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Report of the Court on cooperation**I. Introduction**

1. This report on cooperation is submitted pursuant to resolution ICC-ASP/10/Res.2 as well as resolution ICC-ASP/11/Res.5. It covers the period of October 2011 to September 2013.¹

2. The International Criminal Court (“the Court”) last year celebrated the tenth anniversary of entry into force of the Rome Statute. This report therefore serves as an opportunity to draw upon lessons learned of the past decade of activities, by focusing on priority areas requiring further attention and strengthened support from States Parties, in order to find creative and meaningful avenues to address key challenges to cooperation, which is essential for successfully enforcing the Court’s mandate.

3. The Court is thankful to States Parties and non-States Parties, international and regional organizations, as well as civil society organizations, which have continued to provide cooperation to the Court in accordance with Part 9 of the Rome Statute,² as well as the voluntary assistance provided beyond Part 9. As reported in this year’s report on the activities of the Court,³ the Court continues requesting the assistance of States in order to be able to fulfil its mandate.

4. This report follows the model of the informal discussions decided upon by the Hague Working Group, under the chairmanship of the facilitator for cooperation, Ambassador Krutnes (Norway), by focussing on a few thematic priority areas.⁴

5. These areas are:

- (a) Arrest strategies;
- (b) Voluntary agreements;
- (c) Agreement on Privileges and Immunities of the Court (“APIC”); and
- (d) Supporting, protecting and enhancing the Rome Statute system and its intrinsic cooperation needs, at the regional and international levels.

¹ Certain information were not provided in this report in order to respect the confidentiality of a number of investigative and prosecutorial activities by the Office of the Prosecutor, as well as decisions and orders by the Chambers.

² During the reporting period, the Registry transmitted 1320 requests for visas and 533 requests for cooperation including 19 requests to international and regional organizations. The OTP sent 609 requests for assistance to 71 different partners, including States Parties, States not party, international and regional organizations and others.

³ ICC-ASP/12/28.

⁴ As noted in the Report of the Bureau on Cooperation at the Assembly of States Parties’ eleventh session, “informal consultations were held [in 2012] with representation of States Parties and all Court organs, with a view to identifying a set of key issues on which to focus the efforts of the working group. Mindful of the wide scope of pertinent subjects to address in the area of cooperation, there was agreement among States and the Court to focus on the following issues”. The same model was replicated during the 2013 facilitation at the Hague Working Group.

6. It should nonetheless be emphasized that prioritising these areas does not minimize the importance of other cooperation issues, including the identification, freezing and seizure of assets, discussed during last year's cooperation facilitation; and the availability of channels of communication and domestic procedures for dealing with Court cooperation requests, subject of ongoing consideration in The Hague Working Group (the "working group"), including through current efforts led by Belgium.⁵

7. In this sense, this report is closely linked to, and should be read in the context of, the 66 recommendations on cooperation adopted by States Parties in 2007,⁶ which continue to form an important basis for cooperation discussions and efforts. The relevant recommendations will be recalled throughout this report where applicable, for ease of reference.

8. In addition, this report should be read in conjunction with the Court's Report on its on-going cooperation with the United Nations, including in the field, which will also be submitted to the twelfth session of the Assembly of States Parties ("the Assembly").

9. The Court is acutely aware of its role/responsibility in providing clear, transparent and focused information to States Parties and other relevant stakeholders regarding its cooperation needs in a timely manner; indeed, recommendation 53 notes that "[t]he Court should strive to share information on concrete needs of the Court with relevant States Parties as early as possible". The Court and its different organs will, as they have consistently strived to in the past, continue to bring these issues to the attention of the Assembly, the Bureau and its working groups, as well as to individual States Parties and relevant regional and international organizations.⁷ It is also from this perspective that, in March and June 2013, the Court, with financial assistance of the European Commission, Germany, Denmark, the Hanns Seidel Foundation and the Organisation Internationale de la Francophonie, organized two high-level Seminars for fostering cooperation in Nuremberg, Germany, to promote mutual understanding and cooperation between the Court and Governments, as well as international and regional organizations. Approximately 20 senior decision-makers attended each seminar.⁸

II. Current priority areas in terms of cooperation identified by the Court

A. Arrest Strategies

10. *The importance of arrest and surrender and the impact of the non-execution of the Court's requests:* The arrest and surrender of individuals against whom arrest warrants have been issued by the Court is one of the key elements of States Parties' cooperation with the Court. Indeed, provisions relating to arrest and surrender are a core element of Part 9 of the Rome Statute regarding international cooperation and judicial assistance. States Parties have themselves recognised the importance of arrests in various documents.⁹

⁵ This report should indeed be read in conjunction with the Report of the Bureau on Cooperation (ICC-ASP/6/21) of 19 October 2007 and the 66 recommendations of the Assembly annexed to resolution ICC-ASP/6/Res.2, annex II, as well as the Report of the Court on International Cooperation and Assistance attached to the Report of the Bureau on Cooperation (ICC-ASP/8/44) dated 15 November 2009 ("2009 Report of the Court") and its update (RC/2) dated 11 May 2010, and the Report of the Court on Cooperation (ICC-ASP/10/40) dated 18 November 2011 ("2011 Report of the Court").

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

⁷ This issue will be dealt with in greater detail in the context of the fourth priority area (pages 10-12).

⁸ Both seminars were mainly funded by the European Commission and, Germany. The Organisation internationale de la Francophonie, Denmark and the Hanns Seidel Foundation also co-funded one of the two seminars.

⁹ In the Bureau Report on Cooperation of 19 October 2007, States Parties recognize that "[a]rrest 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. The Rome Statute is a two-pillar system, and the Court depends on States Parties for the implementation of arrest warrants." Most recently, in resolution ICC-ASP/11/Res.5, the Assembly "emphasizes the importance of timely and effective cooperation and assistance from States Parties and other States [...], as the failure to provide such cooperation in the context of judicial proceedings affects the efficiency of the Court, and underlines the negative impact that non-execution of Court requests can have 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." The resolution goes on to stress "the value of the lessons learned from international ad hoc and mixed tribunals on the enforcement of arrest warrants."

11. Recommendation 17 notes “*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*”.

12. The Court, too, systematically and consistently highlights the challenges it faces with regard to arrest and surrender, emphasizing that cooperation with States in this regard “*continues to be a missing component for the effective implementation of the Court’s mandate*.”¹⁰

13. Currently, 12 individuals subject to arrest warrants by the Court remain at large. Some warrants such as those against the commanders and leaders of the *Lord’s Resistance Army* (LRA) date as far back as 2005, while more recent warrants remaining to be executed include those against Saif Al-Islam Gaddafi, Abdullah Al-Senussi, Sylvestre Mudacumura, Abdel Raheem Mohammed Hussein, and Simone Gbagbo.

14. Investigations are carried out at substantial cost, under difficult circumstances and often in on-going conflict situations, entailing great sacrifices by witnesses, victims and staff of the Court. Judges of the Court carefully assess and analyse the evidence presented to them by the Office of the Prosecutor on the basis of which they decide to issue warrants of arrest against certain individuals. Failure to arrest these individuals emboldens them and potential future perpetrators, and fuels the perception that they can remain beyond the reach of the Court and perpetrators can continue to commit crimes with impunity. These risks weaken the Rome Statute system and the Court in particular, undermining its credibility. According to the Prosecutor, LRA crimes reportedly continue to be committed under the same leadership in the Central African Republic and the Democratic Republic of the Congo (DRC); and in the Ituri and Kivu regions of the DRC and the Darfur region in Sudan, crimes also continue reportedly linked to persons against whom arrest warrants have been issued by the Court. Lack of arrests allows crimes such as killings, rapes and pillaging to multiply while the suffering of victims continues.

15. The Court’s experience shows that it is not enough for States Parties to merely recognize the importance of arrests for the work of the Court without considering tangible and concrete measures to achieve arrests and thus trials. It is vital for States Parties to be consistently and effectively engaged in active steps to contribute towards achieving arrests of those sought by the Court. The need for States Parties to work together to develop further efforts made so far and to take meaningful steps, both diplomatically and legally, to ensure arrests is clear.

16. Given the number of outstanding arrest warrants and the potential for more to be issued, and given that to date there has not been a systematic results-orientated discussion among States Parties on concrete steps or measures that can be taken to facilitate arrests, in particular with regards to explicit situations and obstacles faced by the Court, the time is ripe for discussions specifically focussed on cooperation to achieve arrests, with a view to producing recommendations on how best to contribute towards securing them.

17. The Court is thankful in this regard to the cooperation facilitator for bringing this important matter to discussion in the working group in 2013, and providing in several instances, including during the one day meeting on cooperation on 14 May 2013, information to the States Parties in order to contribute to these discussions and to share experiences. The Court endorses the Roadmap on Arrest Strategies identified by the working group and stands ready to further engage on this matter in a systematic manner with States and other stakeholders.

18. *Lessons learned:* As mentioned in 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*”. The Court recognizes the importance for States Parties and relevant organizations to share their experiences and best practices on issues relating to arrest and surrender. The Court would like to highlight here for instance the important contribution to this discussion of the ICTY Prosecutor in the plenary discussion on cooperation during the eleventh session of the Assembly.

¹⁰ Report of the Court on Cooperation, ICC-ASP/10/40.

19. In the spirit of the same recommendation and in the context of the cooperation facilitation, the Office of the Prosecutor has shared with States Parties during the one day meeting on cooperation on 14 May 2013 its lessons learned regarding the Bosco Ntaganda case.

20. *Improving prospects for arrest*: As the report of the Bureau on cooperation, ICC-ASP/6/21, states, cooperation from States Parties with regard to arrest falls into two general categories: operational and technical assistance, and general political support.¹¹

21. It is recognized that the issue of arrest and surrender is not simple and the challenges involved will vary from situation to situation. Situations where suspects are protected by militias present essentially a practical operational challenge, whereas situations where the whereabouts of suspects is well known, but a State lacks the political will to fulfil its legal obligation to cooperate with the Court, present a challenge where high level political commitment and diplomatic coordination between many states, for example to achieve initial marginalisation and political isolation, will be required. Approaches need to be tailored to fit the particular circumstances of each situation.

22. The Office of the Prosecutor presented a non-exhaustive list of possible measures that could be considered by States Parties regarding these different scenarios of outstanding arrest warrants during the one-day meeting on cooperation on 14 May 2013. The list is annexed to this report. It follows the Office's arrest guidelines, as published in its Prosecutorial Strategy for 2009-2012¹² and in the 2009 report of the Court on international cooperation and assistance.

23. The Court believes that States Parties can exchange views on how they can effectively contribute to generating political support and momentum for the timely arrest and surrender of suspects both in their bilateral contacts and activities in regional and international organisations (recommendation 17¹³). States Parties can also explore possibilities for the provision of technical assistance and support to a State on whose territory suspects are located, such as through information-sharing and specialised training of law enforcement personnel (recommendation 20¹⁴). Discussions could also focus on additional concrete suggestions for example in sharing experiences and lessons learned on issues relating to arrest and transfer (recommendation 21¹⁵).

24. Building on experience with securing arrests at the *ad hoc* Tribunals, States Parties could also seek to identify and use effective leverage points, such as economic avenues, to foster cooperation and promote arrests. The inclusion of commitment to take steps towards Rome Statute ratification and implementation in the EU's Cotonou agreement¹⁶ with ACP States could serve as a positive and instructive model for consideration.

25. The Court also highlights that given the nature of the crimes the Court deals with, as well as the often prominent role of the individuals facing outstanding arrest warrants, these individuals tend to cross borders around the area(s) where they are believed to have committed their crimes. The Court thus stresses the need for enhanced discussions and coordination at the political and technical levels between States in the context of regional and sub-regional organizations, in order to improve prospects of arrest. The Court has and will continue to interact and enhance its dialogue with relevant regional groups and organizations in order to strengthen cooperation and ensure better understanding for its mandate and needs. The Court would also like to note here the recent efforts being undertaken by the Assembly of States Parties and its President, Ambassador Tiina Intelmann, regarding non-cooperation. In particular, the Court welcomes the development of procedures to deal with non-cooperation at the tenth and eleventh sessions of the Assembly, the appointment of regional focal points on the issue, as well as the public and diplomatic actions taken by the President of the Assembly in recent instances, such as Nigeria in July or Chad in February 2013, to "*enhance the implementation of the Court's*

¹¹ Para. 39.

¹² OTP Prosecutorial Strategy 2009-2012, 1 February 2010.

¹³ See above, para. 11.

¹⁴ "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".

¹⁵ See above, para. 18.

¹⁶ Article 11.6.

decisions".¹⁷ The Court has, and will continue to, provide timely information to the President of the Assembly regarding potential and averred instances of non-cooperation.

26. Opportunities for improving chances of arrests also exist through action by States in the United Nations context, in particular through the activities of the Security Council; this will be developed further in the Court's report on its relation with the UN, which will also be presented to the twelfth session of the Assembly.

B. Voluntary agreements

27. Issues that fall under voluntary cooperation such as the conclusion of relocation agreements can be critical for the proper functioning of the Court. Recommendation 5 notes "*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*". It would be helpful for the Court if States could provide information on how they may have supported each other in this regard.

28. The signature of framework agreements presents several advantages. Framework agreements provide legal certainty to States with respect to the obligations and entitlements of the Court. They are cost effective as the requests can be facilitated at a more operational level following a pre-agreed format. Conversely, *ad hoc* requests for cooperation are time consuming and therefore have an impact on the length of the proceedings. In addition, it is the Court's experience that the implementation rate for *ad hoc* requests for cooperation regarding urgent relocation of witnesses is very low.

29. The support of States for the signature of agreements on interim release and release of persons is essential to ensure that the rights enshrined in the Statute are fully respected. The signature of such agreements would be a clear sign by States that they want a Court that is impartial and respectful of the right of the defence.

30. *The critical need for witness protection related agreements*: Both the OTP and the defence depend heavily on witnesses in the course of their investigations and for building their case. The Court works in difficult environments, either in post conflict situations or where conflicts still exist. In this context, the ability for the Court to be able to protect its witnesses is vital. The Court has concluded relocation agreements with 13 States Parties, including three in 2013, with African States. Two agreements were signed in Nuremberg during the seminars for fostering the cooperation with the Court (see para 9). The Court is grateful for the commitment of these three additional States but must stress that this is not sufficient for the Court to be able to fulfil its mandate. As stressed already by Vice President Monageng last year during a side event to the Assembly of States Parties on the protection of witnesses, the shortage of relocation agreements has an impact on the proceedings and on the wellbeing of witnesses.

31. In this regard, the Assembly of States Parties, in its last resolution on cooperation (resolution ICC-ASP/11/Res.5), encouraged all States Parties to consider entering into relocation agreements or arrangements with the Court. The Court has made extensive efforts to facilitate the signature of such agreements. The relocation agreements are extremely flexible as witnesses are accepted on a case-by-case basis. Delays in processing specific requests by States that have signed relocation agreements hamper the Court's ability to address urgent demands for relocation, thus putting witnesses at continued risk. There are also possibilities for the relocation to be economically neutral with the use of the Special Fund for Relocations. Finally, a State willing to accept relocated witnesses does not need to have a witness protection programme in place, but can benefit from capacity building projects thanks to the Court's developing partnerships with rule of law agencies.

32. The Court was most grateful for the initiative of the Embassy of Norway for organising a seminar on the protection of witnesses in Dakar on 25-26 June 2013 for French speaking African States with the support of the Netherlands and Estonia. The seminar was also an opportunity for capacity building at the national and regional level, exchange of technical information and network building, thus contributing in

¹⁷ Assembly procedures relating to non-cooperation , ICC-ASP/10/Res.5, annex.

the mid and long term to supporting the work of the Court in the spirit of complementarity. The Court is looking forward to the second seminar planned for October 2013 for English speaking countries, and hopes this will generate new possibilities of further cooperation with the Court on this crucial matter.

33. *States Parties need to share responsibility for enforcement of sentences:* Pursuant to article 103, the Court relies on the cooperation of States for the enforcement of sentences of imprisonment imposed by the Court.

34. Since the Court's establishment, the Presidency – as the organ responsible for enforcement issues – has actively pursued the conclusion of framework agreements on the enforcement of sentences with States Parties. The purpose of the agreements is to provide a clear framework and a common understanding of procedural as well as substantive issues by grouping together all relevant provisions that are located, in a disparate manner, in the Statute and the Rules of Procedure and Evidence. These address the issues that might arise in case of possible future enforcement of sentences in the prison facilities of the State Party in question. It should be noted that the agreements do not create an obligation for the State Party to accept the enforcement of any specific sentence in the future; in other words, a State Party that enters into a framework agreement with the Court retains the right to refuse the enforcement of any individual sentence imposed by the Court.

35. As of September 2013, eight States Parties have concluded agreements on the enforcement of sentences with the Court. Five of these States are WEOG (Austria, United Kingdom, Belgium, Denmark, Finland), one is from Eastern Europe (Serbia), one is from Africa (Mali) and one is GRULAC (Colombia; agreement not yet in force).

36. The present number of agreements on the enforcement of sentences is clearly not sufficient. The Court will soon start facing actual situations in which a State of enforcement has to be identified that is willing to accept individual persons convicted by final judgement of the Court and the experience of other international courts shows that for each actual sentence, a large number of potential enforcement countries should be available, to allow the Court to identify a suitable State of enforcement that is willing to accept the convicted person. In so doing, the Statute provides that the Court shall take into account the views and nationality of the sentenced person and other factors regarding the circumstances of the crime or the person sentenced.

37. It is of particular concern that a very limited number of States Parties outside of Western Europe have expressed willingness to accept convicted persons into their prisons, which would leave the Presidency with minimal choice in terms of geographical considerations for instance in relation to the cultural or family ties of the convicted person. The Rome Statute makes explicit reference to the “principle that States Parties should share the responsibility for enforcing sentences of imprisonment, in accordance with principles of equitable distribution”. It is also in this light that the Court urges more States Parties, particularly from regional groups other than WEOG, to join the eight States that have concluded agreements on the enforcement of sentences.

38. While a large number of States have in communication with the Presidency expressed their willingness in principle to consider the acceptance of convicted persons, practice has shown that there is a long way to go from such statements to the actual conclusion of an agreement on the enforcement of sentences. Accordingly, the Court invites all States Parties to launch active, concrete steps toward the conclusion of enforcement agreements. Furthermore, in the spirit of the Review Conference resolution on Strengthening the enforcement of sentences,¹⁸ the Court urges States Parties to promote international cooperation, such as sharing experiences or providing technical or other assistance, to enable more States to enter into enforcement agreements with the Court. The Presidency of the Court stands available to provide a model agreement to interested States and to discuss practical steps forward.

39. *Interim release:* A model agreement was distributed to States in the context of The Hague Working Group facilitation on cooperation in May 2011, and an adjusted version taking into account comments made by States was circulated again in 2012. The Court is currently negotiating the terms and conditions of the model agreement with one

¹⁸ Resolution RC/Res.3.

State, Belgium. Other States have been approached on an *ad hoc* basis in the context of the judicial proceedings. The Court encourages States to consider entering into this type of agreement, which would facilitate the smooth and diligent implementation of the decision of a Chamber to grant a person's request for interim release.

40. *Agreement in case of release of persons (acquittal, non-confirmation of charges, etc.):* The Court has been holding consultations with specific States in order to find ad hoc solutions in concrete cases. In order to facilitate such discussions, a model agreement was distributed in September 2013 within The Hague Working Group facilitation on cooperation for consideration by the States Parties. The possibility for the Court to relocate released persons in the event that they cannot return to their State of residence is critical, as the absence of such agreements would mean that these persons would remain detained despite having been acquitted or needed to be released for a different reason by the Court. The signature of such agreements would also help the Court avoid ending up in the same situation as the ICTR, which continues to face a very serious challenge in this respect since it has not been able to identify States willing to accept acquitted persons, some of them found not guilty several years ago.

C. Agreement on Privileges and Immunities of the Court (“APIC”)

41. The resolution of the Assembly on cooperation of 21 November 2012 calls upon States Parties and 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”.¹⁹

42. The Court echoes this call and strongly urges all States Parties to become parties to the APIC in order to facilitate the efficient functioning of the Court and to increase legal clarity in their national setting.

43. All States Parties to the Rome Statute are under an obligation stemming from article 48 of the Rome Statute to “respect such privileges and immunities of the Court as are necessary for the fulfilment of its purposes”. Paragraphs 2-4 of article 48 furthermore provide for the privileges and immunities of specific categories of Court officials and other persons.

44. However, the general nature of article 48 may give rise to differing interpretations of the exact scope of the Court's privileges and immunities in concrete situations. This may be problematic for the Court as well as for the States concerned. Indeed, the Court faces various challenges in the context of its operations relating to the interpretation or application of the relevant legal provisions, or the absence of necessary privileges and immunities.

45. APIC increases legal clarity and security by specifying in detail the scope of the Court's privileges and immunities. By acceding to or ratifying APIC, States can ensure consistent and unambiguous application of the Court's privileges and immunities on their territory.

46. Consequently, all States Parties are strongly urged to ratify or accede to APIC for their own as well as the Court's benefit.

47. States are also encouraged to implement the provisions relating to the Court's privileges and immunities in their national legislation, and to take active steps to ensure that the relevant national authorities are aware of the Court's privileges and immunities and their practical implications.

48. States Parties experiencing difficulties in the ratification or implementation of APIC are encouraged to seek assistance with a view to overcoming such difficulties. States and regional or international organisations are encouraged to continue providing such assistance.

¹⁹ Para. 8, annex I. ICC-ASP/11/28.

49. As of 22 April 2013, 72 States have become party to the APIC, including one State not party to the Rome Statute (Ukraine). Accordingly, 51 States Parties to the Rome Statute are yet to become party to APIC.

50. The Court circulated a discussion paper on the issue of privileges and immunities to States Parties ahead of the One Day meeting on cooperation of 14 May 2013, suggesting possible actions by States to address the above matters, including a call on the Assembly to increase attention on the importance of APIC and create momentum for all States Parties to join the treaty.

D. Supporting, protecting and enhancing the Rome Statute system and its intrinsic cooperation needs, at the regional and international levels

51. *Diplomatic and public support and its link to cooperation and the efficiency of the Court:* As emphasized in the 2010-2011 Court's report on cooperation, "*public and diplomatic support remains a priority for the Court and for galvanizing arrest efforts*". This was further recognized by the Assembly in paragraph 11 of resolution ICC-ASP/11/Res.5 of 21 November 2012.²⁰ Recommendation 11 also states "*States Parties should whenever possible express support for the Court and promote its general and situation-specific activities in their bilateral contacts*".

52. The Court sees the importance of these activities as not only contributing to a better understanding and the strengthening of the Rome Statute system of international criminal justice, but also and more critically as a tool to protect and enhance cooperation with the Court. Indeed, the Court brings to the attention of States that a shift has started to emerge in recent months, where lack of strong and consistent public and diplomatic support to the Court has contributed to the development of a trend where technical cooperation requests are not being addressed by the relevant stakeholders, as they deem that cooperation with the Court would impact negatively on their national, regional or international affairs. In addition, given recent trends in discussion, the Court would like to reiterate that the discussions pertaining to the obligations of cooperation of States Parties can only be based on legal considerations. Article 127 of the Rome Statute foresees that a withdrawal from the Statute can only take effect one year after the Secretary General of the UN receives written notification from the State that wishes to withdraw. This withdrawal shall not affect any cooperation with the Court in connection with criminal investigations and proceedings which were commenced prior to the date on which the withdrawal became effective.

53. As the Court operates today in highly sensitive and complex situations, where many interests are at play, it believes it is crucial, for its legitimacy, but also for its efficiency in carrying out its judicial and prosecutorial activities, to create a framework of public and diplomatic support for the Court and the Rome Statute system, strong enough to ensure that States Parties that are under a legal obligation to cooperate with the Court, but that face challenges in doing so because of political, economic, security or capacity-related matters, do not have to carry alone the pressure that could result from these situations.

54. As in the past, the Court has continued to encourage the mainstreaming, coordination and integration of Court issues between States Parties in the bilateral contacts, as well as in their capacity as members of regional and international organizations.

55. *Mainstreaming the Court in States Parties' bilateral, regional and international activities:* As highlighted in the 2010-2011 report of the Court on cooperation, "*the Court [...] encourages States to continue the practice of publicly supporting and promoting the work of the Court in bilateral and multilateral contacts, such as in statements during the general debate of the UN General Assembly, during UN Security Council debates on situations, conflict resolution, human rights and the rule of law, or in bilateral contacts by reminding relevant States of their duty to cooperate, in particular when it concerns arrest and surrender*".

²⁰ "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".

56. Recommendations 11, 48 and 66 are especially relevant in this regard, as they call on States Parties to “*whenever possible express support for the Court and promote its general and situation-specific activities in their bilateral contacts*”, “*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*”, and call on States to “*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*.” The Court is appreciative to States Parties that have taken these efforts forward, and will continue to share information in a timely manner with States in order to maximize these efforts.

57. The Court believes regional and international organizations are important fora for States Parties to discuss and align support to and cooperation with the Court. Recommendation 61 notes that “*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*”. This is also supported by para. 12 of the 2012 Assembly resolution on cooperation, which “*encourages 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 support and cooperation to follow up 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*”.

58. As reported in paragraphs 113 to 116 of the 2012-2013 Court’s Annual Report to the UN General Assembly,²¹ the Court has continued to regularly brief regional organizations about its work, either in the context of working groups within certain regional organisations tasked with issues relating to the Court (like the COJUR-ICC for the European Union or the OAS working group in the Court), or through regular interaction at the senior and working levels. In this sense, it is worth noting as well recommendation 64, which holds that “*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*”, and recommendation 65, which indicates that “*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*”. In this context, the Court regrets the missed opportunity to hold a third ICC-AU technical seminar in Addis Ababa this year, as it would have been a chance to increase the dialogue between the two organizations and to clarify any misunderstandings. The Court avails itself to hold such meeting at the earliest opportunity.

59. The Court emphasizes the important role played by States Parties in these regional and international organizations in initiating and supporting joint statements, positions, declarations and resolutions promoting the Court and its general and situational activities (recommendation 62²²), as these will contribute to strengthening the legitimacy of the Court, and encourage all relevant actors to provide the necessary cooperation to the Court.

60. Interaction between the Court and the United Nations will be dealt with separately in another Report the Court is preparing for the twelfth session of the Assembly. It will include in particular information regarding the importance of mainstreaming Court issues within the UN Security Council discussions, as was already mentioned in para 12 of the 2012 resolution of the Assembly on cooperation, and in line with recommendation 51.²³ Recent positive examples include the Presidential Statement on the protection of civilians

²¹ UN document A/68/314.

²² “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”.

²³ “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”.

of 12 February 2013,²⁴ the resolution on Burundi of 13 February 2013,²⁵ or the Presidential Statement on Cooperation between the United Nations and regional and subregional organizations in maintaining international peace and security of 6 August 2013.²⁶

61. Information regarding the continued regular contacts between the two organizations can also be found in paras. 98 to 105 of the 2012-2013 Court's report to the UN General Assembly.

III. Conclusion

62. As the Court already indicated in its 2009 and 2010-2011 reports on cooperation, lack of cooperation and assistance or delays in executing requests have a tangible cost. This was further recognized by the Assembly in its 2012 resolution on cooperation, as it emphasized "*the importance of timely and effective cooperation and assistance from States Parties and other States under an obligation or encouraged to cooperate 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 underlined "*the negative impact that non-execution of Court requests can have 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*".

63. The impact of lack of strong, timely and consistent cooperation and assistance to the Court is multi-folded: it may lead to delays in the investigations activities and other Court proceedings and operations, thereby affecting the Court's efficiency and as a consequence increasing the running costs and the budget requirements of the Court. The delays may also affect the integrity of the proceedings.

64. From the Office of the Prosecutor's perspective, in situations where cooperation is lacking and arrest warrants are outstanding, there are costs related to preserving evidence, maintaining contact with witnesses, monitoring security and mitigating threats. These costs will continue to run for as long as the relevant cases cannot be presented to the Judges. In addition, the Office has publicly stated in regular occasions that there has been a marked increase in recent years in efforts to intimidate and harm or expose witnesses and pervert justice. The Office could therefore consider launching investigations under article 70 of the Rome Statute in order to ensure the protection of its investigative and prosecutorial activities from hindrance linked to non-cooperation.

65. In order to give a concrete effect to the principle of equality of arms, it is also important that States Parties and requested international organisations give an adequate consideration to requests for cooperation emanating from the defence teams. In the same spirit, States Parties are encouraged to consider entering into defence-related agreements such as release agreements.

66. From a more systemic perspective, effective cooperation, including in particular the execution of arrest warrants, speak for the legitimacy and credibility of the Court and of the Rome Statute community as a whole. The only way forward to consolidate the foundations of the Rome Statute, as the Court is expanding its activities, is to have an increasing number of States accepting to provide voluntary cooperation to the Court. The Court cannot indefinitely rely on the same States that accepted to enter into voluntary agreements years ago to support the new cases and situations before the Court.

67. It is also crucial to take into consideration the expectations of victims and affected communities throughout the Court's situations and cases, as they are the first beneficiaries and the *raison d'être* of this Court.

68. The Court and its organs thank the cooperation facilitator, Ambassador Krutnes (Norway) for her leadership during these last two years' cooperation facilitation, as well as States Parties and non-Parties for their cooperation and support, and remain available for further discussion or information on the basis of this report.

²⁴ S/PRST/2013/2.

²⁵ Resolution 2090 (2013).

²⁶ S/PRST/2013/12.