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Report of the Bureau on complementarity

I. Background

1. At its first meeting in 2017, the Bureau appointed Australia and Romania, under a silence procedure, as *ad country* focal points, on 16 February. As such, Australia and Romania are focal points in both The Hague Working Group and the New York Working Group in the lead-up to the sixteenth session of the Assembly.

2. At the fifteenth session of the Assembly, States Parties resolved to continue and strengthen, within the appropriate fora, effective domestic implementation of the Statute to enhance the capacity of national jurisdictions to prosecute the perpetrators of the most serious crimes of international concern.¹ Consequently, the subsidiary bodies of the Assembly and the organs of the Court were essentially given the following mandates: The Bureau was requested “[...] to remain seized of this issue and to continue the dialogue with the Court and other stakeholders on complementarity, including on complementarity related capacity-building activities by the international community to assist national jurisdictions, on possible situation-specific completion strategies of the Court and the role of partnerships with national authorities and other actors in this regard, and also including to assist on issues such as witness protection and sexual and gender-based crimes”.

3. The Secretariat of the Assembly of States Parties (“the Secretariat”) was mandated to, within existing resources, continue to develop its efforts in facilitating the exchange of information between the Court, States Parties and other stakeholders, including international organizations and civil society, aimed at strengthening domestic jurisdictions, and to report to the sixteenth session of the Assembly on further progress in this regard.² The Court, while recalling its limited role in strengthening national jurisdictions, was encouraged to continue its efforts in the field of complementarity, including through exchange of information between the Court and other relevant actors.³

II. General findings

4. The Rome Statute creates a system of criminal justice designed to ensure that there is no impunity for the most serious crimes of concern to the international community as a whole due to the unwillingness or inability of States themselves to investigate and prosecute the perpetrators of these crimes. This system is based on the principle of complementarity as enshrined in the Statute, which means that the Court will intervene only

¹ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Fifteenth session, The Hague, 16 – 24 November 2016 (ICC-ASP/15/20)*, vol. I, ICC-ASP/15/Res.5, para 100.

² *Ibid.*, annex I, para. 15.

³ *Ibid.*, para. 108.

when States are unwilling or genuinely unable to carry out the investigation or prosecution of these crimes.

5. It is generally understood by States Parties, the Court and other stakeholders that international cooperation, in particular through rule of law development programmes aimed at enabling domestic jurisdictions to address war crimes, crimes against humanity and genocide, may contribute to the fight against impunity for such crimes. Such cooperation has been described as “positive complementarity” or complementarity activities. National ownership is essential and a requirement to engage in, and ensure the success of, such activities

6. Financial contributions to development programmes and to civil society are deemed highly important to promote complementarity. A number of countries have allocated development cooperation resources to promote the strengthening of national judicial capacity to address Rome Statute crimes.

7. In 2017, a number of meetings and consultations on the issue of complementarity were held with relevant stakeholders, including States, all organs of the Court as well as with representatives of civil society and international organizations. All informal consultations within The Hague Working Group were also open to Observer States, non-States Parties and civil society organizations. A summary of these consultations is provided below.

8. On 6 June 2017, the co-focal points held the first informal consultation on complementarity in The Hague Working Group and chaired a panel discussion on “What does complementarity mean? Recent developments and perspectives” with presentations by representatives from the Office of the Prosecutor (OTP), Registry and Africa Legal Aid. The meeting discussed the two aspects of complementarity: the legal aspect as it relates to admissibility of cases ultimately determined by the Court’s Chambers; and the broader, non-legal aspect including complementarity-related capacity building activities undertaken by other actors.

9. In the same meeting, the co-focal points also outlined a draft 2017 program of work which had been circulated on 19 May 2017. Some delegations expressed their support for and requested further information about how discussions could identify tangible, practical, needs-based ways to strengthen national jurisdictions to investigate or prosecute Rome Statute crimes. They added that the Court and State Parties represented different parts of the Rome Statute system and their roles were complementary. Some representatives also suggested further discussion on case completion strategies and remarked that “justice at home” was generally preferable. A delegation also reiterated that the facilitation should not have any impact on the overall budget of the Court and recalled that the mandate of the facilitation was only to provide a forum for dialogue and exchange of information.

10. On 27 June, the co-focal points chaired the second informal consultation in Brussels, dedicated to States Parties to the Rome Statute not represented in The Hague. The seminar provided States Parties, particularly those not represented in The Hague, with information on recent developments relating to different aspects of complementarity and civil society representatives shared information on their recent complementarity-related activities. Speakers included the Secretariat of the Assembly of States Parties, Denmark, the EUROJUST Genocide Network, the European External Action Service in conjunction with European Commission – DEVCO, International Centre for Transitional Justice, the OTP, Registry and Uganda.

11. On 12 September, following further interest from delegations, the co-focal points chaired an informal information session in The Hague Working Group on the judicial aspects of complementarity under the Rome Statute. They also highlighted that issues arising from the admissibility of cases before the Court are a judicial matter that is addressed exclusively by the judges of the Court. Representatives from the OTP and Presidency of the Court provided an overview of jurisprudence relating to issues of admissibility.

12. On 14 September, the co-focal points provided an informal briefing on the complementarity facilitation at the fifth ICC Seminar on cooperation with the national focal points held at the seat of the Court. Several delegations relayed to the co-focal points a

range of technical and operational needs aimed at strengthening their capacity to investigate or prosecute Rome Statute crimes.

13. Following feedback from these meetings and consultations, the co-focal points and Secretariat, in line with their respective mandates, are currently conducting further consultations with ICC States Parties and other key stakeholders. These meetings aim to exchange views on ways to organize requests from States seeking technical assistance to strengthen their national capacity to investigate or prosecute Rome Statute crimes. This may then assist the Secretariat in its existing efforts to facilitate links between these States and relevant actors that may be able to respond to the request, in full coordination with those States.

14. Over the course of the year, one delegation maintained the view that, because the strengthening of national capacities to investigate or prosecute international crimes is a consequence, but not a part, of the principle of complementarity enshrined in the Rome Statute, the ICC's budget and system should not be utilized for such a purpose. Thus, it considered that the active promotion of technical assistance programmes aimed at such strengthening falls outside the scope of the Bureau's mandate on complementarity, which it said should be limited to dialogue and an exchange of information. The delegation maintained the further view that some of the activities proposed by the co-focal points were duplicative of activities currently being carried out by the Secretariat of the Assembly of States Parties, and correspond, rather to the mandate of such Secretariat. It recalled that other appropriate fora exist, such as United Nations rule of law programmes, to promote technical assistance activities. The co-focal points and some delegations reiterated their view, also shared by the Secretariat, that the facilitation had been carried out within the mandate as provided by the Assembly and Bureau.

15. States Parties and the Court have also previously expressed the view that the role of the Court itself is limited in actual capacity-building for the investigation and prosecution of Rome Statute crimes "in the field". Rather, this is a matter for States, the United Nations and relevant specialized agencies, other international and regional organizations and civil society. The Court can, however, in the course of implementing its mandate within the framework of the Rome Statute, in particular article 93, paragraph 10, upon request, share information with and assist national jurisdictions. The Assembly of States Parties has an important role to play in continuing the dialogue on the efforts of the international community in strengthening national jurisdictions through complementarity activities, thereby enhancing the fight against impunity.

16. It is important to recall that issues arising from the admissibility of cases before the Court under article 17 of the Rome Statute all remain a judicial matter to be addressed by the judges of the Court. Initiatives by State Parties to strengthen national jurisdictions to enable them to genuinely investigate and prosecute the most serious crimes of concern to the international community as a whole should always preserve the integrity of the Rome Statute and the effective, independent functioning of its institutions.

III. The President of the Assembly of States Parties, and the Secretariat

17. The Assembly of States Parties is the custodian of the Rome Statute system. While the Assembly itself has a very limited role in strengthening the capacity of domestic jurisdictions to investigate and prosecute serious international crimes, it is a key forum for matters of international criminal justice. Combating impunity at both the national and the international levels for the most serious crimes of concern to the international community as a whole is the core objective of the Statute.

18. The promotion of complementarity and national capacities of States is one of the four priorities of the President of the Assembly, H.E. Mr. Sidiki Kaba. In this respect on 23 May, Australia and Romania participated in a symposium on "Capacity-building with regards to African judicial systems through effective and dynamic complementarity and cooperation with the International Criminal Court" in Dakar, Senegal, chaired by H.E. Sidiki Kaba. The conference discussed three broad areas: the principle of complementarity established by the Rome Statute; capacity building of African judicial systems; and

progress achieved in Senegal in the fight against impunity for serious international crimes. President Kaba also called for States Parties to work together to strengthen the Court, improve its effectiveness and to find solutions to ensure justice is rendered to all victims. Other speakers also discussed the potential to build capacity amongst local actors, which was beyond the mandate of Court, and suggested the Assembly of States Parties could be a valuable forum to explore various possibilities. Australia and Romania also advised that in their role as focal points, they were open to any ideas.

19. On 17 July, the Day of International Criminal Justice was celebrated in Dakar on the theme of “Challenges and Opportunities for the ICC on the eve of the 20th anniversary of the Rome Statute. The discussions focused on four main themes: the relationship between Africa and the Court, cooperation with the Court, complementarity and the universality of the Rome Statute. The Office of the Prosecutor also recalled that the Court does not play a subsidiary role vis-à-vis national and regional jurisdictions, but rather a complementary one, and urged all States Parties to renew their support for and commitment towards the Court.

20. From 19 September to 22 September 2017 President Kaba held meetings in the margins of the 72nd session of the United Nations General Assembly at the ministerial level with some States Parties and non-States Parties on universality of the Rome Statute, national implementing legislation aimed at reinforcing the principle of complementarity, cooperation, and enhancing dialogue between Africa and the Court.

21. Further, considering that the adoption of implementing legislation that enables States to investigate and prosecute at the national levels the crimes under the Rome Statute is fundamental to enable the principle of complementarity, President Kaba has encouraged and offered the assistance of the Assembly to those States Parties that have accepted, in the framework of the Universal Periodic Review of the United Nations Human Rights Council, to implement the Rome Statute nationally.

22. The Secretariat of the Assembly has continued to carry out its outreach, information-sharing and facilitating function. Consistent with past practice and when appropriate, the Secretariat has coordinated with the co-focal points in carrying out these activities. Given that this function has been established within existing resources, there are limits to what can be achieved. The Secretariat will continue to facilitate the exchange of information between relevant States and stakeholders through liaising directly with them and via its complementarity internet portal.

IV. The Court

The following information and views in this Part IV were provided by the Court.

23. The Court does not involve itself directly in building domestic capacity for the investigation and prosecution of the most serious international crimes. From a judicial point of view, complementarity has a specific meaning relating to the admissibility of cases before the Court pursuant to article 17 of the Statute. This remains exclusively a judicial issue. Initiatives by State Parties to strengthen national jurisdictions to enable them to genuinely investigate and prosecute the most serious crimes of concern to the international community as a whole should respect the judicial and prosecutorial independence of the Court in relation to the admissibility of specific cases before it.⁴

24. Nevertheless, the Court and its different organs currently engage in activities which may contribute to enhancing the effectiveness of national jurisdiction capacity to prosecute serious crimes. Each has different roles to play in different situations. These efforts can also contribute to decreasing the overall financial and capacity burden placed on the Court in the long term, as strengthening of national capacities can have an impact on the case load of the Court.⁵

⁴ *Report of the Bureau on stocktaking: Complementarity, Taking stock of the principle of complementarity: bridging the impunity gap* (ICC-ASP/8/51, paras.3, 6-7).

⁵ *Ibid.*, para.43.

25. In particular, the Court has extensive investigative and prosecutorial experience and expertise from various aspects of judicial proceedings gathered throughout its activities in 10 situations under investigation and 10 situations under preliminary examination. It has continued to provide its views on the requirements of the Rome Statute, and share these experiences and best practices with its interlocutors, for example through the issuance of various policy papers by the Office of the Prosecutor (notably its Policy on Sexual Gender Based Crimes and its Policy on Children) as well as amongst relevant networks of practitioners. On occasions, on a cost-neutral basis, the Court has also assigned staff with specific expertise, to join in trainings which focus on addressing the Rome Statute crimes at a national or international level. Furthermore, within the framework of the Rome Statute, in particular article 93, paragraph 10, Court may, upon request, share information with and assist national jurisdictions in their related investigations. Vice versa, as reiterated by the States Parties in the omnibus resolution, the Court has been called on to benefit from the experiences and lessons learned by States and other international criminal law institutions that have themselves investigated and prosecuted Rome Statute crimes.

V. Broader efforts of the international community

26. In addition to discussions and information-sharing and facilitation within the Assembly and by the Court, various actors organize a remarkable number of activities relevant to complementarity and capacity-building for fighting impunity for the most serious crimes of concern to the international community as a whole. States Parties have received updates on some of these, and more comprehensive information will be available on the Secretariat's complementarity web portal.

27. A myriad of concrete capacity-building projects are being implemented around the world, not least in countries in or emerging from conflict. These activities are carried out by States, international and regional organizations including the United Nations and civil society. Several organizations provided the focal points with information on their 2017 activities as summarized below.

28. *Africa Legal Aid* (AFLA) in cooperation with the Netherlands Ministry of Foreign Affairs, convened a Symposium in The Hague on the theme: *Incorporating the Innovations of the Extraordinary African Chambers into International Criminal Justice*. The meeting addressed the role of victims and contribution of civil societies in the Habré trial, as well as what lessons the Court can learn from the innovations of the trial and dedicated its Quarterly journal on the trial. AFLA also presented on *Access to Justice and Availability of Legal Information* at a Symposium on Capacity Building and Complementarity, in Dakar, Senegal convened by ASP President Sidiki Kaba and convened a side event at the 29th AU Summit entitled *Carrying Forward the Innovations of the Extraordinary African Chambers in the Habré Trial: an African Solution to an African Problem*.

29. The *Coalition for the International Criminal Court* has held advocacy meetings with key members of parliaments and other government officials and implemented training with armed forces and other government agencies on the application of the Rome Statute on the ground. For example, with the International Committee of the Red Cross (ICRC), it held IHL courses in Bolivia in November 2016 and in Peru in May 2017; and numerous training sessions for officers from across the Americas at the Joint Command Forces in Peru. The Coalition also worked with partner organizations to promote implementation of the Rome Statute in Côte d'Ivoire, El Salvador, Mexico, Mali, Nigeria, Ukraine, and Uganda and produced materials to promote implementation.

30. Since 2000, the *European Union* (EU) has aimed to increase legal knowledge and foster cooperation with the International Criminal Court. Seminars and trainings of counsel have proved extremely useful for victim representation, development of legal expertise on international criminal and humanitarian law, and familiarization with Court procedures. Moreover, the 2016 European Instrument for Democracy and Human Rights (EIDHR) Call for Proposals with an indicative budget of EUR 5 million focuses on projects that fight against impunity and support transitional justice mechanisms, further contributing to the EU's efforts to support complementarity.

31. The *EU Genocide Network* organized two plenary meetings at Eurojust in The Hague that focused, respectively, on the responses of EU agencies to the immigration flow and consequent identification of individuals as victims, witnesses and perpetrators of core international crimes and on the effective cooperation between NGOs and national authorities. Further, the second EU Day Against Impunity was organized on 23 May by the Maltese Presidency, the Genocide Network, Eurojust and the European Commission with the aim of raising awareness of the most heinous crimes, promoting national investigations and prosecutions and addressing the position and participation of victims in criminal proceedings. In November 2017 at the International Nuremberg Principles Academy, a training programme for judges and prosecutors from EU Member States was delivered together with the European Judicial Training Network.

32. *Human Rights Watch* continued to monitor domestic proceedings for serious crimes in Côte d'Ivoire including, most recently, the trial and acquittal of former First Lady Simone Gbagbo. The organization also continued to press for progress in the domestic investigation of reported crimes and abuses committed in Guinea in September 2009 and encouraged the operationalization of the new hybrid accountability mechanism, the Special Criminal Court in the Central African Republic.

33. On 6 July 2017, the *International Bar Association (IBA)* Hague Office organized 'Fair Trials and Complementarity: An Experts' Roundtable Discussion addressing Practice, Challenges and Future Perspectives'. The event was attended by judges, senior officials and staff of international criminal courts and tribunals, and by diplomats, civil society and academics. The Roundtable was opened by Dr. Mark Ellis, IBA Executive Director and ICC Chief Prosecutor Fatou Bensouda, followed by a keynote speech delivered by Judge Howard Morrison of the ICC Appeals Chamber. Two panels of experts then discussed the ICC OTP's complementarity mandate and working methods; the potential and limitations for international criminal courts and tribunals to influence national justice systems; interpretations of complementarity, including considerations of fairness, in the ICC's legal framework; and specific issues raised by the Libya example. The IBA report on the event is available on its website.

34. As part of its mission to promote complementarity for the investigation and prosecution of international crimes, the *International Center for Transitional Justice (ICTJ)* has provided its expertise to help design criminal justice responses in a number of countries, including the Special Jurisdiction for Peace in Colombia and the Special Chambers for human rights violations in Tunisia. ICTJ experts have also provided their insights to the Office of the High Commissioner for Human Rights and to several governments in the creation of the International, Impartial and Independent Mechanism on international crimes committed in Syria. In Uganda, ICTJ worked to strengthen the capacity of the International Crimes Division to investigate and prosecute international crimes and to strengthen the participation of victims in these processes. In the Democratic Republic of the Congo (DRC), ICTJ has provided support to local prosecution efforts in Goma, helping the military prosecutor to identify priority cases, developing trainings and facilitating collaboration between civil society, prosecutors, and magistrates. In Côte d'Ivoire, ICTJ provided technical support to members of the judiciary and to Special Investigative Cell within the Ministry of Justice.

35. *Justice Rapid Response (JRR)* continued activities under its Complementarity programme in Mali, where it began the collaboration with judicial authorities in 2014, expanding the mentoring support to the Truth, Justice and Reconciliation Commission. JRR has also remained engaged in Guatemala where it started working in 2015, deploying experts from the JRR Roster to offer mentoring support to the Office of the Attorney General. In 2017, JRR has also been working more closely with the OTP in the framework of the Office's Strategic Goal 9, starting in DRC and with the intention of expanding to other situation countries in future where needed.

36. *Parliamentarians for Global Action (PGA)* conducted several missions and meetings aimed at advancing the processes of effective implementation of the Rome Statute by, inter alia, generating political will and mobilising parliamentarians for advancement of the process as well as identifying political or legal obstacles and providing technical assistance to overcome them. One of the most significant events, the 9th Consultative Assembly of Parliamentarians on the International Criminal Court (ICC) and the Rule of

Law, was held in December 2016 in Senegal. Members of Parliaments pledged to launch or intensify efforts to domesticate the Rome Statute provisions into their national laws. PGA also conducted several missions and organized roundtables aimed to advance the implementation process of the Rome Statute including in Argentina, Chile, Ecuador, Niger, Sierra Leone, Ukraine and the MENA region on various issues, including prioritizing the domestic and international accountability mechanisms for international crimes, harmonization of domestic laws with the Rome Statute on complementarity and cooperation with the Court and voluntary agreements on cooperation with the Court on enforcement of sentences.

37. *REDRESS*, in partnership with different organizations, held workshops on topics relevant to capacity-building in the area of international justice. These included in January, with the Human Rights Center at the University of California, Berkeley, and the International Center for Transitional Justice, a roundtable with relevant actors of the Ugandan International Crimes Division (ICD) assessed how best to incorporate at the ICD the lessons learned regarding victim participation at the ICC and other comparative jurisdictions, victims' rights at the ICC, and the domestic implementation of victims' rights in the United States and Kenya. In July, with International Federation for Human Rights (FIDH) and *Avocats Sans Frontières* (ASF), organized training for lawyers and victims' organizations in Central African Republic (CAR) on strengthening victims' rights and reparations before the Special Criminal Court in CAR. Areas of focus included the role of victims, victims' associations and victims' lawyers in achieving accountability under the complementarity principle.

38. The *Open Society Justice Initiative* continued to work with local civil society and some state partners in Central America and Eastern Europe to build cases for national prosecution and advocate reforms necessary to make genuine domestic prosecutions and trials possible. In May, the Justice Initiative convened experts in NY to provide advice to the new chief prosecutor of the Special Criminal Court for the Central African Republic. In December, the Justice Initiative launched a handbook on the design of new international justice mechanisms, drawing lessons from over 30 past models.

39. *The United Nations Development Programme's* (UNDP) Global Programme for Rule of Law and Human Rights provides catalytic technical and financial support in over 35 conflict affected settings, including to support capacity development of domestic justice and security institutions as well as to support transitional justice processes. UNDP also co-chairs the Global Focal Point for Police, Justice and Corrections with Department of Peacekeeping Operations (DPKO), which brings together capacities from across the United Nations system (including Office of the High Commissioner for Human Rights (OHCHR), UN Women, United Nations Office on Drugs and Crime (UNODC), United Nations High Commissioner for Refugees (UNHCR) to jointly assess, plan, and deliver rule of law programmes, including to enhance domestic capacities to improve accountability and address impunity. This includes, for example, support to the establishment of domestic special courts, development of national capacities for prosecution and investigation of international crimes, the establishment of national victim and witness programmes and offices, facilitation of public hearings, truth commissions and reconciliation processes, and support to development and implementation of reparations programmes.

40. A delegation also highlighted the report of the United Nations Secretary General on "Strengthening and coordinating United Nations rule of law activities",⁶ which describes the activities performed by the United Nations rule of law programs to strengthen, amongst others, accountability for international crimes at the national level. The particular appropriateness of United Nations rule of law activities for this strengthening was emphasized.

41. The United Nations, international and regional organizations, States and civil society are encouraged to mainstream these capacity-building activities aimed at strengthening national jurisdictions with regard to investigating and prosecuting Rome Statute crimes into existing and new technical assistance programmes and instruments, in realms such as human rights, development, and the rule of law. These efforts should continue to be done in

⁶ A/72/268.

such fora, rather than by the Court or in the Assembly of States Parties, which have a limited role for such purpose.

VI. Conclusion

42. The above highlights the importance of continued efforts, within the appropriate fora, in strengthening national capacity for investigating and prosecuting Rome Statute crimes, bearing in mind the limited contributions that can be made by the Assembly and its Secretariat, as well as the Court itself in that regard. Ensuring that national judicial systems are able to deal with the most serious crimes of concern to the international community is vital for making the Rome Statute system work, ending impunity for these crimes and preventing their reoccurrence.

43. In this context it is recommended that the Assembly adopt the draft provisions on complementarity contained in annex I to this report. Finally, it is also recommended that the Assembly consider also making complementarity an agenda item to be discussed at future sessions.

Annex I

Draft resolution language for the omnibus resolution

Reaffirming its commitment to the Rome Statute of the International Criminal Court and its determination that the most serious crimes of concern to the international community as a whole must not go unpunished, and *underlining* the importance of the willingness and ability of States to genuinely investigate and prosecute such crimes,

Welcoming the efforts and achievements of the Court in bringing those most responsible for the crimes under the Rome Statute to justice and thus to contribute to the prevention of such crimes and *noting* the jurisprudence of the Court on the issue of complementarity,

Recalling that the application of articles 17, 18 and 19 of the Rome Statute concerning the admissibility of cases before the Court is a judicial matter to be determined by the judges of the Court,

Recalling further that greater consideration should be given to how the Court will complete its activities in a situation country and that possible completion strategies could provide guidance on how a situation country can be assisted in carrying on national proceedings when the Court completes its activities in a given situation,

1. *Recalls* the primary responsibility of States to investigate and prosecute the most serious crimes of international concern and that, to this end, appropriate measures need to be adopted at the national level, and international cooperation and judicial assistance need to be strengthened, in order to ensure that national legal systems are willing and able genuinely to carry out investigations and prosecutions of such crimes;
2. *Resolves* to continue and strengthen, within the appropriate fora, effective domestic implementation of the Rome Statute, to enhance the capacity of national jurisdictions to prosecute the perpetrators of the most serious crimes of international concern in accordance with internationally recognized fair trial standards, pursuant to the principle of complementarity;
3. *Welcomes* the international community's engagement in strengthening the capacity of domestic jurisdictions and inter-State cooperation to enable States to genuinely prosecute Rome Statute crimes;
4. *Also welcomes* efforts by the United Nations, international and regional organizations, States and civil society in mainstreaming capacity-building activities aimed at strengthening national jurisdictions with regard to investigating and prosecuting Rome Statute crimes into existing and new technical assistance programmes and instruments, and *strongly encourages* additional efforts in this regard by other international and regional organizations, States and civil society;
5. *Welcomes*, in this regard, the adoption of the 2030 Agenda for Sustainable Development¹ and *acknowledges* the important work being undertaken with regard to promoting the rule of law at the national and international levels and ensuring equal access to justice for all;
6. *Stresses* that the proper functioning of the principle of complementarity entails that States incorporate the crimes set out in articles 6, 7 and 8 of the Rome Statute as punishable offences under their national laws, to establish jurisdiction for these crimes and to ensure effective enforcement of those laws, and *urges* States to do so;
7. *Welcomes* the report of the Bureau on complementarity, and *requests* the Bureau to remain seized of this issue and to continue the dialogue with the Court and other stakeholders on complementarity, including on complementarity-related capacity-building activities by the international community to assist national jurisdictions, on possible situation-specific completion strategies of the Court and the role of partnerships with

¹ United Nations General Assembly resolution 70/1.

national authorities and other actors in this regard; and also including to assist on issues such as witness and victims protection and sexual and gender-based crimes;

8. Also *welcomes* the information by the Secretariat of the Assembly of States Parties on the progress in giving effect to 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; *welcomes further* the work that has already been undertaken by the Secretariat and the President of the Assembly, and *requests* the Secretariat to, within existing resources, continue to develop its efforts in facilitating the exchange of information between the Court, States Parties and other stakeholders, including international organizations and civil society, aimed at strengthening domestic jurisdictions, and to invite States to submit information on their capacity needs for the consideration of States and other actors in a position to provide assistance, and to report on the practical steps taken in this regard to the seventeenth session of the Assembly;

9. *Encourages* States, international and regional organizations and civil society to submit to the Secretariat information on their complementarity-related activities and *further welcomes* the efforts made by the international community and national authorities, including national capacity building activities to investigate and prosecute sexual and gender-based crimes that may amount to Rome Statute crimes, in particular the continued efforts on the strategic actions to ensure access to justice and to enhance empowerment of victims at national level, recalling the recommendations presented by the International Development Law Organization² during the fourteenth session of the Assembly;

10. *Encourages* the Court to continue its efforts in the field of complementarity, including through exchange of information between the Court and other relevant actors, while *recalling* the Court's limited role in strengthening national jurisdictions and *also encourages* continued inter-State cooperation, including on engaging international, regional and national actors in the justice sector, as well as civil society, in exchange of information and practices on strategic and sustainable efforts to strengthen national capacity to investigate and prosecute Rome Statute crimes and the strengthening of access to justice for victims of such crimes, including through international development assistance.

² International Development Law Organization paper entitled "Complementarity for sexual and gender-based atrocity crimes", November 2015.

Annex II

Draft language for inclusion in the annex on mandates of the omnibus resolution

With regard to **complementarity**,

(a) *requests* the Bureau to remain seized of this issue and to continue the dialogue with the Court and other stakeholders on complementarity, including on complementarity-related capacity-building activities by the international community to assist national jurisdictions, on possible situation-specific completion strategies of the Court and the role of partnerships with national authorities and other actors in this regard; and also including to assist on issues such as witness and victims protection and sexual and gender-based crimes;

(b) *requests* the Secretariat to, within existing resources, continue to develop its efforts in facilitating the exchange of information between the Court, States Parties and other stakeholders, including international organizations and civil society, aimed at strengthening domestic jurisdictions, and to invite States to submit information on their capacity needs for the consideration of States and other actors in a position to provide assistance, and to report on the practical steps taken in this regard to the seventeenth session of the Assembly;
