

**Twelfth session**

The Hague, 20-28 November 2013

**Report of the Bureau on the Plan of action
for achieving universality and full implementation
of the Rome Statute of the International Criminal Court****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 eleventh session, the Assembly of States Parties (hereinafter "the Assembly") welcomed the annual 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 twelfth session.³
3. 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.
4. The Plan of action has been traditionally under consideration by the New York Working Group of the Bureau. At its first meeting on 12 February 2013, the Bureau of the Assembly of States Parties decided to appoint Romania as *ad country* focal point within the New York Working Group to facilitate the implementation of the Plan of action⁴. Further, the Bureau extended the facilitation to The Hague Working Group, based on the recommendation of the latter, and appointed the United Kingdom as *ad country* co-focal point in The Hague on

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/11/26.

³ *Official Records ... Eleventh Session ... 2012* (ICC-ASP/11/20), vol. I, part III, ICC-ASP10/Res.8, para.4.

⁴ Bureau of the Assembly of States Parties, first meeting, 12 February 2013, Agenda and Decisions, http://www.icc-cpi.int/iccdocs/asp_docs/Bureau/ICC-ASP-2013-Bureau-01-12-02-22013.pdf

20 March 2013.⁵ On 7 October 2013, the Bureau decided to appoint Cyprus and Japan as *ad country* co-focal points with The Hague Working Group to replace the United Kingdom. Following this decision of the Bureau, the representatives of three *ad country* focal points have agreed to meet and discuss the co-facilitation methodology and roadmap during the twelfth session of the Assembly.

5. During 2013, consultations and briefings took place both in The Hague and New York in order to keep delegates, Court officials, members of civil society and other interested parties up to date on the progress in the discussions on the Plan of action and to receive their suggestions, comments and recommendations. No amendments to the provisions of the current Plan of action were suggested during the reporting period.

II. Updates on efforts to promote universality and full implementation of the Rome Statute

A. Updates on informal consultations

6. The co-focal points continued the practice of informal consultations with numerous actors in different *fora*. Open informal briefings were held in New York on 5 February 2013 (in the format of the “Friends of the ICC”, co-ordinated by Germany) and 24 October 2013, and in The Hague on 1 November 2013. A common briefing of the co-focal points under the plan of action was held in New York, on 4 June 2013. Representatives of States Parties and non-States Parties, 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 the two main objectives of the Plan of action: universality and full implementation of the Rome Statute.

7. The informal consultations and briefings during 2013 focused on the mandate and programme of work of the co-facilitator countries, Romania and United Kingdom, 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 co-focal points drew attention to the status of ratifications of the Agreement on Privileges and Immunities of the ICC (“APIC”) and encouraged States, in particular those party to the Rome Statute, to take steps to ratify it. Latest developments, efforts and pledges by States in ratifying the amendments of the Rome Statute were mentioned. The co-focal points recalled the annual *note verbale*⁶ of the Secretariat 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 2013 only 10 States Parties⁷ and the European Union responded. They encouraged all States Parties that had not yet done so to provide the requested information.

8. In addition to the open meetings, the co-focal points held individual and joint bilateral consultations with representatives of States, members of civil society, international organizations and the Secretariat. The consultations were held in New York, The Hague and in the capitals at all levels, including directly with Ministers of Foreign Affairs.

B. Updates on official meetings and demarches

9. During the reporting period, the President of the Assembly, Ambassador Tiina Intelmann, and the President of the Court, Judge Song have continued the practice of the last years in promoting universality of the Rome Statute in their official meetings with high level representatives.

⁵ Bureau of the Assembly of States Parties, second meeting, 20 March 2013, Agenda and Decisions, http://www.icc-cpi.int/iccdocs/asp_docs/Bureau/ICC-ASP-2013-Bureau-02-03-20.pdf

⁶ ICC-ASP/12/S/008, dated 13 February 2013.

⁷ Bolivia, Democratic Republic of the Congo, Finland, Georgia, Germany, Latvia, Mexico, Portugal, Romania, Senegal.

10. The President of the Court visited four non-States Parties to the Rome Statute: the United States, China, Turkey and the Russian Federation. A visit to Indonesia and Malaysia, facilitated by the Netherlands, is planned for December 2013. Continuing to promote universality of the Rome Statute, particularly in the Asia-Pacific as the least represented region among the States Parties, the President of the Court addressed groups of stakeholders from that region on several occasions.

11. The President of the Assembly of States Parties used the opportunities offered by the United Nations General Assembly's Ministerial week to meet in New York with high level delegates of non-States Parties to advance the cause of universal ratification, namely the Foreign Ministers of Armenia, Bahamas and Yemen, and the Deputy Prime Minister of Tuvalu. The Permanent Representative of Japan convened a meeting for the President of the Assembly, attended by representatives from the Asian-Pacific region, including some non-States Parties. On these occasions the President of the Assembly explained how the Rome Statute system works and renewed her call for its ratification.

12. Both the President of the Assembly and the President of the Court have sent letters to heads of state or government and other relevant officials of non-States parties urging consideration of joining the Rome Statute. The President of the Assembly approached the following countries: Malaysia (December 2012), Tonga (February 2013) and Yemen (June 2013). The President of the Court also sent a letter to the President of Yemen (June 2013).

C. Seminar series

13. The *ad country* co-focal points Romania and the United Kingdom have continued to engage in organizing events to promote the universality of the Rome Statute in New York, The Hague and Bucharest during 2013.

14. A round table "*11 years from the entry into force of the Rome Statute: challenges in promoting the international criminal justice*" was co-organized by the Organisation Internationale de la Francophonie and Romania, in New York, on 3 July 2013. The event was addressed to the francophone countries and aimed at creating a dialogue opportunity on the implementation of the Rome Statute and its ratification by the francophone countries. The event was attended by representatives of five francophone non-States parties to the Rome Statute: Egypt, Haiti, Mauritania, Rwanda and Togo. The attendees have benefited from the presence of eminent speakers: Mr. Amada Dieng, Assistant Secretary-General of the United Nations and Special Adviser to the UN Secretary-General on the Prevention of Genocide, Mr. Amady Ba, Head of the International Cooperation Office of the Prosecutor of the International Criminal Court, Ms. Astrid Reisinger Coracini, Executive Director of the Program on International Law, Humanitarian Law and Human Rights at the University of Salzburg, Mr. David Donat Cattin, Senior Director of the Program on International Law and Human Rights within the non-governmental organization "*Parliamentarians for Global Action*", and Ms. Alina Orosan, Director of the Department for International Law and Treaties within the Ministry of Foreign Affairs of Romania. Among the issues raised during the interactive session were the impact of the unbalanced perception regarding how the politicization of the ICC influences or fosters the lack of willingness to ratify the Rome Statute; the impact of the Court's approach to cooperation with States Parties and non-Parties on the ongoing investigations; and whether the ICC considers opening a liaison office to the African Union, in Addis Ababa. The debate revealed the need and the interest of francophone non-States Parties to have more dialogue on the ICC and the Rome Statute.

15. The United Kingdom organized a roundtable event in The Hague on 9 July 2013 for States Parties and non-States Parties from the Asian region entitled "Universality of the Rome Statute of the International Criminal Court". The event sought to provide a forum for non-State Parties from the most underrepresented region in the Rome Statute system to come together and discuss the particular political and technical impediments to becoming party to the Statute; while allowing State Parties to offer their expertise and experience in addressing similar problems which had faced them prior to their membership. The event was chaired by Judge Howard Morrison, with the panel consisting of the President of the Court, Judge Song, the

President of the Assembly, Ms. Tiina Intelmann, the Ambassador of Thailand, HE Virachai Plasai, and the British Ambassador, HE Paul Arkwright. There were 17 States represented at the meeting, which was held under the Chatham House Rule.

16. A regional conference focused on promoting the universality of the Rome Statute was co-organized by The Ministry of Foreign Affairs of Romania and the University of Bucharest – Faculty of Law, in Bucharest, on 17 October 2013. The event addressed three areas of interest for the ICC: universality, ratification of the Kampala amendments and cooperation. It benefited from the presence of the President of the Court and the President of the Assembly as keynote speakers. The target audience included representatives of Eastern Europe and Central Asia countries, members of the diplomatic corps, including non-States Parties to the Rome Statute, Romanian officials involved in the cooperation with the ICC, members of the Romanian Parliament and the academic community.

17. Australia, New Zealand, Samoa and the Commonwealth Secretariat continue their efforts to support Small Pacific Island States in achieving ratification and implementation of the Rome Statute by preparing a follow-up to the Pacific Outreach Round Table that took place in Sydney, on 16 February 2012. The outcome report is available on the ICC website dedicated to the 10th anniversary of the Rome Statute. The follow-up event is scheduled to take place in 2014.

18. Specific events for promoting the ratification and implementation of the Kampala amendments to the Rome Statute were conducted by Liechtenstein during 2013. The side event to the legal advisers' meeting of the Council of Europe ("CAHDI"), on 26 March 2013, took the form of a technical workshop exploring the Kampala amendments on the crime of aggression and was open to all members of the Council of Europe. The second notable event was a workshop for all African States Parties held in Gaborone on 15 and 16 April 2013, co-organized by Liechtenstein and the Government of Botswana. This workshop, in which the President, Foreign Minister, and the Defence and Justice Minister of Botswana as well as the Foreign Minister of Liechtenstein, amongst others, participated, focused on the two Kampala amendments. Currently Liechtenstein is planning several upcoming events:

- side event at the Assembly of States Parties in The Hague on 22 November 2013, focusing on the experiences of the early ratifiers of the Kampala amendments;
- an event in the Pacific region in 2014, which will address both universality and the Kampala amendments, co-organized with New Zealand;
- an event on the Kampala amendments for Eastern European States Parties is planned in 2014 in conjunction with Slovenia.

19. A discussion on "The International Criminal Court after 15 years" was organized by the European Union Delegation in Geneva on 10 September 2013. The keynote speakers were Ms. Navi Pillay, UN High Commissioner for Human Rights and Judge Song, President of the ICC and were followed by representatives of Guatemala and the International Committee for the Red Cross. The debate was moderated by Prof. Paola Gaeta, Geneva Academy of International Humanitarian Law and Human Rights. The discussions focused on the challenges faced by the ICC today, including the question of achieving the universality of the Rome Statute.

20. Cyprus, Japan, Romania and the United Kingdom are planning to hold a side-event during the upcoming session of the Assembly in The Hague, on 22 November 2013, in relation to the universality and full implementation of the Rome Statute.

D. Pledges, assistance and cooperation

21. The United Nations Human Rights Council continued to make recommendations related to the ICC, in particular on the ratification of the Rome Statute, the so-called Kampala amendments and the APIC, during the 2013 sessions of the Universal Periodic Review. The non-States Parties in focus were: Tonga, Bahamas, Turkmenistan, Uzbekistan, Tuvalu. All of them received round recommendations to ratify and implement the Rome Statute from the

following countries: Argentina, Australia, Belgium, Estonia, France, Latvia, Romania, Slovenia, Switzerland, Tunisia and Uruguay.

22. 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 cooperation of States Parties with the Court. 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 continuously informed the co-focal points about their activities.

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

24. The European Union (EU) continues to include in its political dialogue with non-States Parties the universality of the ICC. 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 support by mobilizing expertise, including from Member States and NGOs. 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 Organisation Internationale de la Francophonie (“OIF”) started to implement the cooperation instrument signed with the ICC in 2012, and co-organized events in New York and Addis Ababa aimed at strengthening and developing cooperation in promoting international criminal law among member and observer States⁹.

III. Findings and challenges

26. During the reporting period, the membership of the ICC amounted to 122 with Côte d’Ivoire ratifying the Rome Statute in February 2013.

27. The perspective of the ICC regional membership representation continues to be on focus and several highlights are worth mentioning. Only a few States are missing for a full representation of the Central American region, but no significant steps were taken during the reporting period despite the pledges announced on the occasion of the High Level debate on the rule of law at national and international levels that took place in New York on 24 September 2013. 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. Positive signals have been received from Tonga, whose representatives during the 2013 round of the Universal Periodic Review have pointed out that the country is in the process of obtaining a policy decision to sign the Rome Statute. This could be a good basis to continue engaging Tonga through the process towards joining the ICC. Among the Eastern European countries, Ukraine is signatory but not yet Party to the Rome Statute. 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. With the latest ratification by Côte d’Ivoire, the African region consolidated its representation (34/122) in the membership of the ICC.

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.

28. The process of ratification of the amendments to the Rome Statute adopted in Kampala was accomplished by Andorra, Botswana, Cyprus, Estonia, Germany, Luxembourg, Slovenia, Trinidad and Tobago, Uruguay and partially by Norway¹⁰ during the reporting period. Liechtenstein led efforts to assist countries, including at a technical level, in the process of ratification of the amendments. Two key resources were developed during the reporting by Liechtenstein and partners and they are available online¹¹ and in hard copy, in English, French and Spanish: the Handbook on the ratification and implementation of the Kampala Amendments and the eighth version of the Status Report on the Ratification and Implementation of the Kampala Amendments on the Crime of Aggression.

29. The Agreement on Privileges and Immunities of the ICC (“APIC”) was ratified by 72 States, out of which Ukraine is not yet party to the Rome Statute. No State has ratified the APIC during the reporting period and the co-focal points encouraged initiatives to ratify given the high importance of the agreement for the functioning of the Court. The co-focal points took note of the recent Belgian proposal, endorsed by the Bureau at its ninth meeting (18 September 2013), that a pledging ceremony for the ratification of APIC be included in the agenda of the thirteenth session of the Assembly in 2014.

30. 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.

31. 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 potential State Parties and building partnerships with them was welcomed. As mentioned, efforts in this sense have been made bilaterally by countries and jointly by regional organisations and civil society, but further activities are needed. It was also highlighted the need to include third 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.

32. 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.

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;

¹⁰ Only with respect to article 8 amendment.

¹¹ www.crimeofaggression.info.

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.
-