

**SECRETARIAT OF THE ASSEMBLY OF STATES PARTIES TO THE ROME STATUTE
OF THE INTERNATIONAL CRIMINAL COURT**

THE HAGUE WORKING GROUP OF THE BUREAU

Complementarity

Second meeting

4 July 2024

Summary

The meeting was chaired by the representatives of the ad country co-focal points, Ambassador Mirjam Blaak (Uganda) and Ambassador Gregory French (Australia).

In his presentation, Mr. Jonathan Agar (Head of the External Affairs Unit, OTP) highlighted the implementation of the recently launched Policy on Complementarity and Cooperation. He emphasized its integration within the overall strategic objectives of the Office of the Prosecutor (OTP), including delivering results in the courtroom, enhancing efforts by national authorities to fight impunity, bringing justice closer to communities and deepening engagement with civil society and strengthening global support for the work of the Office.

He noted that at the core of this policy there were two concepts, namely partnership and vigilance, which go hand in hand, aimed at strengthening collaboration with national authorities to support their obligations under the Rome Statute and improve OTP's investigations and prosecutions. This dual approach ensures mutual reinforcement and efficiency. The vigilance function is materialized through narrower, deeper and faster approach to investigations and prosecutions, focusing on a more limited number of situations. The OTP is actively building capacity in countries like Colombia, the Central African Republic, the DRC, Guinea, and Venezuela, and providing hard evidence to assist national prosecutions. In addition, the introduction of a new technological platform facilitates faster information processing and support for domestic authorities. He highlighted the establishment of a new structural dialogue with civil society partners, noting as an example an upcoming session with FIDH and the Coalition for the International Criminal Court which aims to enhance this collaboration. The OTP is also fostering a fresh approach and bring new ideas to the Office's engagement with various institutional partners. This includes new working arrangements with Europol, enabling operational cooperation through liaison officers and the SIENA network, and participation in joint teams with Eurojust. Additionally, the OTP is engaging more with regional institutions like the African Union.

He said the OTP had decentralized its cooperation function and created an External Affairs Unit to harmonize information and actions across the Office. This Unit focuses on information harmonization, developing a cooperation toolkit, and establishing an information requirements board to facilitate external partnerships. The External Affairs Unit consists of three teams, namely external relations, judicial cooperation, as well as complementarity and civil society. The upcoming budget will reflect efforts to enhance the team's coherence and impact in implementing cooperation and complementarity work. Overall, the policy focuses on innovative institutional relationships, operational efficiency, and enhanced cooperation with national and regional entities to support the OTP's mandate.

In response to a question on cooperation between the OTP and the International Commission on Missing Persons (ICMP), Mr. Agar noted that a Memorandum of Understanding was established five or six years ago, and that the OTP is engaged with ICMP, especially regarding a new system implemented for field activities. Recently, the OTP circulated a new note verbale concerning a roster of experts available for deployment, which was developed based on their experience in Ukraine. This system allows for quicker responses when needed. Ongoing discussions between the Prosecutor and ICMP's Executive Director aim to identify areas for advanced cooperation, and the conversation.

In her presentation on the Trust Fund for Complementarity and Cooperation, Ms. Eugenia Valenzuela (Legal Officer for Complementarity and Civil Society, OTP) indicated that the Trust Fund was designed to support activities related to complementarity and cooperation that are not covered by the regular budget. She clarified that the regular budget is the primary source for the office's core mandate, including investigating and prosecuting Rome Statute crimes and supporting cooperation activities. This budget also provides a minimal baseline for complementarity activities, which are essential for maintaining core staffing. She noted that the Trust Fund aimed at providing financial support for significant programmatic complementarity initiatives with State Parties, allowing for deeper engagement and impact in investigations and prosecutions of Rome Statute crimes. The Trust Fund is intended to complement baseline complementarity activities, including the setting up of legal frameworks and initial action plans activities, to allow for in depth activities in more robustly manner than the baseline budget allows.

She then enumerated examples for the use of the Trust Fund in different situations. She referred to the situations in Colombia, where the OTP has cooperation agreements with the government and the Special Jurisdiction for Peace, supported by an action plan for deeper collaboration; in the Central African Republic (CAR), where the OTP has agreements that facilitate exchange of information and support for the CAR Special Court's investigations; in Guinea, where the OTP has provided guidance and support for the investigation and trial of 2009 crimes, with ongoing collaboration on areas such as gender-based crimes and witness protection; and in the Democratic Republic of Congo (DRC), where the OTP supports the national strategy to address serious international crimes through priority cases and workshops. Overall, the Trust Fund will allow the OTP to engage more deeply in complementarity activities in those situations and others, reducing the need for full ICC investigations and fostering stronger cooperation with national authorities, thereby enhancing the effectiveness and relevance of the Court's work to a broader constituency.

In response to a question about the Trust Fund's current amount, the funding necessary to start projects, and potential fundraising plans, Ms. Valenzuela noted that the OTP had already established the Trust Fund and had received a limited but generous amount. The OTP hopes to raise more funds and had circulated a Note Verbale to State Parties detailing the fund's purpose. She added that the OTP was willing to engage in bilateral discussions to address any questions from States or agencies. Mr. Agar clarified that the OTP was not specifically targeting aid-type funding but is open to benefiting from such sources and that the OTP was engaging with States to highlight its needs and objectives, with the aim of discussing appropriate funding channels. The Office was currently focused on outlining needs and developing modalities to operationalize the project.

In response to a question on how contributions to the fund will relate to the budget, and whether the Trust Fund will finance activities in both active and completed investigations, Ms. Valenzuela noted that the policy aims to engage in complementarity across all phases of situations before the Court. She highlighted ongoing support in Colombia and the CAR as examples, where activities continue even after closure of preliminary examinations and the completion of investigation activities respectively. Mr. Agar explained that the OTP is developing project portfolios for the Trust Fund, aligning with key priorities but also including other initiatives. The policy encourages dialogue with States at all stages, even after activities are completed, citing technical assistance in Georgia in collaboration with the Nuremberg Academy as an example. He clarified that core cooperation activities are funded by the regular budget, while the Trust Fund supports standalone programmatic initiatives that complement the OTP's core functions. He added that these initiatives add value and enhance the Office's relevance, support, and dialogue with States.

The Colombian delegation highlighted that, while OTP's support is crucial for the country, Colombia also significantly contributes to the Court. In addition, being a non-situation country allows Colombia to share information more freely and engage actively with the Court. Ms. Valenzuela agreed, emphasizing that the OTP aims to implement its policy as a joint, two-way effort. The policy seeks to benefit from the expertise and knowledge of States, such as Colombia's developed jurisprudence,

through a community of practice, enhancing cooperation between State Parties and the OTP. A suggestion was made to have Colombian authorities present their positive experiences with complementarity at a future meeting, which could help secure more funding by explaining the benefits to other delegations. The focal points on complementarity took note of this.

In response to a question regarding the funding needed and potential timelines, Mr. Agar explained that the OTP can develop project proposals for specific initiatives under the existing Trust Fund, which may be thematic or aimed at specific national complementarity initiatives. The OTP is open to receiving non-earmarked funds for general support. He emphasized the need for significant support for standalone programmatic interventions and mentioned plans to build a dedicated complementarity officer team. The OTP has a two-phase implementation plan: the first phase is funded by the regular budget, and the second phase would be dependent on contributions to the Trust Fund. This approach ensures careful planning and resource allocation, considering both existing resources and potential additional funding.

In relation to the Trust Fund, the delegation of Malta announced that it had made a voluntary contribution of 25,000 euros and was looking forward to the successful implementation of the Policy.

In his presentation on synergies between OTP activities and existing ASP efforts, Mr. Agar discussed how the new policy and activities integrate with existing initiatives like the ASP Complementarity and Cooperation Platforms, as well as other activities of the Registry and the Trust Fund for Victims, which provide assistance and support. He noted that the new OTP Cooperation and Complementarity Forum (established under the new policy) aims to deepen cooperation and operational discussions with national authorities and enhance mutual understanding to accelerate investigations and prosecutions. The forum will focus on situation discussions through new situation and case briefs, providing detailed insights to facilitate deeper cooperation with national authorities. It is also addressing thematic priorities, such as engaging with immigration authorities and other key policy areas like slavery and gender crimes. The first meeting of the Forum had taken place earlier that week with national immigration authorities from 22 states. The OTP wanted to broaden participation and would host further group meetings on slavery and gender crimes soon.

Mr. Agar highlighted the strategic dialogue between the OTP and the Registry aimed at aligning priorities and complementarity efforts, including a focal point system to streamline responses to assistance requests. An agreement allocates 50% of the program support costs from the complementarity Trust Fund to the Registry, addressing concerns about resource impacts. The forum will feed operational insights and lessons learned into the complementarity and cooperation platforms, fostering a feedback loop to inform thematic priorities and assist national authorities.

Mr. Agar explained the added benefits of the Court engaging in new activities despite existing platforms, emphasizing synergies with the Court's renewed posture on complementarity and cooperation. He highlighted the ASP platforms' value in identifying and triaging States Parties' technical assistance needs. For example, a recent submission allowed the Court to coordinate assistance across the OTP, Registry, and other partners effectively. This platform provides a useful feedback loop between operational forums and States Parties.

Regarding a question on contributions from non-state actors, Mr. Agar confirmed that international, regional, and private sector entities could contribute, though the OTP has not yet received private sector funds. He noted that while private sector engagement is not yet practiced, it is legally permissible.
