

**Twelfth session**

The Hague, 20-28 November 2013

**Report of the Court on the status of ongoing cooperation
between the International Criminal Court and the
United Nations, including in the field****I. Introduction**

1. This report is submitted pursuant to paragraph 17 of resolution ICC-ASP/11/Res.8, in which the Assembly invited the Court “*to continue its institutional dialogue with the United Nations, and to report on the status of ongoing cooperation between the two organizations, including in the field, based on the Relationship Agreement between the United Nations and the International Criminal Court, to the twelfth session of the Assembly*”.

2. The extraordinary nature and importance of the International Criminal Court’s (“ICC” or “the Court”) relationship with the United Nations (“UN”) is well reflected in the fact that article 2 of the Rome Statute expressly required that the Court be “*brought into relationship with the United Nations through an agreement to be approved by the Assembly of States Parties to this Statute and thereafter concluded by the President of the Court on its behalf*”.

3. The Negotiated Relationship Agreement between the Court and the UN was concluded on 4 October 2004 and it provides the legal basis for the multifaceted cooperation between the two organizations. The Relationship Agreement provides that the Court and the UN shall cooperate closely, whenever appropriate, with each other and consult each other on matters of mutual interest, with a view to facilitating the effective discharge of their respective responsibilities.

4. The many forms of cooperation between the UN and the ICC range from a regular dialogue between the officials of the two institutions aimed at identifying challenges and ways of overcoming them, including reciprocal representation at high-level meetings and proceedings, to a very practical working relationship, including exchange of information and reports, administrative and personnel arrangements, provision of services and facilities, logistical support in the field, financial matters, travel arrangements and judicial assistance, appearance of UN staff in court to provide testimony, and supporting the activities of each other in the field.

5. The Court would like to highlight in this regard the crucial support and cooperation it has received over the years from the UN, starting from Secretary-General Ban Ki-Moon, as well as the Under-Secretary-General for Legal Affairs and Legal Counsel, whose office (the UN Office of Legal Affairs, “OLA”) ensures the transmission and coordination of the judicial cooperation requests between the UN and its agencies and the organs of the Court and parties to the proceeding.¹ The OLA is an efficient interface of the Court that also advises the requesting organ or party on the procedure to be followed, provides updates and identifies the relevant interlocutors that the Court may contact in the different UN agencies or peacekeeping missions in the field.

¹ For the Office of the Prosecutor, 212 requests for assistance were sent to the UN since 2005 to 3 October 2013, with an execution rate of 73,5 %.

6. The Court is also grateful for the regular interaction and support from the other UN offices and departments, including among others the Department of Peacekeeping Operations (“DPKO”), the Department of Political Affairs (“DPA”), UN Women, the Office of the High Commissioner for Human Rights (“OHCHR”), as well as the Special Advisers and Special Representatives of the Secretary-General on the prevention of genocide, the responsibility to protect, children and armed conflict and sexual violence in conflict. The Court also appreciates its regular interaction with UN agencies, such as the UN Educational, Scientific and Cultural Organization (“UNESCO”), as well as UN programmes and funds, such as the UN Children’s Fund (“UNICEF”).

7. The principals of the Court frequently hold high level consultations with the UN Secretary-General as well as other senior UN officials to discuss matters of mutual interest and to explain the interests and mandate of the Court and seek the UN’s support. This is done through high-level visits to New York or through telephone calls. The annual reports of the Court to the UN General Assembly also present an opportunity for the Court to inform the UN and the international community at large on a regular basis about its activities. The Court welcomes General Assembly resolution 67/295 on the Report of the International Criminal Court, which requests the Secretary-General to continue to include information relevant to the implementation of article 3 of the Relationship Agreement in a separate report to the pre-existing Secretary-General’s Report on Expenses incurred and reimbursements received in connection with assistance provided to the Court. Finally, the annual UN-ICC Roundtable also enables officials from both institutions to meet at working level to discuss practical cooperation arrangements.

8. The representation of the Court at the UN, in the form of a small liaison office, provides an important channel of communication between the Court and the UN, facilitating the maintenance and further development of the relationship and cooperation between the two organizations.

9. One issue currently under discussion between the ICC and the UN pertains to article 8 of the Relationship Agreement, under which the UN and the Court agree to “*cooperate in the temporary interchange of personnel, where appropriate, making due provision for the retention of seniority and pension rights*”. The Inter-Organisation Mobility Accord, to which the ICC had been a party since 2005, was cancelled by the UN System with effect from 1 January 2012 and replaced with the Inter-Agency Agreement concerning Transfers, Secondments and Loans amongst the Organisations Applying the UN Common System of Salaries and Allowances. On 13 March 2013, the Human Resources Network of the UN System’s Chief Executives Board for Coordination rejected the request of the ICC to be continued as a party to this new agreement on the grounds that the Court is not a part of the UN Common System of Salaries and Allowances,² although the ICC applies the system. The Court’s continued exclusion from the inter-organisation mobility programme would impact negatively on the Court’s staffing and recruitment efforts and would be unfavourable to staff who move to or from a UN System organisation, including staff currently working at the UN *ad hoc* Tribunals, which are in the process of scaling down their operations. The matter has been raised at the senior level between the two organisations; discussions are on-going and the Court hopes that they will lead to a favourable outcome.

10. Looking beyond the immediate needs of the Court, there are significant synergies and interaction between the UN and the broader Rome Statute system of complementary criminal justice, namely the important role that UN and its agencies can play in strengthening the domestic capacity to address the crimes foreseen in the Rome Statute.³ One particular effort worth mentioning in this respect is the Greentree process, which was launched by the International Center for Transitional Justice (“ICTJ”) and the UN Development Program

² Which includes paying towards the jointly funded activities such as the International Civil Service Commission and the Chief Executives Board for Coordination of the UN System’s Human Resources Network.

³ One positive example of how the UN and its sub-bodies can support complementarity efforts by the Court is Guinea, a situation currently under preliminary examination by the OTP. In this context, the national authorities and the OTP identified areas of possible international support for the conduct of national investigative and prosecutorial activities relating to the alleged crimes committed on 28 September 2009 at the Conakry stadium. This information was conveyed to the United Nations system, including the UN Peace building Commission, the UN special Representative on sexual violence in conflict, and the Office of the High Commissioner for Human Rights who subsequently agreed to provide logistical support and technical advice to the Guinean panel of judges in charge of the 28 September 2009 case.

(“UNDP”) in 2010, with support from the governments of Denmark and South Africa, the focal points for complementarity in the Assembly of State Parties (“the Assembly”). The goal of the Greentree process has been to bring together actors from the criminal justice area and the broader rule of law development sector to consider ways to enhance the practical implementation of complementarity and the strengthening of domestic systems seeking to investigate serious crimes. The Court commends the increasing attention that the UN has recently given to these matters and urges the continuation of these efforts.

11. The present report will focus on the ongoing cooperation between the Court and the UN in the field, including regarding UN peacekeeping missions and commissions of inquiry, the relationship between the Court and the UN Security Council, and the role of ICC States Parties in mainstreaming ICC issues the different UN fora. More general information regarding the cooperation between the Court and the UN can be found in the annual reports of the Court to the UN General Assembly.⁴

II. On-going Cooperation between the Court and the UN in the field

A. UN Peacekeeping Missions and other UN presence in the field

12. The UN-ICC Relationship Agreement provides a general framework for cooperation. In particular, article 3 provides that “[t]he United Nations and the Court agree that, with a view to facilitating the effective discharge of their respective responsibilities, they shall cooperate closely, whenever appropriate, with each other and consult each other on matters of mutual interest pursuant to the provisions of the present Agreement and in conformity with the respective provisions of the Charter and the Statute”.

13. In many situations, including those before the Court, the UN and its sub-bodies may have unique access to a particular territory through their field missions, peacekeeping operations, and commissions of inquiry (“COI’s”).

14. Where a high volume of requests for cooperation has been anticipated, the Court and the OTP have sought to conclude Memoranda of Understanding, (“MOU’s”) to facilitate agreed modalities for specific forms of assistance. This practice has allowed the Court to avoid delays in the deployment of its operations and helped reduce costs. Moreover, these agreements have been beneficial for both organisations as it ensures regular exchanges on issues of mutual interest and allows responding to concerns and dissipating misinformation. Since 2004, exchanges of information with the UN and its specialised agencies and bodies in the field and at the headquarters, through various mechanisms including roundtable meetings, have also been instrumental in supporting the Court.

15. In 2013, cooperation from the UN on the field has been particularly solicited in many areas ranging from assistance for evacuation of ICC personnel from the Central African Republic to negotiating MOU’s and benefiting from continued exchange of information on cooperation matters in various areas of interest for the Court, including logistical and others.

16. In Kenya, the Court continues to benefit from the UN Office at Nairobi (“UNON”) services and facilities, thus achieving important operational cost reductions.⁵ The Registry Task Force Coordinator in Nairobi exchanged regularly with the Director-General’s office, informing on developments in the cases before the Court. Views on issues of common interest have also been shared, bearing in mind the independent mandates of the two organisations.

17. Further to the events in the Central African Republic, the UN Integrated Peacebuilding Office in the Central African Republic (“BINUCA”) assisted the Court in its evacuation operations, including by accommodating ICC personnel in the UN compound during six months. A regular flow of information on the situation in the country was provided by BINUCA, thus supporting the Court in continuing its work in relation to the case of Mr. Jean-Pierre Bemba, including notifying cooperation requests to the authorities.

⁴ http://www.un.org/en/ga/search/view_doc.asp?symbol=a/68/314

⁵ In accordance with article 10 of the Relationship Agreement, the ICC reimburses the UN for any facilities and services provided. The cost reductions are achieved in comparison with the alternative option of the Court creating its own infrastructure and procuring standalone services on the ground.

18. With on-going cases at pre-trial, trial, appeals and reparations stages in the Democratic Republic of the Congo, the Court continued to rely on the administrative and logistical assistance of the UN Organization Stabilization Mission in the Democratic Republic of the Congo (“MONUSCO”), including air transportation from Kinshasa and from its Logistics base in Entebbe, Uganda. By way of an example, a total of 448 UN flights have been used between 1st January and 30 September 2013, in connection with investigations from the Office of the Prosecutor (“OTP”) and the Defence, as well as with activities from the Registry and independent bodies.⁶

19. Since 2011, the Court has no field presence in Chad. Thus, its work in relation to the pending cases in the Darfur, Sudan has greatly benefited from the UN’s support there.

20. On 12 June 2013, the Court concluded a Memorandum of Understanding with the UN Operation in Côte d’Ivoire (“UNOCI”),⁷ building on an earlier model concluded with the UN Mission in the DRC (“MONUC”). This agreement aims at maximising cooperation with the UN while ensuring efficient use of the Court’s resources. UNOCI has facilitated the Court’s operations in the country. In particular, exchanges between UNOCI and the Court in relation to its activities around the case of Mr. Laurent Gbagbo have benefited both organisations.

21. In Mali, the Court is in the early stage of discussing an MOU with the UN Multidimensional Integrated Stabilization Mission in Mali (“MINUSMA”). MINUSMA has nonetheless provided support to the Court on an *ad hoc* basis, including by granting access to UN Humanitarian Air Service (“UNHAS”) flights to areas of ICC operations. The Registry is now conducting a feasibility study to identify the most cost-effective field capacity to be reviewed in line with the upcoming judicial developments.

22. Finally, the Court obtains *ad hoc* cooperation from UN missions that are not located in one of the situation countries. As such, in 2013, the Court was able to organise video conferences to facilitate the testimony of several witnesses from UN premises in three different States.

23. It is also of utmost importance that the UN continues to give due regard to the support and assistance requests for the ICC defence teams in light of the equality of arms principle, and thus includes relevant provisions in this regard in the cooperation agreements with the ICC.

24. The extent to which the peacekeeping missions can cooperate with the Court will depend, largely, on the mandate given to the mission. In particular for the mission’s capacity to facilitate or assist with the arrest and surrender of individuals subject to arrest warrants issued by the Court, it will be important to consistently include in mission mandates the authorisation for the mission to support national authorities in securing arrests, or, if possible, an even stronger mandate and capacity to carry out operations that may lead to arrests prior to transfer of fugitives to the national authorities. Particular lessons may be drawn from the establishment of an “Intervention Brigade”, with a more proactive mandate, within MONUSCO, pursuant to UN Security Council Resolution 2098 (2013).

25. Formulating such mandates will require efforts from all actors involved in the process of establishing the mission, States as well as DPKO, mindful of the positive synergies between the missions and the Court, taking into account the respective mandates.

B. Commissions of Inquiry

26. Over the past years, the OTP has been in contact with numerous international commissions of inquiry set up by the UN Secretary-General, the Security Council or the Human Rights Council, including *inter alia* regarding the situations in Darfur, Guinea and Libya. The OTP has also interacted with selected and relevant UN Groups or Panels of Experts in its areas of investigation.

⁶ The OTP also has a specific MOU agreement with MONUSCO (and formerly with MONUC).

⁷ This MOU replaces a previous agreement signed between the OTP and UNOCI.

27. COI's can provide a valuable source of information on allegations on the possible commission of crimes within the jurisdiction of the Court. Such information may be particularly beneficial for the OTP during the conduct of preliminary examinations where the Office relies on open source information in order to determine whether there is a reasonable basis to investigate.

28. Subject to the specific mandate and considered view of each COI, further exploration could be made on ways to increase cooperation and coordination in situations that fall within the jurisdiction of the Court, with a view to the mutual exchange of information in line with the Relationship Agreement. In this regard, the OTP and OHCHR, with the assistance of the OLA, are looking at ways to strengthen possible modalities for cooperation, including through conclusion of a framework MOU.

29. Whereas each COI will have a different mandate, with a different focus and scope of activity, and COI members are considered independent experts, there will normally be several aspects which may be of particular interest for the work of the OTP. This includes any information on possible crimes within the jurisdiction of the Court, such as information on the most serious crimes and criminal episodes within a situation, any preliminary indication of perpetrators or groups alleged to be responsible, an assessment of the legal qualification of the alleged acts, and any information on the existence and quality of national proceedings in relation to such crimes. For example, the UN COI into the 29 September 2009 events in Conakry, Guinea, was provided a mandate to, *inter alia*, identify individual perpetrators, produced a list of names covering several levels of responsibility; was requested to make recommendations on accountability measures, and provided a brief assessment with respect to the national judiciary.

C. Support provided by the UN Department of Safety and Security (“UNDSS”)

30. The Court is included in the UN security and safety arrangements in all areas of the Court's operations and has liaised closely with the UN security officials in each of these locations. The existing MOU between the Court and the UN is being amended to reflect the modified template approved by the Inter-Agency Security Management Network (“IASMN”) in 2010.

III. The ICC relation with the UN Security Council

31. Several recent developments point to an increased momentum among States Parties, civil society and the Court to reflect together on issues of mutual interest between the Court and Council, with an opportunity to enhance support for the Court. These include the open debate of the UN Security Council on “Peace and justice, with a special focus on the role of the ICC”, held on 17 October 2012 as the first of its kind, triggered by the initiative of Guatemala, the newest ICC State Party at that time; the Chatham House events organized by Parliamentarians for Global Action in March 2012,⁸ by the International Peace Institute in November 2012,⁹ and the Humanity United and University of California Irvine School of Law workshop in November 2012,¹⁰ and the Informal Interactive Dialogue held between the Prosecutor and the UN Security Council in May 2012.

32. Although the Court and the Council have distinct roles (the Council is a political body within the UN system, the Court is an independent judicial institution), they share several traits in their mandates. First, while the Security Council has been given the primary responsibility to maintain international peace and security, the mandate of the Court is to ensure accountability for the most serious crimes of concern to the international community as a whole, crimes which the Rome Statute Preamble recognizes as threatening the peace, security and well-being of the world. As noted in the Concept Note prepared by Guatemala for the 17 October 2012 Security Council open debate, “*the UNSC's and ICC's functions are complementary since they pursue protecting those populations who are at risk.*”

⁸ See <http://www.pgaction.org/pdf/activity/Chatham-ICC-SC.pdf>.

⁹ See <http://www.ipinst.org/publication/meeting-notes/detail/388-the-relationship-between-the-icc-and-the-security-council-challenges-and-opportunities.html>.

¹⁰ See <http://councilandcourt.org/files/2013/05/The-Council-and-the-Court-FINAL.pdf>.

*Perpetrations of mass atrocities that constitute crimes under the Rome Statute usually threaten international peace and security. Thus, preventing mass atrocities and insisting on international accountability can contribute to the maintenance of international peace and security”.*¹¹

33. Second, both the Council and the Court have a role to play in strengthening the complementary relationship between peace and justice. From the Court’s perspective, there is no dilemma or contradiction between peace and justice, but it is crucial that, as noted in the Guatemala Concept Note, “*conflict resolution initiatives considered by the UNSC should be compatible with the values contained in the Rome Statute, so that peace and justice work effectively together*”.

34. Thirdly, in addition to working on the same situations and regions, the ICC and the Council are often dealing with the same challenges, *inter alia* the debilitating impact of gender and sexual violence, the use of children in conflict, the impact of impunity and the lack of the rule of law on situations, and the effectiveness of peacekeeping operations.

35. Finally, both the Security Council and the Court have a clear preventative mandate. In fact, the Rome Statute Preamble makes clear that prevention is a shared responsibility in stating that States Parties are “*determined to put an end to impunity for the perpetrators of these crimes and thus to contribute to the prevention of such crimes.*”

36. Given these connecting and complementary mandates, the relationship between the Court and the Security Council could be nurtured and strengthened by extending interaction, including beyond specific situations referred by the Council to the Prosecutor, and by creating space for open discussions on thematic issues. Such dialogue is crucial, as both the Security Council and the Court are committed to preventing mass atrocities which constitute a threat to international peace and security.

37. For the purpose of giving impetus to this process of reflection, as well as to provide food for thought to the relevant actors, and also taking into consideration the Guatemala Concept Note as a starting point, the Court has identified possible measures that could be of relevance and should be tabled for further discussion by States. Some are listed below. The Court and its organs remain available and willing to provide any additional information and answer queries regarding this list.

38. Enhancing the dialogue between the Council and the Court: Security Council briefings by the Prosecutor on Council referrals are of course important to update the Council on the current situation and to raise issues of concern. So far, the Prosecutor has briefed the Council seventeen times on the situation in Darfur since June 2005,¹² and five times on the situation in Libya since May 2011.¹³

39. In addition, however, the Court would welcome the idea, promoted by a number of Governments during the October 2012 Security Council open debate, to have exchanges between the Council and the Office of the Prosecutor on a regular basis - independent of the specific situations referred by the Security Council. These briefings could address specific situations, whether under investigation or preliminary examination, or could address thematic topics, such as children in armed conflict or prevention. This would allow Member States to monitor and respond to relevant issues beyond the periodic, half-yearly reports the Office submits to the Council.

40. The Guatemalan Concept Note also suggested the possibility of “*extending an annual invitation to the President of the ICC and the Prosecutor to brief the UNSC and to discuss matters of mutual interest and find ways and means to strengthen mutual cooperation*”.

41. The holding of informal interactive dialogues to address specific topics or challenges could also be considered. Representatives of the different organs of the Court, as well as the

¹¹ S/2012/731, annex, 1 October 2012.

¹² http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/situation%20icc%200205/reports%20to%20the%20unsc/Pages/reports%20to%20the%20security%20council%20of%20the%20united%20nations%20organisation.aspx

¹³ http://www.icc-cpi.int/en_menus/icc/situations%20and%20cases/situations/icc0111/reports%20to%20the%20unsc/Pages/index.aspx

Head of the Court's Liaison Office to the UN, remain available to provide these regular updates and participate in more frequent exchanges with the Council.

42. The Guatemalan Concept Note also refers to the idea of establishing a forum to advance questions of cooperation with the ICC through a subsidiary body of the Council – a proposal that the Court encourages the Council to consider as a potential method to streamline and enhance cooperation.

43. In addition, the Council could further consider the exchange of information with the Court. Article 87(6) of the Rome Statute allows the Court to “ask any intergovernmental organization to provide information or documents. The Court may also ask for other forms of cooperation and assistance.” As noted in the Guatemala Concept Note, “the functions of the High Commissioner for Human Rights facilitate the use of a variety of means for the purpose of early warning, including reporting to the UNSC, at its request on situations and issues of special concern. In addition, reports of commissions of inquiry and fact-finding missions have proven relevant to corroborate information concerning the nature and gravity of a particular situation”. Reference is made here as well to the part on the mandates of commissions of inquiry developed earlier in this report.

44. Mainstream ICC provisions in country and thematic-specific situations: As noted earlier, States Parties could consider mainstreaming of ICC issues within the UN Security Council discussions, in line with a recommendation adopted earlier by the Assembly (“States Parties that are members of the Security Council should ensure that the Court’s interests, needs for assistance and mandate are taken into account when relevant matters, such as sanctions, peacekeeping mandates, Security Council missions and peace initiatives are being discussed and decided on, while respecting the independence of both”).¹⁴

45. Recent positive examples include Presidential Statement on the protection of civilians of 12 February 2013,¹⁵ the resolution on Burundi of 13 February 2013,¹⁶ the Presidential Statement on Cooperation between the United Nations and regional and subregional organizations in maintaining international peace and security of 6 August 2013,¹⁷ or the resolution on Women Peace and Security of 24 June 2013.¹⁸ The Court would like to refer here to the useful list kept by the Coalition for the International Criminal Court (CICC), which keeps track of references to the ICC in Security Council resolutions.¹⁹

46. Moreover, the Court welcomes the initiative of the Government of Mali to call upon the Security Council to include in the resolution authorizing a peace enforcement operation²⁰ a request for support (in the event that an ICC investigation is opened), by this international military force to both the national authorities as well as the ICC.²¹ Such language could establish a new standard for how the Security Council and the Court can complement each other and work together towards fighting impunity. Reference is made here as well to the part on the mandates of peacekeeping operations developed earlier in this report.

47. Liaising with regional and subregional organizations: The Council could call on the relevant regional and subregional organizations involved in matters pertaining to peace and justice to support the mandate and activities of the Court, as well as the follow-up to Council referrals and other resolutions. Reference is also made here to the Presidential Statement on Cooperation between the United Nations and regional and subregional

¹⁴ Resolution ICC-ASP/6/Res.2, annex II; recommendation 51.

¹⁵ S/PRST/2013/2.

¹⁶ Resolution 2090 (2013).

¹⁷ S/PRST/2013/12.

¹⁸ Resolution 2106 (2013).

¹⁹ [http://www.coalitionfortheicc.org/documents/CICC_Compilation_UNSC_Resolutions_-_ICC_references_\(2002-2012\).pdf.pdf](http://www.coalitionfortheicc.org/documents/CICC_Compilation_UNSC_Resolutions_-_ICC_references_(2002-2012).pdf.pdf);

[http://www.coalitionfortheicc.org/documents/CICC_compilation_UNSC_resolutions_-_ICC_language_\(January-July_2013\).pdf](http://www.coalitionfortheicc.org/documents/CICC_compilation_UNSC_resolutions_-_ICC_language_(January-July_2013).pdf)

²⁰ S/RES/2100 (2013).

²¹ See page 8 of the resolution: “To support, as feasible and appropriate, the efforts of the transitional authorities of Mali, without prejudice to their responsibilities, to bring to justice those responsible for war crimes and crimes against humanity in Mali, taking into account the referral by the transitional authorities of Mali of the situation in their country since January 2012 to the International Criminal Court”.

organizations in maintaining international peace and security of 6 August 2013,²² which notes that “*regional and subregional organizations and arrangements can contribute to accountability through [...] cooperation with international mechanisms, courts and tribunals, including the International Criminal Court*”.

48. Public and diplomatic support from the Council for the Court: Public and diplomatic support remains a priority for the Court and for galvanizing arrest efforts. The Council can greatly contribute to these efforts through its own declaratory statements recalling the need to observe applicable norms of international law and stressing the importance of accountability for those most responsible for serious violations of these rules. The Council could issue statements recalling the resolution referring the situation to the ICC and the underlying legal obligations to cooperate.

49. Sanctions: The Security Council could consider the possibility of harmonizing the designation criteria of sanctions mechanisms for the identification and freezing of assets and the imposition of travel bans. The designation criteria for a number of such sanctions mechanisms already provide for the listing of persons who commit violations of international humanitarian or human rights law or other atrocities.²³ Consideration could be given to enabling the automatic listing of persons sought by the Court once a warrant for their arrest has been issued by a Pre-Trial Chamber for the alleged commission of crimes within the jurisdiction of the Court, particularly where the situation has been referred by the Security Council itself.

50. Consideration should also be given to streamlining decision-making by the sanctions committees where Court processes intersect with the sanctions programmes, i.e. transfers of individuals to and from The Hague, as well as use of funds for reparations or legal aid purposes. In case of transfers, for instance, an automatic lifting of travel bans could be provided for in relevant resolutions, when an individual subject to such a ban needs to be transferred to or from The Hague.

51. Arrest: The Council has already referred two situations involving reports of large-scale crimes to the Prosecutor, and the Prosecutor regularly reports back to the Council on these matters. The Council and the Court should together seek more constructive strategies for attaining their mutual goals. The failure of States to implement ICC arrest warrants may also be connected with the failure to implement Security Council resolutions relating to cessation of violence, disarming parties to the conflict, ensuring an end to impunity through local initiatives, and other relevant obligations.

52. The Court welcomes the updated UN Guidelines the Office of Legal Affairs has disseminated in March of this year on contacts with persons who are the subject of arrest warrants or summonses issued by the ICC. These guidelines can serve as a basis for a more comprehensive and consistent approach by States Parties and the Council. The OTP has called for careful documentation and analysis of such contacts to assess which contacts are truly essential and what is the impact of such contacts, in order to further refine the policy through practice.

53. The Council could request the UN Secretariat to provide reports on ongoing activities of the suspects at large, and could seek information on this issue from outside the UN as well. This would help to highlight alleged ongoing involvement of suspects in current crimes and underscore the importance of arrest.

54. The Council could consider drawing up, or tasking the UN Secretariat to draw up, guidelines for States in the use of force in conducting arrests, as a measure to encourage arrests that are undertaken in line with international law obligations. The guidelines could be developed separately or in line with guidelines for peacekeeping forces about the conduct of arrests, and training to implement those guidelines.

²² S/PRST/2013/12.

²³ See e.g. S/RES/1591 (2005), para 3(c) provides for application of these measures to individuals “*who impede the peace process, constitute a threat to stability in Darfur and the region, commit violations of international humanitarian or human rights law or other atrocities, violate the measures implemented by Member States in accordance with paragraphs 7 and 8 of resolution 1556 (2004) and paragraph 7 of this resolution as implemented by a state, or are responsible for offensive military overflights described in paragraph 6 of this resolution...*”.

55. Follow-up to Council referrals: As noted in the Guatemala Concept Note, “*follow-up by the Council to its own referrals to the ICC is important for the UNSC for the sake of its credibility, and for the legitimacy of international criminal justice*”. A referral of a situation to the Court is crucial to ensure accountability, but without the necessary follow-up in terms of ensuring cooperation, and in particular arrest and surrender of the individuals identified by the Prosecutor, justice will not be done. On the contrary, a perception of inactivity or reticence from the Council to take further measures to ensure the cases can be brought to the courtroom and the Court is not isolated, would only undermine the Court’s credibility and legitimacy and “*could be seen by the international community as a lack on the Council’s part of the necessary commitment to uphold the rule of law generally and accountability in particular*”.

56. Response of the Council to official ICC communications about non-cooperation: There are at least seven such communications from the Judges about the Darfur situation. There is a need for the Council to ensure that it stands behind its own decisions regarding the ICC, especially when a lack of cooperation has been identified and notified by the Judges.

57. The Council could also see fit to respond to a broader scope of non-cooperation regarding its resolutions and statements regarding a situation referred. The overview of the more than 50 resolutions adopted since 2004 on Darfur, which the OTP has gathered, plus the many Presidential Statements and press statements issued, helps to illuminate the broader scope of non-cooperation on the part of the Government of the Sudan, and could benefit further discussion among Council members. The OTP would be happy to share this compilation with interested parties.

58. An option could be the creation of a working group in the Council to address ICC related matters, including non-cooperation. From meetings with States Parties, the Court also understands that there might be an advantage in convening a caucus of States Parties within the Council.

59. The Council could also consider drawing up, or tasking the UN Secretariat to draw up, analysis of failures by States to implement Council obligations, as a way of tracking the efficacy of the resolutions over time.

IV. Role of States Parties in mainstreaming ICC issues in UN fora

60. The UN, as the main forum of international cooperation and consultations, presents a unique context for promoting the mainstreaming of Rome Statute issues and considerations into a wide variety of areas of international activity.

61. States Parties play a crucial role in highlighting the interests and mandate of the Court in the various fora at the UN. Many States Parties in New York work actively to mainstream the ICC into their discussions at the UN including, in the General Assembly and the Security Council, in line with Recommendations 45, 47, 50 and 51 of the 66 Recommendations adopted by the Assembly in 2007. Each year the General Assembly and the Security Council adopt a number of resolutions and decisions in which the mandate of ICC is recognized and supported, including the annual General Assembly Resolution on the ICC. States Parties continue to offer diplomatic and political support to the Court through their multilateral and bilateral interactions. While the political and diplomatic support from States Parties is often forthcoming, it could be more robust and consistent. If States Parties remain silent when faced with an opportunity to express their support for the work of the Court or to correct misunderstandings concerning its mandate, it tends to create a negative perception that the Court has little support from the international community, a fact that could undermine the work of the Court. More information on this issue can be found in the Court’s Report on Cooperation prepared for the twelfth session of the Assembly.

62. To ensure a better understanding and provide updated information to States Parties, the Court interacts regularly with missions in New York, through the Permanent Representatives and their legal advisers. The Group of Friends of the ICC in New York is one of the relevant forums where the Court and its organs can share information with States Parties, as well as the recent informal interactive dialogues’ meetings with Security Council members. As noted previously, the Court’s Liaison Office to the UN provides a presence

for the Court at the seat of the UN in New York. The Liaison Office facilitates and promotes cooperation between the Court on the one hand and the UN and its funds, programmes and agencies on the other hand, as well as between the Court and Permanent and Observer Missions to the UN. The office also liaises with UN member States, in particular States Parties, to promote mainstreaming of ICC within discussions, reports and decisions of the various offices and organs of the UN.

V. Conclusion

63. To conclude, the Court is highly appreciative of the excellent cooperation it has received from the UN since the start of its operations, ten years ago – ranging from operational assistance in the field to broad support at the highest levels of the UN leadership.

64. As the Court's activities have continuously increased over the years, and concern increasingly complex and sensitive situations and topics, close coordination with, and strong support from, the UN continue to be essential for the success of the Court in fulfilling its independent judicial mandate.

65. In particular, the Court believes that priority efforts should currently focus on enhancing and systematizing the interaction with the UN operations and commissions in the field, increasing the mainstreaming of ICC issues by States Parties in the different UN fora, and, finally, strengthening and expanding the ICC's relationship with the UN Security Council, in order to further achieve their mutual goals of ensuring international peace and security.

66. The Court and its organs thank States Parties for this opportunity to provide information on these crucial issues, and remain available for further discussion on the basis of this report.
