

Promotion of the ratification and full implementation of the Rome Statute

The Netherlands

In Resolution **ICC-ASP/5/Res.3** of 1 December 2006, the ASP decided, *inter alia*, to adopt and implement a Plan of Action for achieving universality and full implementation of the Rome Statute. Pursuant to paragraph 6, sub-paragraph (h), States should provide the Secretariat of the Assembly of States Parties with information relevant to the promotion of ratification and full implementation of the Rome Statute. This was reiterated in the Recommendations on the Plan of Action of 14 December 2007 (**ICC-ASP/6/Res.2**), and in the Recommendations contained in the report of the Bureau on the Plan of action (**ICC-ASP/7/19**) adopted pursuant to paragraph 3 of resolution **ICC-ASP/7/Res.3**.

With reference to **ICC-ASP/8/S/PA/19** the Netherlands hereby provides the Secretariat with relevant information.

A. Introduction

The Netherlands is a staunch supporter of the International Criminal Court (ICC), and played a prominent role in the development of the Rome Statute. It signed it on 18 July 1998, and ratified it on 17 July 2001, before its entry into force on 1 July 2002.

Besides being a State Party, the Netherlands is the Host State for the ICC, in which capacity it supports the ICC in numerous ways, both financially and practically. The Netherlands bears the costs for the ICC's temporary accommodation and the security of the buildings and personnel, as well as paying a substantial portion of the costs for its new housing development. The Netherlands has also concluded various agreements and MoUs with the ICC, including the Headquarters Agreement, and numerous additional arrangements for matters such as the use of forensic services, use of the diplomatic bag, legal assistance, and transport within the Netherlands of suspects, witnesses and victims.

B. Fora

Achieving universality and full implementation of the Rome Statute requires the use of a variety of instruments, such as bilateral instruments, statements in multilateral fora (e.g. the UN and the EU), and (support for) the dissemination of the ICC's principles and rules. The importance of supporting the ICC can also be raised with third countries, e.g. at political meetings or conferences.

It may prove necessary to assist States which have the necessary political will but encounter technical difficulties with accession to or implementation of the Statute. This could involve concrete expert assistance, financial support and/or access to relevant information, for instance.

The Netherlands aims at mainstreaming the Court through all these instruments.

In line with its policy of prioritising the promotion of human rights in general and the international legal order in particular, the Netherlands maintains a high profile in the UN with regard to the ICC, characterised by an active and alert attitude, and a result-oriented approach. Dutch policy is aimed at gaining the broadest possible support for the ICC, both political and

operational. As Host State, the Netherlands is traditionally the leading country in drawing up the annual UN resolution in support of the ICC.

As an EU member state, reference is made to the EU's reply to the request for information by the ASP. The Netherlands is an active member of the EU working group of ICC experts (COJUR Subarea ICC).

C. Support activities

The Netherlands has supported numerous initiatives to promote the ratification and implementation of the Rome Statute. As universal acceptance is of crucial importance for the ICC's legitimacy, the Netherlands believes that a long-term campaign to achieve ratification and implementation of the Statute by as many countries as possible remains necessary. In accordance with Dutch Government policy, the EU Common Position, the EU Action Plan and the ASP Plan of Action, the Netherlands will continue its efforts to achieve the widest possible ratification of the Statute, as well as the broadest possible implementation of its provisions. It also backs projects aimed at supporting the ICC and increasing awareness of it in the countries under investigation (Uganda, Sudan, the Democratic Republic of Congo and the Central African Republic).

A list of activities financially supported by the Netherlands can be found in **Annexe I**, covering the period from 1 October 2008 to 31 August 2009.

Objectives

The objectives of the Netherlands' policy of supporting the ICC are fourfold. First, the ICC must enjoy universal acceptance if it is to be as effective as possible. Although the Statute has been ratified by a substantial number of countries, many others are either still in the process of ratification/accession or have not even begun it.

Second, for the complementarity and cooperation regime to function properly, the Statute needs to be implemented by the largest possible number of States Parties as soon as possible. Implementation of the Statute's provisions in national legislation (and modification of national criminal law) is critical as is the political will to put into place effective investigation and prosecution of ICC core crimes and international cooperation in this respect. Many countries appear to have difficulties with implementation, often due to limited knowledge of the implementation process. In this context the Netherlands would like to stress the importance of networks like the EU-network of contact points for genocide, crimes against humanity and war crimes.

The third objective is to promote the effective and independent operation of the ICC.

Finally, the policy is aimed at protecting the integrity of the Rome Statute.

Strategy

Although support policy with regard to the ICC is multidimensional and its constituent parts cannot be viewed in isolation, three broad components may be distinguished.

Financial support

Financial support is given to non-governmental organisations (NGOs) and other institutions in support of activities organised by these organisations which directly help to achieve the objectives of Dutch support policy. Financial support is accompanied by technical and political support wherever possible.

Technical support

Technical (or judicial) support takes the form of a transfer of knowledge by experts in the field of ratification and implementation of the Statute, either locally (in the relevant country or region), or in the Netherlands, in order to promote these two aims, as well as the effective establishment of the ICC. Technical assistance is often accompanied by financial and political support.

In the past, the Netherlands has actively contributed to legislative work for the ratification and implementation of the Statute in third countries, amongst others by taking part in and facilitating conferences, and by receiving and informing parliamentary delegations in The Hague.

Political support

This involves support for States through political dialogue and takes different forms: bilateral contacts and demarches (the Netherlands tries to ensure that items about the Court appear on the agenda in as many bilateral contacts as possible); EU activities (such as conferences and coordinated demarches based on considerations established in the EU working group of ICC experts); and interventions in the UN and other multilateral fora. The support is intended to help States with the ratification and implementation process and to prevent the Court's effectiveness from being eroded or the Statute's integrity from being undermined.

Criteria

Activities must help to achieve the objectives of Dutch support policy. The main criteria with which the activity or organisation must comply are:

- it must specifically target parties and/or actions directly related to the ratification process;
- it must make a specific and targeted contribution to the implementation of the ICC Statute by the States Parties;
- it must contribute in more general terms to the effective functioning of the ICC and the universal acceptance of the principles set out in the Statute.

Coordination

Many other States are working towards the effective establishment of the ICC and the ratification/implementation of the Statute by third states. The Netherlands maintains contact with EU and other partners and works closely with them on this issue to prevent duplication and promote synergy.

In practice, many initiatives are developed by NGOs and similar organisations. The Netherlands therefore maintains close contacts with the NGO community as a major partner in achieving its policy objectives. It remains willing to support NGO initiatives. Two of the major NGOs – the Coalition for the International Criminal Court (CICC) and Parliamentarians for Global Action (PGA) – are provided with annual funding for their activities worldwide.

D. Financial contribution to the ICC itself

Besides giving NGOs and other institutions funding for activities in support of the ICC, the Netherlands also provides the ICC with direct funding. In addition to the annual obligatory contribution, the Netherlands supports the ICC through voluntary contributions. Over the past year the Netherlands contributed financially to the Trust Fund for Least Developed Countries and other Developing Countries, the Legal Tools Project and the Internship and Visiting

Professional Programme, all projects which indirectly contribute to universal ratification and implementation.

E. Contact point

The national contact point for matters related to promotion of ratification and full implementation is:

UN and International Financial Institutions Department
Political and Legal Affairs Division (DVF/PJ)
Mr F. (Fabio) Rossi

Ministry of Foreign Affairs
Bezuidenhoutseweg 67
PO BOX 20061
2500 EB The Hague
NL

Promotion of the ratification and full implementation of the Rome Statute

The Netherlands

Annexe I - Projects in support of the ICC (October 2008 – August 2009)

Date	Organisation	Project	Sum Allocated
<u>Ongoing projects</u>			
October 2007	Parliamentarians for Global Action (PGA)	Parliamentary Campaign for the ICC 2007-2010	€ 300,000
February 2008	ICC	Trust Fund for the Legal Tools Project 2008-2009	€ 40,000
April 2008	ICC	Internship and Visiting Professional Programme 2008-2009	€ 40,000
<u>Year under review</u>			
November 2008	ICC	LDC Trustfund	€ 20.428,14
January 2009	Pace University Law School (Pace), American Society of International Law (ASIL)	Moot Court Competition, Preliminary North American Round	US\$ 5.000
January 2009	International Criminal Law Network (ICLN)	Moot Court Competition	€ 20.000
March 2009	Coalition for the International Criminal Court (CICC)	<i>"Delivering on the promise of a fair, effective and independent Court"</i> , 2009	€ 80.000
April 2009	ICC	Registry's Seminar on Legal Counsel	€ 43.071,50
May 2009	Liechtenstein Institute on Self-Determination (LISD)	Intersessional Crime of Aggression, Princeton	US\$ 10.000

Promotion of the ratification and full implementation of the Rome Statute

The Netherlands

Annexe II - Implementing legislation questionnaire for States Parties

1. Has your Government adopted any national legislation implementing the Rome Statute ("the Statute")?

Yes

IF YES

Part B

5. In implementing the Statute, did your Government draft special implementing legislation or did it incorporate the articles or substantive provisions of the Statute into pre-existing law?

The Netherlands has special implementing legislation: the Internationaal Crimes Act ('Wet internationale misdrijven') and the International Criminal Court Implementation Act ('Uitvoeringswet van het Statuut van het Internationaal Strafhof met betrekking tot de samenwerking met en bijstand aan het ISH en de tenuitvoerlegging van zijn vonnissen').

6. Does the implementing legislation incorporate the substantive crimes through reference to the Statute or by incorporating the crimes in the legislation itself?

The implementing legislation ('The International Crimes Act') incorporates the crimes in itself.

7. Does the implementing legislation fully incorporate all modes of cooperation under Part 9 of the Statute?

Yes, this is implemented through the 'International Criminal Court Implementation Act'.

8. Does the implementing legislation designate a channel of communication with the Court?

The Implementation Act creates a centralized system, with the Minister of Justice as the central authority (Article 3). The Minister of Justice responds to a request himself or sends it to the Public Prosecutor in the Hague (centralised in a single prosecutors's office). The Public Prosecutor can, in implementing the request, request help from colleagues elsewhere. If, during the handling, an opinion of a judge is needed, this falls exclusively within the confines of the district court in The Hague (a single centralised court).