

Summary of the interventions at the Pacific Islands Roundtable on the ratification and implementation of the Rome Statute of the International Criminal Court (ICC), Port Vila, Vanuatu

The Roundtable was opened by welcoming remarks from **Hon. Esmon Saimon**, Speaker of the Parliament of Vanuatu, who thanked for the organisation of the Roundtable and appreciated it took place in Vanuatu. He emphasised the country's eagerness to implement the Rome Statute (RS), but at the same time acknowledged the lack of domestic capacity to draft such legislation as an impediment to the advancement of such process. **Hon. Ralph Regenvanu**, Minister of Foreign Affairs, International Cooperation and External Trade of Vanuatu, afterwards highlighted the important role of the International Criminal Court (ICC) in preventing atrocities and providing protection and reparations against the gravest violations of basic human rights. He called on the states of the Pacific Islands region to join the Rome Statute (RS) system, expressing hope that the example of Vanuatu in acceding to the Rome Statute in 2011 will serve as an inspiration to that effect.

The opening session was concluded by a key note delivered by **H.E. Mr. O-Gon Kwon**, President of the Assembly of States Parties of the ICC who encouraged the participants to engage their government in proceeding to accessions, observing that "if all the countries of the Pacific Islands were to ratify the Rome Statute, including the crime of aggression, they would effectively have one of the most powerful regional peace agreements in the world. That would be a momentous step for global peace and security".

The next panel offered an opportunity for all participants to provide background about their countries' status of RS dossier and their motivation in attending the Roundtable. In addition to describing the status of Fiji as a State Party (SP) with no sufficient implementing legislation, the MP of **Fiji** provided a historical background and focus on coups d'état in 2000 and 2006. She compared it against the crimes under the Rome Statute, indirectly raising the hypothetical question whether the acts and crimes committed in the course of these coups d'état could have triggered the ICC's jurisdiction.

Minister of Justice of **Kiribati** explained that there had already been efforts in the recent years to move the process forward when he proposed to the General Attorney to look into the perspective of acceding to the Rome Statute and advised the Cabinet to proceed. Nevertheless, the process has not moved forward. He shared several concerns the Government, and him as well, have, resulting from insufficiently clarified matters: (i) What costs would the membership in the ICC entail; (ii) what the obligations and benefits for SPs are; (iii) why the major global powers are not SPs and (iv) why has Malaysia 'withdrawn' from the RS.

Hon Kofe, MP, suggested that the accession might not receive the highest attention of **Tuvalu** at this moment, demonstrated by the level of the country's representation at the Roundtable, especially given that the invitation has been also extended to the Minister of Justice. He therefore said the participating delegation would like to use the occasion of the Roundtable to become more informed about the Rome Statute and the ICC to be able to share the information with the capital accordingly and increase the interest regarding domestic accession process. He also alerted to the fact that there would be legislative elections later this year and the country has been undergoing domestic process of amending the Constitution. Nevertheless, he emphasized that Tuvalu has been at the forefront of the climate change and therefore any connection with the ICC on how to address the environmental issues would serve as a huge motivation for the country to support the ICC.

Hon Taefu, MP from **Samoa** expressed support for the ICC, reiterating that Samoa had both acceded and implemented the RS. He referred to means that are available for states to help with the implementing legislation, including obtaining help with the legislative-drafting process from PGA. To alleviate the potential stress states might feel following the accession, he underscored that the implementation may even come after years following the ratification/ accession.

Hon Agovaka, MP indicated the commitment to the rule of law and human rights as the main reason for the **Solomon Islands'** support towards the ICC. Hence, he said Solomon Islands respect the ICC as it is the only court with the mandate of trying the crimes of genocide, CAH and war crimes. It appears that the majority of the Cabinet members is in favour of the ratification.¹

The former Minister of Justice of **Vanuatu, Hon Kalmasei, MP**, expressed his strong support towards the RS implementation. He also referred to the environmental issues/ crimes as a priority for the country, in particular in light of the devastating aftermath of the Severe Tropical Cyclone Winston in 2016, which affected other countries of the region as well.

The next panel on the importance of effective implementation of the Rome Statute and cooperation with the ICC began with the presentation of **Mr. Arnold Kiel Loughman**, Attorney General (AG) of Vanuatu, who explained the legislative process in Vanuatu. He explained that the process starts at the Government level with the policy decision. Once the policy decision is made, drafting instructions are prepared by the relevant Ministry. Once they are approved by the Development of Committee Officials (DCO) and Council of Ministers, they are submitted to the AG's office, which is responsible for drafting the Bill. It is favourable there is a relevant Ministry which will be the point of contact. That point of contact would answer questions from the drafter and make sure that the draft Bill has been made according to the agreed policy. When the draft Bill is prepared, it is reviewed by the relevant Ministry, which makes sure its content and purpose is aligned with the policy. There are often consultants

¹ Solomon Islands is the only NSP from the Pacific Islands states which signed the RS

working with the Ministries. Once the Bill is completed, it goes to the DCO and Council of Ministers for approval before it is submitted to the Parliament for a discussion.

Afterwards, **Ms. Frederika Schweighoferova**, PGA's Senior Legal Officer, offered an overview of the required implementation legislation and the current status in the region, as well as the importance and benefits of the implementing legislation on both complementarity and cooperation. In the context of the implementing legislation on cooperation, she highlighted the crucial difference between the institutes of surrender and extradition and the importance of having the provision on the surrender process implemented. She used this example to emphasize the necessity to have appropriate legislation already implemented in the domestic legal framework to be able to respond effectively and efficiently to the potential request by the ICC which are usually of crucial importance and time sensitivity. To motivate the implementation process, she also mentioned the financial instrument available through the European External Action Service to the countries of the region, namely the European Development Fund. At the end of the presentation, she shared several examples of legislations prepared by PGA in the region and offered PGA's assistance in supporting the legislative process.

This panel triggered a lot of interest with participants asking questions as to whether there is a consultation process at the stage of drafting of the Bill (confirmed by the AG that indeed, there is, at the level of NGOs and experts) or directed at PGA as to the practice of other states when implementing the legislation and the preferable ways of implementing the provisions.

Afterwards, to address some questions posed by the participants relating to the ICC at the previous sessions, **Mr. Matias Hellman**, External Relations Adviser of the Presidency of the ICC spoke in detail about the threshold of the material jurisdiction of the ICC to explain that only few situations might end up being further reviewed or investigated by the ICC. He provided an overview of the obligations of SPs, including the costs stemming from their membership (approximately USD3500) and clarified the process of the reversal of Malaysia's instrument of accession. He also mentioned several grants available to Pacific Islands States, e.g. the Trust Fund for the least developed countries offered by the ASP that can fund states' participation at the ASP.

The panel on the *Relevance of the Rome Statute for the Environmental Challenges Faced by Pacific Islands States Related to Oceans and Climate* was the most significant one and of the most interest to the participants. The first panelist, **H.E. John H. Licht**, Ambassador of Vanuatu to the European Union, addressed some common concerns and misconceptions that the Pacific Islands States might perceive regarding joining the RS. To further emphasize the relevance of the ICC to the region, he pointed out at the 2016 OTP Policy Paper which specifically includes relevance to the crimes relating to the environment. He then moved to providing examples of how specific environmental crimes have been addressed at the regional level. He concluded by suggesting a creation of a Pacific coalition with the aim of advancing international criminal justice to reflect the emerging necessity to address environment atrocities.

Afterwards, **Dr. Carrie MacDougall**, Senior Lecturer at the Melbourne Law School, took the floor and focused on the following points: (i) the ability of environmental harm to be prosecuted under existing RS provisions (concluding that, realistically, this might only be possible under Article 8(2)(b)(iv)); (ii) the legal (and political) requirements under the RS and the WGA Terms of Reference for the addition of a new environmental crime; (iii) ‘factors of success’ or her recommendations on how any proposed new crime should be shaped in order to secure support; (iv) translation of those factors into a possible draft crime; (v) advocacy points to address key arguments for inclusion in the RS and to overcome likely objections; and (vi) the broader strategic advantages of RS membership to Pacific States’ efforts to protect the environment.

Dr Nabil Ahmed, Senior Researcher with Ecological Defence Integrity (EDI), an NGO that advocates for ecocide as a stand-alone crime and climate justice at the ASP of the ICC, discussed the issue of climate change and accountability. He discussed whether the actions of the world's largest fossil fuel companies that are emitters of greenhouse gasses leading to global warming disproportionately felt in climate frontier Pacific Island states amounts to climate crimes. **Ms. Shirleen Chin**, head of advocacy, presented how EDI is able to assist Pacific Island States to participate at the annual ASP, towards their ratification of the Rome Statute and as a platform to have their voices heard on the issue of climate change.

Ms. Kirsten Meerschaert, Director of Programs, Coalition for the International Criminal Court (CICC) presented an objective evaluation of the feasibility of the prospects of introducing a new crime of ecocide, assessing whether the ICC could serve as an appropriate venue to address the environmental crimes. She emphasized the interconnection between these crimes and global economy, health and the widespread effect of any damage committed against the environment on the whole society globally, notwithstanding the place they occur. She explained the difficulties and the process of amending the scope of the Rome Statute and the politics that would come into play, but emphasized the importance of ratification in this context- ‘the membership means ownership’ and hence, only by acceding to the RS, the states can affect the scope of the ICC jurisdiction. She also referred to the importance of the domestic implementation, through which states can achieve the penalisation of acts damaging environment through customary international law.

The interactive discussion that followed touched upon a variety of diverse topics relating to the RS- including elaborating on the topic of the prospects of introducing environmental crimes into the RS and whether there is an emerging consensus on the creation of the ecocide (in this context, Mr Hellman used the example of Lichtenstein- a small state that spearheaded the process of the activation of the jurisdiction over the Crime of Aggression); the extent of the jurisdiction over states not parties to the RS, the use of referral to the ICC of situations by the UN Security Council; the current preliminary examination into the situation of Rohingya as an example of the jurisdiction over a state not party to the RS; or universal jurisdiction (with concrete current examples of EU countries trying international crimes).

In light of the discussion, Kirsten highlighted the importance of Pacific Islands States in joining the RS from the perspective of ‘safety numbers’- by joining the RS, states are creating a coalition protecting themselves against the atrocities, even against perpetrators belonging to states not parties to the RS.

Following the discussion, participants reviewed and adopted the *Port Vila Plan of Action*, in which they committed themselves to use their legislative and political prerogatives to advance the ratification/accession as well as implementation processes in their respective countries. The final remarks, concluding the vivid and interactive discussions among participants, were delivered during an informal traditional Kava ceremony (offered by the Ministry of Justice of Vanuatu) by **Hon. Ps Don Ken Stephen**, Minister of Justice and Community Services of Vanuatu; **Professor Song Sang-hyun**, former President of the ICC and President of the UNICEF Committee of the Republic of Korea; Professor of Law at the University of Seoul and **H.E. Kym-gu Kang** and Ambassador of the Republic of Korea to the Independent State of Papua New Guinea. All three high-level representatives thanked for the organization of the Roundtable, as well as participation and inspiring interventions by panelists and participants.

In the framework of the Roundtable, PGA Senior Legal Officer had bilateral meetings with officials of Vanuatu (Minister of Justice, Minister of Foreign Affairs and his office and daily meetings with the Ambassador Licht to strategise the way forward). In addition, together with Mr Matias Helman and Mr. O-Gon Kwon, with the delegations of Kiribati and Tuvalu. The meetings served to cement the participants’ commitment and discuss the process of follow up after the Roundtable.