States and encouraged others, in particular signatories¹¹, to ratify the APIC given the high importance of this agreement for the effective functioning of the Court.

30. This year's celebration of the 10th anniversary of the Rome Statute provided an excellent context and opportunities for fruitful debates by representatives of States, academia and civil society on the evolution and the way ahead of the ICC. Many stakeholders continued to engage in sponsoring activities and events aimed at awareness raising and exchange of views and expertise linked to the main dimensions of the universality: ratification and implementation of the Rome Statute.

31. Based on the information provided during the reporting period, the key challenges towards universality that remain to be addressed are: legal difficulties in amending the Constitution or the national legislation in order to ratify the Rome Statute, political challenges that hinder the ratification process, lack of expertise and financial resources, and insufficient information on resources and activities relating to the ratification and implementation of the Rome Statute.

32. Besides fostering the political will, stakeholders could enhance their efforts in assisting current or future States Parties with similar legal systems by sharing with them legal expertise and practice. Pro-activeness by States Parties in identifying Parties-to-be and building partnerships with them was welcomed. As mentioned, efforts in this sense have been made bilaterally by States and jointly by regional organisations and civil society, but further activities are needed. One delegation suggested to initiate an informal network of legal advisers reaching out at regions in complementing efforts by civil society in the area of universality. It was also highlighted the need to include non-States Parties among participants in the prospective activities or to share with them the outcome with the intention to raise awareness and interest for future ratifications.

33. Given the objectives of the Plan of action, it was highlighted that the States Parties should endeavor to make the information widely available, including by providing the Secretariat with relevant information on the activities undertaken in promoting the universality and the full implementation of the Rome Statute.

¹¹ 13 States are APIC signatories as of October 2012: Bahamas, Ghana, Guinea, Jamaica, Jordan, Madagascar, Mongolia, Peru, Senegal, Sierra Leone, Tanzania and Venezuela.

IV. Recommendations

A. To the Assembly of States Parties

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

B. To the 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, regional 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, in conjunction with civil society, academia, international organizations and professional associations seminars, panel discussions and events focusing on promoting the universality and full implementation of the Rome Statute, in New York, in The Hague and 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 the 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.
