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Report of the Bureau on ratification and implementation of the Rome Statute and on participation in the Assembly of States Parties

Note by the Secretariat

Pursuant to operative paragraphs 4 and 38 of resolution ICC-ASP/4/Res.4, of 3 December 2005, the Bureau of the Assembly of States Parties hereby submits for consideration by the Assembly its report on ratification and implementation of the Rome Statute and on participation in the Assembly of States Parties. The attached report reflects the outcome of the informal consultations held by the New York Working Group of the Bureau.

Report of the Bureau on ratification and implementation of the Rome Statute and on participation in the Assembly of States Parties

Procedure and consultations

1. At its fourth session, the Assembly of States Parties to the Rome Statute of the International Criminal Court (“the Assembly”) took the following decisions in resolution ICC-ASP/4/Res.4 in relation to increasing ratification and full implementation of the Rome Statute and to increasing participation in the Assembly:

“4. *Decides*, without prejudice to the functions of the Secretary-General of the United Nations in his capacity as depositary of the Rome Statute, 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 and *requests* the Bureau to consider measures that could be taken by the Assembly, the Secretariat of the Assembly of States Parties or the States Parties to help increase the number of ratifications and to facilitate full implementation of the Rome Statute, and to report thereon to the Assembly in advance of its fifth session;”

“38. *Decides* to make a provisional change to the terms of the trust fund established by paragraph 1 of resolution ICC-ASP/2/Res.6 for the year 2006 to allow other developing States to draw on the fund so as to enhance the possibility of such States to participate in the activities of the Assembly of States Parties in meetings in, but not limited to, The Hague, and requests the Bureau to review the terms of the trust fund and make recommendations on application criteria for accessing the fund to the fifth session of the Assembly of States Parties, through the Committee on Budget and Finance with a view to maximising its effectiveness within the resources available, *calls upon* States, international organizations, individuals, corporations and other entities to contribute to the fund and *expresses its appreciation* to those that have done so;”

2. The requests made to the Bureau in paragraphs 4 and 38 of resolution ICC-ASP/4/Res.4 were referred to the New York Working Group by a decision of the Bureau taken on 14 February 2006.

3. Between April and July 2006, the facilitator, Ms. Jennifer McIver (New Zealand), held numerous informal consultations with experts from the Registry of the Court and the Secretariat of the Assembly of States Parties, with representatives of States Parties and regional groups and with representatives of the Coalition for the International Criminal Court and representatives of other non-governmental organizations. She also met with experts from the United Nations Office of Legal Affairs and the United Nations Department of Economic and Social Affairs regarding their experience with the administration of trust funds.

4. On 27 June, 7 and 13 July 2006, the facilitator held three meetings of the New York Working Group, composed of States Parties and other States that expressed an interest in participating. At the meeting on 27 June, participants received a briefing from members of interested non-governmental organizations on their work relating to the issues before the Working Group and their perspectives on measures that could be taken to address those issues.

5. This report reflects the outcome of the consultations conducted by the facilitator of the New York Working Group in relation to the requests made to the Bureau in paragraphs 4 and 38 of Assembly resolution ICC-ASP/4/Res.4.

Findings

6. Resolution ICC-ASP/4/Res.4 recognised that universal ratification and full implementation of the Rome Statute of the International Criminal Court are imperative if we are to achieve justice and to be successful in the fight against impunity. It also recognised the importance of broad participation in the meetings and activities of the Assembly of States Parties.

7. Since the adoption of the Rome Statute in 1998, much has already been achieved and continues to be done to promote universal adherence to the Rome Statute and its full implementation by States Parties. The sustained efforts by members of the non-governmental community, including initiatives focused on awareness-raising, provision of technical assistance and collection of relevant information (such as model implementing legislation and cooperation agreements, and country-specific information on relevant obstacles and political developments), were highly valued by States Parties. Some States Parties and regional organizations were also active in promoting ratification and full implementation, including through the development of national and regional strategies and plans of actions to that end.

8. This work needs to be continued and reinforced. In developing a plan of action on ratification and full implementation for the Assembly, much could be learnt from past experience. For example, States can provide support and encouragement, including among their closest neighbours and within the regions and groupings to which they belong.

9. As at the end of June 2006 there were 100 States Parties to the Rome Statute - a significant achievement over the seven years since its adoption in 1998. By the end of 2002, some 87 instruments of accession to the Rome Statute had already been deposited. In the three years since 2002, the rate of ratification of the Statute has declined substantially. In 2003 and again in 2004, five States became Parties to the Statute. In 2005, three new instruments of ratification were received. To date in 2006, no additional States have joined the list of States Parties.¹

10. Similarly, the number of States Parties participating in the annual meetings of the Assembly has declined in recent years. In 2003, all States Parties to the Rome Statute attended the second session of the Assembly. In 2004, 10 States Parties did not attend the third session and in 2005, 17 States Parties failed to attend the fourth session.

11. The Working Group was concerned at these developments.

12. A number of obstacles that are hindering increased ratification and better implementation of the Rome Statute were identified. Lack of political will was identified as the key obstacle among States yet to become parties. Various factors could contribute to lack of political will, including in some cases low levels of public awareness about the Court and its contribution to international criminal justice. For a number of States, efforts to secure agreements relating to the non-surrender of persons to the Court were of real, practical concern, even constituting a major impediment to ratification or full implementation. Other major impediments included legal and technical difficulties,

¹ One instrument of ratification and another of accession to the Rome Statute were deposited after the preparation of this report by the Working Group. Furthermore, on 3 November 2006, the depositary indicated that the Statute had become effective for another State on 3 June 2006, the date of State succession. Consequently, as at 1 November 2006, there were 103 States Parties to the Rome Statute.

such as lack of will and/or capacity to develop implementing legislation, country-specific constitutional hurdles, and the need to complete work on the crime of aggression. The levels of assessed contributions required from States Parties to the Rome Statute were an obstacle to ratification in some cases, and in other cases a burden faced by existing States Parties, which will be reduced if there were more ratifications.

13. The Working Group considered that it is the primary responsibility of States to promote universality and full implementation and that States should strengthen their efforts to that end, including by focusing on their closest regional relationships. Efforts should include bilateral and regional political dialogue, awareness-raising initiatives, technical and financial assistance and a deepening commitment by States Parties to a strong and successfully functioning Court.

14. In addition, the Secretariat of the Assembly of States Parties should, within existing resources, act as a focal point for all information relating to ratification and full implementation of the Rome Statute and participation in the Assembly. This information coordination role would help to ensure that efforts are well-targeted and non-duplicative and that maximum benefit is obtained from planned initiatives.

15. The Group also considered that full participation by States Parties in the meetings and activities of the Assembly was important to sustain and deepen commitment to the full implementation of the Rome Statute and to the Court. Wider attendance at the Assembly by non-State parties and observers was also an important way to increase understanding of and support for the Court.

16. In order to increase participation in the Assembly, the Group considered that the terms of reference of the Trust Fund for the participation of least developed countries and other developing States in the work of the Assembly of States Parties should be formally revised to allow other developing States to also benefit from the Fund. In administering the expanded Trust Fund, however, it was considered that States Parties, in particular those that are least developed countries, should be accorded priority access to the Fund.

Recommendations

17. The Working Group recommends that the Bureau forward to the Assembly of States Parties for its consideration this report and the draft plan of action contained in the annex hereto.

18. The Working Group also recommends the following revisions to operative paragraphs 4 and 38 of resolution ICC-ASP/4/Res.4² for consideration by the Assembly at its fifth session:

“4. *Decides*, without prejudice to the functions of the Secretary-General of the United Nations in his capacity as depositary of the Rome Statute, 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 and, to that end, decides to adopt and implement the draft plan of action for achieving universality and full implementation of the Rome Statute of the International Criminal Court annexed to this resolution and requests the Bureau to review implementation of the plan of action and progress towards achieving its objectives and to report thereon to the Assembly in advance of its sixth session;”

² The proposed new language is underlined.

“38. *Decides to request the Registrar of the Court to revise the terms of the trust fund established by paragraph 1 of resolution ICC-ASP/2/Res.6 for the year 2006 to allow other developing States to draw on the fund so as to enhance the possibility of such States to participate in the meetings of the Assembly of States Parties, requests the Secretariat to ensure that information regarding the availability of assistance from the trust fund is widely disseminated among developing States in good time prior to the annual session of the Assembly of States Parties and also that States Parties to the Rome Statute, in particular those that are least developed countries, are accorded priority access to the fund, and reiterates its call upon States, international organizations, individuals, corporations and other entities to contribute to the fund and expresses its appreciation to those that have done so;*”

Annex

Draft plan of action of the Assembly of States Parties for achieving universality and full implementation of the Rome Statute of the International Criminal Court

Objectives

1. Universality of the Rome Statute of the International Criminal Court is imperative if we are to end impunity for the perpetrators of the most serious crimes of international concern, contribute to the prevention of such crimes, and guarantee lasting respect for and enforcement of international justice.
2. Full and effective implementation of the Rome Statute by all States Parties is equally vital to the achievement of these objectives.

States Parties

3. States Parties have the primary responsibility for promoting the objectives set out in paragraphs 1 and 2 above. States should make full use of the political, financial and technical means at their disposal to continue and strengthen their efforts to achieve these objectives.
4. To this end, States Parties should proactively promote universality and full implementation, including through bilateral and regional relationships, such as by developing initiatives that focus on neighbouring States and on the regions, subregions or other groupings to which they belong, as well as on the particular obstacles faced by those States, regions, subregions or groupings.
5. In addition, States Parties should deepen their own commitment to the Court and to the Rome Statute so as to ensure a strong, effective and efficient institution and thereby encourage other States to join.
6. States Parties' efforts should include:
 - (a) Direct political and other contacts with relevant States, regional groups or regional organizations with the objective of fostering political will and support for ratification and full implementation of the Rome Statute;
 - (b) Where appropriate, efforts to seek an agenda item on the Court in any bilateral contacts, including at the highest levels, with non-States parties;
 - (c) Ratification and full implementation of the Agreement on the Privileges and Immunities of the International Criminal Court and encouragement of its ratification and implementation by other States not yet parties to the Agreement;
 - (d) Providing technical or financial assistance to States wishing to become Parties to the Rome Statute as well as to States and other entities wishing to promote its universality;

- (e) Convening and supporting seminars, conferences and other national, regional or international events aimed at promoting ratification and full implementation of, and support for, the Rome Statute;
- (f) Wide dissemination of information about the Court and its role, including by giving consideration to inviting representatives of the Court or the Secretariat of the Assembly of States Parties to address national, regional and international events;
- (g) Identification of a national contact point for matters related to promotion of the ratification and full implementation of the Rome Statute;
- (h) Providing to the Secretariat of the Assembly of States Parties (“the Secretariat”) information relevant to promotion of the ratification and full implementation of the Rome Statute, including, inter alia:
 - (i) Information on obstacles to ratification or full implementation facing States;
 - (ii) National or regional strategies or plans of action to promote ratification and/or full implementation;
 - (iii) Technical and other assistance needs and delivery programmes;
 - (iv) Planned events and activities;
 - (v) Examples of implementing legislation for the Rome Statute;
 - (vi) Bilateral cooperation agreements between the Court and States Parties;
 - (vii) Solutions to constitutional issues arising from ratification;
 - (viii) National contact points for matters related to promotion of ratification and full implementation.
- (i) Full and effective implementation of the Rome Statute, including the duty to cooperate fully with the Court. To this end, any State facing difficulties with ensuring full implementation should identify its assistance needs promptly with a view to obtaining appropriate technical and/or financial assistance;
- (j) Active participation in and support for the meetings and activities of the Assembly of States Parties and its subsidiary bodies, in order to, inter alia, promote attendance at Assembly meetings by other States Parties and those not yet parties.

Secretariat of the Assembly of States Parties

7. The Secretariat should support States in their efforts to promote universality and full implementation of the Rome Statute by acting as a focal point for information exchange, within existing resources, including by:

- (a) Collecting and collating relevant information from States Parties, regional organizations, members of the non-governmental community and others engaged in promoting universality and full implementation of the Rome Statute;
- (b) Ensuring that such information is readily and widely accessible and disseminated to interested States and others.

Assembly of States Parties

8. The Assembly, through its Bureau, should keep this plan of action under review, including by monitoring the status of ratifications of the Rome Statute, developments in the field of implementing legislation, and the range of obstacles to ratification and full implementation faced by States.

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