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## **Report of the Bureau on non-cooperation**

### **Addendum**

#### **Annex II**

### **Toolkit for the implementation of the informal dimension of the Assembly procedures relating to non-cooperation**

#### *Table of contents*

	<i>Page</i>
I. Introduction.....	2
II. Monitoring the travel of persons subject to warrants of arrest.....	3
A. Monitoring through the diplomatic network.....	3
B. Google alerts.....	3
C. Sharing information with the Court and the non-cooperation focal points.....	3
D. Sharing information with States Parties.....	4
E. Sharing information with civil society.....	4
III. Preventing instances of non-cooperation .....	4
A. Draft statements .....	5
B. Draft notes verbale .....	5
C. Talking points .....	7
D. Draft media release .....	8
IV. Sensitizing interlocutors to non-cooperation issues.....	9
V. Security Council referrals .....	9
A. UNSC referral resolutions .....	9
B. The obligation to cooperate .....	10
C. Future referral resolutions.....	10

## I. Introduction

1. This Toolkit has been developed by the non-cooperation focal points as a resource for States Parties to improve the implementation of the informal measures of the procedures on non-cooperation. States Parties may wish to draw on the resources included in this Toolkit in encouraging States to meet their obligations to cooperate with the International Criminal Court (ICC) in relation to the arrest and surrender of persons subject to a warrant of arrest.

2. Article 112 (2) of the Rome Statute provides that:

*The Assembly shall:*

*[...]*

*(f) Consider pursuant to article 87, paragraphs 5 and 7, any question relating to non-cooperation;*

*(g) Perform any other function consistent with this Statute or the Rules of Procedure and Evidence.*

3. Successive resolutions on cooperation adopted by the Assembly of States Parties have stressed that: ‘the non-execution of cooperation requests has a negative impact on the ability of the Court to execute its mandate, in particular when it concerns the arrest and surrender of individuals subject to arrest warrants’ (see most recently operative paragraph 1 of ICC-ASP/14/Res.3).

4. The *Assembly Procedures relating to non-cooperation* (adopted under ICC-ASP/10/Res.5) identified a scenario (in paragraph 7(b)) where:

*[...] the Court might not yet have referred a matter of non-cooperation to the Assembly, but where there are reasons to believe that a specific and serious incident of non-cooperation in respect of a request for arrest and surrender of a person (article 89 of the Rome Statute) is about to occur or is currently ongoing and urgent action by the Assembly may help bring about cooperation.*

5. Under the Assembly Procedures, the informal response procedure may be invoked in such scenarios, as outlined in paragraph 15:

*In order for the Assembly to be able to respond to an impending or ongoing situation of non-cooperation, which may still lead to actual cooperation in that specific case, a flexible mechanism would be required for urgent action. One possibility would be to build on and institutionalize the good offices that the President of the Assembly has undertaken in the past, on an ad-hoc basis, in relation to requested States. The mandate for the President builds on this past work, but is intended to make it more effective through the activities and personal connections of Bureau members from other regions, and to signal the importance placed on cooperation by the Assembly.*

6. The Assembly Procedures provide for the appointment of four focal points to assist the President. Under paragraph 19, where the President’s good offices have been triggered of his or her own initiative, he or she is mandated to:

*[...] raise the issue informally and directly with officials from the requested State and other relevant stakeholders, with a view to promoting full cooperation. The purpose of this interaction with the requested State would be to raise awareness of the issue and to promote full cooperation while that would still be possible, but not to make findings of a judicial nature, which is the sole prerogative of the Court. The President may also remind the requested State of the possibility under article 97 of the Statute to consult with the Court. The President may request any of the regional focal points, or any other Bureau member, as appropriate, to provide assistance in this interaction. In the case of scenario 7(b) above, the President should use the interaction with officials from the requested State to verify the information on the basis of which he or she became active.*

7. Under resolution ICC-ASP/14/Res.4, the Assembly requested the President of the Assembly ‘to continue to engage actively and constructively with all relevant stakeholders, in accordance with the Bureau procedures on non-cooperation, both to prevent instances of non-cooperation and to follow up on a matter of non-cooperation referred by the Court to the Assembly’ (Annex I, paragraph 2(a)).

8. To this end, the Bureau recommended at paragraph 51 of its report on non-cooperation (ICC-ASP/14/38 (2015)) that:

*[...] throughout the inter-sessional period and before the fifteenth session of the Assembly, the focal points, in collaboration with any interested States, and in consultation with the Court, civil society and relevant international and regional organizations finalize the toolkit to improve the implementation of the informal measures of the procedures on non-cooperation.*

9. The current document is the result of those efforts.

10. This Toolkit is the result of a desire to encourage more standardized responses to potential instances of non-cooperation, and to depoliticize action taken to encourage States to meet their cooperation obligations. This said, it is stressed that the non-cooperation focal points will continue to tailor our approach on a case-by-case basis to ensure that our efforts are as effective as possible. While this Toolkit provides resources in the form of templates and guidance for States Parties to draw upon in order to facilitate their outreach in time sensitive situations, our expectation is that States Parties will similarly tailor their approach on a case-by-case basis.

## **II. Monitoring the travel of persons subject to warrants of arrest**

### **A. Monitoring through the diplomatic network**

11. Obtaining early information about the future travel plans of persons subject to a warrant of arrest can enable the Court, the President of the Assembly, the non-cooperation focal points, States Parties and civil society to take action to encourage States to meet their cooperation obligations.

12. As such, States Parties are encouraged to alert their diplomatic networks to seek out and report on the travel of persons subject to a warrant of arrest.

### **B. Google alerts**

13. Representatives of States Parties can set up Google alerts to stay apprised of the travel of persons subject to an ICC warrant of arrest in four easy steps:

- (a) Go to <https://www.google.com/alerts>;
- (b) Enter key search terms (e.g. “[name of individual subject to warrant of arrest]”, “Travel”, “International Criminal Court” etc.);
- (c) Enter your email address and click CREATE ALERT; and
- (d) Google sends you a confirmation email. Verify your request by clicking the link in this email.

14. After completing these steps, you will receive links to relevant articles, news items etc.

### **C. Sharing information with the Court and the non-cooperation focal points**

15. The exchange of information in relation to the travel of persons subject to a warrant of arrest can facilitate action by the Court, the non-cooperation focal points, States Parties and civil society aimed at encouraging States to meet their cooperation obligations.

16. All States, international and regional organizations, non-governmental organizations and members of civil society, are encouraged to share information of which they become aware about the potential travel of persons subject to a warrant of arrest.

17. The non-cooperation focal points have established a joint email address to which such information can be sent: [iccnoncooperation@gmail.com](mailto:iccnoncooperation@gmail.com).

18. The non-cooperation focal points will share relevant information (without disclosing its source unless authorized to do so) with the Court.

19. To ensure that information can be shared with all organs of the Court in a timely and effective manner, the Court has established a joint email address to which information regarding the travel of persons subject to a warrant of arrest can also be sent direct (the email address is not to be made public and is only to be shared with competent national authorities): [ICCArrest@icc-cpi.int](mailto:ICCArrest@icc-cpi.int).

20. Information sent to this address will be provided to a limited number of ICC staff members.

#### **D. Sharing information with States Parties**

21. On receipt of advice about the possible travel of persons subject to a warrant of arrest, each non-cooperation focal point will share relevant information (without disclosing the source of information unless authorized to do so) with members of their respective regional group to enable States Parties to take any action that they may deem appropriate.

22. For this purpose, each non-cooperation focal point maintains a list of the email addresses of the representatives of States Parties responsible for ICC matters. States Parties should ensure that the contact details of a representative in New York are provided to their regional focal point and keep this information updated in the case of a change in personnel. At the discretion of States Parties, representatives based in The Hague and/or in capitals may be added to the contact list.

23. The Court has requested that each State Party also provide the contact details for use outside of normal business hours in relation to urgent cooperation matters relating to the travel of persons subject to a warrant of arrest. States Parties may choose to share a generic email address or telephone number that is monitored 24/7, or may choose to send contact details of multiple representatives in order to maximize the prospects of at least one point of contact being able to be reached. States Parties are requested to provide this information to their regional non-cooperation focal point, so it can be collated and shared with the Court.

24. On occasion, information concerning the travel of persons subject to a warrant of arrest may be shared with States Parties by the Secretariat of the Assembly of States Parties at the request of the President of the Assembly or the non-cooperation focal points.

#### **E. Sharing information with civil society**

25. The non-cooperation focal points have established contact with representatives of civil society, in particular the Coalition for the International Criminal Court (CICC) and Human Rights Watch.

26. Information about the travel of persons subject to a warrant of arrest is shared by the non-cooperation focal points with these umbrella bodies, to enable them to disseminate appropriate information through their regional and local networks.

### **III. Preventing instances of non-cooperation**

27. The following templates have been prepared by the non-cooperation focal points as a resource for States Parties to draw on in order to assist them in encouraging States to meet their cooperation obligations in relation to the arrest and surrender of persons subject to a warrant of arrest.

## A. Draft statements

### 28. Before and during travel:

We understand that [*name*], who is subject to a warrant of arrest issued by the ICC will travel to [*country name*], a State Party to the Rome Statute of the ICC.

It is recalled that under the Rome Statute, States Parties have an obligation to cooperate fully with the ICC in its investigation and prosecution of crimes within jurisdiction of the Court. In particular, States Parties have an obligation to arrest and surrender to the Court persons subject to a warrant of arrest who enter their territory.

[It is [further] recalled that under resolution [1593 (2005)] [1970 (2011)], the Security Council urged all States to cooperate fully with the Court].

We call upon [*country name*] to act in accordance with its obligations under the Rome Statute [and] [Security Council resolution [1593 (2005)] [1970 (2011)]].

### 29. After travel:

We understand that [*name*], who is subject to a warrant of arrest issued by the ICC traveled to [*country name*], a State Party to the Rome Statute of the ICC.

We regret that [*country name*] did not fulfill its obligation to cooperate fully with the ICC in its investigation and prosecution of crimes within jurisdiction of the Court.

We call on all States Parties to act in accordance with their obligations under the Rome Statute [and] [Security Council resolution [1593 (2005)] [1970 (2011)]].

## B. Draft notes verbale

### 30. Before and during travel to State Party:

[...] and has the honor to advise that it has been brought to the attention of the Government of [...] that [*name*] [is intending to enter] [has entered] your territory [*in order to attend .../for the purpose of...*].

The Permanent Mission of [...] notes that [*name*] is subject to [a] [*insert number in the case of multiple warrants*] warrant[s] of arrest for [war crimes] [crimes against humanity] [genocide] issued by the International Criminal Court (ICC). Consistent with the orders of the Court, the Registry has sent all States Parties to the Rome Statute a request to arrest and surrender [*name*] should [he/she] enter their territory.

The Permanent Mission of [...] further notes that under article 86 of the Rome Statute, States Parties are obliged to cooperate fully with the Court in its investigation and prosecution of crimes within its jurisdiction. Under article 89 (1), States Parties have a specific obligation to comply with requests from the Court for arrest and surrender.

The Court's ability to fulfil its mandate is dependent on States meeting their cooperation obligations, in particular when it concerns the arrest and surrender of individuals subject to arrest warrants.

As recognized in the preamble to the Rome Statute, the crimes under the Court's jurisdiction deeply shock the conscience of humanity and threaten the peace, security and well-being of the world. Under the Rome Statute, States Parties pledged to end impunity for the perpetrators of these crimes. In [*sending State's*] view, it is essential that all States Parties meet this duty – this is the least they owe to the victims of the crimes allegedly committed by [*name*].

The Permanent Mission of [...] trusts that [...Ministry of Foreign Affairs/Embassy] shares [*sending State's*] commitment to ending impunity and will not allow [*name*] to enter its territory without meeting its obligation to arrest and surrender [*name*].

## 31. After travel to State Party:

[...] and has the honor to note with concern that it has been brought to the attention of the Government of [...] that [name] entered your territory *[in order to attend.../for the purpose of...]*.

In this regard, the Permanent Mission of [...] reminds the Permanent Mission of [...] that [name] is subject to [a] *[insert number in the case of multiple warrants]* warrant[s] of arrest for [war crimes] [crimes against humanity] [genocide] issued by the International Criminal Court (ICC).

The Permanent Mission of [...] further notes that under article 86 of the Rome Statute, States Parties are obliged to cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court. Under article 89 (1) States Parties have a specific obligation to comply with requests from the Court for arrest and surrender. Indeed, in the present case, [host State] was obliged by its treaty obligations to immediately arrest [name] upon his/her arrival.

The Court's ability to fulfil its mandate is dependent on States meeting their cooperation obligations, in particular when it concerns the arrest and surrender of individual subject to arrest warrants.

As recognized in the preamble to the Rome Statute, the crimes under the Court's jurisdiction deeply shock the conscience of humanity and threaten the peace, security and well-being of the world. Under the Rome Statute, States Parties pledged to end impunity for the perpetrators of these crimes. In *[sending State's]* view, it is essential that we all meet this duty – this is the least we owe to the victims of the crimes allegedly committed by [name].

The Permanent Mission of [...] trusts that [...Ministry of Foreign Affairs/Embassy] shares *[sending State's]* commitment to ending impunity and will not allow [name] to enter its jurisdiction again without meeting its obligation to arrest and surrender [name].

## 32. Transit State Party:

[...] and has the honor to advise that it has been brought to the attention of the Government of [...] that [name] is intending to visit *[name of destination State]* *[in order to attend.../for the purpose of...]* and will travel through *[name of transit State]* as part of [his/her] journey.

The Permanent Mission of [...] notes that [name] is subject to [a] *[insert number in the case of multiple warrants]* warrant[s] of arrest for [war crimes] [crimes against humanity] [genocide] issued by the International Criminal Court (ICC). Consistent with the orders of the Court, the Registry has sent all States Parties to the Rome Statute a request to arrest and surrender [name] should [he/she] enter their territory.

The Permanent Mission of further notes that under article 86 of the Rome Statute, States Parties are obliged to cooperate fully with the Court in its investigation and prosecution of crimes within its jurisdiction. Under article 89 (1) States Parties have a specific obligation to comply with requests from the Court for arrest and surrender.

The Court's ability to fulfil its mandate is dependent on States meeting their cooperation obligations, in particular when it concerns the arrest and surrender of individual subject to arrest warrants.

As recognized in the preamble to the Rome Statute, the crimes under the Court's jurisdiction deeply shock the conscience of humanity and threaten the peace, security and well-being of the world. Under the Rome Statute, States Parties pledged to end impunity for the perpetrators of these crimes. In *[sending State's]* view, it is essential that all States Parties meet this duty – this is the least they owe to the victims of the crimes allegedly committed by [name].

The Permanent Mission of [...] trusts that [...] Ministry of Foreign Affairs/Embassy] shares *[sending State's]* commitment to ending impunity and will

not allow [*name*] to transit its jurisdiction without meeting its obligation to arrest and surrender [*name*].

33. Non-State Party:

[...] and has the honor to advise that it has been brought to the attention of the Government of [...] that [*name*] is intending to enter your territory [*in order to attend.../for the purpose of...*].

The Permanent Mission of [...] notes that [*name*] is subject to [a] [*insert number in the case of multiple warrants*] warrant[s] of arrest for [war crimes] [crimes against humanity] [genocide] issued by the International Criminal Court (ICC).

In resolution 70/264, the United Nations General Assembly acknowledged the role of the ICC in a multilateral system that aims to end impunity, promote the rule of law, promote and encourage respect for human rights, achieve sustainable peace, and further the development of nations, in accordance with international law and the purposes and principles of the Charter of the United Nations. The General Assembly also emphasised the importance of cooperation with States that are not parties to the Rome Statute.

[Furthermore, the Security Council, in resolution [1593 (2005)/1970 (2011)] urged all States and concerned regional and other international organisations to cooperate fully with the ICC.]

The Court's ability to fulfil its mandate to end impunity is dependent on States' cooperation, in particular when it concerns the arrest and surrender of individual subject to arrest warrants.

It is universally recognized that the crimes under the Court's jurisdiction deeply shock the conscience of humanity and threaten the peace, security and well-being of the world. Ending impunity for these crimes therefore concerns all States. In [*sending State's*] view, it is crucial that all States cooperate with the ICC – this is the least we owe the victims of the crimes allegedly committed by [*name*].

The Permanent Mission of [...] trusts that [...Ministry of Foreign Affairs/Embassy] shares [*sending State's*] commitment to ending impunity and encourages [...Ministry of Foreign Affairs/Embassy] to cooperate with the ICC with regards to the arrest warrant issued against [*name*].

### C. Talking points

34. State Party:

(a) We understand that [*name*] is intending to visit [*host State*] in order to attend [...];

(b) The International Criminal Court (ICC) has issued a warrant of arrest against [*name*] for [war crimes/crimes against humanity/genocide];

(c) The establishment of the ICC was a milestone in the fight against impunity and effective criminal justice is the least we owe to victims of crimes of concern to the international community as a whole;

(d) The ICC relies on cooperation by each and every State Party in order to fulfil its mandate;

(e) For this reason, cooperation lies at the heart of the Rome Statute. Under article 86, States Parties shall, in accordance with the provisions of the Statute, cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court;

(f) Failure to comply with a request to cooperate by the ICC contrary to the provisions of the Rome Statute prevents the Court from exercising its functions;

(g) Specifically, it is obligatory for State Parties, in accordance with the relevant provisions of the Rome Statute and the procedure under their national law, comply with requests for arrest and surrender to the Court;

(h) [*Where Security Council resolution 1593 (2005) applies*: The UNSC has determined that the situation in Sudan constitutes a threat to international peace and security:

(i) Acting under Chapter VII of the Charter of the United Nations the Security Council has decided that the Government of Sudan and all other parties to the conflict in Darfur, shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor pursuant to the resolution;

(ii) While recognizing that States not party to the Rome Statute have no obligation under the Statute, the Council also urged all States and concerned regional and other international organizations to cooperate fully with the Court.]

(i) [*Where Security Council resolution 1970 (2011) applies*: The UNSC acting under Chapter VII of the Charter of the United Nations has decided that the Libyan authorities shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor pursuant to the resolution.

(i) While recognizing that States not party to the Rome Statute have no obligation under the Statute, the Council also urged all States and concerned regional and other international organizations to cooperate fully with the Court and the Prosecutor.]

(j) The Government of [...] trusts that [*host State*] shares [*sending State's*] commitment to ending impunity and will not allow [*name*] to enter its territory without meeting its obligation to arrest and surrender [*name*].

35. Non-State Party:

(a) We understand that [*name*] is intending to visit [*host State*] in order to attend [...];

(b) The International Criminal Court (ICC) has issued a warrant of arrest against [*name*] for [war crimes][crimes against humanity][genocide];

(c) In resolution 70/264, the United Nations General Assembly acknowledged the role of the ICC in a multilateral system that aims to end impunity, promote the rule of law, promote and encourage respect for human rights, achieve sustainable peace and further the development of nations, in accordance with international law and the purposes and principles of the Charter of the United Nations:

(i) The General Assembly also emphasized the importance of cooperation with States that are not parties to the Rome Statute.

(d) [The Security Council, in resolution [1593/1970] also urged all States and concerned regional and other international organizations to cooperate fully with the ICC];

(e) The ICC's ability to fulfill its mandate to end impunity is dependent on States' cooperation, in particular when it concerns the arrest and surrender of individual subject to arrest warrants;

(f) It is internationally recognized that the crimes under the Court's jurisdiction deeply shock the conscience of humanity and threaten the peace, security and well-being of the world;

(g) Ending impunity for these crimes therefore concerns all States. It is crucial that all States cooperate with the ICC – this the least we owe the victims of the crimes allegedly committed by [*name*].

#### D. Draft media release

36. [*Name of State Party*] is deeply concerned by advice that [*name*] [will travel/has travelled] to [*host State*] for [*description of the purpose of travel*].



37. The International Criminal Court (ICC) has issued [a] [*insert number in the case of multiple warrants*] warrant[s] of arrest for [war crimes] [crimes against humanity] [and] [genocide] against [*name*] in relation to allegations of deeply shocking crimes committed in [*place of the commission of alleged crimes*].

38. [This/These] warrant[s] [has/have] now been outstanding for [x] years.

39. [All States Parties to the Rome Statute have a binding legal obligation to arrest and surrender persons subject to a warrant of arrest issued by the ICC who are found on their territory.] [*Name of country*] has a specific obligation to cooperate with the Court under UN Security Council resolution [1593 (2005)/1970 (2011)]. [In addition,] UN Security Council resolution [1593 (2005)/1970 (2011)] urges all States and concerned regional and other international organizations to cooperate fully with the Court and the Prosecutor.]

40. In the name of the victims of Rome Statute crimes committed in [*place of the commission of alleged crimes*], [*sending State*] [calls on [*host State*] to ensure that it meets its obligations in full and helps to advance the international community's efforts to deliver justice to the victims of these appalling crimes] [expresses our strong disappointment that [*host State*] failed to support the international community's efforts to deliver justice to the victims of these appalling crimes.]

#### IV. Sensitizing interlocutors to non-cooperation issues

41. States Parties are encouraged to express their support for the ICC in all relevant bilateral and multilateral meetings, especially if these meetings are with States Parties and concern the topics of the rule of law, international law or accountability for serious international crimes.

42. In general, it is advisable that the topic of non-cooperation is raised by underlining States' obligation to cooperate with the ICC, the importance of ensuring accountability for serious international crimes and the need to deliver justice to the victims of such crimes. If feasible, it can be inquired what obstacles a particular State might encounter regarding cooperation with the ICC.

43. In order to ensure that support for the ICC, and the importance of cooperation with the Court, is raised in all meetings, as appropriate, States Parties are encouraged to mainstream messaging by reaching out to all persons handling issues related to international cooperation and justice within the Ministry of Foreign Affairs and Ministry of Justice of their respective countries.

44. States Parties are also encouraged to develop contacts with members of civil society active in encouraging States to meet their non-cooperation obligations. This could include debriefings after instances of non-cooperation take place.

45. Seminars and workshops including representatives of civil society, the Court and States Parties may help maintain public attention on situations where non-cooperation is preventing the Court from fulfilling its mandate.

#### V. Security Council referrals

46. To date, the United Nations Security Council (UNSC) has referred two situations to the Court under article 13(b) of the Rome Statute: the situation in Darfur, Sudan (UNSC resolution 1593 (2005)) and the situation in Libya (UNSC resolution 1970 (2011)).

##### A. UNSC referral resolutions

47. Under operative paragraph 2 of resolution 1593 (2005), the Council:

*Decides that the Government of Sudan and all other parties to the conflict in Darfur, shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor pursuant to this resolution and, while recognising that States not party to the Rome Statute have no obligation under the Statute, urges all States and concerned regional and other international organizations to cooperate fully.*

48. The Council used the same language in operative paragraph 5 of resolution 1970 (2011), with the clarification that cooperation should be extended to the Court and the Prosecutor:

*Decides that the Libyan authorities, shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor pursuant to this resolution and, while recognising that States not party to the Rome Statute have no obligation under the Statute, urges all States and concerned regional and other international organizations to cooperate fully with the Court and the Prosecutor.*

## **B. The obligation to cooperate**

49. In a series of decisions, the Court has held that the Rome Statute, the Elements of Crimes and the Rules of Procedure and Evidence govern investigations and prosecutions arising from situations referred to the Court by the UNSC.

50. For example, in *Decision on Libya's Submissions Regarding the Arrest and Surrender of Saif Al-Islam Gaddafi* (ICC-01/11-01/11), *Prosecutor v Saif Al-Islam Gaddafi and Abdullah Al-Senussi*, Pre-Trial Chamber I, 7 March 2012 (at 12), the Pre-Trial Chamber held that:

*...although Libya is not a State Party to the Statute, it is under an obligation to cooperate with the Court. This obligation stems directly from the Charter of the United Nations, more precisely article 25 and Chapter VII of that Charter, and UNSC resolution 1970. UNSC resolution 1970 orders Libya to "cooperate fully" with the Court, which means that the Statute, and especially its Part IX, is the legal framework within which Libya must comply with the Surrender Request...*

## **C. Future referral resolutions**

51. Notwithstanding the aforementioned Pre-Trial Chamber decisions, arguments about the Rome Statute's inapplicability to non-States Parties continue to be ventilated.

52. In order to avoid such debates, which may be perceived as detracting from the decisions of both the UNSC and the ICC, the following language could be supported by States Parties for inclusion in future UNSC referral resolutions, on the basis that it more closely reflects the cooperation language found in resolutions 827 (1993) and 955 (1994), which respectively established the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda:

*Decides that [X State] [Y authorities], shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor pursuant to this resolution and the Rome Statute of the International Criminal Court, the Elements of Crimes and the Rules of Evidence and Procedure of the International Criminal Court and, while recognising that other States not party to the Rome Statute have no obligation under the Statute, urges all States and concerned regional and other international organizations to cooperate fully with the Court and the Prosecutor.*

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