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**Report of the Bureau on cooperation**

**Note by the Secretariat**

Pursuant to paragraph 36 of resolution ICC-ASP/5/Res.3, of 1 December 2006, the Bureau of the Assembly of States Parties hereby submits its report on the issue of cooperation for consideration by the Assembly. The report reflects the outcome of discussions held by the New York Working Group and by The Hague Working Group of the Bureau, pursuant to the respective mandates assigned to them by the Bureau at its fourth meeting on 1 February, 2007.

## Report on Cooperation

### Contents

	<i>Paragraphs</i>	<i>Page</i>
Executive summary and main recommendations .....	1-9	3
Cooperation – the dynamic approach .....	10-16	4
Part I		
States Parties and the Court .....	17-58	6
A. Cluster 1: General legal mechanisms .....	17-22	6
B. Cluster 2: Diplomatic and public support .....	23-28	7
C. Cluster 3: Cooperation in support of analysis, investigations, prosecutions and judicial proceedings .....	29-38	9
D. Cluster 4: Arrest and surrender .....	39-45	10
E. Cluster 5: Witness protection and support .....	46-50	12
F. Cluster 6: Logistics and security .....	51-54	13
G. Cluster 7: Personnel .....	55-58	14
Part II		
Cooperation in the United Nations context .....	59-67	16
A. Cooperation between the Court and the United Nations.....	60-64	16
B. Cooperation by States Parties in the United Nations context.....	65-67	18
Part III		
International and regional organisations and the Court.....	68-72	21
Part IV		
Conclusion.....	73-79	23
Annexes		
I. Language to be included in the omnibus resolution .....		24
II. List of relevant international and regional organisations .....		25

## Executive summary and main recommendations

1. Cooperation between the International Criminal Court and States Parties, international organisations and non-governmental organisations is an essential basis for the effective functioning of the Court. In general, cooperation functions well. However, more can be done by all parties to strengthen the interaction.

2. Implementing legislation pursuant to article 88 of the Rome Statute is fundamental. It is of great importance that States Parties ensure such legislation is also sufficiently comprehensive. The Assembly of States Parties could **establish a mechanism for sharing information** on the design and functioning of the relevant legislation. Such a mechanism would facilitate the sharing of experiences and best practices. It could also serve as a platform for technical and financial assistance from one State Party to another with regard to implementing legislation.

3. Generating political support and mainstreaming Court issues within national administrations is an equally important factor for facilitating cooperation. Designation of a **national focal point** has proven valuable to a number of States Parties in this regard. The focal point assists with mainstreaming across the national administrative system and provides an accessible entry point for the Court to the national system. It heightens awareness of the Court and allows for efficient feedback on the national capacities for providing support. This, in turn, will strengthen States Parties ability to express political support for the Court in regional and international fora in a consistent manner, inter alia with regards to facilitating arrest and surrender.

4. **Adequate procedures and structures** should be in place in order to respond in a timely and satisfactory manner to requests for cooperation from the Court. Such procedures should be established proactively and prior to actual requests being received. Focal points and relevant diplomatic missions may be part thereof. Such procedures may require networks of agreements or memoranda of understanding to enable national authorities to respond to requests. To further the development of national structures it would be useful if the Court could provide generic examples of the types of assistance that it routinely requests from States Parties. Such examples could also be one of the tools enabling States Parties to share experiences and exchange information on these issues.

5. **Witness relocation and enforcement of sentences agreements** are of great importance to the functioning of the Court. Consideration should be given to establishing relationships between countries that are in a position to provide technical and financial assistance and countries willing to enter into such agreements but who lack the capacity to do so.

6. **The Court** should continually keep States Parties informed of its needs and requirements as they develop as well as strive for full transparency and provision of information with regards to general issues related to cooperation. The Court should also, when submitting actual requests for assistance, do so in a timely manner and be mindful of sharing the burden among States Parties where possible, bearing in mind the circumstances specific to each case.

7. In the **United Nations context**, States Parties are responsible for keeping the interests and mandate of the International Criminal Court in mind, in whatever setting they act. This includes the explanation of the judicial nature of the mandate of the Court, as well as the basic premise on which the Court was founded. The Court should continue to ensure that all channels of communication remain open, so as to ensure cooperation between the two organisations.

8. In general it should be considered whether there is a **larger role to be played by the Secretariat of the Assembly of States Parties** with regard to sharing information and experiences relating to issues of cooperation mentioned above.

9. In order to further a number of the issues dealt with by the New York Working Group and The Hague Working Group – inter alia assistance with witness protection and information sharing mechanisms – it is recommended to **establish a follow-up mechanism**, possibly in the form of a focal point for cooperation in the context of the Working Groups. A full review of the question of cooperation may again present itself as useful within the next 2 – 3 years, depending inter alia on the needs of the Court.

### **Cooperation – the dynamic approach**

10. At its fifth session, the Assembly agreed to “request the Bureau to address the issue of cooperation and to report to the Assembly of States Parties at its next session”.<sup>1</sup> Following this decision, the Bureau, at its meeting on 1 February 2007, decided to appoint facilitators both in New York and in The Hague, one for each Working Group, to address the issue of cooperation. The Working Groups subsequently decided, with a view to ensuring an efficient work process and avoid overlap, to divide the work between themselves. The New York Working Group has primarily dealt with United Nations related issues while The Hague Working Group has dealt with residual areas of cooperation. The two facilitators have coordinated their work closely in order to submit a unified report.

11. On 30 March 2007 – at the request of the Bureau – the Court submitted a report on cooperation. The report was the starting point for the work undertaken in the Working Groups.

12. The issue of cooperation is by nature dynamic – it will change as the caseload of the Court changes. It will also change as interaction with external partners develops. The approach taken here is therefore a dynamic one, focusing on the ‘delivery system’ rather than on a snapshot of cooperation itself.

13. The overall aim of the work in the two Working Groups has been to create and promote an enabling environment for the Court. It was sought to identify problems and barriers in providing cooperation of a general and structural nature, and highlight generic solutions and models for dealing with these. Each national system is unique and States Parties are at different stages in developing their national systems to cooperate with the Court. Recommendations to States Parties therefore need to be adapted to the individual national contexts, inter alia taking into account differences in capabilities.

14. The Hague Working Group decided, based on the report submitted by the Court on cooperation, to organise its work in thematic meetings focusing primarily on the role of States Parties. Each meeting was devoted to a specific cluster or sets of clusters reflecting the way the Court had originally organised items of cooperation in its report of 30 March 2007. Six meetings of The Hague Working Group were held, as well as informal consultations with Court officials and non-governmental organisations. The outcome of this work is reflected in part I of this report.

15. Due to the crosscutting nature of the United Nations related issues, the New York Working Group decided to organise its work around two main themes, namely the relationship between the United Nations and the Court, and the role of States Parties with

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<sup>1</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Fifth session, New York, 23 November - 1 December 2006* (International Criminal Court publication ICC-ASP/5/32), part III, resolution ICC-ASP/5/Res.3, paragraph 36.

respect to the Court in the United Nations context. Five meetings were held in New York, and the facilitator consulted with numerous United Nations officials on an informal basis. The outcome of this work is reflected in part II of this report.

16. Furthermore, both Working Groups dealt with the issue of international and regional organisations as reflected in part III. Part IV contains general conclusions as well as some reflections on options for follow-up on the issue of cooperation.

## **Part I**

### **States Parties and the Court**

#### **A. Cluster 1: General legal mechanisms**

17. General legal mechanisms constitute the basic tools for States Parties in their cooperation with the Court. At the same time, such mechanisms also form the necessary platform for States Parties to cooperate further with the Court on a range of issues.

18. In the framework of general legal mechanisms a distinction can be made between general mandatory obligations under the Statute and supplementary agreements and arrangements.

19. General mandatory obligations include enacting implementing legislation pursuant to article 88 of the Statute,<sup>2</sup> enacting legislation enabling States Parties to investigate and prosecute crimes under the jurisdiction of the Court as well as ratifying the Agreement on Privileges and Immunities of the Court. It is important to note that on the issue of implementing legislation it is not only a question of enactment but also a question of the quality and application of such legislation. Both with regard to enacting and possibly reviewing legislation, it could be useful for all States Parties to have a mechanism for sharing information and experiences. The Court has a database containing implementing legislation of all States Parties. It may be worthwhile to explore ways in which States could use this resource effectively.

20. States Parties should consider ways in which technical assistance may be provided to partners who are experiencing difficulties in drafting such legislation. Some countries are already providing such assistance, as are a range of non-governmental organisations, while others have expressed their willingness to share experiences and assist in overcoming technical and other obstacles. Of particular interest to common law countries is the ICC Model Law, which has been developed by the Commonwealth Secretariat. Technical assistance is also available in this context, and ways of making use of the gradual expansion of the pool of expertise – as an increasing number of States have ratified and implemented the Rome Statute – should be considered by all states.

21. Supplementary agreements and arrangements include witness relocation agreements, enforcement of sentences agreements and agreements to take persons provisionally released or acquitted by the Court. Such agreements are vital for the functioning of the Court, but are currently limited and insufficient in numbers. While all States Parties should strive for such agreements, it is worth noting that there are advantages in relocating a witness or a convicted person to a culturally similar environment for protection or sentence enforcement. It may be useful to explore ways in which States Parties with expertise and resources could assist those who have the will, but not the capacity, to enter into these agreements.

22. A number of issues contained in this section are also being addressed in the New York Working Group in connection with the Plan of Action. This should be kept in mind, both as far as substance and as far as future follow-up on this particular question is concerned.

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<sup>2</sup> Article 88 of the Rome Statute: “*States Parties shall ensure that there are procedures available under their national law for all of the forms of cooperation which are specified under this part*”.

### **Recommendation 1**

All States Parties should secure enactment of implementing legislation, legislation relevant to the investigation and prosecution of crimes under the Statute and ratify the agreement on Privileges and Immunities of the Court.<sup>3</sup>

### **Recommendation 2**

The Assembly of States Parties should consider establishing a mechanism for sharing information between States Parties on drafting and executing implementing legislation. Such a function could be undertaken or supported by the Secretariat. Alternatively, the Court could designate a focal point for implementing legislation and communicate the details of this person to States Parties, subject to statutory requirements.

### **Recommendation 3**

All States Parties should, where appropriate, review their implementing legislation, with a view to improving its functioning. The national focal point could be tasked with this, in cooperation with relevant authorities.

### **Recommendation 4**

States Parties and/or the Assembly, through its subsidiary bodies, could organise regional or global workshops and seminars for national experts and focal points involved in drafting and executing implementing legislation, possibly with the assistance of the Secretariat of the Assembly.

### **Recommendation 5**

States Parties should further consider ways in which support can be given to States who are willing but lack the capacity to enter into witness relocation agreements and sentences enforcement agreements, inter alia through good governance, rule of law and judicial reform programmes, or other forms of cooperation.

### **Recommendation 6**

The Assembly of States Parties should consider tasking the Secretariat with facilitating contact between States Parties interested in providing support and States Parties who would like to receive such support.

## **B. Cluster 2: Diplomatic and public support**

23. The Court underlines that diplomatic and public support is of vital importance for its work. Such support can be divided into four separate but interrelated 'circles'. The first concerns the mainstreaming of Court issues within national administrations, the second bilateral activities of States Parties, the third mainstreaming within regional fora and the fourth is United Nations related issues.<sup>4</sup>

24. Given the complex nature of the Court and its mandate, cooperation with States Parties cuts across various parts of the national administrative systems. This makes the

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<sup>3</sup> See: *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Fifth session, New York, 23 November - 1 December 2006* (International Criminal Court publication ICC-ASP/5/32), part III, resolution ICC-ASP/5/Res.3, paragraphs 31 to 33.

<sup>4</sup> Regional organisations and the United Nations are dealt with in part III and part II, respectively, of this report.

establishment of networks that allow for sharing of information and knowledge crucial, both in terms of generating political support for the Court as well as establishing the capacity to respond to concrete requests for cooperation. Visits to capitals by high-level Court officials can contribute to the generation of such support as well as raising the profile of the Court in general.

25. The establishment of some form of coordinating structure has proven useful in a number of cases. Options range from a single focal point to a task force or some other form of coordinating mechanism, possibly of an inter-institutional nature. Such a mechanism may also be tasked with resolving conflicts between different national entities stemming from incongruent priorities and interests. Whatever form is chosen, however, it is important to ensure that adequate resources exist to cope with the potential workload.

26. It has similarly proven very useful to have a designated contact point for the Court at Embassies of States Parties in either The Hague or Brussels and New York, through which the Court can interact with the national players. Such an interface allows easy and streamlined access for the Court to national systems with regard to all forms of cooperation – a one-stop-shop.<sup>5</sup>

27. Once the appropriate structures are in place the Court should be informed of this and of the modus operandi of such structures.

28. The second circle, bilateral activities of States Parties, is closely related to – and dependent on – national mainstreaming. In their bilateral contacts States Parties should support and promote the Court and its specific activities. Such support encompasses a range of issues such as:

- (a) Promoting the signing, ratification and implementation of the Rome Statute;
- (b) Supporting the Court's general activities, including public support;
- (c) Promoting respect for the Court's independence;
- (d) Supporting situation-specific activities of the Court, including arrest and surrender of wanted persons.

#### **Recommendation 7**

States Parties may consider designating a national focal point tasked with the coordination and mainstreaming of Court-issues within and across government institutions.

#### **Recommendation 8**

States Parties may further consider, based on the activities of the focal point, to establish a more permanent coordinating mechanism either through the focal point or through a working group or task force. Such a mechanism could deal with all Court-related issues.

#### **Recommendation 9**

States Parties could also designate a contact point at relevant Embassies as an interface for the Court with the national focal point.

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<sup>5</sup> This, however, is subject to the procedures applied by States Parties. With regards to requests for judicial cooperation States Parties often choose to designate direct channels of communication to relevant authorities.

### **Recommendation 10**

The Court should continue high-level and working visits to States Parties to contribute to mainstreaming and raising awareness of the International Criminal Court within national administrations of the Court.

### **Recommendation 11**

States Parties should whenever possible express support for the Court and promote its general and situation-specific activities in their bilateral contacts.

### **C. Cluster 3: Cooperation in support of analysis, investigations, prosecutions and judicial proceedings**

29. The Court may at different stages in an investigation approach States Parties with specific requests for various kinds of information and other assistance.

30. In the preliminary examination stage the Court may need general background information. Such information may have no direct relation to a possible trial but is only used for the purposes of deciding whether an investigation may be opened. In addition, where an investigation has been opened, it may be that States are requested to provide background information, for example to assist in planning the investigation. Such information will be kept confidential, subject to the conditions under which the information was provided.

31. States Parties are encouraged to volunteer the provision of such information whenever the Court opens a new investigation, if States believe they have relevant information. The Court should, as early as possible and to facilitate such provision, inform relevant States Parties of the specific needs for background information whenever opening a new investigation. This could, inter alia, be done via regular briefings by the Court on its activities.

32. The Court receives a positive response to the majority of requests for judicial assistance requesting transmission of information that will form part of the evidence. There have, however, been instances of delay in obtaining the relevant information,

33. Provision of information to defence teams may in some cases pose a particular problem in relation to civil law systems, where the defence may be treated differently to the prosecution with regard to requests for judicial assistance, compared to common law systems. It is burdensome for the defence to approach Chambers for a Court order each time they need a particular piece of information, and in most cases Chambers would request that the defence first approach the authorities in question. This leads to very slow turn-around time for this type of cooperation and States Parties should be mindful of ways in which this process can be made more efficient, having due regard to the principle of equality of arms.

34. The importance of having clear and agreed procedures in place before the actual need for information arises has been highlighted, both with regard to the interaction between the Court and States Parties and internally for States. It is, inter alia, suggested that, at a very early stage in a case and based on the notification of needs from the Court mentioned above, States Parties identify relevant parts of the national administrative and judicial system and set up proper, agreed procedures for responding to requests.

35. A continuous dialogue between the Court and relevant officials, through informal channels, facilitates the efficient responses to requests for judicial assistance. The Court can, for instance, inform the relevant focal point in advance that a request is forthcoming. This would facilitate a timely response.

36. While informal trust-based relationships are very important there is, however, at the same time a need to achieve some degree of institutionalisation to ensure that the level of cooperation is not dependent upon individuals.

37. Access to witnesses is a key factor in any investigation carried out by the Court. In situations where the security situation does not allow for access to witnesses in-situ, the issuance of 'emergency' visas to witnesses is sometimes required. In this situation, it would be useful for the Court to have a 'hotline' to relevant States Parties to ensure speedy visa-processing in the interests of the safety of witnesses.

38. Forensics is another important area where the Court regularly needs technical assistance. The Court has already established a wide network with forensic institutes, which is expected to cover the needs for such assistance for the foreseeable future.

#### **Recommendation 12**

States Parties should, where possible, in the context of preliminary examinations, provide the Court with relevant background information as requested.

#### **Recommendation 13**

The Court should, at the earliest possible stage after opening an investigation, provide States Parties with an overview of what types of information would be useful in that specific case, in a way consistent with statutory and other requirements.

#### **Recommendation 14**

States Parties should where relevant – possibly through focal and contact points – engage in an active dialogue with the Court and assess on a case-by-case basis whether they may have background information of value to the Court.

#### **Recommendation 15**

States Parties should, at the earliest possible stage in an investigation identify relevant parts of their national administrative and judicial systems, and ensure that appropriate and agreed procedures are in place to process judicial requests in a timely manner. Where appropriate, this could be done by creating a procedural manual.

#### **Recommendation 16**

States Parties should, where relevant, facilitate access to witnesses for Court officials, inter alia by issuing 'emergency' visas if required.

### **D. Cluster 4: Arrest and surrender**

39. Arrest and surrender of persons wanted by the Court remains a crucial issue. The Court cannot fulfil its mandate without it, as there can be no trials without arrests.<sup>6</sup> The Rome Statute is a two-pillar system, and the Court depends on States Parties for the implementation of arrest warrants. Cooperation from States Parties in this regard, without prejudice to the obligations of all States Parties under the Rome Statute, falls into two general categories; operational and technical assistance and general political support.

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<sup>6</sup> As follows from article 63 of the Rome Statute.

40. Political support for arrest and surrender is important in relation to all cases. States Parties can support arrest and surrender both in bilateral contacts and activities and through regional and international organisations.<sup>7</sup> In order to generate the necessary political support and pressure, all States Parties should, where relevant, stress the importance of this issue. The Court's judicial mandate is not negotiable. This, however, does not contradict the need to view the activities of the Court in a broad political perspective.

41. Freezing of assets is an aspect of arrest and surrender that has been highlighted by the Court as important along with the issue of general disruption of support networks. A continued dialogue between the Court and States Parties would be useful in addressing this issue further.

42. It has been noted that the Court often operates in ongoing conflicts and/or situations where the security situation is very volatile. This highlights not only the political complexities of each individual situation, which creates opportunities and restraints, but also the fact that arresting suspects is not merely a question of political will and support. It is in such situations where operational cooperation and technical/logistical assistance becomes relevant, both in relation to actual arrests and to the transfer of suspects to The Hague.

43. The transfer of suspects will for a variety of reasons have to take place almost immediately after arrest. A number of issues may constitute barriers to an expeditious transfer and it may be useful for States Parties to consider establishing in advance of a request, relevant national guidelines for providing logistical assistance with regard to transfers. Such guidelines may also address issues relating to suspects in transit through the territory of States Parties. The Court may be able to provide a checklist of issues related to transfers.

44. With regard to actual arrests, States Parties may wish to examine if any assistance can be provided to the State on whose territory the wanted person is located, such as information-sharing and special training of police forces, without prejudice to the obligations pertaining to arrests under the Rome Statute.

45. It could be useful to facilitate the sharing of experiences amongst States Parties on general issues related to arrest and surrender, such as transfer of suspects, possibly through a follow-up mechanism on the question of cooperation.

### **Recommendation 17**

All States Parties should contribute where appropriate to generating political support and momentum for the timely arrest and surrender of wanted persons both in their bilateral contacts and activities in regional and international organisations.

### **Recommendation 18**

States Parties should consider establishing guidelines or agreements and memoranda of understanding with regard to the provision of logistical support and make the Court aware of the terms and conditions applicable to such assistance.

### **Recommendation 19**

The Court should to the extent possible provide a general checklist of steps to be taken with regard to transfers, as well as a generic model transfer agreement.

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<sup>7</sup> See also part III.

### **Recommendation 20**

All States Parties should consider whether it would be possible, on request, to provide a State on whose territory suspects are located with technical assistance and support such as information-sharing and specialised training of law enforcement personnel.

### **Recommendation 21**

States Parties and the Assembly of States Parties should consider ways in which experiences can be shared on issues relating to arrest and transfer, possibly through a general focal point for cooperation appointed by the Assembly of States Parties.

### **E. Cluster 5: Witness protection and support**

46. As the number, complexity and political profile of cases before the Court increases so will, at a significant rate, the number of witnesses in need of protection. In 2001 there was one application for protection. That number increased to 36 in 2006. The Court has in the first half of 2007 alone received 25 applications. It is important to note that each application for the protection of a witness concerns 5 - 20 individuals/dependants.

47. These numbers highlight the ever-growing need for States Parties to enter into Witness Relocation Agreements with the Court,<sup>8</sup> as well as the need for other forms of assistance related to witness protection, such as State-to-State assistance, and issues related to the protection of victims.

48. One consequence of the rising number of applicants is the increase in expenditure to provide satisfactory protection of the witnesses. This is particularly relevant for the implementation and maintenance of the initial response systems for witnesses under threat.

49. However, States Parties can also provide assistance with regard to actual extraction of witnesses under threat through staff working in areas where witnesses are located and by providing technical and financial assistance for the further development of the Court's witness protection programme. A dialogue between individual States Parties and the Court on these and related matters to explore further the possibilities of providing assistance would be beneficial.

50. The role of victims in the proceedings of the Court and protective measures for them should also not be neglected. States Parties and the Court should be mindful of the fact that currently no protective measures are in place for potential participating victims from the time they apply for participation in a trial to the time when the Court decides on the application.

### **Recommendation 22**

States Parties should consider tasking their national focal point / national authorities with ensuring that witness protection issues are dealt with adequately.

### **Recommendation 23**

The Court and the States Parties focal points / national authorities should engage in a dialogue to explore the possibilities for obtaining assistance for witness protection, including practical assistance in the field such as support for extraction.

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<sup>8</sup> This issue is addressed in part I, section A, "General legal mechanisms".

#### **Recommendation 24**

The Assembly of States Parties may wish to further monitor developments regarding witness protection and issues related to victims and defence teams, as an increasingly important part of the cooperation dossier.

#### **F. Cluster 6: Logistics and security**

51. Logistics and security are key aspects in support of the activities of the Court in the field, such as practical assistance or information sharing.

52. Sharing of information relevant to the Court's security and threat assessments and possible protective measures are often associated with confidentiality issues, which may complicate cooperation. States Parties can facilitate cooperation in this area by ensuring that there are good channels of communication between the relevant national actors geared to handle the confidentiality issues as well as established procedures for exchanging confidential information with the Court. This can primarily be dealt with on a bilateral level between the Court and individual States Parties. As an interface with the Court, the appointment of a contact point at relevant Embassies and diplomatic missions, where this has not been done, may be beneficial.

53. Practical assistance includes logistical support to defence teams, victims and witnesses, staff and suspects<sup>9</sup> including permission to transfer through national territory, access to communications equipment, meeting facilities and pouch services as well as issuance of visas. The scope for providing such assistance varies with the circumstances of each case. The Court should, however, be mindful of burden sharing to the extent this is at all possible. Again the designation of a contact point at relevant Embassies and diplomatic missions is important, as it enables the Court to explore possibilities for involving more States Parties.

54. Operational support concerns not only the Office of the Prosecutor and Registry but also defence teams. The Court as well as States Parties must keep this in mind to ensure a fair trial and strive to accommodate requests from defence teams.<sup>10</sup>

#### **Recommendation 25**

All States Parties should communicate to the Court the contact details for the relevant contact person at their Embassies and diplomatic missions in The Hague, Brussels and/or New York.

#### **Recommendation 26**

States Parties should examine ways in which national procedures and the interface with the Court could be improved with regard to the exchange of confidential information.

#### **Recommendation 27**

In requests for operational assistance the Court should be mindful of possible burden-sharing.

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<sup>9</sup> The issue of arrest and surrender of suspects is addressed in part I, section D.

<sup>10</sup> The issue of provision of case-related information to defence counsel is addressed in part I, section C.

**Recommendation 28**

All States Parties should, to the extent possible, accommodate requests from the defence teams for operational support – the Court should facilitate this, inter alia, by exploring ways in which the defence teams can benefit from existing agreements between the Court and States Parties.

**G. Cluster 7: Personnel**

55. The Court's ability to attract and retain qualified staff and gain access to relevant expertise is of vital importance. States Parties can assist the Court in this regard by contributing to rosters of experts and provision of such experts. States Parties should also render general support for the recruitment activities of the Court, such as assistance with circulation of vacancy announcements through relevant channels. Furthermore, it is equally important that the Court continues to attract highly qualified candidates from all parts of the world for elected posts, observing the need for gender balance as well. To facilitate assistance in these matters, feed-back from the Court on staffing needs and requirements are important.

56. The regulations of the Court include the possibility that States Parties provide government experts on a gratuity or cost recovery basis on short-term contracts with the Court, in accordance with the guidelines for the selection and engagement of gratis personnel at the International Criminal Court, contained in annex II of resolution ICC-ASP/4/Res.4.<sup>11</sup> Consideration should also be given to ways in which government officials can be granted some form of leave-of-absence for shorter or longer periods of time to take up positions at the Court, including absorbing them into national systems after having served at the Court. Both, States Parties and the Court, should, in offering and accepting such forms of assistance, ensure that personnel are obtained from the widest possible geographical base in accordance with the principles of equitable geographical representation and gender balance.

57. It is important to note, that while these initiatives contribute to ensuring that the Court has adequate and qualified staff, it has the added advantage of contributing to mainstreaming Court issues within national administrations.

58. Without prejudice to the provisions of the Rome Statute, attention is drawn to the relevant work undertaken in the framework of the Justice Rapid Response Mechanism, with regard to the issue of establishing rosters of experts and the provision of expert assistance in general. Some level of cooperation between the Court and the Justice Rapid Response Mechanism could be contemplated, which could produce synergies with regard to the compilation of rosters and related matters as well as for instance training of staff.

**Recommendation 29**

All States Parties should contribute to the extent possible to rosters of experts as well as provide expert assistance on favourable financial terms.

**Recommendation 30**

All States Parties should re-examine possibilities for allowing government officials to take up short-term positions at the Court as well consider ways in which leave-of-absence can be granted to officials enabling them to take up longer-term positions.

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<sup>11</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Fourth session, The Hague, 28 November - 3 December 2005* (International Criminal Court publication ICC-ASP/4/32), part III, resolution ICC-ASP/4/Res.4, annex II.

**Recommendation 31**

The Assembly of States Parties and its appropriate subsidiary bodies should – together with the Court - further examine ways in which cooperation could be established between the Court and the Justice Rapid Response Mechanism, in accordance with the Rome Statute.

## **Part II**

### **Cooperation in the United Nations context**

59. The report on cooperation, which was submitted by the International Criminal Court to States Parties, contains a high number of United Nations related entries in all categories of cooperation. The United Nations is understood in this report as including all principal organs, as well as peacekeeping operations and missions and the Funds and Programmes. The Working Group decided to cluster the elements around two central themes: the cooperation between the International Criminal Court and the United Nations, which concerns practical cooperation, as well as cooperation by States Parties in the United Nations context, which primarily means the political support given by States Parties to the Court in the New York context.

#### **A. Cooperation between the Court and the United Nations**

60. The relationship between the Court and the United Nations is governed by the "Relationship Agreement between the United Nations and the International Criminal Court" of 20 August 2004 (A/58/874). For cooperation in relation to the Democratic Republic of the Congo, a specific Memorandum of Understanding was agreed between the Court and the United Nations in November 2005, entitled "Memorandum of Understanding between the United Nations and the International Criminal Court concerning cooperation between the United Nations organization mission in the Democratic Republic of the Congo (MONUC) and the International Criminal Court". Several basic principles, such as discretion and confidentiality, govern the cooperation between the Court and the United Nations.

61. Cooperation in practice often concerns the exchange of information, but is not limited to that. Allowing United Nations staff to testify or to be interviewed, logistical support in the field, and access to conference facilities at United Nations Headquarters in New York all fall under this heading. It also comprises the way in which United Nations officials integrate the International Criminal Court in their work, for example Special Representatives who work in regions where the Court is active. The Funds and Programs develop their own arrangements for cooperation, in consultation with the Office for Legal Affairs, and in some instances these focus on technical cooperation in areas of special competence (such as training and capacity building of Court staff in a specific field).

62. The Office for Legal Affairs serves as a point of entry for requests for concrete cooperation from any of the organs of the Court to the United Nations Secretariat. The Office for Legal Affairs determines within the United Nations Secretariat in consultation with the relevant department whether a request will be (partially) granted. The turnaround time is about a month. The United Nations procedure is such that the Court can only communicate directly with United Nations Secretariat field operations after United Nations Headquarters has signed off. Contacts on conference facilities take place directly, without engaging the Office for Legal Affairs. Although the general procedure as described here is also applicable to the Funds and Programs, they do have their own internal procedures for handling cooperation requests which, in some cases, also requires a Headquarters decision before a request for cooperation is (partially) granted. In addition to its role in requests for cooperation, The Office for Legal Affairs (and a few other departments) also disseminates information about the International Criminal Court throughout the United Nations system.

63. The Court as well as the United Nations are in general satisfied with the way the cooperation between the two institutions is carried out. Both find that there is a basic mutual understanding of the mandate of one another. After the establishment of internal United Nations procedures, it is clear for both sides how requests are to be made and how these requests will be handled by the system. Although it as a general rule takes quite some time for

the United Nations to process a request, the procedure seems to work. Neither the Court nor the United Nations consider it necessary for the moment to set up new general frameworks for cooperation, but supplementary arrangements for specific areas might be useful. Only for certain Funds and Programs does the Court consider it beneficial to establish additional arrangements within the existing framework of the Relationship Agreement.

64. The following recommendations might further improve the cooperation between the United Nations and the International Criminal Court, bearing in mind the general satisfaction on both sides with how the existing cooperation works, as well as the fact that cooperation between the two institutions is a relatively new phenomenon.

*Recommendations to the Court*

**Recommendation 32**

To ensure mutually sufficient knowledge of and understanding for the mandates and activities of the two organizations, regular contacts between Court officials and United Nations staff should be ensured. Apart from contacts by email and phone, direct contacts, for example in the form of a yearly meeting or workshop, or in the margins of visits, could be envisaged.

**Recommendation 33**

The practice of regular high-level visits as well as working visits to the United Nations should be continued.

**Recommendation 34**

In addition to the regular meetings with the Office for Legal Affairs, the Court should jointly with the United Nations assess periodically the status of cooperation, with a view to improve it if necessary and possible.

**Recommendation 35**

The Court should make better use of the existing possibilities for exchange of personnel with the United Nations.

**Recommendation 36**

To the extent possible and as far as statutory requirements allow, the Court should keep the relevant entities of the United Nations informed of progress in specific cases and situations.

**Recommendation 37**

Without prejudice to operational and statutory requirements, requests for cooperation should be consolidated whenever possible, and be as specific as possible.

**Recommendation 38**

The Court should continue and, if possible, extend its current practice of making use of specific knowledge within the United Nations system, such as the involvement of children in judicial processes.

**Recommendation 39**

The Court could in conformity with statutory requirements, also offer its capacity, knowledge and information to the United Nations system, so as to ensure a more mutually beneficial relationship.

**Recommendation 40**

The Court should continue its practice of sending a yearly report on the work of the Court to the United Nations, as well as the annual address of the President of the Court to the General Assembly.

**Recommendation 41**

The New York Liaison Office should continue to enable concrete cooperation *by* making sure that all necessary channels are open between the two institutions, including the Secretariat of the Assembly, *by* facilitating the exchange of information and *by* serving as an antenna for issues related to cooperation.

**B. Cooperation by States Parties in the United Nations context**

65. Consistent, strong and long-term political support of States Parties is of vital importance for the Court to be able to carry out its functions. In that respect, all States Parties are responsible for keeping the interests and mandate of the Court in mind, in whatever setting they act. This comprises the explanation of the judicial nature of the mandate of the Court, as well as the basic premise, on which the Court was founded. This should be done in their capacity as member of the United Nations, the General Assembly, the Security Council, the Peace Building Commission or of the Human Rights Council, to name a few.

66. In general, States Parties are aware of the need to politically support the Court and have the will to act on it. But various factors, such as insufficient knowledge of the Court with mission staff and lack of information about concrete needs of the Court, might contribute to a sometimes sub-optimal cooperation of States Parties.

67. In that light, the following suggestions for improvement could be considered.

*Recommendations to States Parties*

**Recommendation 42**

In contacts with the Secretary General, other high-level United Nations officials as well as relevant United Nations staff, the interests and mandate of the Court should be explained and actively supported.

**Recommendation 43**

States Parties should strive to ensure that all relevant staff members of permanent missions have adequate knowledge of the Court and the Rome Statute, including regional and military experts. For example, use could be made of a power point presentation distributed by the Group of Friends of the International Criminal Court.

**Recommendation 44**

States Parties should encourage the Group of Friends of the International Criminal Court to try to reach beyond the traditional audience of legal advisors in its activities, for

example by organizing more specific activities aimed at a larger audience. Legal advisors should encourage their colleagues to participate in such activities.

**Recommendation 45**

Existing references to the Court should be maintained in General Assembly and other resolutions as much as possible, and when appropriate included in other resolutions.

**Recommendation 46**

The yearly International Criminal Court resolution should be continued and strengthened where ever possible.

**Recommendation 47**

States Parties should include the Court in statements they make in different relevant forums, for example during the general debate of the General Assembly, when appropriate.

**Recommendation 48**

States Parties should remind States of their duty to cooperate and request in their statements that States fulfil their obligations to cooperate, in particular when it concerns arrest and surrender.

**Recommendation 49**

States Parties should, when considering candidacies for membership in United Nations organs, where relevant take into account the preparedness and willingness of candidates to fully cooperate with the Court, and if they had not yet done so, to become a State Party to the Rome Statute.

**Recommendation 50**

Within regional groupings, States Parties should keep the Court's needs, mandate and interests in mind and put these on the table when relevant. The regional groupings could equally be used to share information.

**Recommendation 51**

States Parties that are members of the Security Council should ensure that the Court's interests, needs for assistance and mandate are taken into account when relevant matters, such as sanctions, peacekeeping mandates, Security Council missions and peace initiatives are being discussed and decided on, while respecting the independence of both.

**Recommendation 52**

States Parties could in their efforts to assist the Court in fulfilling its mandate, make use of the expertise and knowledge of non-governmental organizations.

*Recommendations to the Court*

**Recommendation 53**

The Court should strive to share information on concrete needs of the Court with relevant States Parties as early as possible.

**Recommendation 54**

As much as possible, the organs of the Court should schedule their high level visits to New York in such a way as to ensure an equal spread throughout the year and coincide with the most significant and relevant United Nations events.

**Recommendation 55**

High-level Court visitors should continue to be available in the margins of such visits to brief the Group of Friends of the International Criminal Court as well as Court membership of regional groups, including on situations and cases.

*Recommendations to States Parties and the Court*

**Recommendation 56**

The practice to schedule the President's annual address to the General Assembly to coincide with the address by the Presidents of other courts and tribunals, preferably during the International Law Week at the United Nations, should be continued.

**Recommendation 57**

Incoming members of the Security Council should be briefed on the Court and its relevance to their work in the Security Council well in advance of the beginning of their terms.

**Recommendation 58**

This briefing should not be limited to legal advisors, but could be extended to permanent representatives, sanctions experts, military advisors, regional experts as well as conflict prevention experts, among others.

**Recommendation 59**

Workshops on practical issues related to cooperation such as arrest and surrender, freezing of assets and financial investigations could be organized, with the participation of relevant United Nations actors.

**Recommendation 60**

Efforts should be continued to include the Court in relevant courses and seminars organized by the United Nations Institute for Training and Development, as well as the United Nations University.

## **Part III**

### **International and regional organisations and the Court<sup>12</sup>**

68. International organisations other than the United Nations have important roles to play with regard to cooperation. The first is to disseminate knowledge about the Court and generate political support for the general and situational activities of the Court. The second is to provide financial and technical assistance to States Parties, non-governmental organisations and the Court itself. The third is to support ongoing investigations and proceedings, in particular arrest and surrender of suspects and related issues such as freezing of assets. The extent to which international and regional organisations can engage in these three areas depends on the mandate, nature and capabilities of each individual organisation.

69. To enable the generation of political support the Court must be addressed also at high political levels within the relevant organisations. States Parties should promote, where possible, the mainstreaming of Court-related issues within regional and international organisations, both vertically and horizontally. In this regard, the annual International Criminal Court resolution of the Organization of American States may provide a basis for further work.

70. Support can be directed towards achieving universality of the Rome Statute and pushing for implementing legislation, ratification of the agreement on privileges and immunities of the Court, and the conclusion of supplementary agreements on witness protection and relocation and enforcement of sentences, as well as promoting general cooperation between States Parties and the Court. Furthermore, regional organisations represent excellent fora for sharing experiences related to all forms of cooperation, including implementing legislation. States Parties may consider organising seminars, workshops or even more permanent working groups to this end.

71. With regard to actual investigations, and in particular arrest and surrender and related issues such as freezing of assets, the international framework is also of importance. States Parties should use their membership within the relevant organisation to generate political support aimed at ensuring maximum cooperation from all relevant actors, in particular with regard to arrest and surrender. Some organisations may also possess capabilities and assets, such as information that is relevant for the Court. This underlines the desirability of agreements between the Court and the relevant organisation to enable cooperation. Other organisations may have strong international mandates, which can generate additional momentum for cooperation and arrest and surrender. This could take the form of freezing of assets, travel bans as well as more general sanctions. It should be underlined that such regimes are most likely to come into place under a United Nations umbrella.

72. In order to create a dynamic situation, it may be useful to consider positive incentives as well, where feasible.

#### **Recommendation 61**

States Parties should through their membership of international and regional organisations work to promote the mainstreaming of Court issues, horizontally and vertically within the organisations.

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<sup>12</sup> Annex II contains a non-exhaustive list of relevant international organisations.

**Recommendation 62**

States Parties should, where appropriate, initiate and support joint statements, positions, declarations and resolutions to be issued through regional and international organisations promoting the Court and its general and situational activities.

**Recommendation 63**

States Parties should promote where appropriate cooperation agreements between relevant organisations and the Court.

**Recommendation 64**

States Parties should consider, where appropriate, to propose and support the establishment of working groups within regional organisations tasked with issues relating to the Court. Inspiration can be drawn from the working groups of the Organization of American States and the European Union.

**Recommendation 65**

States Parties should promote regional seminars and workshops within their respective organisations with a view to raise awareness of the Court and to share experiences on various aspects of cooperation.

**Recommendation 66**

States Parties should endeavour to generate political support for maximum cooperation from relevant actors in relation to specific investigations and trials as well as consider the scope for promoting and implementing further measures in this regard.

## Part IV

### Conclusion

73. The issue of cooperation is vital for securing implementation of the Court's mandate. As is evident from the above, while cooperation is functioning there is scope for improvements in a range of areas.

74. States Parties should ensure that **adequate implementing legislation** and supplementary agreements are in place to enable cooperation and ensure that **appropriate structures and procedures** are established to make such cooperation run smoothly. In short, States Parties should reinforce an **enabling environment** by creating a **global framework for cooperation**.

75. For its part, **the Court** should continue to inform States Parties of its needs and requirements and how cooperation is evolving in general. For specific requests for assistance and cooperation the Court should endeavour to be as precise and targeted as possible.

76. The Court, the **United Nations** and States Parties are generally satisfied with the way in which cooperation is carried out. States Parties are in general aware of the need to politically support the Court and have the will to act on it. However, the report clearly identifies **several ways of improving the level of cooperation**.

77. States Parties should always promote the general and situational activities of the Court in **regional and international organisations**. This can be done through resolutions, declarations and other forms of **political support**, as well as different forms of **technical assistance**. These tools may also be used to facilitate arrest and surrender, with a last resort being the use of **coercive instruments** available within some of these organisations.

78. The issue of cooperation will always be important to the Court. Provisions should be made to ensure, that there is a **platform for taking forward the work on cooperation** as well as a general **channel of communication between the Court and States Parties** on this issue. While it may not be necessary to continue facilitation of a full review of the level of ongoing cooperation, a flexible approach targeting specific issues should be considered. In this regard, the appointment of a **focal point for cooperation** in the context of the Working Groups may be the most appropriate solution to consider. The focal point could be supported by the Secretariat of the Assembly of States Parties. Furthermore, as indicated in the different parts of the report, there may be a separate and independent role for **the Secretariat** in taking the work on cooperation further.

79. In conclusion, there is and continues to be a great willingness on the part of States Parties, the United Nations and other organisations to cooperate with and support the Court. Likewise, the Court has a strong interest in building on such support. The challenge is to sustain this will and find ways to translate it into enhanced concrete cooperation wherever possible. That has been the aim of this report.

## **Annex I**

### **Language to be included in the omnibus resolution**

*Takes note* of the report of the Bureau on Cooperation;

*Endorses* the recommendations of the Report as annexed to this resolution;

*Requests* the Bureau to appoint a focal point to continue the work on cooperation in close coordination and dialogue with the Court;

*Invites* the Bureau to report to the Assembly of States Parties at its next regular session on any significant developments with regard to cooperation, as it deems appropriate;

*Decides* to revisit the issue of cooperation in full in two to three years, depending, inter alia, on the needs of the Court.

## **Annex II**

### **List of relevant international and regional organisations**

The following organizations are relevant in this respect:

AALCO	Asian-African Legal Consultative Organization
AL	Arab League
ASEAN	Association of Southeast Asian Nations
AU	African Union
CARICOM	Caribbean Community
COE	Council of Europe
EU	European Union
OIF	International Organisation for the Francophonie
MERCOSUR	Common Market of the South
NATO	North Atlantic Treaty Organization
OAS	Organization of American States
OIC	Organization of the Islamic Conference
OSCE	Organization for Security and Cooperation in Europe
SAARC	South Asian Association for Regional Cooperation
SADC	Southern Africa Development Community

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