

## Resolution ICC-ASP/17/Res.5

*Adopted at the 13th plenary meeting, on 12 December 2018, by consensus*

### ICC-ASP/17/Res.5

#### **Strengthening the International Criminal Court and the Assembly of States Parties**

*The Assembly of States Parties,*

*Mindful* that each individual State has the responsibility to protect its population from the crime of genocide, war crimes, and crimes against humanity, that the conscience of humanity continues to be deeply shocked by unimaginable atrocities in various parts of the world, and that the need to prevent and the duty to end the most serious crimes of concern to the international community and to put an end to the impunity of the perpetrators of such crimes is now widely acknowledged,

*Convinced* that the International Criminal Court (“the Court”) is an essential means of promoting respect for international humanitarian law and human rights, thus contributing to freedom, security, justice and the rule of law, as well as to the prevention of armed conflicts, the preservation of peace and the strengthening of international security and the advancement of post-conflict peacebuilding and reconciliation with a view to achieving sustainable peace, in accordance with the purposes and principles of the Charter of the United Nations,

*Convinced also* that justice and peace are complementary and mutually reinforce each other,

*Welcoming* the activities and events held in commemoration of the 20th anniversary of the Rome Statute, which reaffirmed the support of States Parties, civil society and other stakeholders for the important work of the Court,

*Welcoming* that the international community has agreed to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels and, in this regard, encouraging societies facing conflicts to move from war to peace through peaceful solutions,

*Convinced* that justice and the fight against impunity and holding to account the perpetrators of the most serious crimes of concern to the international community and persons criminally responsible under the Statute are, and must remain, indivisible and that in this regard universal adherence to the Rome Statute of the International Criminal Court is essential,

*Welcoming* the Court’s central role as the only permanent international criminal court within an evolving system of international criminal justice and the contribution of the Court to guarantee lasting respect for and the enforcement of international justice,

*Noting* the primary responsibility of national jurisdictions to prosecute the most serious crimes of international concern and the increased need for cooperation in ensuring that national legal systems are capable of prosecuting such crimes,

*Reaffirming* its commitment to the Rome Statute and its determination that the most serious crimes of concern to the international community as a whole must not go unpunished, and *underlining* the importance of the willingness and ability of States to genuinely investigate and prosecute such crimes,

*Welcoming* the efforts and achievements of the Court in bringing those most responsible for the crimes under the Rome Statute to justice and thus to contribute to the prevention of such crimes and *noting* the jurisprudence of the Court on the issue of complementarity,

*Recalling* that the application of articles 17, 18 and 19 of the Rome Statute concerning the admissibility of cases before the Court is a judicial matter to be determined by the judges of the Court,

*Recalling also* that greater consideration should be given to how the Court will complete its activities in a situation country and that possible completion strategies could provide guidance on how a situation country can be assisted in carrying on national proceedings when the Court completes its activities in a given situation,

*Recognizing* that crimes within the jurisdiction of the Court threaten the peace, security and well-being of the world and, in consequence, that these are values protected by the Rome Statute,

*Underscoring* its respect for the judicial independence of the Court and its commitment to ensuring respect for and the implementation of the Court's judicial decisions,

*Taking note with appreciation* of the annual United Nations General Assembly resolutions concerning the Court,

*Welcoming* the statement by the President of the Security Council of 12 February 2013 in which the Council stated its intention to continue fighting impunity, reiterated its previous call regarding the importance of State cooperation with the Court in accordance with the respective obligations of States and expressed its commitment to effective follow-up of Council decisions in this regard,

*Deeply concerned* by the ongoing lack of effective follow up by the Security Council to its resolutions referring situations to the Court and its consequences, despite efforts by States Parties,

*Recalling* the full range of justice and reconciliation mechanisms with restorative measures that are complementary to criminal justice processes, including truth and reconciliation commissions, national reparation programmes and institutional and legal reforms, including guarantees of non-recurrence,

*Acknowledging* relevant decisions of the Court that have recognized that contributions to the promotion of peace and reconciliation may be a relevant consideration in sentencing decisions, on a case by case basis,

*Recalling* the success of the first Review Conference of the Rome Statute, held in Kampala, Uganda, from 31 May to 11 June 2010,

*Recalling also* the decision by the Assembly of States Parties ("the Assembly") to establish a representation of the Court at the African Union Headquarters in Addis Ababa, and *reiterating* that such presence would promote dialogue with the Court and the understanding of its mission within the African Union and among African States, individually and collectively,

*Appreciating* the invaluable assistance that has been provided by civil society to the Court,

*Reaffirming* the importance of States Parties' cooperation with the Court to the fulfilment of its mandate, and gravely concerned by attempts at intimidation to deter cooperation,

*Concerned* by the recent reports of threats and intimidation directed at some civil society organizations cooperating with the Court,

*Emphasizing* the importance of equitable geographical representation and gender balance in the organs of the Court, and, as appropriate, in the work of the Assembly and its subsidiary bodies,

*Mindful* of the need to encourage the full participation of States Parties, Observers and States not having observer status in the sessions of the Assembly and to ensure the broadest visibility of the Court and the Assembly,

*Recognizing* that victims' rights to equal and effective access to justice, protection and support; adequate and prompt reparation for harm suffered; and access to relevant information concerning violations and redress mechanisms are essential components of justice, *emphasizing* the importance of effective outreach to victims and affected communities in order to give effect to the unique mandate of the Court towards victims and

*determined* to ensure the effective implementation of victims' rights, which constitute a cornerstone of the Rome Statute system,

*Conscious* of the vital role of field operations in the Court's work in situation countries and the importance of stakeholders working together to create suitable conditions for field operations,

*Conscious also* of the risks faced by personnel of the Court in the field,

*Recalling* that the Court acts within the constraints of an annual programme budget approved by the Assembly,

1. *Reconfirms* its unwavering support for the Court as an independent and impartial judicial institution, *reiterates* its commitment to uphold and defend the principles and values enshrined in the Rome Statute and to preserve its integrity undeterred by any threats against the Court, its officials and those cooperating with it, and *renews* its resolve to stand united against impunity;

## A. Universality of the Rome Statute

2. *Invites* States not yet parties to the Rome Statute of the International Criminal Court to become parties to the Rome Statute, as amended, as soon as possible and *calls upon* all States Parties to intensify their efforts to promote universality;

3. *Notes with deep regret* the notification of withdrawal submitted by a State Party under article 127(1) of the Statute on 17 March 2018, and *calls upon* that State to reconsider its withdrawal;<sup>1</sup>

4. *Welcomes with appreciation* also the continuation by the President of the Assembly and by the Bureau of the dialogue on the "Relationship between Africa and the International Criminal Court" initiated by the Bureau during the fifteenth session of the Assembly of States Parties, and *invites* the Bureau to further widen and deepen this dialogue as needed with all interested State Parties;

5. *Welcomes* the initiatives undertaken to celebrate 17 July as Day of International Criminal Justice<sup>2</sup> as well as those to commemorate the 20<sup>th</sup> anniversary of the Rome Statute and *recommends* that, on the basis of lessons learnt, all relevant stakeholders, together with the Court, continue to engage in preparation of appropriate activities and share information with other stakeholders to that effect through the Secretariat of the Assembly<sup>3</sup> and otherwise;

6. *Calls upon* all international and regional organizations as well as civil society to intensify their efforts to promote universality;

7. *Decides* to keep the status of ratifications under review and to monitor developments in the field of implementing legislation, inter alia with a view to facilitating the provision of technical assistance that States Parties to the Rome Statute, or States wishing to become parties thereto, may wish to request from other States Parties or institutions in relevant areas; and, *calls upon* States to annually provide the Secretariat of the Assembly of States Parties with updated information about actions and activities in support of international justice, as per the Plan of Action (paragraph 6(h))<sup>4</sup>;

8. *Recalls* that the ratification of the Rome Statute must be matched by national implementation of the obligations emanating therefrom, notably through implementing legislation, in particular in the areas of criminal law, criminal procedural law and international cooperation and judicial assistance with the Court and, in this regard, *urges* States Parties to the Rome Statute that have not yet done so to adopt such implementing

<sup>1</sup> Depositary Notification C.N.138.2018.TREATIES-XVIII.10, see at: <https://treaties.un.org/doc/Publication/CN/2018/CN.138.2018-Eng.pdf>.

<sup>2</sup> *Official Records... Review Conference... 2010 (RC/11)*, part II.B, Kampala declaration (RC/Decl.1), para 12.

<sup>3</sup> See ICC - Secretariat of the Assembly of States Parties at [https://asp.icc-cpi.int/en\\_menus/asp/asp%20events/ICJ-D/Pages/default.aspx](https://asp.icc-cpi.int/en_menus/asp/asp%20events/ICJ-D/Pages/default.aspx).

<sup>4</sup> ICC-ASP/5/Res.3, annex I.

legislation as a priority and *encourages* the adoption of victims-related provisions, as and when appropriate;

9. *Welcomes* the report of the Bureau on the Plan of action for achieving universality and full implementation of the Rome Statute<sup>5</sup> and *notes with appreciation* the efforts of the Court's President, the Office of the Prosecutor, the President of the Assembly, the Assembly, States Parties and of civil society to enhance the effectiveness of universality-related efforts and to encourage States to become parties to the Rome Statute, as amended, and to the Agreement on Privileges and Immunities, as well as relevant efforts undertaken in the framework of the Universal Periodic Review of the Human Rights Council;

10. *Recalls* Rule 42 of the rules of procedure of the Assembly of States Parties, *endorses* the Bureau decision of 18 October 2017 whereby it adopted an Understanding on the Participation of Observer States in Meetings of the Assembly of States Parties, and *underscores* the importance of promoting universality of the Rome Statute and of strengthening the openness and transparency of the Assembly;

## **B. 20th anniversary of the Rome Statute**

11. *Welcomes* the activation of the International Criminal Court's jurisdiction over the crime of aggression as of 17 July 2018, as decided by consensus by the Assembly of States Parties in its resolution ICC-ASP/16/Res.5, marking the first time that a permanent international court has the authority to hold individuals accountable in respect of this crime, thereby completing the achievements of the Rome and Kampala Conferences of 1998 and 2010;

12. *Renews* its call upon all States Parties to consider ratifying or accepting the amendments to the Rome Statute on the crime of aggression;

13. *Welcomes* the high-level event co-organized by the Court and the Assembly on 16 and 17 July 2018 in The Hague, which included a Mock Trial, a Solemn Hearing and a Symposium on the topic "Enduring Value of the Rome Statute to Humanity";

14. *Welcomes* the high-level event entitled "20th anniversary of the Rome Statute: The need for universality and the International Criminal Court's jurisdiction over the crime of aggression", co-organized by 15 States Parties and held on 17 July 2018 at United Nations Headquarters in New York;

15. *Welcomes* the plenary discussion held at the seventeenth session of the Assembly entitled "Rome Statute 20 years – Addressing current and future challenges", which aimed at identifying a vision of support, capacity and adaptation needed for the Court and the broader Rome Statute system to continue carrying out its mandate effectively;

16. *Welcomes* the high-level regional seminar on "The International Criminal Court and South America: Opportunities for cooperation and exchanges of experiences at 20 years of the Rome Statute", held in Quito, Ecuador, from 7 to 8 June 2018; *takes note* of its outcome, the "Declaration of Quito on the Twentieth Anniversary of the Adoption of the Rome Statute of the International Criminal Court";<sup>6</sup>

17. *Welcomes* the high-level regional seminar organized by the International Criminal Court in collaboration with the Government of Georgia and the European Commission to foster regional cooperation in Eastern Europe, entitled "Opportunities for Cooperation and Exchange of Experience at 20 Years of the Rome Statute" held in Tbilisi, Georgia, from 24 to 25 October 2018;

18. *Welcomes* all other events and activities at international, regional and national level to commemorate the 20<sup>th</sup> anniversary of the Rome Statute, which contribute to a better understanding and awareness of the Rome Statute system and of the important role of the Court in fighting impunity for the most serious international crimes and notes the lists of events and activities published;<sup>7</sup>

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<sup>5</sup> ICC-ASP/17/32.

<sup>6</sup> [https://asp.icc-cpi.int/iccdocs/asp\\_docs/20a/Approved%20Quito%20Declaration%20ENG.pdf](https://asp.icc-cpi.int/iccdocs/asp_docs/20a/Approved%20Quito%20Declaration%20ENG.pdf).

<sup>7</sup> ICC-ASP/17/32, annex II; Link to the ASP website for 20<sup>th</sup> anniversary events:

[https://asp.icc-cpi.int/en\\_menus/asp/asp%20events/20a/Pages/default.aspx](https://asp.icc-cpi.int/en_menus/asp/asp%20events/20a/Pages/default.aspx).

### C. Agreement on Privileges and Immunities

19. *Welcomes* the States Parties that have become a Party to the Agreement on the Privileges and Immunities of the International Criminal Court and *recalls* that the Agreement and international practice exempt salaries, emoluments and allowances paid by the Court to its officials and staff from national taxation, and in this regard *calls upon* States Parties, as well as non-States Parties, that have not yet done so to become parties to this Agreement as a matter of priority and to take the necessary legislative or other action, pending their ratification or accession, to exempt their nationals employed by the Court from national income taxation with respect to salaries, emoluments and allowances paid to them by the Court, or to grant relief in any other manner from income taxation in respect of such payments to their nationals;

20. *Reiterates* the obligations of States Parties to respect on their territories such privileges and immunities of the Court as are necessary for the fulfilment of its purposes and *appeals* to all States which are not party to the Agreement on Privileges and Immunities in which the Court's property and assets are located or through which such property and assets are transported, to protect the property and assets of the Court from search, seizure, requisition and any other form of interference;

### D. Cooperation

21. *Refers* to its resolution ICC-ASP/17/Res.3 on cooperation;

22. *Calls upon* States Parties to comply with their obligations under the Rome Statute, in particular the obligation to cooperate in accordance with Part 9, and *also calls upon* States Parties to ensure full and effective cooperation with the Court in accordance with the Rome Statute, in particular in the areas of implementing constitutional and legislative framework, enforcement of Court decisions and execution of arrest warrants;

23. *Reaffirms* the importance of supporting all those cooperating with the Court, including States and relevant international bodies and entities, in order to secure the ability of the Court to fulfill its critical mandate of holding accountable perpetrators of the most serious crimes of concern to the international community and delivering justice to victims;

24. *Further calls upon* States Parties to continue to express their political and diplomatic support to the Court, *recalls* the sixty-six recommendations annexed to resolution ICC-ASP/6/Res.2 and *encourages* States Parties and the Court to consider further measures to enhance their implementation and to strengthen their efforts to ensure full and effective cooperation with the Court;

25. *Welcomes* the seminar organized by the co-facilitators on cooperation with the Court entitled "Arrests: a key challenge in the fight against impunity" held on 7 November 2018 at the Court's premises in The Hague, *appreciates* the contributions of the participating international and national experts aimed at identifying practical solutions to improve cooperation between States and the Court with a view to enhancing prospects for the implementation of pending arrest warrants, and *urges* The Hague Working Group to continue the discussions in order to consolidate and implement these and other proposals contributing to ensuring the arrest and surrender of suspects;

26. *Welcomes* the plenary session on cooperation held during the seventeenth session of the Assembly of States Parties which offered an opportunity for an enhanced dialogue between States Parties, the Court and members of civil society on the issues of financial investigations, arrests, and voluntary agreements and *welcomes* the signing of an enforcement of sentences cooperation agreement concluded between Slovenia and the Court during the cooperation plenary of the seventeenth session of the Assembly;

27. *Underlines* the importance of effective procedures and mechanisms that enable States Parties and other States to cooperate with the Court in relation to the identification, tracing and freezing or seizure of proceeds, property and assets as expeditiously as possible, *welcomes* the Court's report and comprehensive presentation on cooperation challenges faced by the Court with respect to financial investigation and *calls on* all States Parties to put in place and further improve effective procedures and mechanisms in this regard, with a

view to facilitate cooperation between the Court, States Parties, other States and international organizations;

28. *Recalls* the importance of the non-legally binding Declaration of Paris on asset recovery annexed to resolution ICC-ASP/16/17/Res.2;

29. *Recalls* the Procedures relating to non-cooperation adopted by the Assembly in ICC-ASP/10/Res.5, *recognizes with concern* the negative impact that the non-execution of Court requests continues to have on the ability of the Court to execute its mandate, *welcomes* the engagement by States Parties toward the successful finalization of the review of the Assembly procedures relating to non-cooperation and *decides* to adopt the revised Assembly procedures relating to non-cooperation annexed to this resolution;

30. *Recalls* the Toolkit for the implementation of the informal dimension of the Assembly procedures relating to non-cooperation,<sup>8</sup> *welcomes* the revised Toolkit<sup>9</sup> and encourages States Parties to make use of it as they see fit in order to improve the implementation of the Assembly procedures relating to non-cooperation;

31. *Takes note* of the report of the Bureau on non-cooperation,<sup>10</sup> *welcomes* the efforts of the President of the Assembly in implementing the Assembly procedures relating to non-cooperation and *recalls* that the President serves ex officio as focal point for his or her region,<sup>11</sup> *calls upon* all stakeholders, at all levels, to continue assisting the President of the Assembly, including when accomplishing his or her task with the support of the regional focal points for non-cooperation;

32. *Recalls* the role of the Assembly of States Parties and the Security Council with respect to non-cooperation as provided for by articles 87, paragraph 5, and 87, paragraph 7, of the Rome Statute, and *welcomes* the efforts of States Parties to strengthen the relationship between the Court and the Council;

33. *Welcomes* in this regard the Arria formula meeting of the Security Council on the relationship between the Court and the Security Council on 6 July 2018 and the follow-up meeting organized on 18 September 2018 by the co-facilitators on cooperation;

34. *Calls upon* States Parties to continue their efforts to ensure that the Security Council addresses the communications received from the Court on non-cooperation pursuant to the Rome Statute, *encourages* the President of the Assembly and the Bureau to continue consulting with the Security Council and *also encourages* both the Assembly and the Security Council to strengthen their mutual engagement on this matter;

35. *Noting* the orders of the Pre-Trial Chamber to the Registrar concerning action to be taken in case of information relating to travel of suspects,<sup>12</sup> *urges* States to share with the focal points on non-cooperation any information concerning potential or confirmed travel of persons against whom an arrest warrant has been issued;

## **E. Host State**

36. *Recognizes* the importance of the relationship between the Court and the host State in accordance with the terms of the Headquarters agreement and *notes with appreciation* the ongoing commitment of the host State to the Court with a view to its more efficient functioning;

## **F. Relationship with the United Nations**

37. *Recognizes* the need for enhancing the institutional dialogue with the United Nations, including on Security Council referrals;

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<sup>8</sup> ICC-ASP/15/31, Add.1, annex II.

<sup>9</sup> ICC-ASP/17/31.

<sup>10</sup> ICC-ASP/16/17.

<sup>11</sup> ICC-ASP/11/29, para. 12.

<sup>12</sup> See Corrigendum of "Orders to the Registrar concerning action to be taken in case of information relating to the travel of suspects", ICC-02/05-01/09-235-Corr (15 Apr. 2015).

38. *Welcomes* the twice-yearly reports of the Prosecutor on the situations referred by the United Nations Security Council pursuant to resolutions 1593 (2005) and 1970 (2011), and *noting* the Prosecutor's repeated requests for effective Security Council follow up, *recognizes* the efforts of some members of the Security Council in this regard, and *urges* all members of the Security Council to support future such requests;
39. *Recognizes* that ratification or accession to the Rome Statute by members of the United Nations Security Council enhances joint efforts to combat impunity for the most serious crimes of concern to the international community as a whole;
40. *Also recognizes* the Security Council's call regarding the importance of State cooperation with the Court and *encourages* further strengthening of the Security Council's relationship with the Court by:
- (a) providing effective follow up of situations referred by the Council to the Court and ongoing political support;
  - (b) enabling financial support by the United Nations for expenses incurred by the Court due to referrals of the Council;
  - (c) continued support for the work of the Court through cooperation and assistance by peacekeeping and special political missions mandated by the Council, including by considering extending best practices with respect to the drafting of mandates of peacekeeping operations while respecting their basic principles, and increased cooperation between Sanctions Committees and the Court;
  - (d) considering mandating peacekeeping and special political missions to contribute, where appropriate, to the strengthening of national justice systems through training, outreach and other forms of assistance;
  - (e) enhanced engagement by the Council with Court representatives and on matters related to the Court in various formats; and
  - (f) institutionalizing Council cooperation with and support for the Court in this regard;
41. *Recalls* the report of the Court on the status of ongoing cooperation with the United Nations, including in the field;<sup>13</sup>
42. *Encourages* all United Nations Offices, funds and programmes to strengthen their cooperation with the Court, and to collaborate effectively with the Office of Legal Affairs as focal point for cooperation between the United Nations system and the Court;
43. *Recalls* article 4 of the Relationship Agreement between the Court and the United Nations, and *stresses* the continuing need to ensure the ability of the Court to fully exercise its capacity of observer to the United Nations and its ability to interact and engage in dialogue with the United Nations, including through its attendance and participation as observer in the activities of the United Nations General Assembly, and through the Court's officials regular visits to the United Nations to provide briefings and updates on its activities;
44. *Commends* the important work of the New York Liaison Office of the Court, *reiterates* its full support for the Office and *stresses* the importance of the continued and further strengthening of the implementation of its functions in accordance with ICC-ASP/4/6, paragraphs 2, 3 and 4;
45. *Notes* the redeployment of the Liaison Office to the Registry, with a view to ensure a more effective and efficient implementation of its functions, including by enhancing synergies within the Court;
46. *Welcomes* that States Parties have been informed throughout 2018 on Court-related developments at the United Nations and in particular at the Security Council, notably through regular briefings provided by the designated State Party member of the Security Council, and *calls upon* Bureau members and other States Parties to continue providing

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<sup>13</sup> ICC-ASP/12/42.

States Parties with information about their efforts at the United Nations and in any other international or regional fora to promote the fight against impunity;

47. *Welcomes* the presentation of the annual report of the Court to the General Assembly of the United Nations<sup>14</sup> and in particular its focus on the relationship between the Court and the United Nations, *also welcomes* the adoption of resolution A/RES/73/7 by the General Assembly and *encourages* States Parties to continue their constructive engagement with United Nations Member States to further strengthen this resolution;

48. *Notes with concern* that, to date, expenses incurred by the Court due to referrals by the Security Council continue to be borne exclusively by States Parties and *notes* that, to date, the approved budget allocated so far within the Court in relation to the referrals made by the Security Council amount to approximately €61 million;

49. *Stresses* that, if the United Nations is unable to provide funds for the Court to cover the expenses incurred due to referrals by the Security Council, this will, among other factors, continue to exacerbate resource pressure on the Court;

50. *Urges* States Parties to pursue, within the General Assembly of the United Nations, the implementation of article 115, paragraph (b), of the Rome Statute also taking into account that article 13, paragraph 1, of the Relationship Agreement between the Court and the United Nations states that the conditions under which any funds may be provided to the Court by a decision of the General Assembly shall be subject to separate arrangements;

51. *Encourages* the Court to further engage with the relevant Sanctions Committees of the United Nations Security Council with a view to improving their cooperation and achieving better coordination on matters pertaining to areas of mutual concern;

52. *Notes* that all cooperation received by the Court from the United Nations is provided strictly on a reimbursable basis;

## **G. Relationships with other international organizations and bodies**

53. *Welcomes* the efforts undertaken by various regional and other international organizations to support the Court in the fulfilment of its mandate;

54. *Recalls* the memoranda of understanding and agreements on cooperation concluded by the Court with the European Union, the Asian-African Legal Consultative Organization, the Organization of American States, the Commonwealth, the Organisation internationale de la Francophonie, the Parliament of the MERCOSUR, and the Inter-American Court of Human Rights;

55. *Welcomes* the efforts of the Court to engage with various regional bodies and entities, including through its participation in the bi-annual meeting on ICC of the Organization of American States, the EU Day against Impunity and the organization of a roundtable with the European Union, as well as the annual session of the Asian-African Legal Consultative Organization;

56. *Emphasizes* the need to pursue efforts aimed at intensifying dialogue with the African Union and to strengthen the relationship between the Court and the African Union and *welcomes* the Court's further regular engagement in Addis Ababa with the African Union and diplomatic missions in anticipation of establishing its liaison office, *recognizes* the engagement of the President of the Assembly with officials of the African Union in Addis Ababa and *calls upon* all relevant stakeholders to support strengthening the relationship between the Court and the African Union;

57. *Welcomes* the series of meetings previously held in Addis Ababa which took the form of joint seminars between the Court and the African Union, in July 2011, October 2012, July 2014 and October 2015, and consequent retreats in October 2016 and in November 2017 organized by the Court to enable a frank and constructive dialogue between the Court and the African States Parties to the Rome Statute as a key measure to strengthen relations between the Court and its African partners and address challenges within the context of this relationship;

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<sup>14</sup> United Nations document A/73/334.



58. *Also welcomes* the efforts to further the presence of the Court at meetings of regional organizations, including through the organization of a side event at the 48th Pacific Islands Forum in Apia, Samoa;

59. *Recalls* the contribution that the International Humanitarian Fact-finding Commission, established by article 90 of the Additional Protocol I to the 1949 Geneva Convention, could make in ascertaining facts related to alleged violations of international humanitarian law and facilitating, where appropriate, the prosecution of war crimes, both at the national level and before the Court;

## H. Activities of the Court

60. *Takes note* of the latest report on the activities of the Court to the Assembly;<sup>15</sup>

61. *Notes with satisfaction* the fact that owing, not least, to the dedication of its staff, considerable progress continues to be made in the Court's activities including its preliminary examinations, investigations and judicial proceedings in various situations which either States Parties or the United Nations Security Council<sup>16</sup> referred to the Court or which the Prosecutor initiated *proprio motu*;

62. *Recalls* its invitation to the Court to continue to take note of best practices of other relevant international and national organizations and tribunals, including those gained by national institutions that have already investigated and prosecuted crimes that fall within the Court's jurisdiction, in solving challenges similar to those encountered by the Court, while reiterating its respect for the independence of the Court;

63. *Notes with appreciation* the efforts undertaken by the Office of the Prosecutor to achieve the efficiency and transparency of its preliminary examinations, investigations and prosecutions;

64. *Welcomes* the continued implementation by the Office of the Prosecutor of its Policy Papers on Case Selection and Prioritization, on Children, and on Sexual and Gender-Based Crimes, and, in this regard, *stresses* the importance of the effective investigation and prosecution of sexual and gender-based crimes and crimes against children by the Court and by national courts, in order to end impunity for perpetrators of such crimes, *calls upon* States Parties to consider the Policy Papers to strengthen the investigation and prosecution of these crimes domestically and *notes* the on-going preparation of the Office of the Prosecutor's Policy Paper on the Protection of Cultural Property within the Rome Statute framework;

65. *Expresses its appreciation* to the Office of the Prosecutor for consulting with States Parties and other stakeholders before the issuance of its policies and strategies and *welcomes* the contributions made by States Parties in this regard;

66. *Also welcomes* the efforts undertaken by the Court to implement the One-Court principle, and to coordinate its activities among its organs at all levels, including through the implementation of measures to increase clarity on the responsibility of different organs, while respecting the independence of the judges and the Prosecutor and the neutrality of the Registry and *encourages* the Court to undertake all necessary efforts to fully implement the One-Court principle, inter alia with a view to ensuring full transparency, good governance, efficient use of financial resources and sound management;

67. *Notes* the intention of the Court, the Office of the Prosecutor and the Registry to prepare Strategic Plans for the period 2019-2021 in the first quarter of 2019, *stresses* the importance of receiving Strategic Plans at the earliest possible time, and preferably before the beginning of the Strategic Plan period, and *requests* the Court, the Office of the Prosecutor and the Registry to update States Parties on the development of those plans;

68. *Notes with appreciation* the continued efforts undertaken by the Registrar to mitigate the risks faced by the Court in relation to its field offices and to enhance the Court's field operations with a view to increasing their efficiency and visibility and

<sup>15</sup> ICC-ASP/17/9.

<sup>16</sup> United Nations Security Council resolutions 1593 (2005) and 1970 (2011).

*encourages* the Court to continue to optimize its field offices in order to ensure the Court's continued relevance and impact in States in which it carries out its work;

69. *Welcomes* the ongoing efforts undertaken by the Court to improve its use of alternative sources of information and evidence as well as its capacities to this end, including in the field of financial investigations, *encourages* the Court to continue these efforts and *notes* the importance of providing the Court with the appropriate means for this purpose;

70. *Recognizes* the important work done by the field-based staff of the Court in difficult and complex environments and *expresses its appreciation* for their dedication to the mission of the Court;

71. *Emphasizes* the need for the Court to continue to improve and adapt outreach activities with a view to further developing and implementing effectively and efficiently the Strategic Plan for Outreach<sup>17</sup> in affected countries, including, where appropriate, by early outreach from the outset of the Court's involvement, including during the preliminary examination stage;

72. *Recalls* that the issues of public information and communication about the Court and its activities constitute a shared responsibility of the Court and States Parties, while *acknowledging* the significant contribution of other stakeholders to developing a coordinated and comprehensive approach;

## **I. Elections**

73. *Emphasizes* the importance of nominating and electing the most highly qualified judges in accordance with article 36 of the Rome Statute, and for this purpose *encourages* States Parties to conduct thorough and transparent processes to identify the best candidates;

74. *Stresses* the importance of elected judges who have made their solemn undertaking being available to take up their full-time service when the Court's workload so requires;

75. *Welcomes* the Report of the Bureau on the Advisory Committee on Nominations;<sup>18</sup>

76. *Recalls* its decision that the Advisory Committee on Nominations hold its sessions in The Hague or in New York, depending on the cost effectiveness of the particular venue;

77. *Reiterates* the importance of face-to-face interviews with candidates to the effective discharge of its mandate and *stresses* the responsibility of the nominating States to ensure candidates attend a face-to-face interview with the Advisory Committee on Nominations;

78. *Recalling* the terms of reference of the Advisory Committee on Nominations of Judges of the International Criminal Court adopted by the Assembly via resolution ICC-ASP/10/Res.5, paragraph 19, *requests* States Parties which may be considering nominations of their nationals as members of the Advisory Committee to bear in mind that the composition of the Committee should reflect, inter alia, "a fair representation of both genders";

## **J. Secretariat of the Assembly of States Parties**

79. *Recognizes* the important work done by the Secretariat of the Assembly of States Parties ("the Secretariat"), *reiterates* that the relations between the Secretariat and the different organs of the Court shall be governed by principles of cooperation and of sharing and pooling of resources and services, as set out in the annex to resolution ICC-ASP/2/Res.3, and *welcomes* the fact that the Director of the Secretariat participates in the meetings of the Coordination Council when matters of mutual concern are considered;

80. *Recalls* the general oversight function of the Bureau over the Secretariat, as contained in the resolution establishing the Secretariat;<sup>19</sup>

<sup>17</sup> ICC-ASP/5/12.

<sup>18</sup> ICC-ASP/17/21.

<sup>19</sup> ICC-ASP/2/Res.3, annex, para. 10.

81. *Welcomes* the report of the Bureau on the assessment of the Secretariat and the recommendations contained therein;<sup>20</sup>

## **K. Counsel**

82. *Notes* the important work of independent representative bodies of counsel or legal associations, including any international legal association relevant to rule 20, sub-rule 3, of the Rules of Procedure and Evidence;

83. *Takes note* of the report on the constitution and activities of the International Criminal Court Bar Association<sup>21</sup> and *invites* the International Criminal Court Bar Association to report to the Assembly, through the Bureau, on its constitution and activities in advance of the eighteenth session;

84. *Notes* the need to improve gender balance and equitable geographical representation on the list of counsel and thus *continues to encourage* applications to the list of counsel established as required under rule 21, paragraph 2, of the Rules of Procedure and Evidence with a particular view to ensuring equitable geographical representation and gender balance, as well as legal expertise on specific issues such as violence against women or children, as appropriate;

## **L. Legal aid**

85. *Acknowledges* the Court's efforts to continue implementing the legal aid remuneration policy and *stresses* the need for continuous monitoring of the efficiency of the legal aid system to uphold and strengthen the principles of the legal aid system, namely fair trial, objectivity, transparency, economy, continuity and flexibility;<sup>22</sup>

86. *Takes note* of the information provided by the Registrar<sup>23</sup> and the recommendations made by the Committee on Budget and Finance regarding this matter;<sup>24</sup>

87. *Recalls* the fundamental importance of the legal aid system to ensure the fairness of judicial proceedings as well as the right of the defendants and victims to appropriate legal representation;

## **M. Study Group on Governance**

88. *Welcomes* the continued structured dialogue between States Parties and the Court with a view to strengthening the institutional framework of the Rome Statute system and enhancing the efficiency and effectiveness of the Court while fully preserving its judicial independence;

89. *Takes note* of the Bureau's report on the Study Group on Governance;<sup>25</sup>

90. *Extends* for another year the mandate of the Study Group, established in resolution ICC-ASP/9/Res.2 and extended in resolutions ICC-ASP/10/Res.5, ICC-ASP/11/Res.8, ICC-ASP/12/Res.8, ICC-ASP/13/Res.5, ICC-ASP/14/Res.4, ICC-ASP/15/Res.5 and ICC-ASP/16/Res.6;

91. *Encourages* the Court to continue its work in 2019 on developing common practice, in particular on victim participation;

92. *Also welcomes* the dialogue between States Parties, the Court, members of civil society and practitioners at the plenary discussion on victim participation held during the seventeenth session of the Assembly, which focused on achievements and challenges regarding victim participation and representation twenty years after the adoption of the Rome Statute;

<sup>20</sup> ICC-ASP/17/39.

<sup>21</sup> ICC-ASP/17/38.

<sup>22</sup> ICC-ASP/3/16, para. 16.

<sup>23</sup> ICC-ASP/17/4.

<sup>24</sup> *Official Records ... Seventeenth session ... 2018* (ICC-ASP/17/20), part B.1, paras. 112-118; part B.2, paras. 226-228.

<sup>25</sup> ICC-ASP/17/36.

93. *Calls upon* States Parties to continue considering amendment proposals by the Working Group on Lessons Learnt;

94. *Welcomes* the continued work of the Court on the topic of performance indicators as an important tool to fulfill its functions;

95. *Expresses* the Assembly's wish to continue an active dialogue with the Court on that topic, bearing in mind that the Court needs to implement its intended approach in order to produce results which can form the basis of further dialogue;

## **N. Proceedings of the Court**

96. *Emphasizes* that the effectiveness of proceedings of the Court is essential to the rights of victims and those of the accused, the credibility and authority of the institution and the promotion of the universality of the Statute, as well as the best possible use of the Court's resources;

97. *Welcomes* the Court's efforts to enhance the efficiency and effectiveness of proceedings, as well as the efforts on the part of States Parties and civil society in this regard, *mindful* of the importance of continued dialogue on this matter and *noting* the shared responsibility of the Court and States Parties in this regard;

## **O. Working methods review**

98. *Recognizes* the benefits of rationalizing the working methods of the subsidiary bodies of the Bureau and the Assembly in order to cope with an increasing workload;

99. *Welcomes* the steps already undertaken by the Bureau for the improvement of the working methods;

100. *Decides* to continue improving the working methods of the Bureau and the governance of the Assembly, and to that effect:

(a) *recalls* the revised general roadmap for facilitations contained in annex II of resolution ICC-ASP/15/Res.5 and *stresses* the need for its full implementation;

(b) *welcomes* the holding of Bureau meetings both in New York and in The Hague;

(c) *acknowledges* the importance of ensuring that the agenda of the Assembly allows sufficient time for substantive discussions;

(d) *recognizes* the importance of exchange of information as well as mutual consultations between the New York Working Group and The Hague Working Group on matters of joint concern with a view to enhancing efficiency while avoiding duplication of efforts;

(e) *encourages* all States Parties to use the Extranet designed for the work of the subsidiary bodies of the Bureau and the Assembly containing all necessary documentation on the work in progress; and

(f) *also encourages* States Parties to deliver statements no longer than five minutes and to submit written statements instead of oral ones;

101. *Recognizes* the importance of the work carried out by the facilitators and the focal points;

102. *Recalling* the representative geographical character of the Bureau, *encourages* Bureau members to strengthen their communication with States Parties of their respective regional group to inform the discussion of the Bureau, including by establishing appropriate mechanisms for providing regular updates on the work of the Bureau;

103. *Requests* the Bureau, in consultation with all States Parties, the Court and civil society, both in New York and The Hague, to submit a report assessing the benefits and challenges with regard to current schedule, including the proposal to hold the future Assembly meetings in the first semester of each calendar year, length, including the

proposal to shorten the Assembly, location of the meetings of the Assembly and of the Bureau and to make recommendations to improve efficiency;

## **P. Victims and affected communities, reparations and Trust Fund for Victims**

104. *Refers* to its resolution ICC-ASP/13/Res.4 on victims and affected communities, reparations and Trust Fund for Victims;

105. *Reiterates* that victims' right to present and have considered their views and concerns at stages of the proceedings determined to be appropriate by the Court where their personal interests are affected and to protection of their safety, physical and psychological well-being, dignity and privacy, under article 68 of the Rome Statute, as well as access to relevant information are essential components of justice and, in this regard, *emphasizes* the importance of effective outreach to victims and affected communities in order to give effect to the mandate of the Court;

106. *Stresses* the central importance that the Rome Statute accords to the rights and needs of victims, in particular their right to participate in judicial proceedings and to claim reparations, and *emphasizes* the importance of informing and involving victims and affected communities in order to give effect to the unique mandate of the Court towards victims;

107. *Recalls* article 75 of the Rome Statute and, in this regard, the reparative justice role of the Court, and *notes* that assistance and reparations to victims may promote reconciliation and contribute to peace-building;

108. *Acknowledges* the importance of protective measures for victims and witnesses, including considering the best interests, rights and well-being of children and maintaining the physical and psychological welfare of witnesses, particularly victims of sexual and gender-based crimes, for the execution of the Court's mandate, *stresses* the need for States to conclude agreements with the Court in order to facilitate expeditious international relocation of persons at risk, *welcomes* the relocation agreement with the Court concluded since the sixteenth session of the Assembly, *urges* all States to consider making such relocation agreements and *encourages* all States to contribute to the Special Fund for Relocations;

109. *Stresses* that, since the identification, tracing and freezing or seizure of any assets of the convicted person are indispensable for reparations, it is of paramount importance that all necessary measures are taken to that end, in order for relevant States and relevant entities to provide timely and effective assistance pursuant to articles 75, 93, paragraph 1(k), and 109 of the Rome Statute, and *calls upon* States Parties to enter into voluntary agreements, arrangements or any other means to this end with the Court, as required;

110. *Recalls* the Court's previous commitment to review its Revised Strategy in Relation to Victims once a judicial cycle is finished,<sup>26</sup> and therefore *requests* the Court to submit an updated strategy, including measurable and time-bound objectives, to the Assembly at its eighteenth session;

111. *Renews its appreciation* to the Board of Directors and the Secretariat of the Trust Fund for Victims for their continuing commitment towards victims and affected communities;

112. *Notes* the significant growth in the activities of the Trust Fund, to include four on-going reparations proceedings as well as the expansion of assistance programmes to more situations before the Court;

113. *Calls upon* States, international and inter-governmental organizations, individuals, corporations and other entities to make voluntary contributions, in accordance with their financial ability, to the Trust Fund for Victims in order to broaden its resource base, improve the predictability of funding and maintain responsiveness to harm suffered by

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<sup>26</sup> ICC-ASP/13/Res.4, para. 1.

victims as well as to the Court's judicial developments, and *renews its appreciation* to those that have done so;

114. *Invites* States Parties to respond to requests of the Trust Fund for Victims for earmarked contributions for the purposes of funding specific reparations awards, as well as of replenishing and strengthening the Trust Fund's general reparations reserve, and *expresses its appreciation* to those that have already done so;

115. *Invites* States Parties to consider making earmarked voluntary contributions to the Trust Fund to the benefit of victims of sexual and gender-based violence, and *expresses its appreciation* to those that have already done so;

116. *Notes* the intention of the Trust Fund for Victims to raise €30 million in voluntary contributions and private donations by 2020, in order to implement reparations orders and assistance mandates to the benefit of victims in cases and situations before the Court;

## **Q. Recruitment of staff**

117. *Takes note* of the Court's report on Human Resources,<sup>27</sup> and *requests* the Court to strengthen its efforts, in the recruitment of staff, to seek equitable geographical representation with a particular focus on candidates from non-represented and under-represented States Parties and gender balance and the highest standards of efficiency, competency and integrity, as well as to seek expertise on specific issues, including, but not limited to, trauma-related psycho-social needs and violence against women or children, and *encourages* further progress in this regard;

118. *Takes note* of the continued dialogue between the Court and the Bureau with regard to ensuring equitable geographical representation and gender balance in the recruitment of staff members, and *welcomes* the report of the Bureau and its recommendations;<sup>28</sup>

119. *Urges* States Parties to undertake efforts to identify and enlarge pools of potential applicants to the Court's professional positions from State Parties from non- and under-represented regions and countries, including through the financing by the Assembly of the Court's internship and visiting professional programmes, and by States Parties of Junior Professional Officer (JPO) programmes, through targeted outreach initiatives and through the dissemination among relevant national institutions and organizations of the Court's vacancies;

120. *Welcomes* the establishment by the Court of a programme to fund, through voluntary contributions, the placement of interns and visiting professionals from developing regions with a particular focus on candidates from non-represented and under-represented States Parties, *welcomes* the voluntary contributions received thus far and *calls upon* States Parties to contribute to this programme;

121. *Requests* the Court to further devise mechanisms that can ensure in a more sustainable and systematic manner the funding of placements of interns and visiting professionals from developing regions, and further *requests* the Court to explore and propose modalities for implementing Junior Professional Officer (JPO) programmes for candidates from non- and under-represented States Parties, particularly from developing regions, to be funded through voluntary contributions;

## **R. Complementarity**

122. *Recalls* the primary responsibility of States to investigate and prosecute the most serious crimes of international concern and that, to this end, appropriate measures need to be adopted at the national level, and international cooperation and judicial assistance need to be strengthened, in order to ensure that national legal systems are willing and able genuinely to carry out investigations and prosecutions of such crimes;

123. *Resolves* to continue and strengthen, within the appropriate fora, effective domestic implementation of the Rome Statute, to enhance the capacity of national jurisdictions to

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<sup>27</sup> ICC-ASP/17/6.

<sup>28</sup> ICC-ASP/17/36.

prosecute the perpetrators of the most serious crimes of international concern in accordance with internationally recognized fair trial standards, pursuant to the principle of complementarity;

124. *Welcomes* the international community's engagement in strengthening the capacity of domestic jurisdictions and inter-State cooperation to enable States to genuinely prosecute Rome Statute crimes;

125. *Also welcomes* efforts by the United Nations, international and regional organizations, States and civil society in mainstreaming capacity-building activities aimed at strengthening national jurisdictions with regard to investigating and prosecuting Rome Statute crimes into existing and new technical assistance programmes and instruments, and *strongly encourages* additional efforts in this regard by other international and regional organizations, States and civil society;

126. *Welcomes*, in this regard, the adoption of the 2030 Agenda for Sustainable Development<sup>29</sup> and *acknowledges* the important work being undertaken with regard to promoting the rule of law at the national and international levels and ensuring equal access to justice for all;

127. *Stresses* that the proper functioning of the principle of complementarity entails that States incorporate the crimes set out in articles 6, 7 and 8 of the Rome Statute as punishable offences under their national laws, to establish jurisdiction for these crimes and to ensure effective enforcement of those laws, and *urges* States to do so;

128. *Welcomes* the report of the Bureau on complementarity, and *requests* the Bureau to remain seized of this issue and to continue the dialogue with the Court and other stakeholders on complementarity, including on complementarity-related capacity-building activities by the international community to assist national jurisdictions, on possible situation-specific completion strategies of the Court and the role of partnerships with national authorities and other actors in this regard; and also including to assist on issues such as witness and victims protection and sexual and gender-based crimes;

129. *Also welcomes* the information by the Secretariat of the Assembly of States Parties on the progress in giving effect to its mandate to facilitate the exchange of information between the Court, States Parties and other stakeholders, including international organizations and civil society, aimed at strengthening domestic jurisdictions; *welcomes further* the work that has already been undertaken by the Secretariat and the President of the Assembly, and *requests* the Secretariat to, within existing resources, continue to develop its efforts in facilitating the exchange of information between the Court, States Parties and other stakeholders, including international organizations and civil society, aimed at strengthening domestic jurisdictions, and to invite States to submit information on their capacity needs for the consideration of States and other actors in a position to provide assistance, and to report on the practical steps taken in this regard to the eighteenth session of the Assembly;

130. *Encourages* States, international and regional organizations and civil society to submit to the Secretariat information on their complementarity-related activities and *further welcomes* the efforts made by the international community and national authorities, including national capacity building activities to investigate and prosecute sexual and gender-based crimes that may amount to Rome Statute crimes, in particular the continued efforts on the strategic actions to ensure access to justice and to enhance empowerment of victims at national level, recalling the recommendations presented by the International Development Law Organizations during the fourteenth session of the Assembly<sup>30</sup>;

131. *Encourages* the Court to continue its efforts in the field of complementarity, including through exchange of information between the Court and other relevant actors, while *recalling* the Court's limited role in strengthening national jurisdictions and *also encourages* continued inter-State cooperation, including on engaging international, regional and national actors in the justice sector, as well as civil society, in exchange of information and practices on strategic and sustainable efforts to strengthen national capacity to

<sup>29</sup> United Nations General Assembly resolution A/RES/70/1.

<sup>30</sup> International Development Law Organization paper entitled "Complementarity for sexual and gender-based atrocity crimes", November 2015.

investigate and prosecute Rome Statute crimes and the strengthening of access to justice for victims of such crimes, including through international development assistance;

## S. Independent Oversight Mechanism

132. *Notes* that the Independent Oversight Mechanism is fully staffed as of 1 November 2018 and that it is operational in respect of its investigation, inspection and evaluation functions;

133. *Takes note* of the amendment to rule 26 of the Rules of Procedure and Evidence concerning the receipt and admissibility of complaints by the Independent Oversight Mechanism;

134. *Welcomes* the discussions held during 2018 on the review of the work and operational mandate of the Independent Oversight Mechanism, and *stresses* the importance of completing that review and reporting to the Assembly at its eighteenth session;

135. *Also notes* that discussion on and potential mechanisms for the reporting of areas where the Independent Oversight Mechanism might advise the Bureau to consider requesting that the Independent Oversight Mechanism undertake an inspection or evaluation will be incorporated into the full review of the Independent Oversight Mechanism mandate and organization for Assembly consideration at its eighteenth session;

136. *Recalls* that a proposal to formally align the Regulations of the Court with the mandate of the Independent Oversight Mechanism is under consideration and *encourages* the Assembly, the Court, and the Independent Oversight Mechanism, as appropriate, to ensure that all relevant documents are updated and aligned with the mandate of the Independent Oversight Mechanism in order to harmonize the applicable rules;

137. *Welcomes* the complementary initiatives undertaken by the Bureau, the Assembly oversight bodies and the Court to try to ensure that the different organs of the Court have streamlined and updated ethics charters/codes of conduct, which should be consistent to the extent possible;

138. *Reaffirms* the critical importance of the Independent Oversight Mechanism in carrying out its work in an independent, transparent and impartial manner free from any undue influence;

139. *Reaffirms* the importance of the Independent Oversight Mechanism reporting to States Parties on the results of its activities;

140. *Emphasizes* the importance of adherence to the highest professional and ethics standards by all Court staff and elected officials, *notes* the need to further strengthen the professional and ethical framework for elected officials, *acknowledges* the essential role played and work done by the Independent Oversight Mechanism, *welcomes* the steps taken by the Court<sup>31</sup> to investigate the potential impact on the Court's work in light of allegations of misconduct surrounding former officials and *urges* the Court to take further steps to complete this investigation fully and transparently, to identify any necessary follow-up action for the Court and/or the Assembly, and to report to the Assembly in advance of its eighteenth session;

## T. Programme budget

141. *Takes note* of the important work done by the Committee on Budget and Finance, and *reaffirms* the independence of the members of the Committee;

142. *Recalls* that, according to its Rules of Procedure,<sup>32</sup> the Committee on Budget and Finance shall be responsible for the technical examination of any document submitted to the Assembly that contains financial or budgetary implications and *emphasizes* the importance of ensuring that the Committee is represented at all stages of the deliberations

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<sup>31</sup> ICC-ASP/17/INF.5.

<sup>32</sup> *Official Records ... Second session ... 2003* (ICC-ASP/2/10), annex III.



of the Assembly at which documents that contain financial or budgetary implications are considered;

143. *Takes note with concern* of the report of the Bureau on the arrears of States Parties;<sup>33</sup>

144. *Emphasizes* the importance of endowing the Court with the necessary financial resources, and *urges* all States Parties to the Rome Statute to transfer their assessed contributions in full and by the deadline for contributions or, in the event of pre-existing arrears, immediately, in accordance with article 115 of the Rome Statute, rule 105.1 of the Financial Regulations and Rules, and other relevant decisions taken by the Assembly;

145. *Calls upon* States, international organizations, individuals, corporations and other entities to contribute voluntarily to the Court and *expresses its appreciation* to those that have done so;

## U. Review Conference

146. *Recalls* that at the successful first Review Conference of the Rome Statute, held in Kampala, Uganda, from 31 May to 11 June 2010, States Parties adopted amendments to the Rome Statute, in accordance with article 5, paragraph 2, of the Rome Statute to define the crime of aggression and to establish conditions under which the Court could exercise jurisdiction with respect to that crime<sup>34</sup> and adopted amendments to the Rome Statute to expand the jurisdiction of the Court to three additional war crimes when committed in armed conflicts not of an international character;<sup>35</sup>

147. *Notes* that those amendments are subject to ratification or acceptance and shall enter into force in accordance with article 121, paragraph 5, of the Rome Statute, *notes with appreciation* the recent ratifications of the amendments and *notes* that two States Parties have lodged declarations in accordance with article 15 *bis*, paragraph 4, of the Rome Statute;

148. *Calls upon* all States Parties to consider ratifying or accepting these amendments;

149. *Recalls* the discussions on the issue of peace and justice at the stock-taking exercise held at the Review Conference, *notes* the interest to resume the discussions on this issue and *invites* interested States Parties to do so;

150. *Recalls with appreciation* pledges of increased assistance to the Court made by thirty-five States Parties, one observer State, and one regional organization, *calls upon* these States and the regional organization to ensure the swift implementation of these pledges and *also calls upon* States and regional organizations to submit additional pledges and to report further at the eighteenth session of the Assembly, in written form or through their statement at the general debate on the implementation thereof;

## V. Consideration of amendments

151. *Welcomes* the report of the Working Group on Amendments;<sup>36</sup>

152. *Calls upon* all States Parties to ratify or accept the amendment to article 124;

153. *Also calls upon* all States Parties to ratify or accept the amendments to article 8 adopted at the sixteenth session of the Assembly;<sup>37</sup>

## W. Participation in the Assembly of States Parties

154. *Calls upon* States, international organizations, individuals, corporations and other entities to contribute in a timely manner and voluntarily to the Trust Fund to allow the participation of least developed countries and other developing States in the annual session of the Assembly and *expresses its appreciation* to those that have done so;

<sup>33</sup> ICC-ASP/17/37.

<sup>34</sup> *Official Records ... Review Conference ... 2010* (RC/11), part II, RC/Res.6.

<sup>35</sup> *Ibid.*, RC/Res.5.

<sup>36</sup> ICC-ASP/17/34.

<sup>37</sup> ICC-ASP/16/Res.4.

155. *Encourages* the continuation of efforts undertaken by the President of the Assembly to hold an ongoing dialogue with all stakeholders, including regional organizations and *calls upon* all States Parties to support the President in his undertakings aimed at strengthening the Court, the independence of proceedings and the Rome Statute system as a whole;

156. *Recalls*, in light of the 20th anniversary of the Rome Statute, the long-term and continuing cooperation between the Assembly, States Parties, and non-governmental organizations of civil society, and *reaffirms* resolution ICC-ASP/2/Res.8 on recognition of the coordinating and facilitating role of the NGO Coalition for the ICC;

157. *Decides* to entrust the Court, the President of the Assembly, the Bureau, the Advisory Committee on Nominations, the Working Group on Amendments, the Independent Oversight Mechanism, the Secretariat, and the Board of Directors and the Secretariat of the Trust Fund for Victims, as appropriate, with the mandates contained in the annex to the present resolution.

## Annex I

### Mandates of the Assembly of States Parties for the intersessional period

1. With regard to **universality of the Rome Statute**,
  - (a) *endorses* the recommendations of the report of the Bureau on the Plan of action for achieving universality and full implementation of the Rome Statute<sup>1</sup>; and
  - (b) *requests* the Bureau continue to monitor the implementation of the Plan of action for achieving universality and full implementation of the Rome Statute and to report thereon to the Assembly at its eighteenth session;
2. With regard to the **Agreement on Privileges and Immunities**, *requests* the Bureau to continue to support the ratification of the Agreement;
3. With regard to **cooperation**,
  - (a) *urges* the Bureau, through The Hague Working Group, to continue the discussions on the proposals resulting from the seminar of the co-facilitation held in The Hague on 7 November 2018 entitled “Arrests: a key challenge in the fight against impunity”;
  - (b) *requests* the Bureau, through its Working Groups, to continue the discussions on voluntary framework agreements or arrangements, and to report thereon to the Assembly at its eighteenth session;
  - (c) *invites* the Bureau, through its Working Groups, to discuss the feasibility of establishing a coordinating mechanism of national authorities;
  - (d) *invites* the Court to continue improving its practice in transmitting specific, complete and timely requests for cooperation and assistance, including by considering consultations with the State Party concerned when necessary;
  - (e) *requests* the Bureau, through its Working Groups, to continue its review of the implementation of the 66 recommendations on cooperation adopted by States Parties in 2007,<sup>2</sup> in close cooperation with the Court, where appropriate;
  - (f) *requests* the Bureau to maintain a facilitation of the Assembly of States Parties for cooperation to consult with States Parties, the Court, other interested States, relevant organizations and non-governmental organizations in order to further strengthen cooperation with the Court;
  - (g) *requests* the Court to submit an updated report on cooperation to the Assembly at its eighteenth session and annually thereafter;
  - (h) *mandates* the Bureau, through its Working Groups, to continue discussions on cooperation on financial investigations and the freezing and seizing of assets as set out in the Declaration of Paris;
  - (i) *requests* the President of the Assembly to continue to engage actively and constructively with all relevant stakeholders in accordance with the Assembly procedures relating to non-cooperation, both to prevent instances of non-cooperation and to follow up on any matter of non-cooperation referred by the Court to the Assembly;
  - (j) *requests* that any information concerning potential or confirmed travel of persons against whom an arrest warrant has been issued be promptly shared with the Court by the focal points on non-cooperation; and
  - (k) *requests* the Bureau to continue to actively engage throughout the intersessional period with all relevant stakeholders to continue to ensure effective implementation of the Assembly procedures relating to non-cooperation and to submit a report on its activities to the Assembly at its eighteenth session;

<sup>1</sup> ICC-ASP/17/32.

<sup>2</sup> ICC-ASP/6/Res.2, annex II.

4. With regard to the **relationship with the United Nations**,
  - (a) *invites* the Court to continue its institutional dialogue with the United Nations, based on the Relationship Agreement between the United Nations and the International Criminal Court; and
  - (b) *requests* the Registry to update its report on the approximate costs allocated so far within the Court in relation to referrals by the Security Council<sup>3</sup> ahead of the eighteenth session of the Assembly;
5. With regard to **relationships with other international organizations and bodies**, *invites* the Court to include in its annual report to the United Nations General Assembly a section on the status and implementation of specific agreements on cooperation with other international organizations;
6. With regard to **elections**,
  - (a) *decides* to continue to review the procedure for the nomination and election of judges as set forth in resolution ICC-ASP/3/Res.6, as amended, on the occasion of future elections after the sixteenth session with a view to making any improvements as may be necessary, taking into account the work conducted so far as reflected in the facilitator's discussion paper;<sup>4</sup>
  - (b) *requests* the Bureau to update the Assembly, at its eighteenth session, on the progress of the review of the procedure for the nomination and election of judges;<sup>5</sup>
7. With regard to the **Secretariat**, *invites* the President to report to the eighteenth session of the Assembly on the implementation of the recommendations contained in the report of the Bureau on the assessment of the Secretariat<sup>6</sup>;
8. With regard to **Legal Aid**,
  - (a) *mindful* of the recommendation of the Committee on Budget and Finance that the Court make every effort to present a reform that can be achieved within existing resources by exploring opportunities to contain the administrative burden without jeopardizing the need for accountability and by setting priorities accordingly,<sup>7</sup> *requests* the Court to continue its review of the functioning of the legal aid system and to present, in early 2019, as appropriate, proposals for adjustments to the legal aid remuneration policy for the consideration of the Assembly, through the Committee and Budget and Finance, at its eighteenth session;
  - (b) *requests* the Bureau to establish a facilitation on legal aid to discuss the proposals from the Court and report to the Assembly thereon;
9. With regard to the **Study Group on Governance**,
  - (a) *invites* the Court to further engage in a structured dialogue with States Parties with a view to strengthening the institutional framework of the Rome Statute system and enhancing the efficiency and effectiveness of the Court while fully preserving its judicial independence;
  - (b) *requests* the Study Group to report back to its eighteenth session;
  - (c) *requests* the Study Group to follow up and, where appropriate, continue the dialogue on the evolution of indicators;
  - (d) *encourages* the Court to continue to share with the Study Group any update on the development of qualitative and quantitative indicators;
  - (e) *invites* the Court to monitor the use of intermediaries through its Working Group on Intermediaries with a view to safeguarding the integrity of the judicial process and the rights of the accused; and

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<sup>3</sup> ICC-ASP/17/27.

<sup>4</sup> Report to the Bureau on the review of the procedure for the nomination and election of judges (ICC-ASP/15/23), annex I.

<sup>5</sup> *Official Records ... Third session ... 2004* (ICC-ASP/3/25), part III, ICC-ASP/3/Res.6

<sup>6</sup> ICC-ASP/17/39.

<sup>7</sup> *Official Records...Sixteenth session ...2017* (ICC-ASP/16/20), vol.II, part B.2, paras. 11, 176-183.

(f) *requests* the Court to inform States Parties, when appropriate, about important developments pertaining to the use of intermediaries, which might require the Court to amend the Guidelines;

10. With regard to **proceedings of the Court**,

(a) *invites* the Court to intensify its efforts to enhance the efficiency and effectiveness of proceedings including by adopting further changes of practice; and

(b) *encourages* the Bureau, including through the two working groups and the Study Group on Governance, to continue to support the Court's efforts to enhance the efficiency and effectiveness of proceedings;

11. With regard to the **working methods review**,

(a) *decides* that its annual session shall have a duration of seven working days with a possible extension of up to two additional days in election years, as required, and to focus, in such cases, the first two days on the elections of judges;

(b) *also decides* that its annual sessions shall include one or two plenary segments on specific agenda items;

(c) *invites* the facilitators and focal points, when appropriate, to present their work to the Assembly;

(d) *also invites* the facilitators and focal points to commit themselves for a period of up to three years considering the particularities and the complexity of each mandate and to submit, in addition to their regular reports, a final written report to the Assembly at the end of their mandate, including lessons learnt;

(e) *invites* the Bureau to implement the recommendations of the 2013 working methods report;<sup>8</sup>

(f) *requests* the Bureau to establish facilitations only if the mandate requires open-ended consultations, and the matter cannot be addressed by a less resource-intensive mechanism, such as a rapporteur or a focal point;<sup>9</sup>

(g) *invites* the Bureau to use existing technologies such as video-conferencing in order to ensure participation of members of the Bureau not represented at the venue of the Bureau meeting; and

(h) *requests* the Bureau to continue conducting evaluations of the established mandates and, where appropriate, consider the inclusion of end-dates and that it prepare recommendations on the reduction of the number and length of reports; and

(i) *requests* the Bureau, in consultation with all States Parties, the Court and civil society, both in New York and The Hague, to submit a report assessing the benefits and challenges with regard to current schedule, including the proposal to hold the future Assembly meetings in the first semester of each calendar year, length, including the proposal to shorten the Assembly, location of the meetings of the Assembly and of the Bureau and to make recommendations to improve efficiency;

12. With regard to **Victims and affected communities, reparations and Trust Fund for Victims**,

(a) *requests* the Court to continue to establish principles relating to reparations in accordance with article 75, paragraph 1, of the Rome Statute as a priority in the context of its judicial proceedings;

(b) *encourages* the Board of Directors and the Secretariat of the Trust Fund for Victims to continue to strengthen its ongoing dialogue with the organs of the Court, States Parties and the wider international community, including donors as well as non-governmental organizations, who all contribute to the valuable work of the Trust Fund for

<sup>8</sup> ICC-ASP/12/59.

<sup>9</sup> As outlined, e.g., in paras. 21(a) and 23(b) of the report on the Evaluation and rationalization of the working methods of the subsidiary bodies of the Bureau (ICC-ASP/12/59).

Victims, so as to ensure increased strategic and operational visibility and to maximize its impact and ensure the continuity and sustainability of the Fund's interventions;

(c) *requests* the Court and the Trust Fund for Victims to continue developing a strong collaborative partnership, mindful of each other's roles and responsibilities, to implement Court-ordered reparations;

(d) *decides* to continue to monitor the implementation of the rights of victims under the Rome Statute, with a view to ensuring that the exercise of these rights is fully realized and that the continued positive impact of the Rome Statute system on victims and affected communities is sustainable;

(e) *requests* the Court to submit an updated Revised Strategy in Relation to Victims, including measurable and time-bound objectives, to the Assembly at its eighteenth session

(f) *mandates* the Bureau to continue considering victims-related issues as necessary or as they arise, having recourse to any appropriate process or mechanism; and

(g) *requests* the Court to make available to the Assembly appropriate statistics in relation to victims admitted to participate in proceedings before the Court when these are publicly submitted to the respective Chambers in the context of the judicial proceedings; such statistics may include, as appropriate, information on gender, criminal offense and situation, among other pertinent criteria as determined by the relevant Chamber;

13. With regard to **recruitment of staff**,

(a) *endorses* the recommendations of the Committee on Budget and Finance in relation to geographical representation and gender balance contained in the report of its thirtieth and thirty-first sessions;<sup>10</sup>

(b) *requests* the Court to submit a comprehensive report on human resources to the Assembly at its eighteenth session, which would include an update on the implementation of the recommendations on the topic, which would be made by the Committee on Budget and Finance in 2019;

(c) *requests* the Bureau to continue engaging with the Court to identify ways to improve equitable geographical representation and gender balance in professional posts, as well as to remain seized of the issue of geographical representation and gender balance, and to report thereon to the eighteenth session of the Assembly; and

(d) *urges* the Court to continue to seize the opportunities of the outstanding and future recruitment processes to implement measures that would contribute to the efforts of meeting the desirable ranges of geographical representation and gender balance;

14. With regard to **complementarity**,

(a) *requests* the Bureau to remain seized of this issue and to continue the dialogue with the Court and other stakeholders on complementarity, including on complementarity-related capacity-building activities by the international community to assist national jurisdictions, on possible situation-specific completion strategies of the Court and the role of partnerships with national authorities and other actors in this regard; and also including to assist on issues such as witness and victims protection and sexual and gender-based crimes; and

(b) *requests* the Secretariat to, within existing resources, continue to develop its efforts in facilitating the exchange of information between the Court, States Parties and other stakeholders, including international organizations and civil society, aimed at strengthening domestic jurisdictions, and to invite States to submit information on their capacity needs for the consideration of States and other actors in a position to provide assistance, and to report on the practical steps taken in this regard to the eighteenth session of the Assembly;

<sup>10</sup> *Official Records ... Seventeenth session ... 2018 (ICC-ASP/17/20)*, vol. II, part B.1 and B.2.

15. With regard to the **Independent Oversight Mechanism**,
- (a) *Requests* the Bureau to continue forthwith with the review of the work and the operational mandate of the Independent Oversight Mechanism and to report thereon to the Assembly at its eighteenth session;
  - (b) *Requests* the Bureau to consider amending the mandate of the IOM to include investigations of allegations against former officials during its review of the operational mandate of the IOM;
16. With regard to the **programme budget**,
- (a) *requests* the Secretariat, together with the Committee on Budget and Finance, to continue to make the necessary arrangements to ensure that the Committee is represented at all stages of the deliberations of the Assembly at which documents that contain financial or budgetary implications are considered;
  - (b) *decides* that the Bureau, through the President of the Assembly, the coordinator of the working group and the facilitator, should continue to monitor the status of payments received throughout the financial year of the Court and consider additional measures to promote payments by all States Parties, as appropriate, continue to engage in dialogue with States Parties that have outstanding contributions or are in arrears, and via the re-establishment of an annual facilitation on the topic of arrears, report thereon to the Assembly at its eighteenth session;
  - (c) *requests* the Secretariat to inform States Parties periodically of States that have recovered their voting rights following payment of their arrears;
17. With regard to the **Review Conference**, *requests* the Secretariat to make publicly available on the Court's website information provided by States and regional organizations on the pledges of increased assistance to the Court made in Kampala;
18. With regard to **consideration of amendments**,
- (a) *invites* the Working Group on Amendments to continue its consideration of all amendment proposals, in accordance with the Terms of Reference of the Working Group; and
  - (b) *requests* the working group to submit a report for the consideration of the Assembly at its eighteenth session;
19. With regard to **participation in the Assembly of States Parties**,
- (a) *decides* that the Committee on Budget and Finance shall hold its thirty-second session from 29 April to 3 May 2019 and its thirty-third session from 26 August to 6 September 2019; and
  - (b) *requests* the Secretariat to present options for scheduling the next session of the Assembly and *requests* the Bureau to decide on the date and venue of the eighteenth session by 31 January 2019.

## Annex II

### Assembly procedures relating to non-cooperation<sup>1</sup>

#### A. Background

1. Article 112, paragraph 2, of the Rome Statute provides that:
  - “2. 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.”
2. Article 87, paragraphs 5 and 7, provide that:
  - “5. (a) The Court may invite any State not party to this Statute to provide assistance under this Part on the basis of an ad hoc arrangement, an agreement with such State or any other appropriate basis.
    - (b) Where a State not party to this Statute, which has entered into an ad hoc arrangement or an agreement with the Court, fails to cooperate with requests pursuant to any such arrangement or agreement, the Court may so inform the Assembly of States Parties, or, where the Security Council referred the matter to the Court, the Security Council.”
  - “7. Where a State Party fails to comply with a request to cooperate by the Court contrary to the provisions of this Statute, thereby preventing the Court from exercising its functions and powers under this Statute, the Court may make a finding to that effect and refer the matter to the Assembly of States Parties or, where the Security Council referred the matter to the Court, to the Security Council.”
3. Paragraph 1 of the Assembly’s cooperation resolution<sup>2</sup> adopted on 14 December 2017 provides as follows:

Emphasizes the importance of timely and effective cooperation and assistance from States Parties and other States under an obligation or encouraged to cooperate fully with the Court pursuant to Part 9 of the Rome Statute or a United Nations Security Council resolution, as the failure to provide such cooperation in the context of judicial proceedings affects the efficiency of the Court and stresses 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.

#### B. General scope and nature of non-cooperation procedures

4. For the purpose of these Procedures, non-cooperation is understood as the failure by any State Party or a State which has entered into an ad hoc arrangement or an agreement with the Court (hereafter: “requested State”) to comply with a specific Court request for cooperation (articles 89 and 93 of the Statute), as defined in article 87, paragraphs 5(b) and 7 of the Statute.
5. This needs to be distinguished from a situation where there is no specific Court request and a State Party has yet to implement the Rome Statute domestically in such a manner as to be able to comply with Court requests, which may lead to non-cooperation in the medium or longer-term future. This scenario is not under consideration here, as it is

<sup>1</sup> The procedures as originally adopted are contained in *Official Records ... Tenth session ... 2011* (ICC-ASP/10/20), vol. I, part III, ICC-ASP/10/Res.5, annex.

<sup>2</sup> *Official Records ... Sixteenth session ... 2017* (ICC-ASP/16/20), vol. I, part III, ICC-ASP/16/Res.2, para 1.



dealt with by the Assembly in the context of the ongoing work on cooperation, in particular the discussions held in The Hague Working Group of the Bureau.

6. Given the respective roles of the Court and the Assembly, any response by the Assembly would be non-judicial in nature and shall be based on the Assembly's competencies under article 112 of the Statute. The Procedures reflect the Assembly's efforts to support the effectiveness of the Rome Statute by deploying political and diplomatic efforts to promote cooperation and to respond to non-cooperation. These efforts, however, do not replace the judicial determinations of the Court.

7. Regarding concrete instances of non-cooperation, the following two scenarios may require action by the Assembly:

(a) A scenario where the Court has referred a matter of non-cooperation to the Assembly under article 87 of the Rome Statute.<sup>3</sup> Depending on the circumstances, urgent action by the Assembly may bring about cooperation; and

(b) Exceptionally, a scenario where the Court has yet to refer a matter of non-cooperation to the Assembly, but there are reasons to believe that a specific and serious incident of non-cooperation, including 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;<sup>4</sup>

8. The procedures outlined herein only refer to requested States as defined above. These procedures are without any prejudice whatsoever to any steps the Assembly (and its sub-organs) might decide to take in regard of cooperation (and lack thereof) in respect of other States.

### C. General approach for non-cooperation procedures

9. The non-cooperation scenarios 7(a) and 7(b) require different procedures to be adopted, which may however partially overlap.

10. Scenario 7(a) requires a formal response, including some public elements, given that it has been triggered by a formal decision of the Court referring the matter to the Assembly. Depending on the specifics of the case, there may be merit in pursuing an informal and urgent response, as a precursor to a formal response, in particular where it is still possible to achieve cooperation.

11. Scenario 7(b) requires an urgent, but entirely informal response at the diplomatic and political levels, taking into account the Toolkit for the Implementation of the Informal Dimension of the Assembly Procedures relating to Non-Cooperation.<sup>5</sup> Past experience has shown that the Bureau may not be able to respond quickly enough to an immediate situation of non-cooperation, as outlined below.

### D. Specific non-cooperation procedures

12. The procedures outlined below would have to be carried out by the Bureau and the Assembly in full respect for the authority and independence of the Court and its proceedings, as enshrined in the Rome Statute and the Rules of Procedure and Evidence.<sup>6</sup> These procedures are aimed at enhancing the implementation of the Court's decisions. All actors involved must ensure that their participation in these procedures does not lead to discussions on the merits of the Court request or otherwise undermine the findings of the Court. These procedures address the role of the Assembly and its subsidiary organs, and are without prejudice to actions taken by States at the bilateral or regional levels to promote cooperation.

<sup>3</sup> The Court's decisions relating to non-cooperation can be found on the non-cooperation page of the Assembly of States Parties' website: [https://asp.icc-cpi.int/en\\_menus/asp/non-cooperation/Pages/default.aspx](https://asp.icc-cpi.int/en_menus/asp/non-cooperation/Pages/default.aspx).

<sup>4</sup> Where the matter has not yet been referred to the Assembly by the Court but is also not urgent in nature, it appears that no specific procedures need to be adopted. Instead, it would be up to the Court to decide whether to trigger the Assembly's action by referring the matter to the Assembly or not.

<sup>5</sup> *Ref. to Toolkit (annex to the Report on non-cooperation)*, ICC-ASP/15/31/Add.1

<sup>6</sup> *Official Records ... First session ... 2002* (ICC-ASP/1/3 and Corr.1), part II.A.

## 1. Formal response procedure: successive steps to be taken by the Bureau and the Assembly

### (a) Trigger

13. A formal procedure for the Assembly to address instances of non-cooperation should only be triggered by a decision of the Court regarding non-cooperation addressed to the Assembly.<sup>7</sup> Any such decision should be forwarded to all States Parties without delay by the Secretariat of the Assembly of States Parties. The general public should be informed of the decision by way of a press release of the President of the Assembly of States Parties.

### (b) Procedure

14. Subsequent to the Court decision, it is recommended that the following actions be undertaken to address the issue, with additional optional steps to be considered on a case-by-case basis, bearing in mind that the good offices by the President of the Assembly may also continue as described in paragraph 16 below:

(a) Emergency Bureau meeting: where the matter is such that urgent action by the Assembly may still bring about cooperation, a meeting of the Bureau could be convened at short notice. The meeting would be an opportunity to receive a report from the President of the Assembly on any action taken, and to decide on what further action would be required. The fact of the convening of the Bureau meeting and any decisions taken should be announced to all State Parties.

(b) Open letters from the President of the Assembly could be sent to the requested State, reminding that State of the obligation to cooperate and requesting its views on the matter as part of a formal response procedure within a specified time. The President of the Assembly should send a copy of the letter to all States Parties, encouraging them to raise the matter with the requested State, as appropriate.

(c) At the next meeting of the Bureau a representative of the requested State should be invited to discuss the implications of the Court's decision regarding its non-cooperation and present its views on how it would cooperate with the Court in the future.

(d) Subsequently, and provided the next session of the Assembly is scheduled to take place more than three months after the Bureau meeting referred to under (c), the Bureau could request the New York Working Group to hold a public meeting on the matter to allow for an open dialogue with the requested State. This would include the participation of States Parties, observers and civil society representatives as currently provided under the Rules of Procedure of the Assembly of States Parties.<sup>8</sup>

(e) The Court's decision should be noted in the omnibus resolution adopted by the Assembly at its next (or ongoing) session.

(f) At the next (or ongoing) session of the Assembly, the report referred to in paragraph 15 could be discussed in plenary session of the Assembly with a view to enhance future cooperation with the Court. Where appropriate, the Bureau could appoint a dedicated facilitator to consult on a draft resolution containing concrete recommendations on the matter; and

(g) In cases of a finding of non-cooperation referred by the Court to the Security Council under article 87, the President of the Assembly could write to the President of the Security Council asking the Security Council to follow up on its own referrals to encourage cooperation with the Court and outline what the Assembly has done in response to the Court's referral.

15. Subsequent to the Court decision, a Bureau report on action taken in accordance with paragraph 14 above shall be submitted to the next (or ongoing) session of the Assembly, including any concrete recommendations on the matter.

<sup>7</sup> See [https://asp.icc-cpi.int/en\\_menus/asp/non-cooperation/Pages/default.aspx](https://asp.icc-cpi.int/en_menus/asp/non-cooperation/Pages/default.aspx).

<sup>8</sup> *Official Records ... First session ... 2002* (ICC-ASP/1/3 and Corr.1), part II. c; part XX.

## 2. Informal response procedure: good offices by the President of the Assembly

16. In order for the Assembly to be able to respond to an impending or ongoing situation of non-cooperation, which may still lead to cooperation in that specific case, a flexible mechanism is required for urgent action. The procedures set out below provide guidance on the use of the good offices of the President of the Assembly and the regional non-cooperation focal points and are aimed at highlighting the importance placed on cooperation by the Assembly.

### (a) *Regional focal points for non-cooperation*<sup>9</sup>

17. In order to assist the President in his or her good offices, the Bureau should appoint four, or, if so requested by the President, five focal points on the basis of the principle of equitable geographical representation.

### (b) *Trigger*

18. The President of the Assembly could become active on his or her own initiative where it is assessed that the conditions of scenario 7(b) described above are met and in consultation with the Court. Furthermore, the President should also become active on his or her own initiative where it is assessed that the conditions of scenario 7(a) are met, and, in consultation with the Court, it is assessed that the opportunity to fulfill a request for arrest and surrender may no longer exist by the time the Bureau would be able to convene an emergency meeting to discuss the matter. In any event, the President should immediately notify Bureau members of the initiative. Whenever the President becomes active the President shall indicate that he or she is acting from the good offices of the Presidency.

19. Otherwise, the President shall become or remain active as decided by the Bureau.

### (c) *Mandate and procedures*

20. Where the President's good offices have been triggered as outlined above, the matter should be raised after consulting the Court, where appropriate, 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 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 of consulting with the Court.<sup>10</sup> The President may request any of the regional non-cooperation 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.

21. The President should provide a report to the Bureau on his or her engagement, including notifying the Bureau about information received from the UN Secretariat as set out in the Guidance on contacts with persons who are the subject of arrest warrants or summonses issued by the International Criminal Court.<sup>11</sup>

22. The regional focal points for non-cooperation should assist in the exercise of the President's good offices as outlined above by engaging, as appropriate, with officials from the requested State, representatives of the Court and other relevant stakeholders with a view to promoting full cooperation. Where appropriate, the regional focal points should share information with States Parties to encourage them to engage in outreach, in respect of which States Parties may wish to draw on the Toolkit for the Implementation of the Informal Dimension of the Assembly Procedures relating to Non-Cooperation. The regional focal points should maintain contact with the Court to seek advice and share information.

<sup>9</sup> As amended by resolution ICC-ASP/11/Res.8, annex I.

<sup>10</sup> With regard to consultations pursuant to article 97(c) of the Rome Statute, see ICC-ASP/16/Res.3 and annex.

<sup>11</sup> See: [https://digitallibrary.un.org/record/747189/files/A\\_67\\_828\\_S\\_2013\\_210-EN.pdf](https://digitallibrary.un.org/record/747189/files/A_67_828_S_2013_210-EN.pdf)

23. The Secretariat of the Assembly of States Parties should fully assist in the President's formal response procedure and the exercise of good offices as outlined above. Where appropriate, the Secretariat should assist and share information, such as official contact point, with the regional focal points.