

Resolution ICC-ASP/16/Res.2

Adopted at the 12th plenary meeting, on 14 December 2017, by consensus

ICC-ASP/16/Res.2 Resolution on cooperation

The Assembly of States Parties,

Recalling the provisions of the Rome Statute, the declaration on Cooperation (RC/Decl.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 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 cooperation¹, submitted pursuant to paragraph 32 of resolution ICC-ASP/15/Res.3,

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 redrafted and redistributed 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,

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

¹ ICC-ASP/16/16.

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;

2. *Expresses* serious concerns that arrest warrants or surrender requests against 15 persons remain outstanding,² and *urges* States to cooperate fully in accordance with their obligation to arrest and surrender to the Court;
3. *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;
4. *Takes note* of the report on arrest strategies by the Rapporteur³ and *takes note* of the draft Action Plan on Arrest Strategies, and *urges* the Bureau to continue consideration of the recommendations of the draft Action Plan on Arrest Strategies with a view to its adoption, and to report thereon to the seventeenth session of the Assembly;
5. *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;
6. *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 other measures so as to ensure that they can fully meet their obligations under the Rome Statute;
7. *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;
8. *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;
9. *Welcomes* the organization by the Court, with the support of the European Commission and other donors, of a yearly seminar on cooperation with its main focal points;
10. *Recalls* the report to the thirteenth session of the Assembly on the feasibility study of establishing a coordinating mechanism of national authorities, and *invites* the Bureau, through its working groups, to discuss the feasibility of establishing such a mechanism, taking into consideration, inter alia, the study in annex II of the report of the Bureau on cooperation to the thirteenth session of the Assembly³, as well as the presentation made by Belgium on 27 July 2017 contained in annex III of the report of the Bureau on cooperation to the sixteenth session of the Assembly⁴, and to report to the Assembly well in advance of the eighteenth session;
11. *Emphasizes* also 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, and *invites* the Court to continue improving its practice in transmitting specific, complete and timely requests for cooperation and assistance;
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;

² As of 27 October 2017, see ICC-ASP/16/9.

³ ICC-ASP/13/29.

⁴ ICC-ASP/16/17, annex III.

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; *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;
14. *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;
15. *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;
16. *Acknowledges* the importance of protective measures for victims and witnesses for the execution of the Court's mandate *welcomes* the two new relocation agreements concluded since the last resolution on cooperation, and *stresses* the need for more such agreements or arrangements with the Court for the expeditious relocation of witnesses;
17. *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;
18. *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;
19. *Welcomes* the conclusion of *two* agreements between the Court and the Republic of Argentina and Sweden on the enforcement of sentences;
20. *Emphasizes* that the need for cooperation with the Court on the enforcement of sentences 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, 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;
21. *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;
22. *Recalls* the conclusion in 2014 of the first voluntary agreement between the Court and a State Party on interim release and *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 seventeenth session;
23. *Welcomes* the increased cooperation between the Court and the United Nations, and other international and regional organizations, and other inter-governmental institutions;
24. *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;
25. *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;

26. *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;

27. *Welcomes* the replies to the 2016 questionnaire and the exchange of information on the implementation of the 66 recommendations on cooperation adopted by States Parties in 2007⁵ as a step in the reviewing process of the implementation of the 66 recommendations, *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, and, *requests* the Bureau, through its working groups, to continue its review of the implementation of the 66 recommendations, in close cooperation with the Court, where appropriate;

28. *Welcomes* the organization by the Court, with the support of States Parties and international and regional organizations, of seminars on 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;

29. *Welcomes* the enhanced dialogue between States Parties, the Court, members of civil society and the International Criminal Court Bar Association offered by the plenary discussion on cooperation held during the sixteenth session of the Assembly, with a special focus on financial investigations and the challenges of asset recovery as well as the future of cooperation with the International Criminal Court on the eve of the twentieth anniversary of the Rome Statute;

30. *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;

31. *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;

32. *Recognizing* the importance of the Court's contribution to the Assembly's efforts to enhance cooperation, *requests* the Court to submit an updated report on cooperation to the Assembly at its seventeenth session and annually thereafter.

⁵ Resolution ICC-ASP/6/Res.2, annex II.

Annex

Declaration of Paris

The States Parties to the Rome Statute of the International Criminal Court (ICC),

1. *Reaffirming* that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation, as stipulated in the Preamble of the Rome Statute of the International Criminal Court (hereinafter referred to as “the Rome Statute”),
2. *Emphasizing* the obligation of States Parties enshrined in Part 9 of the Rome Statute concerning International Cooperation and Judicial Assistance, to cooperate fully with the ICC in its investigation and prosecution of crimes within the jurisdiction of the ICC, and reaffirming full respect for domestic procedures set forth by national legislations,
3. *Further emphasizing* the obligation of States Parties to, in accordance with the provisions of Part 9 of the Rome Statute and under procedures of national law, comply with requests issued by the ICC to assist in the identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes for the purpose of eventual forfeiture, without prejudice to the rights of bona fide third parties, as stipulated in article 93(1)(k) of the Rome Statute,
4. *Mindful of* existing applicable international treaties governing asset recovery and of the related obligations for the jurisdictions concerned to afford one another the widest measure of cooperation and assistance with regard to the return of assets,
5. *Recalling* the recommendations on cooperation endorsed by the ICC Assembly of States Parties (ASP) during its sixth session,¹ particularly recommendations on the identification, seizing and freezing of assets and, if appropriate their implementation,
6. *Further noting* the importance of keeping 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,² as well as the importance of cooperation requests by the Court being as specific as possible,
7. *Recalling* the conclusions of the Workshop on Financial Investigations organized at the seat of the ICC on 26-27 October 2015, as well as the follow up observations made at the 18 November 2016 ASP panel discussion on strengthening financial criminal investigations, and the need to further discuss and clarify the mandate and the requirements of the ICC in relation to financial investigations and asset recovery,
8. *Willing* to advance cooperation with the ICC in the area of financial investigations and asset recovery, in accordance with national legislations, for the purposes of potentially providing evidence to demonstrate linkage between the crimes and assets, *as well as* securing funds for possible reparations to victims if the accused person is found guilty and, for recovering the costs arising from legal aid.

Invite the States Parties to the Rome Statute of the International Criminal Court to,

1. *Consider* the possibility of setting up, reviewing or strengthening the implementation of domestic cooperation laws, procedures and policies, to increase the ability of States Parties to cooperate fully with the ICC in the area of financial investigations and asset recovery, in accordance with the Rome Statute,
2. *Raise* awareness among relevant national authorities about the mandate and the requirements of the ICC in relation to financial investigations and asset recovery, and the nature and extent of the obligation to cooperate under Part 9 of the Rome Statute,

¹ Resolution ICC-ASP/6/Res.2.

² Resolution ICC-ASP/15/Res.3, para 13.

3. *Maintain* the dialogue with the ICC to provide the necessary assistance in the preparation and execution of its requests for cooperation for the purpose of ICC's financial investigations,
4. *Encourage* national authorities and officials to engage with the ICC and look for opportunities to cooperate with the ICC in the area of financial investigations and asset recovery, and consider how to overcome any cooperation challenges,
5. *Consider* initiating discussion at the national level, where relevant, on the possibility of sharing information and best practices, through the appropriate channels, between the ICC and competent national authorities,
6. *Encourage* national authorities to keep under review the possibility of domestic investigation on financial crimes based on relevant information received through requests for cooperation by the ICC in the course of its investigations or prosecutions,
7. *Reinforce* cooperation in relation to investigations or prosecutions already opened before national jurisdictions with respect to crimes within the jurisdiction of the ICC, or serious crimes under the relevant national law, where relevant information would be identified and could be requested from the ICC, as provided for in article 93 (10) of the Rome Statute,
8. *Insert* and *mainstream* the ICC specific mandate, legal framework and cooperation needs in the context of meetings and exchanges between relevant specialized, regional and international networks that deal with financial investigations and asset recovery,
9. *Consider* the possibility of secondments and visiting professionals from the competent national authorities to the ICC, and other specialized trainings, for the purpose of increasing knowledge and understanding, cooperation, and mutual capacity in the area of financial investigations and asset recovery,
10. *Continue* to place emphasis on cooperation regarding financial investigations and asset recovery and follow up to the Paris Conference by inviting the Assembly of States Parties to consider the present declaration at its sixteenth session.

Invite the International Criminal Court to

11. *Create* and *strengthen* the ICC's partnerships with national authorities responsible for international cooperation in criminal matters and international organizations, and with the aim to share information and best practices on the identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes under jurisdiction of the ICC,
12. *Raise* awareness of the ICC's mandate by providing States with relevant information to this end in a timely manner,
13. *Conduct* efficient and effective financial investigations at all stages of investigation and trial, with the aim to use relevant information as evidence, and to obtain freezing and seizure of assets with the view to contribute to reparations to victims and, to recover the costs arising from legal aid, in accordance with the relevant Rules of Procedure and Evidence of the Rome Statute, in particular rule 221.