



Assembly of States Parties

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Report of the Bureau on cooperation

Note by the Secretariat

Pursuant to paragraph 17 of resolution ICC-ASP/8/Res.2, of 26 November 2009, the Bureau of the Assembly of States Parties hereby submits for consideration by the Assembly the report on cooperation. The present report reflects the outcome of the informal consultations held by The Hague Working Group of the Bureau with the Court.

I. Introduction

1. Operative paragraph 17 of resolution ICC-ASP/8/Res.2¹ entitled “Cooperation”, adopted by the Assembly on 26 November 2009, requested the Bureau to report to the ninth session of the Assembly of States Parties on significant developments on the issue of cooperation. In line with paragraph 16 of the resolution on cooperation, on 19 January 2010, the Bureau appointed Ambassador Mary Whelan (Ireland) as facilitator for cooperation.
2. Preparations for the Review Conference and the Review Conference, held in Kampala from 31 May to 11 June, witnessed significant developments on cooperation. In preparation for the Review Conference extensive consultations were undertaken by the facilitator and the co-focal points, Costa Rica and Ireland, with representatives of States Parties, the organs of the Court, international organizations, non-States Parties and non-governmental organizations.
3. The reissuance of the questionnaire on the Plan of action in April 2010² provided a useful tool for assisting States Parties in their preparations for the Review Conference. In all, a total of 42 States Parties responded with information which outlined the steps they had taken or the difficulties they faced in meeting their obligations to cooperate with the Court.³
4. The Court issued an up-date on its report on cooperation,⁴ which highlights those areas where further cooperation and assistance from States are most urgently needed.
5. The Review Conference adopted a high-level declaration⁵ (“The Kampala Declaration”). The Conference also adopted a Declaration on Cooperation⁶ and took note of the report prepared by the moderator of the Round Table on Cooperation, Mr. Philippe Kirsch, which was held on 3 June 2010.⁷

II. Review Conference

A. Public and Diplomatic Support for the Court

6. The Review Conference was successful in enhancing public and diplomatic support for the Court. The statements made in the high-level segment of the Conference and in the stocktaking discussion underlined the strong political and diplomatic support provided to the Court by States Parties and other stakeholders. In the Kampala Declaration, adopted at the conclusion of the high-level segment, States Parties referred to “a renewed spirit of cooperation and solidarity”. In the Kampala Declaration States Parties resolved to “continue and strengthen our efforts to ensure full cooperation with the Court in accordance with the Statue, in particular in the areas of implementing legislation, enforcement of court decisions, execution of arrest warrants, conclusion of agreements and witness protection, and to express our political and diplomatic support for the Court”.
7. Highlighting the importance which the Conference attached to the issue of cooperation, a specific Declaration on Cooperation was adopted at the 9th plenary meeting of the Conference. The Declaration, inter alia, reaffirmed the importance of compliance with requests for cooperation from the Court, emphasized the particular need to have in place adequate implementing legislation or other procedures under national law to enhance cooperation with the Court and emphasized *the* crucial role that the execution of arrest warrants plays in ensuring the effectiveness of the Court’s jurisdiction. The Declaration on Cooperation also encouraged States Parties to continue to engage in seeking to enhance

¹ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Eighth session, The Hague, 18-26 November 2009* (ICC-ASP/8/20), vol. I, part II.

² Note verbale ICC-ASP/S/PA/07 from the Secretariat, dated 9 April 2010.

³ See: http://www.icc-cpi.int/Menu/ASP/Sessions/Plan+of+Action/2010+_+Plan+of+Action.htm .

⁴ Report of the Court on international cooperation and assistance, contained in the Report of the Bureau on cooperation (ICC-ASP/8/44), annex I.

⁵ Declaration RC/Decl.1.

⁶ Declaration RC/Decl.2.

⁷ RC/ST/CP/1/Rev.1.

their voluntary cooperation with the Court through arrangements or any other appropriate form of assistance on an ad hoc basis.

8. The statements made in the opening high-level segment of the Review Conference and the high-level participation by States Parties, non-States Parties, representatives of international organizations and NGOs in the Round Table discussion pointed to a strong willingness to strengthen cooperation with the Court.

9. Public support for the Court was advanced at the Review Conference by the strong engagement of the NGO sector in the deliberations of the Conference and in the organization of a wide range of side events.

B. Specific pledges and actions on cooperation

10. In statements at the Review Conference and in pledges made to the Conference, many States Parties and other stakeholders made specific reference to steps taken or actions contemplated with regard to cooperation. These steps included commitments with regard to implementing legislation, assistance to support other States in their efforts to enhance their cooperation with the Court, support for victims, and willingness to enter into discussion on agreements covering areas such as witness protection and enforcement of sentences. Three States Parties signed agreements on enforcement of sentences. Pledges were also made with regard to the execution of arrest warrants.

C. Other developments at the Review Conference of relevance to cooperation

11. Issues relevant and integral to the issue of cooperation were also discussed in the stocktaking exercises at the Review Conference on Complementarity⁸ and on The impact of the Rome Statute system on victims and affected communities.⁹ A resolution on strengthening the enforcement of sentences was adopted by the Review Conference¹⁰. Further work in these areas will assist in strengthening cooperation with the Court.

III. Developments since the Review Conference

12. In his summary of the Round Table discussion on cooperation, Mr. Philippe Kirsch referred to the fact that “when certain States Parties had clear obligations to execute arrest warrants but were unable to do so, responsibilities would become diluted. The problem, however, would remain intact and could have significant consequences for the Rome Statute system”.

13. Since the Review Conference, there have been examples of situations where the expressions of support and commitments to fully implement the provisions of the Rome Statute were not translated into the requisite action. It is essential for States Parties to comply with their obligation to cooperate in accordance with Part 9 of the Rome Statute. Pre-Trial Chamber I of the Court has drawn the attention of the Security Council of the United Nations as well as the Assembly of States Parties to the Rome Statute to matters relating to outstanding arrest warrants. The President of the Assembly has also raised concerns in this regard. Political support can only be given effect if the statements, declarations and pledges made at Kampala are given concrete expression in actions to fully implement the Rome Statute.

⁸ RC/ST/CM/1.

⁹ RC/ST/V/1.

¹⁰ Resolution RC/Res.3.

IV. Future work on cooperation

14. Resolution ICC-ASP/8/Res.2¹¹ set out a substantial area of future work on cooperation. It also requested the Court to submit an updated report on cooperation to the Assembly at its tenth session.

15. The facilitator has indicated her intention to take up the issues identified in resolution ICC-ASP/8/Res.2 in the coming year. The work of the facilitator will also be guided by the Plan of action and other resolutions of the Assembly of States Parties relating to cooperation. Two issues arising from the declaration on cooperation adopted at Kampala require further consideration.

16. At its ninth session, the Assembly of States Parties might wish to consider how it wishes to progress the decision contained in operative paragraph 8 of the Declaration on Cooperation adopted in Kampala, which states that the Review Conference “Decides that the Assembly of States Parties should, in its consideration of the issue of cooperation, place a particular focus on sharing experiences”.

17. The stocktaking exercise undertaken at the Review Conference provided an example of the benefits of sharing experiences. As such it could be a model which the Assembly might wish to adopt at future sessions. Another approach would be for the Assembly to carry out this task by other means and procedures. Any approach could focus on a positive engagement and exchange of views on the experiences of States Parties as they seek to strengthen their cooperation with the Court.

18. A second issue arising from the Declaration on Cooperation adopted at Kampala is operative paragraph 11 wherein the Conference “requests the Assembly of States Parties in its future consideration of the issue of cooperation to examine how to enhance public information on, and promote an understanding of, the mandate and operations of the Court”. An exchange of views on existing practices and programmes would be of use and the Court might be asked to address this issue in the report which it will prepare for the tenth session of the Assembly.

19. The Assembly should hold a principled discussion on what procedures could be required to enable it to discharge its mandate to consider any question relating to non-cooperation. The Assembly should also continue to consider further the scope of cooperation with the Court under Part 9 of the Statute.

¹¹ *Official Records ... Eighth session... 2009* (ICC-ASP/8/20), vol. I, part II.