

PRESENTATION ON THE PLAN OF ACTION: UNIVERSALITY OF THE ROME STATUTE AND IMPLEMENTING LEGISLATION, DEVELOPMENTS AND RESOURCES. UNITED NATIONS NEW YORK: 19 DECEMBER 2011

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Mr Chairman, President Song, Excellencies, Ladies and Gentlemen

I am delighted to be here representing the Commonwealth Secretariat at the Tenth Meeting of the Assembly of States Parties to promote universality of the Rome Statute. I wish to thank the Facilitator and the Secretariat of the Assembly of States Parties for organising this important side event.

2011 has been a positive year for the Commonwealth regarding universality of the Rome Statute with three more Commonwealth States ratifying the Rome Statute, namely, Grenada, Maldives and Vanuatu. The declared intention of Malaysia to ratify in due course is also to be welcomed.

The recent ratifications now bring the total number of Commonwealth states to 37 of 54 member states; well over half of the membership.

We, at the Commonwealth Secretariat certainly cannot claim all the credit for the hard work in assisting Commonwealth states to ratify, so I would like to take this opportunity to recognise the hard work of those civil society organisations in the room today such as Parliamentarians for Global Action and the Coalition for the ICC for their sterling efforts, as well as other intergovernmental partners such as the International Committee of the Red Cross.

However, what the Commonwealth can claim some credit for is constructively and quietly working in the background to help build the capacity of our member states to realise the notion of complementarity.

Earlier in July at their Meeting in Sydney, Commonwealth Law Ministers further deepened their support for the mandate of the International Criminal Court through the conclusion of a Memorandum of Understanding on co-operation with the International Criminal Court.

The Memorandum of Understanding seeks to enhance cooperation in international criminal law matters within Commonwealth countries and to promote greater understanding of the principles and values in the Rome Statute.

The agreement will help contribute to promoting respect for the rule of law at the national level through the delivery of capacity building measures such as developing training and assistance programmes for national judges, prosecutors, and other relevant criminal justice officials in the fields of international humanitarian law and international criminal law.

We are firmly of the view that our collective work to operationalise the Rome Statute must not stop at ratification and implementation but must go much further to train the relevant domestic actors who are responsible for conducting the necessary investigations and prosecutions.

Implementation or domestication of the Rome Statute is not enough to close the impunity gap if national actors do not fully understand how to use the instrument.

Through these various steps we hope that Commonwealth States will be better placed in the future to conduct effective investigations and prosecutions of Rome Statute crimes at the national level thereby fully operationalising the notion of complementarity and making impunity a fact of the past.

The conclusion of this Memorandum of Understanding demonstrates in the most visible political terms that the Commonwealth membership takes very seriously its commitment to the global fight against impunity for perpetrators who commit the worst atrocities known to mankind and to bringing justice for victims.

Commonwealth Model Law

Commonwealth Law Ministers also approved the dissemination of a revised Commonwealth model law on the implementation of the Rome Statute which I believe is an invaluable tool for Commonwealth countries that have ratified the Rome Statute and wish to incorporate or domesticate the Rome Statute into their national legal systems.

The conclusion of the revised model law is the result of collaboration with the ASP Secretariat and the ICC, ICRC, civil society groups and Commonwealth member states and serves as an excellent example of what can be achieved through a collective sharing of experience. The participation of the PGA through the invaluable contribution of Dr David Donat-Cattin provided the Expert group with an insight into the civil law perspective on implementation which was important for the model law given that a few of our Commonwealth countries have a hybrid legal system rather than a pure common law system.

Let me make a few remarks about the Model law:

- Firstly, although called a model it does not presume to be a 'one size fits all'. That is simply not its intention. Rather it serves as a legislative and policy guidance tool for governments wishing to domesticate the Rome Statute to adopt;
- It does not seek to be prescriptive in that it provides different options to help implement different legislative provisions of the Rome Statute
- There is a substantial commentary explaining why certain provisions are drafted in a particular manner;
- It reflects the most up to date shared experience from the myriad of expert stakeholders within the Commonwealth states to academics to civil society who have brought a wealth of experience to produce the model law;

Regrettably Legislative action lags behind ratification:

Implementation remains a key obstacle to ensuring that the obligations which flow from the Rome Statute are fulfilled. Only 12 Commonwealth States have comprehensive implementing legislation with another 2 having partial implementing legislation.

Ratification of the Agreement on Privileges and Immunities of the Court (APIC) also remains a challenge for many Commonwealth states.

While not all international treaties require implementation, many do. And this is particularly true in common law states of the Commonwealth where treaties are normally required to be enacted through separate implementing legislation to give effect to their obligations in the domestic law of the State party.

Without such legislation, States may not be able effectively to punish or deter the commission of grave breaches or other violations of IHL.

Equally worrying is that the territory of a State party to the Rome Statute may unwittingly become a safe haven for fugitives in the absence of relevant implementing legislation allowing the State either to prosecute or transfer the suspect to the International Criminal Court to face prosecution.

Of some interest to you is a true story I was told recently on my travels; I was informed by one Commonwealth member state that while Colonel Gaddafi was on the run they were contacted regarding their position on the Rome Statute. When they informed the inquirer that the State had ratified the Rome Statute and was moving to implementation further contact ceased. Officials from the member state in question told me that they are convinced that their membership of the Rome Statute had had a 'protective effect' from dissuading Col Gaddafi from seeking exile there.

What we should take from this event is precisely the importance of us working together to ensure universality of the Rome Statute; only through further ratifications can universality be achieved and the impunity gap closed through the closing off of safe havens to fugitives.

The reasons for non implementation of domestic legislation are often down to a lack of capacity and/or sometimes competing priorities on the legislative agenda. The same may also apply to non-ratification.

But is also important to recognise that in some instances there may also be political objections which need to be respected and sensitively 'unpacked' through constructive dialogue. It is therefore important to fully understand the underlying constraints and to develop locally driven strategies which address the differentiated constraints.

We hope that the Commonwealth Model law will go some way to helping with reducing capacity constraints and we will go further, if requested, by assisting with the drafting of the domestic law, if necessary, at no cost to the member state.

Significant technical and capacity building assistance is available from the Commonwealth Secretariat to assist member States with ratification and or implementation of IHL instruments. We work closely with the ICRC to assist Commonwealth States which avoids duplication of effort and multiplies our impact in an effective and coordinated manner.

A copy of the Commonwealth model law can be accessed from our website www.thecommonwealth.org

In closing, I wish to recall the important words of His Excellency Ali Hussain Didi, Ambassador of The Maldives to the Netherland relating to Maldives ratification. He said ‘Each ratification of the Rome Statute is a small piece of the mosaic of international justice and represents a closer step to establishing a complete system of accountability and justice”.

Thank you