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Report of the Bureau on cooperation

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I. Background

1. The resolution ICC-ASP/19/Res.2 entitled “Resolution on cooperation”, adopted by the Assembly of States Parties (“the Assembly”) on 6 December 2020 (Operative paragraph 29, 30, 31), requested the Bureau to maintain a facilitation of the Assembly for cooperation to consult with States Parties, the Court and non-governmental organizations as well as other interested States and relevant organizations in order to further strengthen cooperation with the Court.
2. It requested the Bureau, through the facilitation on cooperation, bearing in mind the mechanism created to follow up the assessment and the implementation of the independent experts’ recommendations to examine the issues and challenges related to cooperation, with a view to identify concrete measures and follow-up action in order to address those challenges and to report thereon to the Assembly at its twentieth session, in line with the overall reporting framework set by the Assembly for the Mechanism; to continue to address a number of issues that have been priorities in recent years, and with a matter of priority: to continue the work to further develop the content of the Secured Platform on Cooperation; to hold consultations on the advisability of developing regional thematic focal points on cooperation, of creating a permanent structure for a network of national practitioners and focal points on cooperation, and on the deepening of the relationship between the United Nations and its agencies and entities, including for capacity building purpose in order to foster cooperation with the Court (operative paragraphs 32, 33, 34).
3. The Assembly also welcomed the Court’s report on cooperation, which contained disaggregated data over the responses provided by States Parties, including highlighting the main challenges and requested the Court to submit an updated report on cooperation to the Assembly at its twentieth session.
4. On 6 April 2021 the Bureau re-appointed Ambassador Momar Guèye (Senegal) and Ambassador Luis Vassy (France) as co-facilitators on cooperation.

II. Organization of work and main issues considered

5. In 2021, The Hague Working Group (“the working group”) held a total of two meetings or informal consultations on the issues of cooperation.
6. The continued unprecedented situation due to the COVID19 pandemic impacted the work of the facilitation and limited the scope and interactiveness of its meetings and consultations. Nevertheless, meetings and consultations have been held virtually with a number of stakeholders, including States, Court officials and representatives of civil society.
7. Informal consultations were held throughout the year with representatives of the Court on the elaboration of the interactive platform on cooperation and on the future priorities of the facilitation on cooperation.
8. At the first meeting, held on 13 July 2021, the co-facilitators presented the work program of the facilitation, and their approach towards the assessment of the Independent Expert Review recommendations allocated to the facilitation on cooperation. This approach did not elicit any particular reactions or objections and thus was considered as a relevant working basis to carry out their work.
9. A second meeting of the facilitation was held with all states parties and other stakeholders on 4 November 2021, in order for the Court to present its annual report on cooperation and recommendations contained therein,¹ and for the facilitation to assess together with stakeholders the IER recommendations allocated to the Cooperation facilitation and to present other areas for consideration in 2022. The co-facilitators decided to group the IER recommendations allocated to the facilitation by clusters of issues. While the assessment of some recommendations began at this meeting, the assessment of another group of recommendations was postponed to the first half of 2022.

¹ ICC-ASP/20/25.

10. The co-facilitators continued to work on the priorities identified in the previous years and pursuant to the mandate outlined in the resolution on cooperation (ICC-ASP/19/Res.2),² as well as in the omnibus resolution (ICC-ASP/19/Res.6, including annex I).³ They particularly focused their efforts on the following subjects:

– follow up to the Paris Declaration on financial investigations and asset recovery and developing the interactive platform on cooperation;

– further work on voluntary cooperation agreements, with the aim of identifying any blockages or obstacles and try to deal with them through best practices sharing and testimonies of States that have successfully concluded agreements in order to explain how it works;

– assessment of IER recommendations allocated to the cooperation facilitation.

11. At the second meeting of the facilitation, representatives of the Court provided an overview of the 2021 Court's report on cooperation. The report covered the period between 16 September 2020 and 15 September 2021 when cooperation work remained important during the ongoing challenging period of the Covid19 pandemic. The report states that the Office of the Prosecutor made 387 requests for judicial assistance and that the Registry made 467 requests for cooperation (including operational support requests made by offices located in situation countries while requests for legal assistance in the strict sense sent by the Registry amounted to 124). On average, States respond within two to three months of sending the request. This timeline vary greatly depending on the nature of the request. The report also states in general, the cooperation received by the Court is good but some difficulties were still present, for example with regard to requests to obtain large amounts of or very technical information. The Registry faced difficulties with respect to voluntary cooperation for example to support family visits to detainees.

12. The Court welcomed some positive developments during the period considered, including the signature of two cooperation agreements: one between France and the ICC Presidency on the execution of sentences, and the 25th relocation agreement with the Court.

13. The report highlighted the crucial importance of cooperation supporting financial investigations and asset recovery as well as cooperation with the defense.

14. The working group was also updated on three other priorities, namely legal mechanisms allowing the implementation of the Rome Statute, diplomatic support and cooperation between states.

15. Even if this year's particular context did not permit the facilitation to organize thematic events, such as experts meeting on synergies between cooperation and complementarity or implementation of arrest warrants, the co-facilitators are of the views that those issues remain of great importance and should continue to be on the cooperation agenda of the Assembly for the next years.

III. Assessment of IER recommendations allocated to the cooperation facilitation

16. During the first meeting of the facilitation on 13th of July, the co-facilitators presented how they viewed the role of this working group related to the IER follow-up exercise. They mentioned their contribution to the Review Mechanism sent in spring 2021, in which the co-facilitators expressed their readiness to serve as a platform of discussion on recommendations allocated to the facilitation. They also underlined the importance of make a "stock-taking" exercise of what has been collectively accomplished in the past years to implement existing recommendations on cooperation (the "66 recommendations on cooperation" adopted in 2007, the 2017 "Paris Declaration on financial investigations and asset recovery"). The independent experts' report usefully contributes to this exercise by proposing new recommendations addressed to both the Court and the ASP to tackle existing challenges related to cooperation.

² ICC-ASP /19/Res.2, adopted at the 4th plenary meeting, on 16 December 2020, by consensus.

³ ICC-ASP/19/Res.6, adopted at the 4th plenary meeting, on 16 December 2020, by consensus.

17. They added that although the Independent Experts' Report addresses the issue of cooperation primarily from the perspective of improving investigative techniques and tools, and reinforcing the cooperation capacities of the Court, the facilitation on cooperation addresses cooperation issues from a broader perspective, which does not only concern judicial cooperation or legal assistance, but also voluntary cooperation.

18. The list of recommendations as set out in the comprehensive action plan published by the Review Mechanism and adopted by the Bureau in July 2021 allocated 47 to the facilitation on cooperation as a platform for discussion recommendations which encompass other issues than those initially identified by the co-facilitators since the cooperation facilitation is identified as the platform for the assessment of the recommendations related with: Investigative strategy (section A, chapter XIV), Field presence of the OTP in situation countries (section C, Chapter XIV), Evidence assessment and analysis (section D, Chapter XIV).

19. The co-facilitators proposed to group the recommendations, not in chronological order of the recommendations in the independent experts' report, but in coherent thematic clusters in order to streamline the discussions.

20. This organisation of the assessment work by clusters of issues was presented in the draft work programme in July and leads the working group to deviate somewhat from the Comprehensive Action Plan indicative timeframe for assessment. Indeed, the discussion of some recommendations will be postponed to the first half of 2022 for reasons of workload distribution but also to give the new Prosecutor more time to put in place certain measures that relate to the organisation of his Office. This approach was presented to the Representatives of the Mechanism on the Review, who took note of this approach and recalled that it may sometimes be necessary to be flexible.

21. The facilitators proposed to address the following two groups of recommendations in 2021:

- a) Recommendations dealing with cooperation between the ICC and international organisations, in particular the UN and its agencies (R149, R152, R153, R272 and R275);
- b) Recommendations dealing with cooperation (in the sense of legal assistance) between the ICC and States: R272, R273, R274, R276, R277, R279, R280, R281, R285.

22. They proposed to postpone the assessment discussion on other recommendations until 2022. These relate to: Investigative strategies, techniques and tools, OTP field presence, OTP resources and internal cooperation capacities, specific issues or of interest to the Assembly of States Parties such as the review of the New York Liaison Office (R150&R151), the establishment of a reward programme (R289), the establishment of a focal point for arrests (R284).

23. At the meeting held on 4 November, the participants first had a discussion on the first group of recommendations first group of recommendations identified, namely those relating to cooperation relations with the United Nations and international and regional organizations. The participants then discussed the second group of recommendations which address the modalities of interaction between the Office of the Prosecutor and States Parties in the context of requests for judicial cooperation (RFA)

24. A representative from the Presidency of the Court and the Deputy Prosecutor took the floor to present the Court's position on these recommendations. A summary of the main conclusions drawn by the facilitators from this discussion can be found on the ASP website.⁴

IV. Recommendations

25. The working group recommended that the Assembly continue to monitor cooperation with a view to facilitating States Parties in sharing their experiences and considering other initiatives to enhance cooperation with the Court. The working group also recommended to continue the assessment and possible action on the recommendations of the Report of the Independent Expert Review bearing in mind the past activities already undertaken, including

⁴ https://asp.icc-cpi.int/en_menus/asp/bureau/WorkingGroups/Cooperation/Pages/default.aspx

the 66 recommendations adopted by the Assembly on cooperation in 2007, in order to take further action to improve cooperation with the Court and to continue to include cooperation as a standing agenda item for future sessions of the Assembly, pursuant to operative paragraph 30 of resolution ICC-ASP/17/Res.3. The working group further recommended that the draft resolution in annex I be adopted by the Assembly.

Annex I

Proposed Resolution on cooperation

The Assembly of States Parties,

Recalling the provisions of the Rome Statute, the Declaration on Cooperation (RC/Dec.2) agreed by States Parties at the Review Conference in Kampala and previous resolutions and declarations of the Assembly of States Parties with regard to cooperation, including ICC-ASP/8/Res.2, ICC-ASP/9/Res.3, ICC-ASP/10/Res.2, ICC-ASP/11/Res.5, ICC-ASP/12/Res.3, ICC-ASP/13/Res.3, ICC-ASP/14/Res.3, ICC-ASP/15/Res.3, ICC-ASP/16/Res.2, ICC-ASP/17/Res.3, ICC-ASP-18/Res.3, **ICC-ASP-19/Res.2** and the sixty-six recommendations annexed to resolution ICC-ASP/6/Res.2,

Determined to put an end to impunity by holding to account the perpetrators of the most serious crimes of concern to the international community as a whole, and *reaffirming* that the effective and expeditious prosecution of such crimes must be strengthened, inter alia, by enhancing international cooperation,

Stressing the importance of effective and comprehensive cooperation and assistance by States Parties, other States, and international and regional organizations, to enable the Court to fulfil its mandate as set out in the Rome Statute and that States Parties have a general obligation to cooperate fully with the Court in its investigation and prosecution of crimes within its jurisdiction, including with regard to the execution of arrest warrants and surrender requests, as well as other forms of cooperation set out in article 93 of the Rome Statute,

Welcoming the report of the Court on cooperation,⁵ submitted pursuant to paragraph 376 of resolution ICC-ASP/19/Res.23,

Noting that contacts with persons in respect of whom an arrest warrant issued by the Court is outstanding should be avoided when such contacts undermine the objectives of the Rome Statute,

Further noting the arrest guidelines issued by the Office of the Prosecutor for the consideration of States, including inter alia, the elimination of non-essential contacts with individuals subject to an arrest warrant issued by the Court and that, when contacts are necessary, an attempt is first made to interact with individuals not subject to an arrest warrant,

Noting the guidelines setting out the policy of the United Nations Secretariat on contacts between United Nations officials and persons who are the subject of arrest warrants or summonses issued by the Court, as annexed to a letter dated 3 April 2013 by the Secretary General of the United Nations to the President of the General Assembly and the President of the Security Council,

Recognizing that requests for cooperation and the implementation thereof should take into account the rights of the accused,

Commending international and regional organizations' support for strengthening cooperation in the area of voluntary agreements,

Recalling the pledges relating to cooperation made by States Parties at the Review Conference in Kampala and *noting* the importance of ensuring adequate follow-up with regard to the implementation of pledges,

*Taking note of the resolution on Review of the International Criminal Court and the Rome Statute system*⁶ adopted by the ASP at its eighteen session requesting “the Bureau to address the following issues as a matter of priority in 2020 through its working groups and facilitations, in a fully inclusive manner, in line with their mandates [...]: (a) Strengthening cooperation”; the “Matrix over possible areas of strengthening the Court and the Rome

⁵ ICC-ASP/19/25.

⁶ Resolution ICC-ASP/18/Res.7, adopted at the 9th plenary meeting, on 6 December 2019.

Statute System”, dated 11 October 2019, prepared by the Presidency of the Assembly, which identifies as a priority issue to be addressed by the Bureau and its working groups, the strengthening of cooperation,

Taking note also of the “Independent Expert Review of the International Criminal Court and the Rome Statute System, Final Report”, dated 30 September 2020, prepared by the Independent Experts,

1. *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;

Execution of arrest warrants

2. *Expresses* serious concerns that arrest warrants or surrender requests against 123 individuals remain outstanding despite the arrest and surrender to the Court of ~~one~~ ~~two~~ suspects in ~~June 2020 and November 2020~~ **January 2021** and *urges* States to cooperate fully in accordance with their obligation to arrest and surrender to the Court;

3. *Notes* the OTP and the Registry common efforts to devise and implement common strategies and missions to foster the arrest of suspects within the inter-organ working group on arrest strategies created in March 2016;

4. *Reaffirms* that concrete steps and measures to securing arrests need to be considered in a structured and systematic manner, based on the experience developed in national systems, the international ad hoc and mixed tribunals, as well as by the Court, regarding both tracking efforts and operational support;

5. *Underlines* the necessity to continue the discussions on practical solutions to improve cooperation between States and the Court with a view to enhancing prospects for the implementation of pending arrest warrants following the seminar organized by the facilitators on cooperation on 7 November 2018 in The Hague;

6. *Urges* States Parties to avoid contact with persons subject to a warrant of arrest issued by the Court, unless such contact is deemed essential by the State Party, *welcomes* the efforts of States and international and regional organizations in this regard, and *acknowledges* that States Parties may, on a voluntary basis, advise the ICC of their own contacts with persons subject to a warrant of arrest made as a result of such an assessment;

Implementation legislation of the Rome Statute

7. *Recalls* that the ratification of the Rome Statute must be matched by national implementation of the obligations emanating therefrom, in particular through implementing legislation and, in this regard, *urges* States Parties to the Rome Statute that have not yet done so to adopt such legislative and to set up effective procedures and structures so as to ensure that they can fully meet their obligations under the Rome Statute regarding cooperation and judicial assistance;

8. *Acknowledges* efforts by States, by civil society organizations and by the Court, including through the Legal Tools Project, to facilitate exchange of information and experiences, with a view to raising awareness and facilitating the drafting of national implementing legislation and underlines the need to further exchange experience and best practices between States Parties;

Informal consultations and establishment of focal points

9. *Encourages* States to establish a national focal point and/or a national central authority or working group tasked with the coordination and mainstreaming of Court related issues, including requests for assistance, within and across government institutions, as part of efforts aimed at making national procedures for cooperation more efficient, where appropriate;

10. *Recalls* the report to the thirteenth session of the Assembly on the feasibility study of establishing a coordinating mechanism of national authorities, and *encourages* States Parties to continue the discussion;

11. *Emphasizes* the on-going efforts made by the Court in providing focused requests for cooperation and assistance which contribute to enhancing the capacity of States Parties and other States to respond expeditiously to requests from the Court, *invites* the Court to continue improving its practice in transmitting specific, complete and timely requests for cooperation and assistance and *invites* the States to consider offering consultations and facilitating meetings between the Court organs formulating the requests and the competent national authorities ultimately in charge of executing them with a view to finding solutions together on ways to assist or transmit the information sought and when appropriate, to follow up on execution of requests and discuss on the most efficient way forward;

Financial investigations and freezing of assets

12. *Recognizes* that effective and expeditious cooperation with regard to the Court's requests for the identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crime is crucial to the provision of reparations to victims and for potentially addressing the costs of legal aid;

13. *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; *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;

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

15. *Welcomes the development of the launch of the proposal of the facilitation on cooperation to create a secured digital platform to reinforce exchange of relevant information between States Parties to encourage inter-State cooperation and to strengthening States' capacity to cooperate with the Court; to identify the practical challenges to the effective execution of the Court's requests for cooperation and to further raise awareness of the Court's mandate and requirements for financial investigations and asset recovery, and decides to continue the work with the Court and the Secretariat of the Assembly in order to enhance the platform further in 2022;*

16. ***Welcomes the preparatory work launched by the Court in order to set up a network of operational focal points in the States parties to enhance cooperation with the Court regarding financial investigations, localisation and freezing of assets, encourages the Court to continue this work in order to launch in 2022 the activities of that network and encourages States parties to support the functioning of that network;***

Cooperation with the defence

17. *Urges* States Parties to cooperate with requests of the Court made in the interest of Defence teams, in order to ensure the fairness of proceedings before the Court;

Agreement on Privileges and Immunities of the International Criminal Court

18. *Calls upon* States Parties as well as non-States Parties that have not yet done so to become parties to the Agreement on Privileges and Immunities of the International Criminal Court as a matter of priority, and to incorporate it in their national legislation, as appropriate;

Voluntary cooperation

19. *Acknowledges* the importance of protective measures for victims and witnesses for the execution of the Court's mandate, *welcomes* the new relocation agreement concluded since the last resolution on cooperation, and *stresses* the need for more relocation agreements or arrangements with the Court for the expeditious relocation of witnesses;

20. *Calls upon* all States Parties and other States, to consider strengthening their cooperation with the Court by entering into agreements or arrangements with the Court, or any other

means concerning, inter alia, protective measures for victims and witnesses, their families and others who are at risk on account of testimony given by witnesses;

21. *Acknowledges* that, when relocation of witnesses and their families proves necessary, due account should be given to finding solutions that, while fulfilling the strict safety requirements, also minimize the humanitarian costs of geographical distance and change of linguistic and cultural environment and *urges* all States Parties to consider making voluntary contributions to the Special Fund for Relocations;

22. ***Welcomes the conclusion of an agreement between the Court and France on the Enforcement of sentences;***

23. *Emphasizes* that the need for cooperation with the Court on the enforcement of sentences, and on interim and final release is likely to increase in the coming years as more cases proceed toward conclusion, *recalls* the principle enshrined in the Rome Statute that States Parties should share the responsibility for enforcing sentences of imprisonment and for the interim and final release, in accordance with principles of equitable distribution, and *calls upon* States Parties to actively consider the conclusion of agreements with the Court to this end;

24. *Commends and further encourages* the work of the Court on framework agreements or arrangements, or any other means in areas such as interim release, final release - also in cases of acquittal - and sentence enforcement which may be essential to ensuring the rights of suspects and accused persons, in accordance with Rome Statute and guaranteeing the rights of convicted persons and *urges* all States Parties to consider strengthening cooperation in these areas;

25. *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 ~~twentieth~~ **twenty-first** session;

Cooperation with United Nations

26. *Welcomes and further encourages* the increased cooperation between the Court and the United Nations, and other international and regional organizations, relevant mechanisms for collecting and preserving evidence, and other inter-governmental institutions with a view to foster prosecution of crimes falling within the jurisdiction of the Court;

27. *Urges* States Parties to explore possibilities for facilitating further cooperation and communication between the Court and international and regional organizations, including by securing adequate and clear mandates when the United Nations Security Council refers situations to the Court, ensuring diplomatic and financial support; cooperation by all United Nations Member States and follow-up of such referrals, as well as taking into account the Court's mandate in the context of other areas of work of the Security Council, including the drafting of Security Council resolutions on sanctions and relevant thematic debates and resolutions;

Diplomatic support

28. *Emphasizes* the importance of States Parties enhancing and mainstreaming diplomatic, political and other forms of support for, as well as promoting greater awareness and understanding of the activities of the Court at the international level, and *encourages* States Parties to use their capacity as members of international and regional organizations to that end;

Promoting dialogue with all stakeholders

29. *Welcomes* the work undertaken on the implementation of the 66 recommendations on cooperation adopted by States Parties in 2007,⁷ *recalls* the flyer prepared by the Court that can be used by all stakeholders to promote the 66 recommendations and increase their understanding and implementation by relevant national actors and the Court

30. *Welcomes* the joint panel discussion on strengthening cooperation with the Court organised by the co-facilitators on cooperation and the focal points on non-cooperation on 5 October 2020;

⁷ Resolution ICC-ASP/6/Res.2, annex II.

31. *Takes note* of the Bureau's Report on cooperation⁸, covering inter alia, the follow up to the Paris Declaration on financial investigations and asset recovery and the work on a secured digital platform on cooperation; considerations on the Court's relationship with the United Nations; and proposals concerning the follow-up action regarding cooperation issues identified in the framework of the review and strengthening process of the Court and the Rome Statute System, and priority areas for 2021;
32. *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;
33. ~~*Requests*~~ *Encourages* the Bureau, through its Working Groups to ~~speed up~~ *continue* its review of the implementation of the 66 recommendations, in close cooperation with the Court, where appropriate;
34. ~~*Requests* the Bureau, through the facilitation on cooperation, bearing in mind the mechanism created to follow up the assessment and the implementation of the independent experts' recommendations, in accordance with the resolution on the Review of the International Criminal Court⁹ and the Review Mechanism's Comprehensive Action Plan¹⁰, to continue to assess the recommendations related to cooperation and their follow-up including their implementation as appropriate, with a view to identify challenges and concrete measures and follow-up action in order to address those challenges and to report thereon to the Assembly at its ~~twentieth first~~ session, in line with the overall reporting framework set by the Assembly for the Mechanism;~~
35. *Requests* the Bureau, through the facilitation on cooperation, to continue to address a number of issues that have been priorities in recent years, and with a matter of priority : to continue the work to further develop the content of the Secured Platform on Cooperation; to hold consultations on the advisability of developing regional thematic focal points on cooperation, of creating a permanent structure for a network of national practitioners and focal points on cooperation, and on the deepening of the relationship between the UN and its agencies and entities, including for capacity building purpose in order to foster cooperation with the Court;
36. *Encourages* the Bureau to identify issues for the Assembly to continue holding plenary discussions on specific topics related to cooperation, including on the issue of financial investigations and arrests;
37. *Recognizes* the importance of ensuring a safe environment for strengthening and fostering cooperation between civil society and the Court and of taking all necessary action to address threats and intimidation directed at civil society organizations;
38. *Takes note* that due to the COVID-19 pandemic, the Court was not able to organize its ~~78th~~ Focal Points Seminar on Cooperation during the reporting period, which is expected to take place in ~~2022~~, focused on cooperation regarding financial investigations and recovering of assets, *underlines* that those seminars constitute important platforms to enhance dialogue and cooperation between the Court and States Parties including on new developments in technical areas of cooperation, and *encourages* all stakeholders, including civil society organizations, to continue organizing events that allow for exchange of information with the purpose of enhancing cooperation and constructively seeking solutions to identified challenges;
39. **[Placeholder for text based on ASP cooperation debate];**
40. *Recognizing* the importance of the Court's contribution to the Assembly's efforts to enhance cooperation, *welcomes* the Court report on cooperation¹¹, which contained disaggregated data over the responses provided by States Parties, including highlighting the main

⁸ ICC-ASP/20/2519/33.

⁹ ICC-ASP/19/ Res.7.

¹⁰ https://asp.icc-cpi.int/iccdocs/asp_docs/ASP20/RM-Comprehensive_Action_Plan-ENG.pdf.

¹¹ ICC-ASP/20/2519/33.

challenges, *requests* the Court to submit an updated report on cooperation to the Assembly at its **twenty-first** session.

Annex II

Proposed text for omnibus resolution

A. Cooperation

1. *Refers* to its resolution ICC-ASP/20/Res.[..] on cooperation;
2. *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;
3. *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 fulfil its critical mandate of holding accountable perpetrators of the most serious crimes of concern to the international community and delivering justice to victims;
4. *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;
5. *Welcomes* the Court's report and comprehensive presentation on cooperation¹², which contained disaggregated data over the responses provided by States Parties, including highlighting the main challenges;
6. *Underlines* the necessity to continue the discussions on practical solutions to improve cooperation between States and the Court with a view to enhancing prospects for the implementation of pending arrest warrants following the seminar organized by the facilitators on cooperation on 7 November 2018 in The Hague;
7. ***Underlines also the necessity to continue the discussions between the co-facilitators on cooperation and the focal points no-cooperation and the Court, following***~~*Welcomes*~~ the joint panel discussion on strengthening cooperation with the Court ~~organised by the co-facilitators on cooperation and the focal points on non-cooperation held~~ on 5 October 2020;
8. **[Placeholder for text based on ASP cooperation debate];**
9. *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, 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;
10. *Recalls* the importance of the non-legally binding Declaration of Paris on asset recovery annexed to resolution ICC-ASP/16/Res.2;
11. ~~*Welcomes the creation*~~ ***Recalls the existence*** of the secured digital platform for States Parties to exchange relevant information on cooperation and financial investigations and assets recovery;
12. ~~*Notes*~~***Recalls*** the recommendations on cooperation contained in the 30 September 2020 Independent Experts Report;

¹² ICC-ASP/20/2549/33.

B. Mandates of the Assembly of States Parties for the intersessional period

1. 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 ~~twentieth~~ **twenty-first** session;
 - c) *invites* the Bureau, through its Working Groups, to discuss the feasibility of establishing a coordinating mechanism of national authorities;
 - d) *invites* the Bureau, through its Working Groups, to continue to strengthen the relationship between the UN and its agencies and entities, including for capacity building, the ICC and States Parties, to foster cooperation with the Court;
 - e) *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;
 - f) ~~*requests*~~ ***encourages*** the Bureau, through its Working Groups, to ~~speed up~~ **continue** its review of the implementation of the 66 recommendations on cooperation adopted by States Parties in 2007,¹³ in close cooperation with the Court, where appropriate;
 - g) *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;
 - h) ~~*Requests* the Bureau, through the facilitation on cooperation, bearing in mind the mechanism created to follow up the assessment and the implementation of the independent experts’ recommendations, in accordance with the resolution on the Review of the International Criminal Court¹⁴ and the Review Mechanism’s Comprehensive Action Plan¹⁵, to continue to assess the recommendations related to cooperation and their follow-up including their implementation as appropriate, with a view to identify challenges and concrete measures and follow up action in order to address those challenges and to report thereon to the Assembly at its ~~twentieth~~ **first** session, in line with the overall reporting framework set by the Assembly for the Mechanism;~~
 - i) *requests* the Court to continue to submit an updated report on cooperation to the Assembly at its annual session, containing disaggregated data over the responses provided by States Parties, including highlighting the main challenges;
 - j) *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, including by continuing the work to further develop the secured digital platform.

¹³ ICC-ASP/6/Res.2, annex II.

¹⁴ ICC-ASP/19/ Res.7.

¹⁵ https://asp.icc-cpi.int/iccdocs/asp_docs/ASP20/RM-Comprehensive Action Plan-ENG.pdf.

Annex III

Table of recommendations

Recommendations	Context	Court's assessment	Conclusions following 4 November Meeting
Cooperation between the ICC and international organizations (especially UN + Agencies)			
<p>R149. The Court leadership should decide on and identify a focal point in The Hague responsible for relations with the UN Secretariat.</p> <p>Timing : 2nd Half 2021</p> <p>Categorization/Allocation: Court/Court</p>	<p>The Liaison Office in New York (NYLO) has existed now for more than 15 years, but relations with key UN Secretariat offices, and the communication with the Missions of States Parties, particularly those that do not have diplomatic representation in The Hague, and with civil society organizations based in New York, continue to be challenging.</p> <p>The report identifies a tendency of different Organs and offices in the Court in The Hague to bypass the NYLO in conducting their business with counterparts in the UN Secretariat. The justification for this is sometimes the need for confidentiality, for others a sense that this is more efficient, but the result is that the NYLO is too often left unsighted and caught unaware when it is called to intervene.</p> <p>This undermines its credibility in the New York context and leaves its clients and contacts sometimes dissatisfied. The Court should ensure that efficient communication and coordination processes are established, enabling</p>	<p>The Court is ready to engage with the UN to discuss and better understand if they see value in modifying the existing model of interaction with the organs of the Court based on this recommendation. While current relationship is already fluid and working, the Court recognizes that it needs constant nurturing and awareness raising for example due to changes in personnel and new developments at the work done by both the Court and the UN. It is important to reevaluate this in a manner that is most helpful to the operations and communication needs of both organizations, but also mindful in particular of the specific mandates and needs of the organs of the Court, notably, OTP's independence and Registry's neutrality, obligations of confidentiality, to safeguard operational integrity, as well as its support to Defence and Legal Representatives of Victims. Accordingly, prima facie, a single focal point for the whole Court could present some conflicts of interest and practical challenges.</p> <p>The interactions with the UN Secretariat may be further strengthened by increasing the frequency and developing the format of the "roundtables" held between the two institutions. Discussions and brainstorming are currently underway on the former.</p>	<p>→ The Court agrees with the overall idea of strengthening the relationship with the UN but finds that appointing one focal point for the whole court could not be actionable, given the different roles and independence of the Court organs, as well as associated confidentiality aspects, require the involvement of different persons at the Headquarters end</p> <p>→ The Court was ready to engage with the UN with a view to discussing this issue</p>

	the NYLO to benefit from up-to-date information on Court developments, so that it can timeously and reliably respond to queries from the diplomatic community in New York.		
<p>R152. The leadership of the Court, particularly the Prosecutor, should establish regular consultations with the heads of the UN agencies most relevant to the Court's operation, in cooperation with the UN Office of Legal Affairs, in order to facilitate the assistance required by Court officials in the field.</p> <p>Timing : 2nd Half 2021</p> <p>Categorization/Allocation: Court/Court</p>	<p>There is some indication that at times the leadership of the Court has sought to interact with the leadership of the relevant agencies to try to iron out difficulties, but this seems to have been ad hoc and sporadic. According to the Experts, in some places the cooperation is lower, hampering the activities of the Court and slowing down investigations. The IER highlights a need for more formal and regular channels of communication between the Prosecutor and the Registrar, and UN-agencies in the field, i.e. the High Commissioner for Refugees, the Administrator of UNDP, the Executive Director of UNICEF, the Director-General of International Organization for Migration, and others.</p> <p>The purpose of such meetings would be to keep the latter informed of the Court's planned activities and strategies, to encourage an inclusion in the various agencies briefing of officers going into the field of an appreciation and understanding of the role of the Court, and to build habits of inter-agency collegial-</p>	<p>Cooperation mechanisms exist at the working level between the Organs of the Court and various UN agencies.</p> <p>Having more such consultations at the leadership level would further strengthen the Court's relationship with UN agencies on whose cooperation the Court regularly relies. Annual and operational planning of the Court, already envisage direct interaction between the Principals and the UN, and all opportunities are seized for this purpose. Many of such engagements are matters of public record. These efforts will continue and will see added focus.</p> <p>As a particular point of improvement, cooperation with some UN agencies or organizations, in particular those with a significant field presence and humanitarian or protection mandates, is a point of development, for which the OTP is developing an action plan, identifying the relevant UN agencies and organizations with prioritized cooperation needs and strategies to enhance cooperation.</p>	<p>→ The Court supported this recommendation</p> <p>→ Particularly useful in relation to the Court's operations in the field, and the assistance required in that context</p> <p>→ The OTP already interacts with the UN officials by way of regular meetings with relevant UN Officials such as the UN Secretary General's Special Advisors on Children in Conflict, Sexual Violence and Genocide Prevention</p> <p>→ Interesting to see what the role of the deputy prosecutors will be regarding the relationship with the UN</p>

	ity that would, hopefully, trickle down to the field.		
<p>R153. The Court should maintain its practice of engaging actively with regional organizations and should take advantage of opportunities to expand its engagement with other relevant regional bodies.</p> <p>Timing : 1st half 2022</p> <p>Categorization/Allocation: Court/Court</p>	<p>The Court has also worked to engage with international, inter-regional and regional organizations, particularly relevant political and legal organizations such as the African Union, the Organization of American States, the EU, the Caribbean Community, the Commonwealth, and the Organisation Internationale de la Francophonie, with the aim of helping relevant states better understand the purpose and value of the Court and thereby building support for its activities. Nowhere has this been more important, though also challenging, than with respect to the African Union.</p> <p>These activities should be maintained and where resources allow, strengthened and extended, particularly in regions where the OTP is conducting preliminary investigations or has an ongoing investigation.</p>	<p>With the expanding geographical scope of the Court’s operations, the need to further interact with regional organizations across the globe is more important than ever. Therefore, the Court fully subscribes to this recommendation.</p> <p>To this end, the Court has regular engagement with regional organizations, notably the EU and the AU through its Legal Counsel’s office as well as ICC Member States who are also AU members, with whom it organizes annual roundtable meetings, as well as the OAS, the OIF and the Commonwealth, with which the Court has concluded general cooperation agreements, among others.</p> <p>The Court has also invited representatives of many other regional organizations to participate in relevant activities, notably ICC-organized regional cooperation seminars. More concretely, currently the planning includes meetings or seminars with the EU, AU, OAS, ACP and ECOWAS, regional events in Asia and North Africa</p>	<p>The Court fully supports R153.¹⁶</p> <p>→ the Court remains open to dialogue and continues to actively explore ways to strengthen partnerships with regional organizations, such as the African Union. The Court has tried to develop links with African Union for a long time with limited success.</p> <p>→ With regards to Asian region, it was noted that despite challenges faced, the Court would maintain its efforts to develop relations.</p> <p>→ The OTP indicated that the Office has active relationship with Europol similar to that with Eurojust and its Genocide network</p>
<p>R272. The OTP should continue to develop strong partnerships and enter into Memoranda of Understanding with States Parties, international and intergovernmental organizations, and private companies.</p> <p>Timing : 2nd Half 2021</p>	<p>Most of the OTP investigative steps require cooperation from States Parties, national governmental authorities, inter-governmental bodies, civil society organizations, commercial, and other entities.</p> <p>The need for this cooperation is only increasing with the growing number of</p>	<p>This is an actionable recommendation, which also reflects current OTP efforts, especially on the part of the Prosecutor and JCCD, which takes the lead for the Office in developing cooperation networks and negotiating Memoranda of Understanding (“MoUs”) with States.</p> <p>The JCCD also negotiates cooperation agreements with other entities that can support investigation activities, including non-State actors. An example is the</p>	<p>→ Positively assessed by the OTP for implementation</p> <p>→ The OTP seems to be already taking an approach compatible with the recommendation, although it says it remains flexible in its approach to operational needs because it believes that not all partnerships need to be translated into agreements and arrangements, but there are other ways to formalize and</p>

¹⁶ While not explicitly stated during the second cooperation meeting of 4 November 2021, the Court subsequently confirmed this positive assessment, which was also in line with the Court’s Overall Response of 14 April 2021.

<p>Categorization/Allocation: Court & ASP/OTP</p>	<p>situations, more suspects at large, the need to obtain evidence from witnesses located abroad, and increased use of digital evidence.</p> <p>In order for the OTP to conduct effective and efficient investigations, within its limited resources and broad mandate, it will need to rely on the assistance of outside entities.</p> <p>Intergovernmental and international organizations (e.g. INTERPOL, EUROPOL, UN and UN Agencies) often have access to immigration records, are active in situation countries, act as first responders, and collect medical and forensic records. Such types of evidence have been successfully obtained and presented in court in relation to several Court cases.</p> <p>The OTP staff interviewed by the Experts stressed the need to have stronger cooperation agreements with national authorities, including the armed forces and national law enforcement agencies, international and intergovernmental organizations, and private companies. This need for increased cooperation is recognized in the latest OTP Strategic Plan.</p>	<p>work the ID and JCCD have done in reaching agreement with the Law Enforcement Network, the Norwegian Police University College and the Institute for International Criminal Investigations.</p> <p>In addition to developing new partnerships, the JCCD tends to the maintenance of existing partnerships. Through country focal points, it works to gain, and create, better understanding, in order to facilitate operations.</p> <p>Also, partnerships do not always have to be translated into MoUs; there are other ways to formalize and maintain them, sometimes more efficiently, so that the OTP should remain flexible in its approach. Given, for all parties involved, the resource-intensive nature of the whole process of concluding MoUs, their negotiation should be reserved for circumstances that would generate efficiencies.</p>	<p>maintain them more effectively.</p>
<p>R275. The OTP and the ASP could consider revisiting agreements with international and</p>	<p>The ID is presently cooperating with a number of partners, including some States</p>	<p>This recommendation may only be partly actionable, since it must take into account that cooperation with UN entities is governed by</p>	<p>→ Positively assessed by the OTP for implementation</p>

<p>intergovernmental agencies with which the OTP engages frequently, such as the UNHCR and International Organization for Migration.</p> <p>Timing : 1st half 2022</p> <p>Categorization/Allocation: Court & ASP/OTP & Cooperation</p>	<p>Parties and intergovernmental bodies, and is actively working on strengthening such cooperation. However, the Experts heard serious concerns from some OTP staff to the effect that there remain troubling situations in which there is a serious lack of cooperation and inordinate delays in responding to requests for information.</p> <p>The Experts recognize that some of these problems might be a consequence of requests that are too complex or imprecise to enable states or other stakeholders to adequately respond to them.</p>	<p>the existing umbrella UN-ICC relationship agreement. The relationship agreement is Court-wide and not OTP-specific. It was subject to lengthy negotiations, especially in fields such as peace-keeping operations, and the outcome from re-opening those negotiations would be uncertain.</p> <p>The current framework agreement covers the needs of the OTP broadly, foresees obligations on the UN side and allows some leeway in the level of cooperation provided by the UN.</p> <p>The OTP could, within the broad parameters of the agreement, and with the support of the UN Office of Legal Affairs (OLA), seek to increase its exchanges with the relevant offices, agencies and entities to improve cooperation. For example, in recent years, guidelines on cooperation have been developed with the OLA and focal points identified for each entity; similar initiatives could be examined. Supported by the OLA, ICC management and operational staff interact regularly with organizations, such as UNHCR and the IOM, to improve cooperation; this remains an area of ongoing effort, however, and improvements are desirable.</p> <p>On this last point, States Parties could themselves act on the need for some UN agencies to improve their cooperation with the OTP and the Court. States Parties could do this in their role as UN Member States who support and contribute to those organizations, by pushing for improved cooperation through both high level and working level bilateral discussions.</p>	<p>→The OTP also actively tries to maintain and explore ways of reinforcing existing partnership agreements as much as possible as well as to develop new partnerships thanks to the specific focal points in each country</p> <p>→ The OTP stressed the importance of taking into account the existing framework agreement between the UN and the ICC as well as the support of the UN Office of Legal Affairs (OLA), to increase its interaction with UN programs</p>
Cooperation between the ICC and States Parties / Judicial assistance			
<p>R272. The OTP should continue to develop strong partnerships and enter into Memoranda of Understanding with States Parties, international and intergovernmental organizations, and private companies.</p>	<p>Judicial cooperation are of particular importance. In many cases, the necessary information to enable the OTP to conduct an investigation is located in a foreign ju-</p>	<p>This is an actionable recommendation, which also reflects current OTP efforts, especially on the part of the Prosecutor and JCCD, which takes the lead for the Office in developing cooperation networks and negotiating MoUs with States.</p>	<p>See response above for R272</p>

<p>Timing : 2nd half 2021</p> <p>Categorization/Allocation: Court & ASP/OTP</p>	<p>risdiction. The domestic agencies will likely have the capacity and legal framework to allow them to collect the information that would enable successful investigations. This would include intercepting communications, telephone records, satellite imagery, bank records, and immigration records.</p> <p>Private companies are the custodians of the contents of social media or email accounts; private banking companies would be able to provide information on money transfers.</p> <p>The OTP, to conduct effective and efficient investigations within its limited resources and broad mandate, will need to rely on the assistance of outside entities. The OTP staff interviewed by the Experts stressed the need to have stronger cooperation agreements with national authorities, including the armed forces and national law enforcement agencies.</p>	<p>The JCCD also tends to the maintenance of existing partnerships. Through country focal points, it works to gain, and create, better understanding, in order to facilitate operations.</p> <p>Also, partnerships do not always have to be translated into MoUs; there are other ways to formalize and maintain them, sometimes more efficiently, so that the OTP should remain flexible in its approach. Given, for all parties involved, the resource-intensive nature of the whole process of concluding MoUs, their negotiation should be reserved for circumstances that would generate efficiencies.</p>	
<p>R273. The OTP should consider requesting assistance from the ASP in raising the awareness of States Parties to the needs of the OTP. Best practices and lessons learnt could be shared.</p> <p>Timing : 1st half 2022</p> <p>Categorization/Allocation:</p>	<p>Requests for judicial cooperation are of particular importance. In many cases the necessary information to enable the OTP to conduct an investigation is located in a foreign jurisdiction. The domestic agencies will likely have the capacity and legal framework to allow them to collect the information that would</p>	<p>This is an actionable and welcome recommendation.</p> <p>It could be implemented in various ways, including through the Hague Working Group facilitation on cooperation. As the Office has highlighted in regular reports and presentations in ASP working groups and plenary sessions, priority areas for raising awareness include financial investigation needs and arrest and tracking challenges, as well as other areas for support, such as access to</p>	<p>→ Positively assessed for implementation but within certain practical constraints</p> <p>→ The OTP continues to explore and promote standard practices and procedures, where possible</p>

<p>Court & ASP/OTP & Cooperation</p>	<p>enable successful investigations.</p> <p>Apart from specialized types of information, another area where a stronger cooperation framework is required relates to witnesses.</p> <p>The Experts were informed of the increasingly burdensome requirements placed by some states on the OTP to enable it to carry out witness interviews. Regrettably, this also applies to some States Parties. Delayed interviews not infrequently result in the loss or dilution of investigative opportunities.</p>	<p>certain domestic immigration records. Annual ASP cooperation reports include feedback on difficulties faced and the 2020 report presents a more detailed account of the execution of requests.</p>	
<p>R274. The OTP and the ASP should consider improvements in cooperation. Consideration might be given to the development of a uniform cooperation framework for all States Parties, or for regional groups of states</p> <p>Timing : 1st half 2022</p> <p>Categorization/Allocation: Court & ASP/OTP & Cooperation</p>	<p>The Experts recognize that some problems related to lack of cooperation might be a consequence of requests that are too complex or imprecise to enable states or other stakeholders to adequately respond to them. The responders might not have an awareness of the OTP's legal mandate.</p> <p>Stronger professional capacity within the OTP is also important to ensure that information received is treated in an appropriate manner, and so inspires more confidence on the part of the authorities, organizations, or businesses receiving requests for assistance.</p>	<p>This recommendation is only partly actionable, because internal State structures that address cooperation depend on domestic constitutional and legal norms, and on available capacities. Developing a uniform cooperation framework has not proven feasible in the experience of the JCCD's ICS. The JCCD's ICS has introduced RFA templates to harmonize cooperation requests that the OTP sends out, thus contributing to a more uniform pattern of cooperation and a standardization of Office interactions with domestic law enforcement and judicial actors.</p> <p>However, the real challenge may be for the Court to negotiate specific cooperation frameworks with States Parties, to allow for direct judicial cooperation between the OTP and States Parties, for example, by including the OTP in the European network of judicial cooperation, as this would require adjustments to national legislation. The OTP does support the Mutual Legal Assistance Treaty initiative led by some States Parties. The OTP has also noted efforts to create uniform</p>	<p>→ Positively assessed for implementation but within certain practical constraints</p> <p>→ The OTP has encountered some difficulties with the number of different laws and legal requirements in the different States Parties, and added that it was challenging to have a one-size fits all approach</p>

		practices in the field of mutual co-operation in legal matters at the regional level, such as those promoted by the Council of Europe, and contributes to these efforts as appropriate. The most promising way for the OTP to follow up on the Experts' recommendation might be to participate in initiatives that States foster at the regional level, where the OTP and the Court could develop best practices for cooperation and more uniform operating procedures.	
<p>R276. The OTP should consider a review of relevant domestic co-operation laws, procedures, and policies for the purpose of enabling cooperation with States Parties for evidence collection</p> <p>Timing : 2nd half 2021</p> <p>Categorization/Allocation: Court/OTP</p>	<p>The Experts recognize that some problems related to lack of cooperation might be a consequence of requests that are too complex or imprecise to enable states or other stakeholders to adequately respond to them. The responders might not have an awareness of the OTP's legal mandate. Stronger professional capacity within the OTP is also important to ensure that information received is treated in an appropriate manner, and so inspires more confidence on the part of the authorities, organizations, or businesses receiving requests for assistance.</p>	<p>It is being implemented.</p> <p>The JCCD's ICS now collects relevant records in the course of developing cooperation plans and in its interactions with States; it makes information on domestic cooperation laws, procedures and policies available to the integrated teams.</p> <p>Such information is now recorded in the recently established RFA DB system and is available to relevant OTP staff, including integrated teams. In addition, the ICS is in the process of making available within the OTP information on State requirements respecting assistance requests.</p>	<p>→ Positively assessed by the OTP and seems to be already partially implemented</p> <p>→ The Office collects relevant information on national laws, procedures and policies on co-operation that are useful in the development of co-operation plans and in interactions with States</p> <p>→ This information is also made available to the integrated teams</p>
<p>R277. The OTP should consider establishing joint training with Court staff and investigators from States Parties, not only to improve capacity, but also to strengthen an informal network of contacts</p> <p>Timing : 1st half 2022</p> <p>Categorization/Allocation: Court/OTP</p>	<p>The Experts recognise that some of these problems might be a consequence of requests that are too complex or imprecise to enable states or other stakeholders to adequately respond to them. The responders might not have an awareness of the OTP's legal mandate. As further discussed below, the OTP needs to be deliberate and strategic in securing</p>	<p>This is an actionable recommendation, but has so far had limited application, given time and resource constraints respecting the organization of trainings and seminars.</p> <p>Some examples where the OTP has been able to engage in them include contribution to regional trainings for legal communities, such as magistrates and members of law enforcement; annual Court focal point seminars; contribution to European Judicial Network and Interpol trainings; and workshops on financial investigations and</p>	<p>→ The OTP welcomed the recommendation positively although its implementation would require time and resources</p> <p>→ With the support of the generous grant from the European Commission, the OTP, together with Registry, has organized such trainings and seminars on specific topics</p> <p>→ The Prosecutor has attached great importance to this recommendation, which he has raised at every opportunity, particularly during his visit to France, where the possibility of an exchange of</p>

	<p>the necessary cooperation by developing in-house technical expertise to ensure that any requests for assistance are sound and include all the relevant information to enable the requested bodies to respond meaningfully to them. Stronger professional capacity within the OTP is also important to ensure that information received is treated in an appropriate manner, and so inspires more confidence on the part of the authorities, organizations, or businesses receiving requests for assistance.</p>	<p>witness management. These engagements do improve capacity and strengthen a growing network of informal contacts.</p>	<p>good practice between the National Terrorism Prosecution Office and his office was envisaged</p> <p>→ The OTP noted regarding joint trainings, that the OTP’s practical experience had been beneficial, for example when participating in trainings organized by the Institute for International Criminal Investigations, as it allowed for Court investigators to interact with investigators of domestic jurisdictions → the OTP noted the idea deserved more exploration</p> <p><i>A view by one State Party was expressed that the implementation of this recommendation might be dangerous for the respect of confidentiality rules. The same State expressed concern that this can only be achieved by a minority of States with the capacity to offer such training. The facilitator noted that the issue should be solved by further consultations on the meaning and interpretation of the recommendation, which in their view, should be primarily beneficial, apart from the Court, to those States, which are in need of capacity building.</i></p>
<p><i>R279 and R281 are dealt with jointly by the court.</i></p> <p>R279. The efficiency of the RFA process should be improved. Many delays could be averted by eliminating the additional review process, leaving the ICAs responsible for the consistency and reliability of judicial cooperation practices. The Senior Trial Lawyers should provide the ICAs with the content of the RFAs. The ICAs should then be able more speedily to facilitate compliance with the requests.</p> <p>R281. Consideration should be given to the</p>	<p>The Experts recognize the essential role the ICS plays in facilitating cooperation and opening doors to assist the work of investigators and prosecutors. Cooperation issues are complex and situation specific. This requires work relating to different countries, each with its own distinctive political systems, legislative framework and bureaucracies. However, despite the importance of its work, the Experts received much criticism of the JCCD. Many in the PD and ID perceive the JCCD as approaching its task as</p>	<p>The ICS has been developing, despite constraints due to resource deficits, templates and standardized practices to limit the need for review, as well as installing a back-up system for the review of RFAs to ensure timeliness.</p> <p>Some delays could be reduced by improving the Office’s French language capabilities, given the language used by officials in many situation countries in which the OTP is currently engaged (see too R100). This would reduce delay caused by the need for translation, which is done either by the ICA or by the OTP’s Language Services Unit).</p> <p>Since 2019 the new RFA DB has been made available to all Prosecutions Division and Investigations Division (ID) management;</p>	<p>R279 → The OTP has already implemented ways to increase the speed and efficiency of the RFA process, its examination and prevent bottlenecks</p> <p>→ The OTP has harmonized its request for cooperation by developing model RFAs, but limits because of the variability of national laws and requirements in this regard</p> <p>→ The OTP has been able to reduce some of the delays by strengthening its French language capacity</p> <p>R281 → the RFA database was accessible to members of all integrated teams</p> <p>→ Recommendation has already been implemented</p>

<p>RFA database being made more accessible to appropriate leadership of PD and ID.</p> <p>Timing : 1st half 2022</p> <p>Categorization/Allocation: Court/OTP</p>	<p>a diplomatic one and not geared to respond to the requests for assistance from prosecutors and investigators. It is regarded by some members of staff as a hindrance rather than as a help to them.</p> <p>There appear to be serious delays in the complicated system of drafting and filing Requests for Assistance (RFAs). Currently, the RFAs are drafted by the ICA, in consultation with the Senior Trial Lawyer and Investigations Team Leader. Upon drafting, the RFAs are reviewed for consistency by a Judicial Cooperation Adviser and two assistants (GS-OL). This additional review layer reportedly creates a bottleneck in the process, and leads to frustration on the part of the PD/ID integrated team members.</p>	<p>since early 2020 it has become available to all integrated team members identified by ID and PD management (see too R276 above). The RFA DB has also since been integrated with the Language Service Request System, to reduce duplication and ensure timely translation of RFAs. There are also plans to integrate it with the Forensic Service Request System and the OTP Contacts Database. The Office is also working to integrate information and task management systems for the benefit of integrated team operations.</p>	
<p>R280. A framework for informal operational contacts should be established in all situation countries. Investigators could then make informal enquiries to law enforcement or national authorities to ascertain whether the information sought actually exists/and is available. RFAs should, if necessary, then follow.</p> <p>Timing : 1st half 2022</p> <p>Categorization/Allocation: Court/OTP</p>	<p>Apart from the reportedly slow process in producing and communicating the RFAs, the Experts heard concerns that the RFA system overall is not fit-for-purpose for OTP investigations. In order not to lose investigative opportunities, the ID requires a facility for direct operational communication with relevant domestic authorities and other agencies. The investigators would prefer direct contact with the domestic officials and</p>	<p>It has already been implemented, as a matter of OTP practice, but with some practical limitations due to particularities of specific situation countries.</p> <p>Integrated teams, with the support of the ICS, establish networks of operational contacts in their situation countries. This approach will be strengthened in future by the greater field presence the OTP is planning to have. Facilitating operational contacts is a key objective of cooperation plans and an element of situation-specific cooperation agreements.</p> <p>The ICS also develops such networks in non-situation countries, subject to their agreement, for use when the need arises.</p>	<p>This recommendation was not addressed by the Court during the meeting.</p>

	<p>so avoid the cumbersome and time-consuming system of RFAs.</p>	<p>While some States welcome the development of operational contacts by investigators, some others insist, instead, on having one focal point for such interactions and also ask that requests be channeled through one OTP contact person, rather than be conveyed directly by a number of OTP staff.</p>	
<p>R285. In order to improve the tracking of suspects, the OTP should continue to develop mechanisms for coordination and cooperation at the technical level (national law enforcement), and focus on informal cooperation networks</p> <p><i>(The court dealt with it with 284 and 286)</i></p> <p>Timing : 2nd half 2021</p> <p>Categorization/Allocation: Court/OTP</p>	<p>The inability to secure arrests of fugitives is an inherent problem with the Rome Statute system. In spite of some recent positive developments, as of June 2020, warrants of arrest against 14 individuals in six situations are outstanding. Furthermore, in respect of the two Security Council referrals of Sudan and Libya, there have been 15 findings of non-cooperation by States Parties. These were communicated by the OTP to the UN Security Council without any response.</p> <p>The Court and the ASP appear to have been coordinating the development of a stronger framework for the tracking and arrest of Court fugitives. In 2013, the ASP appointed a Rapporteur on arrest strategies, who delivered a comprehensive action plan for the ASP and the Court.</p> <p>Work in this area continues, as the OTP Strategic Plan 2019-2021 includes ‘developing with States enhanced strategies and methodologies to increase the arrest rate of persons subject to outstanding Court arrest warrants.’</p>	<p>The OTP supports the above actionable recommendations, R284-R286.</p> <p>The SALTT has organized meetings with relevant States Parties, to increase access to special investigative techniques; as authorized by these States, it has ongoing direct contacts with partners at the technical level. However, the SALTT would benefit from a more coordinated approach on the State Party side: the ASP, or an ASP focal point, could help foster additional support from States Parties to assist with intelligence collection and special investigative tools (such as intercepts and remote monitoring).</p>	<p>→ The OTP supports the implementation of the recommendation and was making efforts to increase the involvement of the SALTT with national law enforcement agencies</p> <p>→ The SALTT suffers from insufficient capacity, especially since the retirement of one of its investigator</p> <p>→ The OTP said the SALTT would benefit from a more coordinated approach on the part of States parties and the addition of an analyst or investigator to the team</p> <p>→ One state party proposed the creation of an ASP focal point for SALTT</p>

	<p>It is critical for the Court. Otherwise, resources that were put into investigating these cases up to the stage of an Application for Warrant of Arrest (AWA), and maintaining the evidence basis while the cases are in hibernation, are wasted.</p> <p>Based on the successful use of Situation Specific Investigative Assistants in situation countries, such as Uganda, Côte d'Ivoire and Georgia, and the productive re-deployment of staff to situation countries, such as Uganda, Côte d'Ivoire, Mali and CAR, the OTP is now planning for an increased ID field presence in situation countries or in the region where these are situated, and examining how such field presence could best be established and maintained.</p>		
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