

Resolution ICC-ASP/8/Res.3

Adopted at the 8th plenary meeting, on 26 November 2009, by consensus

ICC-ASP/8/Res.3

Strengthening the International Criminal Court and the Assembly of States Parties

The Assembly of States Parties,

Mindful that each individual State has the responsibility to protect its population from genocide, war crimes, and crimes against humanity, that the conscience of humanity continues to be deeply shocked by unimaginable atrocities in various parts of the world, and that the need to prevent the most serious crimes of concern to the international community, and to put an end to the impunity of the perpetrators of such crimes, is now widely acknowledged,

Convinced that the International Criminal Court (“the Court”) is an essential means of promoting respect for international humanitarian law and human rights, thus contributing to freedom, security, justice and the rule of law as well as to the prevention of armed conflicts, the preservation of peace and the strengthening of international security and the advancement of post-conflict peacebuilding and reconciliation with a view to achieving sustainable peace, in accordance with the purposes and principles of the Charter of the United Nations,

Convinced also that there can be no lasting peace without justice and that peace and justice are thus complementary requirements,

Convinced further that justice and the fight against impunity are, and must remain, indivisible and that in this regard universal adherence to the Rome Statute of the International Criminal Court is essential,

Welcoming the Court's central role as the only permanent international criminal court within an evolving system of international criminal justice,

Noting the principal responsibility of national jurisdictions to prosecute the most serious crimes of international concern and the increased need for cooperation in ensuring that national legal systems are capable of prosecuting such crimes,

Underscoring its respect for the judicial independence of the Court and its commitment to ensuring respect for and the implementation of its judicial decisions,

Taking note with appreciation of United Nations General Assembly resolution A/RES/64/9 of 2 November 2009, concerning the Court, and previous relevant United Nations General Assembly resolutions,

Welcoming the establishment of the representation of the Court at the African Union Headquarters in Addis Ababa,

Appreciating the invaluable assistance that has been provided by civil society to the Court,

Conscious of the importance of equitable geographical representation and gender balance in the organs of the Court,

Mindful of the need to encourage the full participation of States Parties, Observers and States not having observer status in the sessions of the Assembly of States Parties and to ensure the broadest visibility of the Court and the Assembly,

Conscious of the risks faced by personnel of the Court in the field,

*Recalling that at its seventh session the Assembly invited the Court, taking into account the comments of the Committee on Budget and Finance, to present to the Assembly at its eighth session an updated report on the legal and financial aspects for funding victims' legal representation before the Court,*¹

*Noting the views of the Committee on Budget and Finance on the issue of legal aid for victims' legal representation,*²

Recalling that the Court acts within the constraints of an annual programme budget approved by the Assembly of States Parties,

A. Rome Statute of the International Criminal Court and other agreements

1. *Welcomes* the States that have become a Party to the Rome Statute of the International Criminal Court since the seventh regular session of the Assembly and *invites* States that are not yet parties to the Rome Statute to become so as soon as possible;

2. *Decides* to keep the status of ratifications under review, and to monitor developments in the field of implementing legislation, inter alia, with a view to facilitating the provision of technical assistance that States Parties to the Rome Statute, or States wishing to become parties thereto, may wish to request from other States Parties or institutions in relevant areas;

3. *Recalls* that the ratification of the Rome Statute must be matched by national implementation of the obligations emanating therefrom, notably through implementing legislation, in particular in the areas of criminal law, criminal procedural law and judicial cooperation with the Court, and in this regard *urges* States Parties to the Rome Statute that have not yet done so to adopt such implementing legislation as a priority;

4. *Encourages* States, particularly in view of the fundamental principle of complementarity, to include 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;

5. *Recognising* that treaty obligations arising from the Rome Statute must be adhered to, *encourages* cooperation between States Parties to the Rome Statute particularly in situations where it is being challenged;

6. *Encourages* States Parties to further discuss issues related to the principle of complementarity and to explore proposals by States Parties introduced as "positive complementarity";

7. *Welcomes* the report of the Bureau regarding the implementation of the Plan of action for achieving universality and full implementation of the Rome Statute,³ *endorses* the recommendations of the report, and *requests* the Bureau to continue to monitor its implementation and to report thereon to the Assembly during its ninth session;

¹ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Seventh session, The Hague, 14-22 November 2008* (International Criminal Court publication, ICC-ASP/7/20), vol. I, part III, resolution ICC-ASP/7/Res.3, para. 16.

² *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Eighth session, The Hague, 18-26 November 2009* (International Criminal Court publication, ICC-ASP/8/20), vol. II, part B.2., para. 126.

³ Report of the Bureau on the Plan of action for achieving universality and full implementation of the Rome Statute of the International Criminal Court (ICC-ASP/8/23).

8. *Welcomes* the States Parties that have become a Party to the Agreement on the Privileges and Immunities of the International Criminal Court, and *calls upon* States Parties as well as non-States Parties that have not yet done so to become parties to this Agreement as a matter of priority and to incorporate it in their national legislation as appropriate;

9. *Recalls* that the Agreement on the Privileges and Immunities of the International Criminal Court and international practice exempt salaries, emoluments and allowances paid by the Court to its officials and staff from national taxation and *calls upon* States that have not yet become parties to this Agreement to take the necessary legislative or other action, pending their ratification or accession, to exempt their nationals employed by the Court from national income taxation with respect to salaries, emoluments and allowances paid to them by the Court, or to grant relief in any other manner from income taxation in respect of such payments to their nationals;

10. *Reiterates* the obligations of States Parties to respect on their territories such privileges and immunities of the Court as are necessary for the fulfilment of its purposes, and *appeals* to all States which are not party to the Agreement on the Privileges and Immunities of the International Criminal Court in which the Court's property and assets are located or through which such property and assets are transported, to protect the property and assets of the Court from search, seizure, requisition and any other form of interference;

B. Institution-building

11. *Takes note* of the statements presented to the Assembly of States Parties by the heads of the organs of the Court, including the President, the Prosecutor and the Registrar, as well as the Board of Directors of the Trust Fund for Victims, the Chair of the Committee on Budget and Finance, and the Chair of the Oversight Committee on permanent premises;

12. *Notes* with satisfaction the fact that owing, not least, to the dedication of its staff, considerable progress continues to be made in the Court's analyses, investigations and judicial proceedings in various situations which were referred to the Court by States Parties and the United Nations Security Council;⁴

13. *Takes note* of the experience already gained by other relevant international organizations in solving operational challenges similar to those encountered by the Court and, while reiterating its respect for the independence of the Court, *invites* the Court to take note of best practices of other relevant international organizations and tribunals;

14. *Encourages* the Court to continue the dialogue with other international courts and tribunals to assist with their planning on residual issues and to report to the Assembly of States Parties on this dialogue;

15. *Emphasizes* the importance of electing the most highly qualified judges in accordance with article 36 of the Rome Statute;

16. *Recalls* under article 53(1)(c) that the Prosecutor, in initiating an investigation, is to take into account the gravity of the crime and the interests of victims, as well as to consider whether there are nonetheless substantial reasons to believe that an investigation would not serve the interests of justice;

⁴ United Nations Security Council resolution 1593 (2005).

17. *Notes* the consultations held by the Office of the Prosecutor on the Prosecutorial Strategy with States, international organizations and civil society, and *encourages* the Office of the Prosecutor to continue to carry out such consultations on its policy papers and guidelines, as a continuing sign of its transparency, and to keep the Assembly of States Parties informed in this regard;

18. *Notes with appreciation* the efforts undertaken by the Registrar to mitigate the risks faced by the Court in relation to its field offices and to enhance field operations with a view to increasing their efficiency⁵, and *encourages* the Court to continue to optimize its field offices in order to ensure the Court's continued relevance and impact in countries in which it carries out its work;

19. *Recognizes* the important work done by the field based staff of the Court in difficult and complex environments and *expresses its appreciation* for their dedication to the mission of the Court;

20. *Notes* the need to improve gender balance and equitable geographical representation on the list of counsel, and thus *continues to encourage* applications to the list of counsel established as required under rule 21(2) of the Rules of Procedure and Evidence with a particular view to ensuring equitable geographical representation and gender balance, as well as legal expertise on specific issues such as violence against women or children, as appropriate;

21. *Notes* the important work of independent representative bodies of counsel or legal associations, including any international legal association relevant to rule 20, sub-rule 3, of the Rules of Procedure and Evidence;

22. *Takes note* of the report, "Legal Aid: Alternate Methods for the Assessment of Indigence",⁶ submitted by the Court to the Assembly of States Parties, *endorses* the recommendations contained therein, and *invites* the Court to report to the Assembly of States Parties at its tenth session on the desirability of introducing absolute thresholds of asset holdings beyond which legal aid would not be provided;

23. *Welcomes* the constructive dialogue between the Court and States Parties on the issue of legal aid for victims' legal representation; and *takes note* of the "Report of the Court on legal aid: Legal and financial aspects of funding victims' legal representation before the Court",⁷ submitted by the Court to the Assembly of States Parties, and the conclusions drawn therein, *mindful* that a full judicial cycle, including the reparations phase, is yet to be completed and that the development of policy toward legal aid for victims' legal representation before the Court is ongoing;

24. *Notes* the Court's interpretation of the legal basis for funding legal representation of victims, and *agrees* that it is necessary to fund legal representation for indigent victims in order to give effect to their rights to participate and *endorses* the current assessment of indigence for victims;

25. *Affirms* the position taken in the Court's report to as far as possible appoint one legal team per case in the trial phase;

26. *Invites* the Court to engage in a dialogue with States Parties on the utilization of internal and external counsel and the revised costs analysis of the two options, taking into consideration the comments of the Committee on Budget and Finance at its thirteenth session, and *requests* the Court to present to the Assembly at its ninth session an updated report on the comparison between internal and external counsel, including the revised cost analysis;

⁵ Report of the Court on the enhancement of the Registry's field operations for 2010 (ICC-ASP/8/33).

⁶ ICC-ASP/8/24.

⁷ ICC-ASP/8/25.

27. *Commends* the important work of the New York Liaison Office of the Court, which enables regular and efficient cooperation and exchange of information between the Court and the United Nations and the effective conduct of the Bureau as well as the New York Working Group, *expresses* its full support for the work of the New York Liaison Office, and *welcomes* the comprehensive and detailed information provided by the Court on the functioning of the New York Liaison Office as a part of the report on the activities of the Court;
28. *Decides* to establish a Liaison Office for the Court at the Headquarters of the African Union in Addis Ababa and *requests* the Court to report to the Assembly of States Parties on the implementation of this decision at its next session;
29. *Welcomes* the presentation of the fifth report of the Court to the General Assembly of the United Nations;⁸
30. *Recognizes* the important work done by the Secretariat of the Assembly of States Parties, *reiterates* that the relations between the Secretariat and the different organs of the Court shall be governed by principles of cooperation and of sharing and pooling of resources and services, as set out in the annex to resolution ICC-ASP/2/Res.3, and *welcomes* the fact that the Director of the Secretariat of the Assembly of States Parties participates in the meetings of the Coordination Council when matters of mutual concern are considered;
31. *Welcomes* the efforts undertaken by the Court to implement the One Court principle, including by coordinating the activities of the Court among its organs at all levels, while respecting their necessary independence under the Statute, and *encourages* the Court to undertake all necessary efforts to fully implement the One Court principle, inter alia, with a view to ensure full transparency, good governance, and sound management;
32. *Welcomes* the Report of the Bureau on the Strategic Plan⁹, *welcomes also* the efforts of the Court to implement a strategic approach based on the document entitled “Revised strategic goals and objectives of the International Criminal Court for 2009-2018”¹⁰ and the substantial progress made by the Court in the implementation of the strategic goals and objectives, and *underlines* the importance of a credible process of strategic planning, that has a guiding impact on the definition of the Court’s annual priorities and work programmes as well as on budgetary allocations;
33. *Reiterates* the need to continue to improve and adapt outreach activities, and *encourages* the Court to further develop and implement the Strategic Plan for Outreach¹¹ in affected countries;
34. *Considers* that the issue of wider communication on the Court and its activities is of strategic nature and that an adequate mix of policies, means and methods is needed to meet this significant challenge, hence *encourages* the Court, taking into account the distinct responsibilities and mandates of its organs, to report on a Court-wide plan on public information to the ninth session of the Assembly of States Parties as well as to reinforce the Court’s internal coordination of communications activities to maximize their impact;
35. *Takes note* of the recent presentation by the Court on victims’ strategy¹² and *considers* that the implementation of this strategy constitutes a priority of major importance for the Court in the years to come;

⁸ United Nations document A/64/356.

⁹ Report of the Bureau on the strategic planning process of the International Criminal Court (ICC-ASP/8/46).

¹⁰ Report on the activities of the Court (ICC-ASP/7/25), annex.

¹¹ Strategic Plan for Outreach of the International Criminal Court (ICC-ASP/5/12).

¹² Report of the Court on the strategy in relation to victims (ICC-ASP/8/45).

36. *Reiterates* the importance of the relationship and coherence between the strategic planning process and the budgetary process, which is crucial for the credibility and sustainability of the longer-term strategic approach, *decides* to keep the issue of the location of Court activities under active review with a view to assisting the Court in due time in formulating a strategy based on adequate preparation and empirical experience, *requests* that adequate attention being given to changing circumstances and significant emerging issues to be considered in adapting the Strategic Plan in order to enable the Court to meet new challenges, *recommends* that the Court continue the constructive dialogue with the Bureau on the strategic planning process, including the victims' strategy, and its different priority dimensions, and *requests* the Court to submit to the ninth session of the Assembly an update on all activities related to the strategic planning process and its components;

37. *Welcomes* the Court's continued efforts, in the recruitment of staff, to seek equitable geographical representation and gender balance and the highest standards of efficiency, competency and integrity, as well as to seek expertise on specific issues, including, but not limited to, trauma and violence against women or children;

38. *Stresses* the importance of the dialogue between the Court and the Bureau of the Assembly of States Parties with regard to ensuring equitable geographical representation and gender balance in the recruitment of staff members, *welcomes* the report of the Bureau,¹³ and *recommends* the Bureau to continue to engage with the Court to identify ways to improve equitable geographical representation and increase the recruitment and retention of women in higher level professional posts, without prejudice to any future discussions on the suitability, or otherwise, of the current model, as well as to remain seized of the issue of geographical representation and gender balance and to report thereon to the ninth session of the Assembly;

39. *Welcomes* activities aiming at strengthening complementarity and the international justice system, such as the Court's Internship and Visiting Professionals Programme as well as the Legal Tools Project, which by aiming at equipping users with the legal information, digests and software required to work effectively in the field of international criminal law, contributes significantly to the promotion of international criminal law and justice and thus to combating impunity, *encourages* States to contribute actively in support of these activities and *encourages further* the Court to keep its database updated;

40. *Welcomes* Resolution A/RES/63/259 whereby the United Nations General Assembly decided to amend article 1 paragraph 7 of the Pension Scheme Regulations for members of the International Court of Justice, and article 1 paragraph 5 of the Pension Scheme Regulations for judges of the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda to include a specific reference to the International Criminal Court so as to ensure that no former judge of any of these courts receives a pension while also serving as a judge of the International Criminal Court;

C. Assembly of States Parties

41. *Expresses its appreciation* to the Secretary-General of the United Nations for facilitating the first and second resumptions of the seventh session of the Assembly of States Parties, held at United Nations Headquarters, and *looks forward* to continuing such assistance to the Court in accordance with the Relationship Agreement between the United Nations and the Court;

¹³ Report of the Bureau on equitable geographical representation and gender balance in the recruitment of staff of the International Criminal Court (ICC-ASP/8/47).

42. *Takes note* of the latest report on the activities of the Court to the Assembly of States Parties;¹⁴
43. *Calls upon* States, international organizations, individuals, corporations and other entities to contribute timely and voluntarily to the Trust Fund to allow the participation of least developed countries and other developing States in the annual session of the Assembly of States Parties, and *expresses its appreciation* to those that have done so;
44. *Calls upon* States, international organizations, individuals, corporations and other entities to contribute voluntarily to the Trust Fund for Victims, and *expresses its appreciation* to those that have done so;
45. *Expresses its appreciation* to the Board of Directors of the Trust Fund for Victims and the Secretariat of the Trust Fund for Victims for their continuing commitment towards easing the suffering of victims, and *encourages* the Secretariat to continue to strengthen its ongoing dialogue with the Registry and the international community, including donors as well as civil society, who all contribute to the valuable work of the Trust Fund for Victims, so as to ensure the highest standards of transparency and visibility in respect of the procedures and activities of the Trust Fund;
46. *Emphasizes* the importance of endowing the Court with the necessary financial resources, and *urges* all States Parties to the Rome Statute to transfer their assessed contributions in full and by the deadline for contributions, or, in the event of pre-existing arrears, immediately, in accordance with article 115 of the Statute, rule 105.1 of the Financial Regulations and Rules, and other relevant decisions taken by the Assembly of States Parties;
47. *Calls upon* States, international organizations, individuals, corporations and other entities to contribute voluntarily to the Court, and *expresses its appreciation* to those that have done so;
48. *Takes note* of the Report of the Bureau on the arrears of States Parties¹⁵ and *decides* that the Bureau should continue to monitor the status of payments received throughout the financial year of the Court, consider additional measures to promote payments by States Parties, as appropriate, and continue to engage in dialogue with States Parties in arrears;
49. *Requests* the Secretariat of the Assembly of States Parties to inform States Parties periodically of States that have recovered their voting rights following payment of their arrears;
50. *Welcomes* the work by the Bureau and its two informal working groups and *invites* the Bureau to create such mechanisms as it considers appropriate and to report back to the Assembly of States Parties on the result of their work;
51. *Also welcomes* the efforts of the Bureau to ensure communication and cooperation between its subsidiary bodies and *invites* the Bureau to continue such efforts;
52. *Takes note* of the important work done by the Committee on Budget and Finance, and *reaffirms* the independence of the members of the Committee;
53. *Welcomes* the request of the Committee on Budget and Finance that the Court submit a report for consideration at its fourteenth session on the measures the Court is taking to increase clarity on the responsibilities of its different organs, with a view to continued dialogue between the Court and States Parties on this issue;

¹⁴ ICC-ASP/8/40.

¹⁵ ICC-ASP/8/41.

54. *Recalls* that, according to its Rules of Procedure,¹⁶ the Committee on Budget and Finance shall be responsible for the technical examination of any document submitted to the Assembly that contains financial or budgetary implications, *emphasizes* the importance of ensuring that the Committee on Budget and Finance is represented at all stages of the deliberations of the Assembly of States Parties at which such documents are considered, and *requests* the Secretariat, together with the Committee on Budget and Finance, to continue to make the necessary arrangements;

55. *Decides* that the Committee on Budget and Finance shall hold its fourteenth session from 19 to 23 April 2010 and its fifteenth session from 23 to 31 August 2010;

56. *Decides* that the Assembly of States Parties shall hold its resumed eighth session in New York for a period of three working days between 22 and 25 March 2010;

57. *Recalls* that, according to paragraph 63 of resolution ICC-ASP/6/Res.2, the Assembly of States Parties shall hold its ninth session in New York and *decides* that it will meet for a period of five working days as early as possible in December 2010 with the specific dates to be fixed by the Bureau;

58. *Recalls* that, according to paragraph 63 of resolution ICC-ASP/6/Res.2, the Assembly of States Parties shall hold its tenth session in The Hague and *decides* to hold its resumed tenth session in New York in order to elect six judges and to fill the post of Chief Prosecutor.

¹⁶ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Second session, New York, 8-12 September 2003* (International Criminal Court publication, ICC-ASP/2/10), annex III.