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**Establishment of a New York Liaison Office for the International Criminal Court and the Secretariat of the Assembly of States Parties – report pursuant to paragraph 11 of resolution ICC-ASP/2/Res.7**

**I. Introduction**

1. This report is submitted by the Registrar pursuant to paragraph 11 of resolution ICC-ASP/2/Res.7 of the Assembly of States Parties (hereinafter referred to as “the ASP”) dated 12 September 2003.<sup>1</sup> It has been prepared in consultation with all organs of the International Criminal Court (hereinafter referred to as “the Court”) and with the Secretariat of the ASP (hereinafter referred to as “the Secretariat”).

2. The report examines whether a New York Office (hereinafter referred to as a “Liaison Office”) for the Court and the Secretariat is required and how such an Office might be structured.

**II. Executive summary**

3. The report concludes that the Court and the Secretariat require a permanent New York presence. This conclusion is shared by the Court and the Secretariat.

The Liaison Office would liaise and have a representative function with:

- The United Nations
- States Parties and States that are not parties to the Rome Statute
- International and regional organizations
- Non-governmental organizations
- Media organizations

4. It would perform services in support of the activities of the ASP in New York and with respect to visits to New York by Court and ASP officials from The Hague.

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<sup>1</sup> In resolution ICC/ASP/2/Res.7, the Assembly of States Parties recommended that “the Court consider the desirability and feasibility of establishing, at United Nations Headquarters, a small representation common to all parts of the Court, and requests the Registrar to report to the Assembly of States Parties on this question, including its budgetary implications”. The ASP did not place a deadline on its request to the Registrar, but the reality of international relations and the prominence of the United Nations over the past 18 months make consideration of this issue an urgent priority. The Registrar therefore needs to produce a report early enough for it to be included in the budget process for 2005 initiated at the beginning of 2004, so that the report to the ASP may be considered for adoption at the third session in September 2004 and implemented as part of the 2005 Programme Budget.

5. It is recommended that the Liaison Office be established as a United Nations observer office, with the privileges and immunities associated with such status. It would be preferable for the Liaison Office to be situated within United Nations Headquarters or somewhere in the close vicinity.

6. The Liaison Office would initially be staffed by one P-5 staff member and one General Service category assistant. This core staff may be expanded in the future to include two additional staff members in the Professional category. The P-5 Head of Office would report administratively to the Registrar but functionally to the organs for which he or she is acting on specific issues.

#### **A. Desirability of a New York Office**

7. The Rome Statute institutions (the Court and the ASP) are geographically remote from the Headquarters of the United Nations in New York. It is crucial to ensure that this geographical distance does not lead to the development of political and legal distance.

8. To prevent such a distance from developing, the Court needs to establish a presence in New York, not only to keep the Rome Statute and its institutions on the international agenda but also to reinforce the role of the Rome Statute institutions collectively as an essential, dynamic and developing element of the international peace and justice mosaic. In addition to these political reasons, there are strong practical and logistical justifications for having such a presence in New York.

9. New York is and will remain the hub of international relations and diplomatic negotiations. New York-based representatives of States Parties are most likely to continue to be responsible for servicing the ASP meetings in The Hague. Indeed, almost all least developed and developing countries have representation in New York (as opposed to The Hague) at a level that allows them to follow closely the work of the Court.

10. The draft Relationship Agreement between the Court and the United Nations envisages a number of ways in which each of the organs of the Court can cooperate with the United Nations and its organs, funds and programmes. An analysis of the many functional and administrative links envisaged between the organs of the Court and the United Nations system strongly confirms the need to establish a working relationship between the two entities. With the relocation of the Secretariat to The Hague, there can be no doubt that the absence of official and effective contacts, if allowed to continue, between the Court and the United Nations will adversely affect the working relationship between the two entities. A presence in New York would enable United Nations organs, funds and programmes to provide necessary assistance to, and to cooperate with, the Court.

11. Additionally, coordination on Court matters with the United Nations requires active liaison among States Parties and between States Parties and other United Nations Member States. In particular, the Office of the Prosecutor has an ongoing need to be kept informed of developments on matters before the Security Council, as items that reach the point where they threaten international peace and security are likely to generate crimes that fall within the jurisdiction of the Court. Continued and active interface between the Court and the Security Council, inter alia with regard to referrals pursuant to article 13 of the Rome Statute, will be necessary.

12. Furthermore, the ASP Secretariat would rely on a Liaison Office for any practical and logistical arrangements for meetings of the ASP held in New York (hiring of temporary staff; printing facilities; liaising with the UN Secretariat on arrangements for meetings and any financial matters).

## **B. Framework for the establishment of a Liaison Office**

### **(a) General framework**

13. The Rome Statute, together with its secondary documents, sets out a structure in which the Court, as the key institution, is politically and financially supported by the ASP. Furthermore, as part of this structure, a permanent Secretariat to the ASP has been established in The Hague in order to provide the ASP and its subsidiary bodies with independent substantive servicing as well as administrative and technical assistance in the discharge of their responsibilities under the Rome Statute.

14. The needs and activities of all organs of the Court, as well as of the ASP and its Secretariat, have to be adequately considered when establishing a New York presence.

### **(b) Financial framework**

15. The budget for the Rome Statute institutions is produced using a top-down approach, with assumptions based on direct expectations of various actors: first, those of the Prosecutor, the Presidency and the Registrar, next those of the Committee on Budget and Finance and, finally, those of the ASP.

16. While this approach works well for the complex structure of the Court and its related bodies as a whole, a more holistic approach is appropriate for a small, manageable and workable Liaison Office which seeks to complement the resources and structures of all these institutions.

### **(c) Institutional framework**

17. The Court and the ASP need to find a structural solution which brings the Liaison Office within the Rome Statute framework and which allows it to serve all institutions in a fair and transparent manner, respecting the existing lines of authority and structures of independence. Furthermore, a legal solution needs to be found that enables the Liaison Office to function as part of an international organization, with all the requisite privileges, immunities and facilities.

### **(d) Minimum requirements**

18. Although the list of issues to consider is long, some requirements stand out as central to a long-term and constructive New York presence:

- (i) Sufficient financial and human resources;
- (ii) Access to the United Nations premises and facilities;
- (iii) Adequate communication and administration facilities;
- (iv) Ability to protect confidential documentation and communications;
- (v) A minimum set of international privileges and immunities for the Liaison Office and its officials in order to secure the independent functioning of the Office vis-à-vis the United States authorities and other external actors.

These key requirements inform the options presented below.

**C. Role and functions of the Liaison Office**

**(a) Proposed role of the Liaison Office**

19. The Liaison Office would play a multi-functional role, providing a permanent extension of the Hague-based institutions in New York.

The Liaison Office would:

- Liaise with the United Nations, States Parties to the Rome Statute, States that are not parties to the Rome Statute, other international and regional organizations, non-governmental organizations including defence and victims groups, defence representatives and other professional associations, international and United States media, and United States academic institutions;
- Represent and serve the Court and the ASP;
- Relay information to and from officials of the Court in The Hague;
- Perform an outreach function by disseminating information about, and promoting, the Rome Statute system.

20. A Liaison Office would raise the profile of the Court, develop and maintain a close working relationship between the Rome Statute institutions and the United Nations, and serve as the link between the New York diplomatic community and the Court/ASP.

**(b) Proposed functions of the Liaison Office**

*(i) Liaison functions:*

21. Through its liaison with all these New York actors, the Liaison Office will be able to maintain active and regular communication with the Court and the Secretariat in order to report on liaison and representation efforts and to coordinate strategy and seek instructions. Furthermore, the Liaison Office may be able to provide analysis and briefings to the Court and the Secretariat on relevant United Nations developments. The following are some of the functions that may be envisaged:

a. Liaison with the United Nations

- Act as the direct point of contact with the United Nations Secretariat and United Nations agencies located in New York;
- Liaise with relevant United Nations Secretariat departments and agencies to collect information, monitor developments and facilitate cooperation and sharing of information between the United Nations and the Court/ASP; and
- Liaise with the political organs of the United Nations;

b. Liaison with States

- Maintain a close liaison with States Parties to the Rome Statute, many of which are not represented in The Hague;
- Maintain and strengthen relationships with non-States parties;
- Gather information about relevant developments at the national level; and
- Promote ratification and implementation of the Rome Statute and cooperation with, and support for, the Court and the ASP;

- c. Liaison with international and regional organizations
  - Maintain strong relationships with such organizations; and
  - Facilitate negotiations on arrangements for cooperation;
- d. Liaison with non-governmental organizations, including defence and victims groups
  - Maintain contact with New York-based non-governmental organizations;
  - Attend relevant meetings and collect pertinent information from NGOs; and
  - Facilitate communication between NGOs and the Court;
- e. Liaison with the media
  - Develop working relationships with United States and international media, in particular United Nations journalists;
  - Relay information about the Court in general; and
  - Organize press briefings and circulate press releases.

(ii) *Representation functions:*

The Liaison Office would represent the Court/Secretariat before the following:

- The United Nations; States Parties to the Rome Statute;
- Non-States parties;
- International and regional organizations;
- Non-governmental organizations (including defence and victims groups);
- The media; and
- Academic institutions.

22. The Liaison officers would convey “Court messages” only after consulting and coordinating with the organs of the Court and the Secretariat.

23. Clear policies should be devised to define where the Liaison officers may act on behalf of the organs of the Court and the Secretariat, and where the representation needs to be conducted by officials from The Hague.

(iii) *Servicing functions:*

The Liaison Office would:

- Assist the Secretariat with practical arrangements for meetings of the ASP and its subsidiary bodies held in New York;
- Assist the President and the Bureau of the ASP; and
- Provide logistical and substantive assistance in organizing and promoting visits of Court/Secretariat officials to New York and the United States in general.

(iv) *Outreach functions:*

24. The outreach activities of the Liaison Office would form part of the wider outreach strategy of the organs of the Court and the Secretariat. This would include awareness-raising and the dissemination of information in order to raise the visibility of the Court/ASP, using products and materials produced in The Hague. Furthermore, the Liaison Office could promote ratification and implementation of the Agreement on Privileges and Immunities of the Court through contacts with States and civil society.

**D. Relationship between a Liaison Office and the Court****(a) Authority and reporting**

25. As an extension of the Court and the Secretariat in The Hague, the question of how to link the Liaison Office to the structures in The Hague is of great importance. From the point of view of the Court and its overall relationship (and potential observer status) with the United Nations system, a Liaison Office needs to be able to represent the Court as a single institution and as a single international legal entity while at the same time respecting the ability of the organs, especially the Office of the Prosecutor (OTP), to remain fully independent. While the Liaison Office should allow for autonomy of the organs, the pooling of resources should be envisaged (especially during the first year of operations) with a view to maximizing economy without necessarily sacrificing efficiency.

26. It is thus submitted that for administrative purposes the Liaison Office should be attached to the Registry, as the Registrar is responsible for the non-judicial aspects of the administration and servicing of the Court. On a practical level, this might involve having in place a Head of Office representing the Court in its entirety, administratively reporting to the Registrar, while substantively reporting to the organ that requested a service. Given the independence of the OTP, the future creation of a separate representative of the Office of the Prosecutor, who would act under the Prosecutor's full political and legal authority and who might act independently from the rest of the Liaison Office where the issues at hand so required, should be envisaged. A similar separation of authority could apply to the Secretariat and Presidency/Registry representatives, whose independence should mirror the lines of authority that apply to staff in The Hague.

27. Although the advice of the Liaison Office on the strategy of the Court and the ASP vis-à-vis developments in the United Nations will be crucial, ultimately decision-making power should lie with officials in The Hague. The Liaison Office would thus take instructions and briefings directly from The Hague. For this purpose, clear lines of authority should be developed between the Court and the Secretariat on the one hand and the Liaison Office on the other.

28. In order to balance the interests of the various bodies fairly and transparently, there will need to be a high degree of cooperation and coordination with The Hague. The Head of Office should, in discharging his or her management responsibilities, put in place regulations to govern the operation of the Liaison Office in consultation with the Registrar, the Prosecutor, the Presidency and the Director of the Secretariat.

**(b) Networks and technical solutions**

29. As far as technically possible, the staff of the Liaison Office should be able to access the online networks and technical infrastructure of the Court, according to rules of confidentiality and access that apply to corresponding staff in The Hague.

**(c) Finance, auditing and other general services**

30. The administrative, financial and other general services provided by the Registry should be available to the Liaison Office as far as possible and practicable.

**E. Legal status of the Liaison Office**

31. The full range of possibilities for a legal framework for the status of the Liaison Office has been considered in the preparation of this report.<sup>2</sup> Among the considered options, the only solution that guarantees the privileges, immunities and independence that the Liaison Office would require is to

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<sup>2</sup> The possibilities considered included: the establishment of a separate office outside the United Nations premises, governed by United States law and regulations; an office outside the United Nations premises governed by a stand-alone agreement with the United States authorities; and an informal office hosted by a State Party's Mission to the United Nations.

establish an office with observer status within or near the United Nations building. Such an arrangement, especially a location within the United Nations premises, would provide access as a matter of course to those premises and enable the Liaison Office to take advantage of United Nations facilities and infrastructure (against reimbursement). It would also circumvent the need for a host State agreement with the United States authorities. This would endow the Liaison Office with an official, well-recognized status at the United Nations as a basis for the types of cooperation envisaged by the draft Relationship Agreement. If the Liaison Office were to be located outside of the United Nations premises, it would still give the Court the legal protection and rights associated with United Nations observer status.<sup>3</sup>

#### **F. Resource requirements of the Liaison Office**

32. A proposed programme budget defining the objectives, expected results, key performance indicators as well as resource requirements for the Liaison Office is attached as Annex 1.

##### **(a) Personnel structure of the Liaison Office**

33. The workload of the Office can be expected to fluctuate between periods of increased activity at the United Nations (General Assembly, Security Council debates, and ICC-related discussions in the Main Committees of the General Assembly) and lull periods. Considering the above, it is suggested that the staff of the Liaison Office should initially include, as a minimum, the Head of Office (P-5) and an Administrative and Logistical Assistant (G-7). Provision should also be made for the hiring of general temporary assistance staff to cater for temporary increases in the workload.

##### Head of the Liaison Office

34. The Head of Office at the P-5 level would be responsible for the proper administration of the Office and would have overall responsibility for ensuring the servicing of the organs in The Hague. Administratively, the Head of Office would report to the Registrar while, substantively, the incumbent would report directly to the organ that requested a service.

35. The incumbent would liaise with and represent the Court before the United Nations and its related agencies, NGOs, States Parties and the media. In particular, the incumbent would report to and advise the OTP on relevant issues before the Security Council, support the President of the ASP in the discharge of his duties, implement decisions and carry out instructions from the Presidency and the Registry.

##### Administrative and Technical Assistant

The incumbent would:

- Provide administrative and logistical support to the Liaison Office and to visiting officials from The Hague;
- Organize information resources; and
- Assist with general support to the Liaison Office and to meetings of the Court and the Assembly in New York.

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<sup>3</sup> This arrangement is premised on the assumption that the ICC-United Nations Relationship Agreement is adopted by the ASP in a form substantially unchanged from the text submitted to the ASP at its September 2004 session.

**(b) Physical resource requirements of a Liaison Office***(i) Premises, furniture and equipment*

36. It will be necessary to lease office space somewhere in the vicinity of United Nations Headquarters since it is unlikely that space will be available at United Nations Headquarters itself. Considering that the Liaison Office is likely to host up to four people in the long term, the office space should be estimated at between 1,000 and 1,500 square feet (90 m<sup>2</sup> – 135 m<sup>2</sup>).

37. Ideally, the Office should be located close to United Nations Headquarters (42<sup>nd</sup> Street and 1<sup>st</sup> Avenue). This neighbourhood is one of the most expensive in New York (a reasonable estimate would be in the region of \$40 per square foot per year). An office located further away from this location would be less expensive (roughly \$30 per square foot per year) but much less convenient, practical and indeed useful.

*(ii) General operating expenses, building and property management*

38. Provision for construction costs would be required for the creation of separate office spaces.

39. Phone and data system allocations should be made for the wiring of about six work stations. In addition, these work stations should be compatible with the systems used in The Hague in order to facilitate communication and to ensure the secure exchange of information, including access to the Intranet and the databases of the Court's headquarters in The Hague.

40. Additional costs for electricity and cleaning services should also be foreseen in the budget.

41. Insurance costs for a Liaison Office could be substantial as insurance companies may consider the Court's Office as potentially entailing high liability.

42. A Liaison Office would require a security system comparable to the Court's system at headquarters in The Hague. In order to ensure the security and protection of the premises of a Liaison Office, the Office would be equipped with a double-entrance security door, an alarm and buzzer system and a secure document storage facility.

43. Ideally, the Court would be in premises with a security guard at the entrance to the building and a security guard on the same floor as the Liaison Office. A security survey would be conducted as part of the process of selecting suitable premises.

*(iii) Other expenses*

(a) Office automation: network server and software, secure link-up connection to The Hague;

(b) Mobile phones and other miscellaneous office equipment.

## **Annex 1**

### **Budget of the New York Liaison Office**

#### **Introduction**

The Liaison Office is to provide a permanent, visible and effective representation of the Court at the United Nations and on the international stage. A further aim is to enhance the profile of the Court as an instrument for dispensing international criminal justice, thus promoting universal acceptance of the Court as an important player in the maintenance of international peace and security. The Office will be located at the United Nations or in close proximity to it in order to: reduce the political and geographical distance between the Rome Statute institutions and the United Nations; connect the Court to New York as a hub of international relations and diplomacy; and keep the Court in close contact with States Parties and States that are not parties to the Rome Statute. The Office will be headed by a P-5 staff member, who will report administratively to the Registrar but, when acting on behalf of the other organs of the Court, will report to those organs to ensure that lines of authority are respected within the overall framework of the Statute. Lastly, given the importance of the Office to the ASP and the Court, it will have observer status at the UN and for that purpose will enjoy such privileges and immunities as are necessary for it to carry out its functions.

#### **Objectives**

The objectives of the Office will be:

- To represent the Court before, and liaise with, the United Nations and its organs, States Parties, States that are not parties to the Rome Statute, international and regional organizations, non-governmental organizations, defence and victims groups, defence representatives, media organizations, professional associations and academic institutions;
- To perform services in support of the activities of the ASP and its Secretariat and Bureau, and the officials of the Court;
- To perform outreach functions by disseminating information about and promoting the Rome Statute and the Agreement on Privileges and Immunities of the Court (“APIC”) and their ratification;
- To relay information to and from officials of the Court at The Hague to the UN and the diplomatic community.

#### **Functions**

The functions of the Office will be:

- To provide briefings and analysis to the Court and Secretariat on relevant developments within the United Nations and the Security Council;
- To liaise with the UN through direct contacts with its Secretariat and political organs;
- To maintain close contacts with States Parties and States that are not parties to the Rome Statute, thereby supporting ratification of the Rome Statute and the APIC;
- To maintain a working relationship with international and regional organizations;
- To maintain a beneficial working relationship with relevant NGOs, defence and victims groups, professional associations and academic institutions;
- To maintain a working relationship with United States and international media, to relay information about the Court, to organize press briefings and to circulate press releases;

- To represent the Court and the Secretariat at the United Nations and in other intergovernmental organizations in New York;
- To provide logistical and administrative support to the ASP and its Secretariat, President and Bureau;
- To provide logistical support for visits of officials of the Court and the Secretariat to New York and the United States in general;
- To perform outreach functions through dissemination of information on the Rome Statute institutions.

### Expected accomplishments and indicators of achievement

EXPECTED ACCOMPLISHMENTS	INDICATORS OF ACHIEVEMENT
Effective representation and articulation of the views of the Rome Statute institutions at the UN, in international and regional organizations and on the international stage.	Greater appreciation of the role of the Court; cordial relations; sustained support for the Court.
Improved relations with the United States and States that are not parties to the Rome Statute.	Friendly relations with the Court; support for and ratification of the Rome Statute and the APIC.
Better coordination and organization of the meetings of the ASP and the Bureau.	Frequency and efficiency of meetings.
Excellent reception of officials of the ASP, the Bureau, the Secretariat and the Court in New York.	Satisfaction with the role of the Office.
Universal appreciation of the Rome Statute and its institutions.	Greater awareness of the role of the Rome Statute institutions.
Maintenance of a closer relationship with the UN and its agencies.	Excellent relationship with these institutions and readiness by them to cooperate with and help the Court. Effective implementation of the Relationship Agreement between the United Nations and the Court.
Efficient communications between the Court and the UN, States Parties and the international community.	Quick and timely dissemination of information.
Accurate reporting on the Court.	Acceptance of the Court by the international community as a respected independent judicial institution.
An excellent and beneficial working relationship with relevant NGOs, victims and defence groups and other institutions.	Better understanding of the Court and its activities by these groups; support for and increased interfacing between these groups and the Court.

### Final output

- Visible presence of the Court at the UN.
- Timely and effective representation of the Court at the UN, in international organizations and in the media.
- Easy accessibility of the Court by States Parties and States that are not parties to the Rome Statute.
- Constructive engagement between the United States and the Court.
- Continued ratification of the Rome Statute and the APIC.
- Higher profile of the Court internationally.

*Resource requirements (with one P-5 and one GS-PL)*

<i>Item</i>	<i>Post table 2004</i>	<i>Post table 2005</i>			<i>Proposed budget 2005 (thousands of euros)</i>		
		<i>Core</i>	<i>Conditional</i>	<i>Total</i>	<i>Core</i>	<i>Conditional</i>	<i>Total</i>
Professional staff	0	1		1	147		147
General Service staff	0	1		1	69		69
<i>Subtotal staff</i>	<i>0</i>	<i>2</i>		<i>2</i>	<i>216</i>		<i>216</i>
General temporary assistance					20		20
Overtime					10		10
<i>Subtotal other staff</i>					<i>30</i>		<i>30</i>
Travel					40		40
Hospitality					10		10
Contractual services					36		36
General operating expenses					52		52
Supplies and materials					15		15
Furniture and equipment					39		39
<i>Subtotal non-staff</i>					<i>192</i>		<i>192</i>
Total subprogramme					438		438

*Resource requirements (with one D-1 and one GS-PL)*

<i>Item</i>	<i>Post table 2004</i>	<i>Post table 2005</i>			<i>Proposed budget 2005 (thousands of euros)</i>		
		<i>Core</i>	<i>Conditional</i>	<i>Total</i>	<i>Core</i>	<i>Conditional</i>	<i>Total</i>
Professional staff	0	1		1	169		169
General Service staff	0	1		1	69		69
<i>Subtotal staff</i>	<i>0</i>	<i>2</i>		<i>2</i>	<i>238</i>		<i>238</i>
General temporary assistance					20		20
Overtime					10		10
<i>Subtotal other staff</i>					<i>30</i>		<i>30</i>
Travel					40		40
Hospitality					10		10
Contractual services					36		36
General operating expenses					52		52
Supplies and materials					15		15
Furniture and equipment					39		39
<i>Subtotal non-staff</i>					<i>192</i>		<i>192</i>
Total subprogramme					460		460