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Report of the Bureau on cooperation

Note by the Secretariat

Pursuant to paragraph 27 of resolution ICC-ASP/12/Res.3 of 27 November 2013, the Bureau of the Assembly of States Parties hereby submits for consideration by the Assembly the report on cooperation. The present report reflects the outcome of the informal consultations and other meetings held by The Hague Working Group of the Bureau, with the Court and other stakeholders.

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I. Background

1. Operative paragraph 27 of resolution ICC-ASP/12/Res.3 entitled “Cooperation”, adopted by the Assembly of States Parties (“the Assembly”) on 27 November 2013, requested the Bureau to maintain a facilitation of the Assembly for cooperation to consult with States Parties, the Court and non-governmental organizations as well as other interested States and relevant organizations in order to further strengthen cooperation with the Court.
2. The Bureau appointed Ambassador Anniken Ramberg Krutnes (Norway) as facilitator for cooperation at its second meeting on 18 February 2014.

II. Organization of work and general findings

3. In 2014, The Hague Working Group (“the working group”) held a total of eight informal consultations on the issues of cooperation. Meetings were held on 20 February, 15 May, 11 June, 23 September, 16 October, 28 October, 14 November, and 20 November. Meetings and consultations have been held with a number of stakeholders, including States, Court officials and representatives of civil society.

4. The first 2014 meeting, held on 20 February, was of an organizational nature, aiming at discussing the work plan for the year. The Chair identified the following set of issues on which to focus the efforts of the working group, pursuant to the mandates outlined in the Resolution on cooperation (ICC-ASP/12/Res.3), as well as in the omnibus resolution (ICC-ASP/12/Res.8, including annex I):

- (a) Arrest strategies;
- (b) Non-essential contacts;
- (c) A coordinating mechanism of national authorities; and
- (d) Follow up on the pledges made in Kampala.

Other key issues were also discussed in subsequent meetings, such as cooperation and defence issues and voluntary agreements.

5. The Court highlighted the importance of different areas of cooperation, such as the issue of voluntary agreements (on relocation of witnesses and the enforcement of sentences, interim release, final release – also in cases of acquittal), arrest strategies, national focal points, freezing of assets and cooperation seminars. The Court also underlined the importance of continuous political support to the Court.

6. On 11 June 2014, the facilitator organized a one-day meeting on cooperation at the premises of the Court. Participants in the meeting included representatives of States Parties, observer States and representatives of the Court. The meeting had three topics on its agenda: a) The feasibility study on the establishment of a coordinating mechanism of national authorities dealing with cooperation; b) stocktaking of the work on arrest strategies; and c) cooperation and defence issues.

7. In addition, two high-level seminars on fostering cooperation between The Court and States Parties were held: on 20-21 May 2014 in Buenos Aires, and in Accra 3-4 July. The seminars were co-organized by the Court and the facilitator for cooperation, Ambassador Anniken Ramberg Krutnes (Norway); and were funded by the European Commission, Norway and the Netherlands. The seminars were organized with the support of the Argentine Republic and Ghana, respectively. They gathered Government representatives and high-level officials from nine Latin American countries at the seminar in Buenos Aires, and nine, mainly Anglophone African countries, at the seminar in Accra. Representatives of Norway and the Netherlands, Court officials and experts were also present. In-depth discussions on cooperation between the Court and States Parties were held, emphasizing witness protection and voluntary agreements. Summaries from these

seminars can be found in annexes V and VI, respectively. Another such seminar will take place in Cotonou, in early November.¹

A. Arrest strategies

8. The Bureau decided on 18 February 2014 to appoint Mr. Roberto Bellelli (Italy) as rapporteur on arrest strategies. The roadmap and concept document on arrest strategies, appended to the report of the Bureau on cooperation submitted to the twelfth session of the Assembly,² formed the basis for the mandate of the rapporteur. Mr. Bellelli's mandate, was to conduct consultations within and outside the Court, with a view to presenting a report and a draft Action Plan on arrest strategies to the thirteenth session of the Assembly.

9. The rapporteur has during the course of the year presented updates on the status of his work. He recounted consultations held with the Court, the ad-hoc tribunals – including officials in the field, INTERPOL and other law enforcement agencies, as well as civil society. He also introduced a draft questionnaire on arrest strategies, addressed to all States Parties, to be responded to on a voluntary and confidential basis by 15 September 2014.

10. Participants in the working group discussed segments of the draft questionnaire, including the section relating to incentives. It was clarified by the rapporteur that reference to political and other incentives in the draft questionnaire was based on the experience of ad-hoc tribunals. Such incentives and the isolation of fugitives have shown to be crucial in the implementation of arrest warrants. The importance of enforcement mechanisms was also highlighted in these discussions, as well as the need for States Parties not to be isolated in their efforts to arrest fugitives, and the importance of having proper national legislation in place to effectively cooperate with the Court.

11. Representatives of civil society welcomed the initiatives of the working group concerning arrest strategies and commented that the issue had been subject to a long-standing attention in the context of the cooperation facilitation. In this regard, the important role of the Assembly in facilitating States Parties cooperation with the Court, notably through the organization of plenary discussions at the Assembly sessions, was stressed.

12. [Placeholder: The rapporteur presented his report to the working group at the meeting x November, and the working group recommended ...]

B. Non-essential contacts

13. At the first meeting of the working group, the Chair recalled that the issue of non-essential contacts had been an issue of discussion in the working group since 2012. Pursuant to resolution ICC-ASP/12/Res.3, paragraph 7, the Bureau was mandated through its working group to continue these discussions and report thereon to the Assembly. It was decided that the issue would be a prioritized subject for the discussions in the second semester of 2014, and that the focus of the discussion should be on State practice.

14. The working group considered the issue of non-essential contacts during three meetings during the second semester. The first discussion thereon, held at 23 September, focused on practical experiences with the concept of non-essential contacts, as one delegation shared its views on the issue and its government's practices on what it considered as "essential" contacts, in order to distinguish from non-essential contacts. Several delegations voiced their support for the practices laid out and stated that their governments practiced similar routines. Some delegations voiced concerns with the way forward for the concept, which in their view required a precise definition. One delegation presented a text for an operative paragraph on non-essential contacts, to be considered for the resolution on cooperation. A summary of the discussions on the issue during this meeting is included in annex IV.

15. During the following two meetings, different proposals for an operative paragraph for the resolution on cooperation regarding non-essential contacts were considered, utilizing the proposal from the 23 September meeting as a basis. One proposal included a passage

¹ A summary of this event will be appended to this report in due course.

² ICC-ASP/12/36.

suggesting that States Parties could advise the Court of any contact with persons subject to warrants of arrest, as a result made from an assessment of the non-essential contacts policy.

C. Study on the feasibility of establishing a coordinating mechanism of national authorities dealing with cooperation

16. Pursuant to resolution ICC-ASP/12/Res.3, paragraph 18, the working group was tasked with the undertaking of a study on the feasibility of establishing a coordinating mechanism of national authorities dealing with cooperation with the Court. The Chair decided to dedicate half of the full-day meeting of 11 June to this issue. At the outset, it was noted that a summary of the feasibility would be submitted to the Assembly at its thirteenth session for its consideration. A summary of the study is included in annex II, and the background paper to the study in appendix 1.

D. Cooperation and defence issues

17. In accordance with resolution ICC-ASP/12/Res.3, paragraph 14, the Court provided a document to the working group on the issue of cooperation and defence issues. The paper was partly of a legal character, as it outlined several relevant provisions of the Rome Statute and the Rules of Procedure and Evidence. It also stressed the vital importance of cooperation between States, international organizations and defence teams, to safeguard the principles of fair trial and equality of arms.

18. The Court's paper, which was subsequently amended after input from some delegations, is appended to this report as annex III.

E. Voluntary agreements

19. Pursuant to paragraphs 19 and 22 of resolution ICC-ASP/12/Res.3, voluntary agreements/arrangements were discussed at 23 September meeting. The Court presented its work on framework agreements and underlined the need for such voluntary agreements. The Court also underlined that States always retain the prerogative to enter into such agreements, and to make a final decision whether or not to accept a specific witness or sentenced person. Ad-hoc arrangements might also be feasible in the absence of an agreement. The Court had in a few cases managed to relocate witnesses to States that had not signed relocation agreements. However, the Court stressed that such ad-hoc solutions were not ideal, as in the absence of a framework agreement many matters had to be negotiated on a case by case basis.

20. The working group discussed the issue of voluntary agreements in relation to relocation of witnesses, enforcement of sentences, interim release of detained persons, and final release - also in cases of acquittal. The Chair noted that the first agreement on interim release had been signed with Belgium, and expressed the need for more such voluntary agreements.

1. Witness relocation

21. Witness protection, and in particular entering into voluntary agreements with the Court on the relocation of witnesses, was one of the prioritized agenda items during the high-level seminars in Buenos Aires, Accra, as well as during similar seminars in Dakar and Arusha in 2013, and the planned seminar in Cotonou. During the past year, a number of new relocation agreements between the Court and States Parties have been entered into, bringing the total number of such agreements up to 14.

2. Enforcement of sentences

22. The Court has signed eight agreements on the enforcement of sentences with States Parties,³ noting concern however that three years had passed since the conclusion of the latest agreement. The Court would wish to have a broad range of agreements in different geographical areas and different normative regimes, so as to be ready to determine enforcements. This would allow the Court to meet the cultural and linguistic needs for sentenced persons, including for the families of the individuals concerned. The conditions of enforcement of sentences should meet international minimum standards. The Court clarified that no review of national prison systems would be conducted as a condition to enter into agreements. Only when a sentenced person was to start to serve his/her sentence would such an evaluation be made. However, such evaluations would not be performed by the Court. In this connection, it was suggested that the Court could resort to a discrete and trusted third party, such as the International Committee of the Red Cross, to follow up on prison conditions.

23. At the 16 October meeting, the working group received a presentation on these subjects by professors of criminology from the University of Amsterdam, Ms. Barbora Hola and Mr. Joris van Wijk.⁴

24. At the 28 October meeting, the working group received a presentation by representatives of UNODC on the memorandum of understanding t⁵ between the Court and UNODC on enforcement and practical implications for States Parties.

3. Interim release

25. The Registry recalled that conditional interim release was a fundamental right of an accused person. The implementation of such release needed to be possible in practice, and the Registry encouraged States to sign framework agreements thereon in order to facilitate the process.

4. Final release – also in cases of acquittal

26. The Registry informed that the agreement on the release in case of acquittal only applied to individuals who were unable to return to their home country. In such cases, the Court would need to find a State that would receive the acquitted individual. The Registry informed that the draft framework agreement had been finalized by the Court and was ready for discussion. States were thus encouraged to consider the agreement and to contact the Registry should they be interested.

27. A suggestion was made that the Court also develop an agreement relating to convicted persons who have completed their sentences and were in need of resettlement.

F. Follow up to the pledges made in Kampala.

28. The Secretariat sent a letter to all States Parties on this topic requesting an update to the progress on the implementation of the Kampala pledges, as well as any new pledges. As at 28 October the Secretariat has received three replies. An overview of the responses may be found on the website of the Assembly.⁶

³ Five are with WEOG States, one is with a GRULAC State, one is with an Eastern European State, and one is with an African State.

⁴ The title and topic of their presentations was: "The Enforcement of Sentences and Its Aftermath at International Criminal Courts and Tribunals: Dilemmas and Lessons Learned", which was based on their research project and essay "Life After Conviction at International Criminal Tribunals: An Empirical Overview"; available at <http://jicj.oxfordjournals.org/content/12/1/109.abstract>.

⁵ Entitled: "*Building the Capacity of States to Enforce, in Accordance with International Standards on the Treatment of Prisoners, Sentences of Imprisonment Pronounced by the Court*"

⁶ http://www.icc-cpi.int/en_menus/asp/Pages/asp_home.aspx.

III. Recommendations

29. The working group recommended that the Assembly continue to monitor cooperation with a view to facilitating States Parties in sharing their experiences and considering other initiatives to enhance cooperation with the Court, and to include cooperation as a standing agenda item for future sessions of the Assembly, pursuant to paragraph 26 of resolution ICC-ASP/12/Res.3.

30. The working group further recommended that the draft resolution in annex I be adopted by the Assembly [following the plenary session on cooperation].

Annex I

Draft resolution on cooperation

The Assembly of States Parties,

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

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

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

Welcoming the report of the Court on cooperation, submitted pursuant to paragraph 28 of resolution ICC-ASP/12/Res.3,

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

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

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

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

Welcoming the memorandum of understanding between the Court and UNODC on strengthening the capacity of States to enforce sentences, and *commending* international organizations' support for strengthening cooperation in the area of voluntary agreements,

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

1. *Expresses* serious concerns that arrest warrants or surrender requests against 13 persons remain outstanding,¹ and *urges* States to cooperate fully in accordance with their obligation to arrest and surrender to the Court;
2. *Emphasizes* 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

¹ As at 16 October 2014.

affects the efficiency of the Court and *stresses* that protracted non-execution of Court requests has a negative impact on the ability to execute its mandate, in particular when it concerns the arrest and surrender of individuals subject to arrest warrants;

3. *Acknowledges* that concrete steps and measures to securing arrests need to be considered in a structured and systematic manner, based on the experience developed in national systems, the international ad hoc and mixed tribunals, as well as by the Court;

4. [placeholder: *welcomes* the report on Arrest strategies by the rapporteur and *adopts* the annex concerning an action plan on arrests;]

5. *Emphasizes* also the on-going efforts made by the Court in providing focused requests for cooperation and assistance which contribute to enhancing the capacity of States Parties and other States to respond expeditiously to requests from the Court, and *invites* the Court to continue improving its practice in transmitting specific, complete and timely requests for cooperation and assistance;

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

7. *Welcomes* the continued efforts of the President of the Assembly in implementing the non-cooperation procedures adopted by the Assembly in resolution ICC-ASP/10/Res.5, and *encourages* the Assembly to keep said procedures and their implementation under review in order to secure their effectiveness, including with regard to ensuring early notification to States Parties of opportunities to work together to avoid non-cooperation;

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

9. *Welcomes* the increased cooperation between the Court and the United Nations, and other international and regional organizations, and other inter-governmental institutions;

10. *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;

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

12. *Urges* States Parties to cooperate with requests of the Court made in the interest of Defence teams, in order to ensure the fairness of proceedings before the Court and *welcomes* the Court's briefing paper on defence and cooperation issues;

13. *Recalls* that the ratification of the Rome Statute must be matched by national implementation of the obligations emanating therefrom, in particular through implementing legislation and, in this regard, *urges* States Parties to the Rome Statute that have not yet done so to adopt such legislative and other measures so as to ensure that they can fully meet their obligations under the Rome Statute;

14. *Acknowledges* efforts by States and by the Court, including through the Legal Tools Project, to facilitate exchange of information and experiences, with a view to raising awareness and facilitating the drafting of national implementing legislation;

15. *Encourages* States to establish a national focal point and/or a national central authority or working group tasked with the coordination and mainstreaming of Court related issues, including requests for assistance, within and across government institutions;
16. *Welcomes* the report to the thirteenth session of the Assembly on the feasibility study of establishing a coordinating mechanism of national authorities and [*requests* the Bureau to mandate a group of interested States, taking into account regional representation, to set up a pilot coordinating mechanism of national authorities to be convened in the margins of the fourteenth session of the Assembly, on a voluntary basis;]
17. *Acknowledges* the importance of protective measures for victims and witnesses for the execution of the Court's mandate, *welcomes* the relocation agreements concluded with the Court in 2014, and *stresses* the need for more such agreements or arrangements with the Court for the expeditious relocation of witnesses;
18. *Calls upon* all States Parties and other States, to consider strengthening their cooperation with the Court by entering into agreements or arrangements with the Court, or any other means concerning, inter alia, protective measures for victims and witnesses, their families and others who are at risk on account of testimony given by witnesses;
19. *Acknowledges* that, when relocation of witnesses and their families proves necessary, due account should be given to finding solutions that, while fulfilling the strict safety requirements, also minimize the humanitarian costs of geographical distance and change of linguistic and cultural environment and *urges* all States Parties to consider making voluntary contributions to the Special Fund for Relocations;
20. *Commends* and *further encourages* the work of the Court on framework agreements or arrangements, or any other means in areas such as interim release, final release - also in cases of acquittal - and sentence enforcement which may be essential to ensuring the rights of suspects and accused persons, in accordance with Rome Statute and guaranteeing the rights of convicted persons and *urges* all States Parties to consider strengthening cooperation in these areas;
21. *Welcomes* the conclusion of the first voluntary agreement between the Court and a State Party on interim release and *requests* the Bureau, through its Working Groups, to continue the discussions on voluntary framework agreements or arrangements, and to report thereon to the Assembly at its fourteenth session;
22. *Recognizes* that effective and expeditious cooperation with regard to the Court's requests for the identification, tracing and freezing or seizure of proceeds, property and assets, can be of value to provide for reparation to victims and address the costs of legal aid;
23. *Underlines* the importance of effective procedures and mechanisms that enable States Parties and other States to cooperate with the Court in relation to the identification, tracing and freezing or seizure of proceeds, property and assets as expeditiously as possible; and *calls on* all States Parties to put in place and further improve effective procedures and mechanisms in this regard, with a view to facilitate cooperation between the Court, States Parties, other States and international organizations;
24. *Requests* the Bureau, through its Working Groups, to review the 66 recommendations on cooperation adopted by States Parties in 2007², in close cooperation with the Court;
25. *Welcomes* the enhanced dialogue between States Parties, the Court and civil society offered by the plenary discussion on cooperation held during the thirteenth session of the Assembly, with a special focus on [placeholder] and, *mindful* of the importance of full and effective cooperation with the Court in accordance with the Rome Statute, *notes with appreciation* the fruitful exchange of views on, inter alia, the challenges faced by States and the Court in ensuring [placeholder];
26. *Requests* the Bureau to maintain a facilitation of the Assembly of States Parties for cooperation to consult with States Parties, the Court, other interested States, relevant organizations and non-governmental organizations in order to further strengthen cooperation with the Court;

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

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

Annex II

Report of the Feasibility study on the establishment of a coordinating mechanism of national authorities dealing with cooperation

1. In its resolution on cooperation adopted at its twelfth session, the Assembly of States Parties (“the Assembly”) requested “the Bureau to report to the thirteenth session of the Assembly on the feasibility of establishing a coordinating mechanism of national authorities dealing with cooperation with the Court, for sharing knowledge and know-how, on a voluntary basis”¹.

2. The working group met 11 June to assess the feasibility of establishing such a mechanism. As a background for the elaborations, a list of questions was prepared. The background document, entitled “Feasibility Study for a coordinating mechanism of national authorities dealing with cooperation with the Court”², dated 30 May 2014 and prepared by Belgium developed in particular the following points: a) the purpose of the proposed mechanism; b) the participation to the mechanism; c) the servicing of the meetings of the coordinating mechanism; d) the location of the meetings of the mechanism; e) the frequency of the meetings; and f) the funding of the mechanism.

3. The facilitator noted, at the outset, that a report of the Feasibility study should be submitted to the Assembly at its thirteenth session, with a view to determining whether such a coordinating mechanism could be established.

4. In its presentation, Belgium stressed that the coordination mechanism would allow the sharing of knowledge, know-how and good practices among States Parties, on technical and legal matters relating to cooperation with the Court. Policy issues, such as non-cooperation, would not fall under the mandate of the coordinating mechanism. It was also put forward that the mechanism would also facilitate the creation of a professional network, in contrast to the current *ad hoc* exchange of information among practitioners. Possible issues for discussion would include among others: information on national legislation relating to cooperation; sharing of information on national legal and practical difficulties and possible solutions; sharing of information with the Court to enhance cooperation.

5. In terms of participation, it was noted that national practitioners dealing with cooperation with the Court, from States Parties and non-States Parties, as well as representatives of the Court (Registry, Office of the Prosecutor, or any other organ dealing with cooperation), could participate on a voluntary basis. It was also proposed to establish a small Bureau, composed of three to five States Parties from different regional groups, which would be tasked with convening and servicing the meetings, drafting of agendas, sending of documents (including reports), in close coordination with the Court for logistical support.

6. Furthermore, it was indicated that meetings of the coordinating mechanisms could take place at the seat of the Court, in The Hague, once per year, for one and a half day. Lastly, it was added that it would not be necessary for the Assembly to fund the coordinating mechanism, which could be funded through a trust fund made of voluntary contributions.

7. In the presentation, it was suggested that the coordinating mechanism would in practice consider two categories of information: information not related to any situations or cases, and information related to operational and legal issues (in connection to specific situations and cases). Specific examples of issues could be witness hearings, freezing and seizing of assets, views on interim release, arrest, transit and transport of witnesses or detainees, coordination of requests for cooperation involving several countries, etc. In this regard, some States Parties drew the attention of the working group to the possible confidential nature of the information to be considered by the coordinating mechanism, and the limitations it could pose in practice.

¹ Resolution ICC-ASP/12/Res.3, para. 18.

² The document is appended to this report as an appendix.

8. In response to this concern, it was noted that it was perfectly possible to share information and experience relating to specific cooperation requests without entering into the details of the said request. Therefore, it was possible to review the challenges and practical issues related to a cooperation request without infringing confidentiality.

9. Other concerns were raised concerning the mandate of the mechanism, in relation with the existing legal framework, in particular article 87(7) of the Rome Statute, which sets out the role the Assembly must play in case a State Party fails to comply with a request to cooperate, as well as article 97 – which already sets out the procedure for addressing problems arising in the execution of cooperation requests identified by the concerned State itself. In this regard, it was advanced that if some States are interested in fostering exchange of lessons learned they may do so in their bilateral relationships but that there is not a legal ground to do so in the context of the Assembly. Concerns as regards the increase of the bureaucracy, the possibility of falling into a “naming and shaming” practice and the freedom of States to organize themselves were also brought up. Questions were also raised regarding the relation of the mechanism with the cooperation facilitation, as well as the added value of the initiative in comparison with the possible establishment of an *ad hoc* network. Several delegations of the working group stressed that the “one size fits all” approach would not be relevant in relation to issues of cooperation with the Court.

10. In answer to these questions, the Belgian delegation replied that according to their proposal, the mandate of the mechanism would not include non-cooperation issues, or obstacles to cooperation as defined in article 97 of the Rome Statute. The rationale for this proposal was precisely to establish a forum to discuss and anticipate possible cooperation issues, with a view to avoiding entering into consultations with the Court pursuant to article 97. It was further argued that the cooperation facilitation was seized with policy issues, as a political body, whereas the coordinating mechanism would deal with cooperation issues of a technical nature. It was also stressed that the proposal was not aiming at discussing issues of political will through a technical legal angle, but rather at discussing the various ways in which similar cooperation requests from the Court can be implemented at the national level, by practitioners.

11. Some delegations expressed general support for the proposal to establish such a coordination mechanism, noting the positive experience of the European Union Genocide network, and the importance of providing support to national authorities in charge of cooperation at the national level. In that regard, the importance of ensuring the adequate level of participation, from the Ministries of Justice in particular, was stressed by some delegations.

12. The representatives of the Court welcomed the proposal to establish a technical forum of practitioners dealing with cooperation requests, and underlined the link with the invitation made to States Parties to establish national focal points for cooperation. The Court further indicated that it was following the development of similar networks at the regional level, notably in Latin America and in Africa.

13. Some delegations voiced concerns regarding the multiplication of structures within The Hague Working Group and in parallel to it. The question was raised as to whether the Registry would have the capacity to provide logistical assistance to the mechanism as foreseen in the proposed structure, noting that it may not be appropriate to ask the Court to involve its resources in the organization of such meetings. Other budgetary concerns were expressed, indicating that there already existed several trust funds, and warning against possible competition among trust funds.

14. Participants generally supported the idea of enhancing the sharing of information and best practices relating to cooperation, among States Parties, at a practitioners level. Concerns relating to specific confidentiality issues, costs, and other practical issues were also acknowledged.

15. Participants further agreed to use the framework of the fourteenth session of the Assembly of States Parties, to be held in The Hague, to convene an event of practitioners with the aim of giving an expression of interest of national authorities and to discuss the modalities of establishing a coordinating mechanism of national authorities dealing with cooperation. A reference to this is included in the draft resolution on cooperation.

Appendix

Background paper of the Feasibility study on the establishment of a coordinating mechanism of national authorities dealing with cooperation

A. Mandate from ASP12

1. Paragraph 18 of resolution ICC-ASP/12/Res.3:
Requests the Bureau to report to the 13th session of the Assembly on the feasibility of establishing a coordinating mechanism of national authorities dealing with cooperation with the Court, for sharing knowledge and know-how, on a voluntary basis.

B. What could be the content of the meetings of the Mechanism?

2. Objective: sharing of knowledge, know-how and good practices relating to the cooperation between national authorities and the organs of the Court
3. The meeting will focus on **technical matters**. Examples of issues to be raised could be the following ones:
 - (a) Exchange of information on the national legislation on cooperation;
 - (b) Sharing of experience relating to witness hearings, freezing and seizing of assets, drafting of views of States on conditional release, arrest, transit and transport of witnesses or detainees, coordination of requests for cooperation involving several countries, etc.;
 - (c) Establishing a list of contact points – creation of a professional network in view of a better exchange of information; and
 - (d) Others.

C. Who could be the participants to the meetings of the Mechanism?

4. **Practitioners** at national level (cf. language of the resolution: ... *national authorities dealing with cooperation with the Court* ...), coming from States Parties or States not Party cooperating with the Court, on a voluntary basis.
5. **Representatives** of the Court (both from the Registry and the Office of the Prosecutor depending on the items discussed).

D. Who could be the organizers and the Secretariat of the meetings of the Mechanism?

6. A Bureau composed of a Group of States Representatives (up to 5) coming from different regional groups will be tasked with the convening of the meetings, drafting of the agenda, sending of documents (including reports) with the logistic help of the Registry if necessary.
7. The first Bureau could be designated by the Assembly and the following ones by the Assembly or the Network itself.
8. The membership of the Bureau will be limited in time.

E. Where could the meetings of the Mechanism take place?

9. The meetings could take place at the **seat of the Court** for practical and cost limiting reasons.

10. A meeting at the permanent premises of the Court will permit to benefit from the presence of practitioners of the Court and avoid unnecessary rental costs.

F. When and how often should the meetings of the Mechanism take place?

11. The meetings could take place once a year, not at the same time or too close to a session of the ASP, in order to avoid overburdening the officials of the Court participating in both meetings.

12. Each meeting could last 1½ day/2 days in order to permit formal and informal contact between participants, and to establish a living network of colleagues.

G. How could the Mechanism be financed?

13. A trust fund could be created in order to avoid any financial impact on the budget of the Court.

Annex III

Briefing paper: cooperation and defence issues

1. The objective of the paper is to provide a brief technical description of the actions performed by the Court to support the work of the defence teams in the area of cooperation¹.
2. In order to respect the principles of fair trial and equality of arms enshrined in the Rome Statute, it is of crucial importance that defence teams can effectively obtain cooperation from States and international organizations in the conduct of their activities, as the Office of the Prosecutor does, notwithstanding the fact that the Defence is not listed in article 34 of the Rome Statute as being an organ of the Court. The Registry plays an active role in assisting the Defence teams in the implementation of their work and missions. Rule 20 of the Rules of Procedure and Evidence (RPE) thus specifies the responsibilities of the Registrar related to the rights of the Defence. In accordance with this rule, the Registrar shall, *inter alia*, “provide support, assistance, and information to all defence counsel appearing before the Court”.
3. Cooperation from States Parties is of high importance in this regard, and prompt replies by States to requests made by the Court contribute to speedy and fair proceedings. Last year, in its resolution ICC-ASP/12/Res.3 related to Cooperation, the Assembly of States Parties urged “*States Parties to cooperate with requests of the Court made in the interest of Defence teams, in order to ensure the fairness of proceedings before the Court*”.
4. Today, in the current cases before the Court, there are 22 defence teams and several duty counsels, to which various sections and units of the Registry have been providing support. To facilitate the communication with the defence teams, all requests are received by the Counsel Support Section and further dispatched to the relevant Registry services dealing with cooperation.
5. The Registry assists the defence teams in the following three main areas requiring assistance from States Parties, non-State Parties and international organizations:
 - (a) Facilitating the work of the Defence by *inter alia* ensuring that their privileges and immunities will be respected, organizing their travels to different States, facilitating their meetings with government officials, liaising with States to transmit, respectfully of the applicable procedures, their various requests (i.e. requests for obtaining information, documentation, visit to specific places, interview of witnesses, including of detained persons);
 - (b) Liaising with States in order to encourage the signature of interim and provisional release agreements, as well as sending *ad hoc* requests in the absence of such agreement;
 - (c) Liaising with States to request their assistance in order to facilitate the appearance and the protection of Defence witnesses.

A. Investigations of the Defence in the field and requests for assistance:

6. Pursuant to regulation 119 (1) (a) of the Regulations of the Registry, “the Registrar shall, *inter alia* (a) assist counsel and/or his or her assistants in travelling to the seat of the Court, to the place of the proceedings, to the place of custody of the person entitled to legal assistance, or to various locations in the course of an on-site investigation. Such assistance shall encompass securing the protection of the privileges and immunities as laid down in the Agreement on the Privileges and Immunities of the Court (APIC) and the relevant provisions of the Headquarters Agreement”.
7. Such assistance is provided in practice by the Registry by:

¹ Although the Registry sends requests for cooperation to States that impact on the defence (i.e. with regard to the investigations it conducts in the context of the legal aid and transmitting decisions from the Chambers regarding the identification and freezing of goods and assets), this aspect was not covered in this paper as the requests do not aim at assisting the defence teams.

- (a) Ensuring that the interests of the Defence are protected in the various agreements negotiated with States and International Organizations. For instance, specific provisions related to cooperation with the Defence have been systematically included in agreements with the United Nations, its specialized agencies and other partners. In the Memorandum of Understanding concluded with ONUCI (Côte d'Ivoire) in 2013, for example, provisions apply to the Office of the Prosecutor and the Defence in the areas of witnesses' tracing, interviews and preservation of physical evidence. The same provisions are included in the agreement currently being discussed with MINUSMA (Mali);
 - (b) Preparation of the necessary certificate under the signature of the Registrar enabling counsel to benefit from the relevant privileges and immunities during the period required for the exercise of their functions in accordance with article 18 of the APIC and Article 25 of the Headquarters Agreement;
 - (c) Coordinating with the competent authorities via *note verbale* on upcoming missions of the Defence unless a specific arrangement was agreed upon with the State. The national authorities may also be requested to ensure the security and safety of the members of the Defence during their stay on the State's territory; and
 - (d) Providing necessary travel arrangements, such as requesting UN security clearance, requesting assistance from the UN (for example with MONUSCO flights), arranging for visas to travel to The Hague or the field, etc.
8. In order to obtain the cooperation of a State Party, the Defence teams have to respect applicable rules, namely 87-1-a) of the Rome Statute and rule 176 of the RPE. The Registry is in a position to advise the defence teams on which States accept direct requests from defence teams. When approached by a defence team, the Registry prepares a note verbale to the relevant authorities, transmitting the request prepared by the Defence, mindful of the relevant provisions of the Rome Statute including in particular the language, the channel of communication and the legal basis to be used. In addition, in order to obtain the cooperation of a State Party, in conformity with Chapter 9 of the Rome Statute, the Defence may have to seek a Chamber's ruling; the Chamber may further order the Registry to request States to cooperate in accordance with the specific provisions of the Rome Statute.
9. The Registry also assists by following up with requested States to monitor the status of implementation of these requests. In 2013, the Registry transmitted 11 requests on behalf of the Defence and conducted 85 follow-up activities on Defence requests across situation countries.

B. Agreements on the release of persons

10. After his or her surrender to the Court, a person may apply for interim release before a Pre-Trial Chamber (article 60 of the Rome Statute) and in practice Trial Chambers have also considered such requests (article 61 (11) of the Rome Statute).
11. In order to take a decision, the Pre-Trial Chamber shall seek observations from the host State and from the State on the territory of which the person seeks to be released (rule 119-3 of the Rules of Procedure and Evidence, and regulation 51 of the Regulations of the Court). Therefore, States may be invited to provide such observations and inform the Court whether they are capable and willing to accept a suspect or an accused on their territory.
12. The Court makes efforts in this regard to conclude interim release agreements with State Parties in order to establish and clarify the administrative and legal issues for the possible interim release of the persons on the territory of the State. As of today, Belgium is the only State which has entered into such an agreement with the Court.
13. Also, in the event that a person is released from the Court, either because he or she is acquitted, or for other reasons, and cannot go back to his or her country of residence (i.e. for security reasons), the Court has a responsibility to identify a State that would accept this person on its territory. The Registry also encourages States to enter into agreements that detail the conditions under which such release could take place.

14. Although the signature of such agreements is of a voluntary nature, the Court aims at avoiding the difficulties encountered by the International Criminal Tribunal for Rwanda, which could not find enough States willing to accept acquitted persons.

C. The appearance and the protection of Defence witnesses

15. Regarding witness-related cooperation, article 93 (1) of the Rome Statute foresees that States Parties shall provide assistance in (e) “facilitating the voluntary appearance of persons as witnesses or experts before the Court” and in (j) “the protection of victims and witnesses and the preservation of evidence.” This applies equally to witnesses called by the Defence and by the Prosecution.

16. The appearance and the protection of Defence witnesses is dealt with by the Victims and Witnesses Unit (VWU) of the Registry, which assists both defence teams and the Office of the Prosecutor, in coordination with the cooperation services of the Registry.

17. With regard to the relocation of witnesses, the voluntary model relocation agreement negotiated with States covers both Prosecution and Defence witnesses.

Annex IV

Summary of the discussions on non-essential contacts during the September 23 meeting

1. This is a summary of the discussions on the issue of non-essential contacts held during the meeting of the Hague Working Group (“working group”) 23 September, at the premises of the ICC.
2. The facilitator for cooperation, Ambassador Anniken Krutnes (Norway), chaired the meeting.
3. At the outset, the facilitator recalled operative paragraph 7 of the 2013 resolution on cooperation¹, adopted at the twelfth session of the Assembly of States Parties, whereby the Assembly requested that the Bureau, through its working groups, continue the discussions on the issue of non-essential contacts, and to report thereon to the Assembly in advance of its thirteenth session. She also referred to the background discussion of the topic, referred to in the 2013 report of the Bureau on cooperation.²
4. In this connection, the facilitator invited delegations to share with the working group the practices regarding the non-essential contacts” of their respective governments.
5. While recognizing that, in general, implementing a policy on non-essential contacts would differ between States, the delegation of the United Kingdom gave a short presentation on its government’s practices, which pointed out that:
 - (a) The policy on non-essential contacts only applied to individuals subject to arrest warrants and not to States. Implementing a non-essential contacts policy would not prevent that State from cooperating with the State of nationality of the individual; and
 - (b) The implementation of the policy on non-essential contacts does not affect the principle of presumption of innocence of the accused, it was aimed at encouraging the individual subject to an arrest warrant to cooperate with the Court.
6. To determine whether a contact was essential or not, the United Kingdom’s delegation explained that its government applied four general categories:
 - (a) Diplomatic contacts in a strict sense, such as presentation of credentials upon arrival of new Ambassadors as well as farewell bids for departing Ambassadors. Without these basic diplomatic meetings an Embassy would not be able to operate effectively;
 - (b) Ceremonial representation, where the absence of a representative might be taken as disrespectful to the people of a country or to a religion;
 - (c) Core diplomatic business, such as consular work where the well-being of a national of the country might be at risk; and
 - (d) Attendance at an event to help achieve an essential objective, for example if contact with a fugitive would help to bring about a peace agreement.
7. Mindful of the obligation of States Parties to support the work of the Court, the delegation of the United Kingdom further pointed out that, sometimes, the less clearly defined categories lead to difficulties in determining when a contact was essential. In such cases, the definition was determined on a case by case basis and in that process there might be consultations with other States Parties, to try to reach a common position and that a final decision would then be made by one of the Ministers of the Government, before the contact could take place. The same delegation added that this policy applied to all of their state officials, not only ambassadors.
8. The delegation also indicated that the practices applied by other States and the European Union in particular provided an additional framework of policies with regard to non-essential contacts.

¹ ICC-ASP/12/Res.3.

² ICC-ASP/12/36, paras. 12-15.

9. Following the presentation, a discussion among the delegations ensued. Some delegations expressed their support for the practices regarding non-essential contacts explained by the presenting delegation and stated that they corresponded in a similar way to the practices applied by their governments. States were also encouraged to look into the possible final effect of this approach, taking into account the relationship with States and individuals.

10. Some delegations expressed their concerns on the way forward concerning the issue of non-essential contacts. In this connection, reference was made to resolution ICC-ASP/12/Res.3, in which the Assembly requested the working group to “continue the discussions” on the matter, without further precision. Other questions reflected concern related to the objective sought by proposing a policy on non-essential contacts, and asked whether the Court had been assisted or hampered in carrying out its mandate in the absence of such a policy. The lack of a clear definition of the term “essential” was also problematic to some delegations.

11. Furthermore, it was stated that in accordance with article 89, paragraph 1, of the Rome Statute, the legal obligation for the arrest of an individual only materializes when the person is in the territory of a State Party. It was also recalled that the United Nations guidelines of non-essential contacts had no binding effect upon States. Some delegations saw that there was no reason to bring into the discussion the administrative practices of the United Nations in that regard. In addition, it was questioned if the principle of presumption of innocence might be in conflict with the policy of non-essential contacts. It was stated that the policy of avoiding non-essential contacts sought to isolate a fugitive and thus contribute to the person’s arrest.

12. For its part the Court indicated that it was not requesting any binding norm on non-essential contacts, that the matter was important insofar as it could facilitate the implementation of a judicial order. It noted that non-essential contacts constitute a political tool which States are free to implement as they deem appropriate, adding that it would be a sovereign decision of each States on how to define what is essential.

13. One delegation proposed wording for an operational paragraph, to be considered for the resolution on cooperation.

14. The facilitator recalled that, the purpose of the meeting was to share the practical experiences and policies applied by different States Parties and that the various suggestions and concerns raised would be further discussed in the forthcoming meetings.

Annex V

Summary of the Buenos Aires seminar on fostering cooperation (20-21 May 2014)

1. On 20 and 21 May 2014, a high-level seminar on the promotion of cooperation with the International Criminal Court (the Court) took place in Buenos Aires (Argentine Republic). The seminar, co-organised by the Court and the facilitator on cooperation, Ambassador Anniken Ramberg Krutnes (Norway) and sponsored by the European Commission, Norway and the Netherlands and with the support of the Argentine Republic, was held in *Palacio San Martín* and was attended by high officials of ten South American States Parties to the Rome Statute: Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Paraguay, Peru, Uruguay and the Bolivarian Republic of Venezuela. In his opening speech, the Minister for Foreign Relations of the Republic of Argentina, Mr. Héctor Timmerman, noted that the Court could not have reached its current level of consolidation without the support of States, and that such cooperation by States with the Court is fundamental in enabling the latter to fulfil its mandate.
2. In addition to States representatives, participants in the seminar included International Criminal Court judge Ms. Silvia Fernández de Gurmendi; the Registrar of the International Criminal Court, Mr. Herman von Hebel; the facilitator on cooperation, Ambassador Anniken Krutnes; the representative of the Netherlands to the International Criminal Court, Ambassador Jan-Lucas van Hoorn; and representatives of the Secretariat of the Assembly of States Parties, Court Registry and Office of the Prosecutor. Other participants in the seminar included members of the International Humanitarian Fact-Finding Commission Ambassador Susana Ruiz Cerutti (Argentina), Dr. Jeannete Irigoin (Chile) and Col. Hugo Corujo (Uruguay), as well as the representative of the Inter-American Court of Human Rights, Mariana Clemente Fábrega.
3. The various sessions of the seminar were introduced by representatives of the Court and of participating States, and by representatives of the International Humanitarian Fact-Finding Commission and Inter-American Court of Human Rights. Following the introductory presentations, delegations made presentations on the specific topic of each session, whose common aspects would provide the basis for the seminar's conclusions.
4. Concerning the need for political support, emphasis was placed on the region's high degree of commitment to the Court and the importance of achieving universality so as to strengthen the Court's powers. It was noted that States could enhance this support at the regional level, through, *inter alia*, the Organisation of American States (OAS), the Southern Common Market (MERCOSUR) and the Union of South American Nations (UNASUR), and that there was a need for closer contacts between the Court and States of the region, with a view to maintaining a more continuous dialogue, exchanging concerns and achieving greater mutual understanding. Finally, emphasis was placed on the need to strengthen cooperation regarding the execution of arrest warrants issued by the Court.
5. In regard to State cooperation with the Court, it was observed that cooperation is a reciprocal matter; just as the Court may request States Parties to cooperate, the latter may ask the Court, and in particular the Office of the Prosecutor, for assistance in the conduct of legal proceedings for crimes falling within the jurisdiction of the Court, as it is enshrined at article 93(10) of the Rome Statute.
6. In terms of witness protection, participating States presented their own programmes, and discussed their compatibility with the Court's witness relocation agreements. The importance of strengthening national witness protection capacities was addressed. It was agreed that the Court needs more relocation agreements, and that such agreements represent an additional form of political support for the work of the Court.
7. In regard to the execution of the Court's judicial decisions on arrest warrants and the freezing of assets, it was observed that this is an obligation binding upon States, but that not all States of the region have laws that allow for its expeditious and effective implementation; adoption of the necessary legislation was therefore encouraged, where

appropriate. It was further observed that States could count on the Court's assistance in this regard, if necessary.

8. In the session on the adoption of national legislation to ensure cooperation, two models were identified among States in the region, including both legislation in force and under discussion: on the one hand, the adoption of specific legislation on cooperation, on the other, a provision for cooperation as part of general implementing legislation in respect of obligations under the Rome Statute.¹

9. In regard to the Agreement on Privileges and Immunities of the Court (APIC), to which seven of the nine States Parties participating in the seminar were signatories, the importance of its ratification was emphasised, as the Court frequently investigates in violent situations during conflicts, or when conflicts have ended but discord remains.

10. The possibility of using external mechanisms to support the requirement of cooperation with the Court was discussed during a session examining how the International Humanitarian Fact-Finding Commission and Justice Rapid Response can intervene to investigate acts constituting crimes within the Court's jurisdiction, in particular in situations where the Court cannot investigate as a result of local circumstances.

11. In regard to the relationship between the complementarity principle and the obligation of cooperation, it was recalled that, since the Statute accords primacy to Member States in the prosecution of crimes within the jurisdiction of the Court, it is they who are primarily responsible for taking action to investigate and prosecute such crimes. To this end, it was noted that States should develop cooperation mechanisms, not only with the Court but also between their own courts and tribunals.

12. Finally, in the session on victim reparation, attention was drawn to the reparations scheme developed under the Inter-American System for the Protection of Human Rights, as well as the experience of States of the region in comprehensive victim reparation.

13. In its conclusions, the seminar emphasized the desirability of more direct contact with the Court through this type of meeting. Participating States reiterated their high level of commitment and political support for the Court and stated that they would consider the possibility of extending forms of cooperation with the Court, in particular through voluntary agreements.

¹ Concerning this point, attention was drawn to the availability of model laws on cooperation with the Court, prepared by the non-governmental organisation *Parliamentarians for Global Action*.

Annex VI

Summary of the Accra seminar on fostering cooperation (3-4 July 2014)

1. On 3 and 4 July 2014, a high level seminar for fostering cooperation between the International Criminal Court (ICC) and States Parties to the Rome Statute was held in Accra, Ghana. Government representatives and other high level officials from nine African countries – Angola, Botswana, The Gambia, Ghana, Liberia, Mozambique, Nigeria, Sierra Leone, and the United Republic of Tanzania – as well as Norway and the Netherlands, ICC officials and experts, held in-depth discussions on cooperation between the ICC and States Parties, with an emphasis on witness protection and investigations. The seminar highlighted the importance of judicial cooperation nationally, regionally and with the Court, and explored avenues on how the capacity of States in this regard could be strengthened.

2. In her keynote address to open the seminar, the First Vice-President of the Court, Judge Sanji Mmasenono Monageng, stated: "The Rome Statute is fundamentally based on the concept of complementarity, under which national jurisdictions and the ICC are both working toward the same goal of ending impunity for the gravest crimes of concern to the humankind. Accordingly, the strengthening of a State's capability to cooperate effectively with the ICC in many cases also translates to improved capacity of national authorities to investigate, prosecute and adjudicate Rome Statute crimes".

3. Representing the seminar's host state, Ghana's Attorney General and Minister for Justice, H.E. Marietta Brew Appiah-Opong, stated: "This seminar aims at stimulating high level in-depth discussions on some of the most relevant issues regarding cooperation between the International Criminal Court and States Parties in respect of the protection of witnesses as well as the connection between national capacity building and international cooperation. Member States would be expected to commit to the full implementation of adopted legislation as soon as possible".

4. In all of its activities, the ICC relied on the cooperation of States and international organizations, including in arresting and surrendering suspects, seizing and freezing assets, enforcing sentences of imprisonment pronounced by the Court, receiving detainees after their interim release, or relocating witnesses. The Court might enter into arrangements or agreements to provide such cooperation. The successful cooperation also depended on a mutual understanding between the Court and States Parties of the needs and requirements pertaining to the relevant cooperation issues.

5. The event was organized by the ICC in close cooperation with the facilitator for cooperation between the Court and the States Parties- the Norwegian Ambassador to the Netherlands- and the Permanent Representative of the Netherlands to the ICC; it was funded by the European Commission, the Governments of the Netherlands and Norway, and supported by the Government of Ghana.

A. Witness protection

6. Participants had privileged and fruitful exchanges of views on: the system of witness protection in place at the Court, the challenges faced by States and the Court in ensuring the protection of witnesses, the relocation agreements and the Special Fund for relocations, and the complementary role of national systems of protection. The Court, while recognizing its prime responsibility for protecting both the prosecution and defence witnesses, emphasized the crucial importance of States Parties' cooperation in this area, through the signature of relocation agreements or any other ad hoc arrangements. The Court noted with satisfaction that since the two 2013 seminars on witness protection in Dakar, Senegal and in Arusha, United Republic of Tanzania, the number of witness protection agreements with African States had increased from one to five. However, even if relocation of witnesses to other States was a measure of last resort, the Court was facing a strain on its capacity to relocate. It was stressed that the current number of agreements was not sufficient and that the Court approached States Parties in all regions to enhance the capacity. Broad regional capacity would also allow for finding solutions that, while fulfilling the strict safety requirements,

also minimize the humanitarian costs of geographical distance and the change of linguistic and cultural environment when relocation of witnesses and their families proves necessary.

7. The Court also made it clear that the emphasis of witness protection was a global recent development. However, even realizing that conditions and legal systems varied, there was no need for States to start from scratch. Substantial knowledge has now been assembled on what worked and what did not, and this knowledge could and must be shared. The responsibilities and functioning of the witness protection units within the Court were clearly presented to participants, who gained a better understanding of the operational issues at stake when seized with a cooperation request from the Court. The Court, for its part, was able to gain valuable feedback on the individual countries specific situations and needs.

8. Through the conclusion of relocation agreements, the Court could assist with the transfer of expertise to national authorities in the field of witness protection. Such assistance could also strengthen the national witness protection capacities in general. A substantial number of States representatives made it clear that the increase in serious cross border crimes, as well as the crucial role of witnesses with regard to successful investigation and prosecution, called for enhanced efforts. Established as well as improved capacities in this field in a larger number of countries might therefore prove crucial in ensuring effective bilateral and regional cooperation for the investigation and prosecution of all serious crimes.

B. Implementing legislation for facilitating cooperation with the ICC

9. Professor Olympia Bekou, from the University of Nottingham, delivered an interactive session, entitled "Implementing Legislation for Facilitating Cooperation with the ICC". Professor Bekou discussed the purpose of national implementing legislation, challenges faced by States when implementing, sources of documentation, and the existing models available, comparing approaches taken by States using information drawn from the National Implementing Legislation Database (NILD), which was part of the ICC Legal Tools Project, and the recently commissioned Cooperation and Judicial Assistance Database (CJAD).

C. Voluntary agreements

10. Thanks to its interactive format, the seminar allowed for an open and constructive dialogue among the participating States Parties and the Court on the implications of entering into voluntary agreements with the Court on witness relocation, enforcement agreements, agreements on interim release and release of acquitted persons. These agreements created a framework, which took into account the specificities of individual States and their legal systems, but the decision to accept specific persons under these agreements was subject to approval in each case.

D. How to take cooperation further

11. The participants discussed the recommendations which could be given to the Court and the States Parties in order to take Cooperation further. The issues discussed included: agreements and arrangements on witness relocation, developing and strengthening regional networks, identifying national focal points, capacity building in the justice sector, implementing legislation, as well as improved routines for communication between States Parties and the Court.

12. During the discussions, the participants from the African States expressed a strong wish for more outreach from the Court. The close relation between complementarity and cooperation was repeatedly recognized. Those observations were made with regard to the cooperation obligations outlined in Part 9 of the Rome Statute, as well as to issues related to voluntary agreements and arrangements. Capacity building had also to be done in a sustainable way. The network created at the seminar could, as appropriate, serve for both further cooperation between States and the Court, and between States on the African continent.

Annex VII

Report on arrest strategies submitted by the Rapporteur

[See ICC-ASP/13/29/Add.1]
