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Report of the Bureau on cooperation

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I. Background

1. Operative paragraph 30 of resolution ICC-ASP/15/Res.3 entitled “Cooperation”, adopted by the Assembly of States Parties (“the Assembly”) on 24 November 2016, 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 Momar Diop (Senegal) and Ambassador Philippe Lalliot (France) as co-facilitators on Cooperation.

II. Organization of work and general findings

3. In 2017, The Hague Working Group (“the working group”) held a total of six informal consultations on the issues of cooperation. Meetings were held on 27 July, 14 September, 27 September, 5 and 13 October and 6 November 2017. Meetings and consultations have been held with a number of stakeholders, including States, Court officials and representatives of civil society.
4. At the first 2017 meeting, held on 27 July, the co-facilitators presented their programme of work which included 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/15/Res.3),¹ as well as in the omnibus resolution (ICC-ASP/15/Res5, including annex I):
 - (a) The 66 recommendations on cooperation from 2007;²
 - (b) Voluntary agreements and arrangements;³
 - (c) Coordinating mechanism of national authorities;⁴ and
 - (d) Arrest strategies.

A. 66 recommendations on cooperation from 2007

5. Pursuant to the mandate of the Assembly to conduct a review of the 66 recommendations adopted by the Assembly in 2007,⁵ in close cooperation with the Court, in 2017 the co-facilitators had conducted consultations with different stakeholders and had highlighted main priorities in order to better implement the recommendations.
6. In 2017, pursuant to the operative paragraph 30 of resolution ICC-ASP/15/Res.3 encouraging the Bureau to identify issues, the co-facilitators have focused their mandate on two main priorities: voluntary agreements and financial investigations. As regard financial investigations a conference was held in Paris on 20 October 2017.

B. Voluntary agreements

7. As regards voluntary agreements, the Court presented its work on framework agreements and underlined once more the need for voluntary agreements in relation to relocation of witnesses, enforcement of sentences, interim release of detained persons, and final release - also in cases of acquittal. Furthermore, the Court emphasized 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.
8. The Court recalled that it had concluded eighteen witness relocation arrangements, ten enforcement of sentences agreements, and one interim release agreement.

¹ ICC-ASP/13/Res.3, adopted at the 12th plenary meeting, on 17 December 2014, by consensus.

² *Ibid.*, operative paragraph 24.

³ *Ibid.*, operative paragraph 21.

⁴ ICC-ASP/13/Res.3, operative paragraph 16.

⁵ ICC-ASP/6/Res.2, annex II.

9. The Court also indicated that two new witness relocation agreements and two enforcement-of-sentence agreements had been signed since the Assembly session in November 2016.

C. Cooperation challenges with respect to financial investigations

10. Financial investigations remained a central focus within the work of the working group on cooperation. In this respect, the ambassadors from France and Senegal to The Netherlands, co-facilitators mandated by the Assembly of States Parties on cooperation with the International Criminal Court, invited the States Parties to the Rome Statute to the conference on "The International Criminal Court and International Cooperation: The Challenges of Asset Recovery" in Paris on 20 October 2017. The purpose of this conference was to discuss the state of cooperation in the area of financial investigations, particularly with regard to identifying, locating, freezing or seizing the proceeds of crime, and goods, assets and instruments linked to crime.

11. The conference gathered senior state officials, officials of the International Criminal Court, national and international experts in financial investigations and asset recovery, representatives of regional and international organisations, as well as members of civil society. The event provided a unique opportunity for participants to share their experience and best practices on this crucial issue, and discuss concrete ways to strengthen cooperation between the Court and various actors in this matter.

12. The Conference included a political component addressing the importance of the political aspect of cooperation relating to asset recovery. The co-facilitators proposed a non-legally binding declaration on cooperation in the area of financial investigations, and more particularly on asset recovery, that was approved in principle in Paris with a view to being adopted at the 16th Session of the Assembly of States Parties and annexed to the cooperation resolution.

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

13. At its thirteenth session the Assembly had welcomed the study on the feasibility of establishing a coordinating mechanism of national authorities dealing with cooperation with the Court⁶ and had invited the Bureau to discuss the feasibility of establishing such a mechanism, taking into consideration the study. At its fifteenth session the Assembly had invited the Bureau, through its working groups, to discuss the feasibility of establishing a coordinating mechanism of national authorities, taking into account the respective background document, and to report to the Assembly well in advance of its sixteenth session.⁷

14. In this connection, the Ambassador of Belgium briefed the Working Group on 27 July on the project for the establishment of a coordinating mechanism of national authorities dealing with cooperation and several alternative tracks for its implementation. The Belgian delegation indicated that the objective of the said mechanism is to allow State Parties and non-States Parties to the Rome Statute, on a voluntary basis, to deal only with the technical aspects of cooperation or mutual legal assistance and sharing of knowledge and know-how on this subject. Belgium suggested that the participation in the mechanism would be provided through a contribution to a voluntary fund and open to States Parties, non-States Parties and to the organs of the Court, thus not affecting the current contribution of States Parties to the Court's regular budget. To evaluate the relevance of the mechanism, it was proposed to organize a test meeting before or after the Assembly to increase the likelihood of participation by States Parties. This meeting would not take place until the second half of 2019.

15. In 2017, the establishment of such mechanism was discussed formally and informally with States Parties and must continue to be discussed.

⁶ ICC-ASP/13/29, annex II.

⁷ ICC-ASP/15/Res.3, para. 10.

E. Arrest strategies

16. At its thirteenth session, the Assembly had taken note of the report on arrest strategies submitted by the Rapporteur⁸ which had annexed a draft Action Plan, and had invited the Bureau to continue discussions on the topic with a view to submitting a consolidated draft Action Plan on arrest strategies for consideration by the Assembly.⁹

17. At its fourteenth session, the Assembly had taken note of the Report on the draft Action Plan on arrest strategies, submitted by the Rapporteur,¹⁰ and had urged the Bureau to continue consideration of the recommendations of the draft Action Plan on Arrest Strategies with a view to its adoption, and to report thereon to the fifteenth session of the Assembly.¹¹

18. At its fifteenth session, the Assembly had again taken note of the report and urged the Bureau to continue consideration of the recommendations of the draft Action Plan on Arrest Strategies with a view to its adoption, and to report thereon to the sixteenth session of the Assembly.¹²

19. In 2017, the co-facilitators, as mandated by the Assembly conducted informal consultations on arrest strategies; given the importance of this topic, additional consultations must be held in 2018.

F. Seminars

20. The Court was able to organise 10 seminars, events and trainings to achieve greater cooperation of States with the ICC; broaden understanding of the ICC and Rome Statute amongst key stakeholders and contribute to universality; and reinforce national capacities to deal with crimes under the Rome Statute, particularly in countries related to situations before the ICC.¹³ These events included two high-level cooperation seminars, in Trinidad and Tobago in January 2017, targeting the Caribbean countries, and in the Republic of Korea in April 2017, targeting Asia and Pacific States; one seminar on cooperation with the focal points of the situation countries and other countries in the region, in September 2017, in The Hague; four expert seminars, on cooperation agreements and witness protection, in Trinidad and Tobago and in The Hague; the fifth retreat between the ICC and African States Parties, in Addis Ababa, in December 2016; a side-event on the ICC in the margins of the 48th Pacific Islands Forum Meeting, in Samoa, early September 2017; and the annual training for ICC Counsel, in June 2017, in The Hague; a high-level regional symposium on cooperation and complementarity in Niger, in October 2017.

III. Recommendations

21. 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 operative paragraph 31 of resolution ICC-ASP/15/Res.3. The working group further recommended that the draft resolution in annex I and the draft declaration annexed to it be adopted by the Assembly following the plenary session on cooperation.

⁸ ICC-ASP/13/29/Add.1.

⁹ ICC-ASP/13/Res.3, para. 4 and ICC-ASP/13/Res.5, para.11.

¹⁰ ICC-ASP/14/26/Add.1, annex IV, appendix.

¹¹ ICC-ASP/14/Res.3, para. 4.

¹² ICC-ASP/15/Res.3, para 4 and ICC-ASP/15/Res.5, annex I, para 3 (a).

¹³ ICC-ASP/16/16.

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, ICC-ASP/13/Res.3, ICC-ASP/14/Res.3, ICC-ASP/15/Res.3 and the sixty-six recommendations annexed to resolution ICC-ASP/6/Res.2,

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

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

Welcoming the report of the Court on cooperation¹, submitted pursuant to paragraph 32 of resolution ICC-ASP/15/Res.3,

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

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

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

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

Commending international and regional organizations' support for strengthening cooperation in the area of voluntary agreements,

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

1. *Emphasizes* the importance of timely and effective cooperation and assistance from States Parties and other States under an obligation or encouraged to cooperate fully with the Court pursuant to Part 9 of the Rome Statute or a United Nations Security Council resolution, as the failure to provide such cooperation in the context of judicial proceedings affects the efficiency of the Court and *stresses* that the non-execution of cooperation requests has a negative impact on the ability of the Court to execute its mandate, in particular when it concerns the arrest and surrender of individuals subject to arrest warrants;

¹ ICC-ASP/16/16.

2. *Expresses* serious concerns that arrest warrants or surrender requests against 13 persons remain outstanding,² and *urges* States to cooperate fully in accordance with their obligation to arrest and surrender to the Court;
3. *Reaffirms* that concrete steps and measures to securing arrests need to be considered in a structured and systematic manner, based on the experience developed in national systems, the international ad hoc and mixed tribunals, as well as by the Court;
4. *Takes note* of the report on arrest strategies by the Rapporteur³ and *takes note* of the draft Action Plan on Arrest Strategies, and *urges* the Bureau to continue consideration of the recommendations of the draft Action Plan on Arrest Strategies with a view to its adoption, and to report thereon to the seventeenth session of the Assembly;
5. *Urges* States Parties to avoid contact with persons subject to a warrant of arrest issued by the Court, unless such contact is deemed essential by the State Party, *welcomes* the efforts of States and international and regional organizations in this regard, and *acknowledges* that States Parties may, on a voluntary basis, advise the ICC of their own contacts with persons subject to a warrant of arrest made as a result of such an assessment;
6. *Recalls* that the ratification of the Rome Statute must be matched by national implementation of the obligations emanating therefrom, in particular through implementing legislation and, in this regard, *urges* States Parties to the Rome Statute that have not yet done so to adopt such legislative and other measures so as to ensure that they can fully meet their obligations under the Rome Statute;
7. *Acknowledges* efforts by States, by civil society organizations and by the Court, including through the Legal Tools Project, to facilitate exchange of information and experiences, with a view to raising awareness and facilitating the drafting of national implementing legislation;
8. *Encourages* States to establish a national focal point and/or a national central authority or working group tasked with the coordination and mainstreaming of Court related issues, including requests for assistance, within and across government institutions, as part of efforts aimed at making national procedures for cooperation more efficient, where appropriate;
9. *Welcomes* the organization by the Court, with the support of the European Commission and other donors, of a yearly seminar on cooperation with its main focal points;
10. *Recalls* the report to the thirteenth session of the Assembly on the feasibility study of establishing a coordinating mechanism of national authorities, and *invites* the Bureau, through its working groups, to discuss the feasibility of establishing such a mechanism, taking into consideration, inter alia, the study in annex II of the report of the Bureau on cooperation to the thirteenth session of the Assembly³, as well as the presentation made by Belgium on 27 July 2017 contained in annex III of the report of the Bureau on cooperation to the sixteenth session of the Assembly⁴, and to report to the Assembly well in advance of the eighteenth session;
11. *Emphasizes* also the on-going efforts made by the Court in providing focused requests for cooperation and assistance which contribute to enhancing the capacity of States Parties and other States to respond expeditiously to requests from the Court, and *invites* the Court to continue improving its practice in transmitting specific, complete and timely requests for cooperation and assistance;
12. *Recognizes* that effective and expeditious cooperation with regard to the Court's requests for the identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crime is crucial to the provision of reparations to victims and for potentially addressing the costs of legal aid;
13. *Underlines* the importance of effective procedures and mechanisms that enable States Parties and other States to cooperate with the Court in relation to the identification,

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

³ ICC-ASP/13/29.

⁴ ICC-ASP/16/17, annex III.

tracing and freezing or seizure of proceeds, property and assets as expeditiously as possible; *welcomes* the Court's report and comprehensive presentation on cooperation challenges faced by the Court with respect to financial investigation and *calls on* all States Parties to put in place and further improve effective procedures and mechanisms in this regard, with a view to facilitate cooperation between the Court, States Parties, other States and international organizations;

14. *Urges* States Parties to cooperate with requests of the Court made in the interest of Defence teams, in order to ensure the fairness of proceedings before the Court;

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

16. *Acknowledges* the importance of protective measures for victims and witnesses for the execution of the Court's mandate *welcomes* the two new relocation agreements concluded since the last resolution on cooperation, and *stresses* the need for more such agreements or arrangements with the Court for the expeditious relocation of witnesses;

17. *Calls upon* all States Parties and other States, to consider strengthening their cooperation with the Court by entering into agreements or arrangements with the Court, or any other means concerning, inter alia, protective measures for victims and witnesses, their families and others who are at risk on account of testimony given by witnesses;

18. *Acknowledges* that, when relocation of witnesses and their families proves necessary, due account should be given to finding solutions that, while fulfilling the strict safety requirements, also minimize the humanitarian costs of geographical distance and change of linguistic and cultural environment and *urges* all States Parties to consider making voluntary contributions to the Special Fund for Relocations;

19. *Welcomes* the conclusion of *two* agreements between the Court and the Republic of Argentina and Sweden on the enforcement sentences;

20. *Emphasizes* that the need for cooperation with the Court on the enforcement of sentences is likely to increase in the coming years as more cases proceed toward conclusion, *recalls* the principle enshrined in the Rome Statute that States Parties should share the responsibility for enforcing sentences of imprisonment, in accordance with principles of equitable distribution, and *calls upon* States Parties to actively consider the conclusion of agreements with the Court to this end;

21. *Commends* and *further encourages* the work of the Court on framework agreements or arrangements, or any other means in areas such as interim release, final release - also in cases of acquittal - and sentence enforcement which may be essential to ensuring the rights of suspects and accused persons, in accordance with Rome Statute and guaranteeing the rights of convicted persons and *urges* all States Parties to consider strengthening cooperation in these areas;

22. *Recalls* the conclusion in 2014 of the first voluntary agreement between the Court and a State Party on interim release and *requests* the Bureau, through its Working Groups, to continue the discussions on voluntary framework agreements or arrangements, and to report thereon to the Assembly at its seventeenth session;

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

24. *Recognizes* the importance of ensuring a safe environment for strengthening and fostering cooperation between civil society and the Court and of taking all necessary action to address threats and intimidation directed at civil society organizations;

25. *Emphasizes* the importance of States Parties enhancing and mainstreaming diplomatic, political and other forms of support for, as well as promoting greater awareness and understanding of the activities of the Court at the international level, and *encourages* States Parties to use their capacity as members of international and regional organizations to that end;

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

27. *Welcomes* the replies to the 2016 questionnaire and the exchange of information on the implementation of the 66 recommendations on cooperation adopted by States Parties in 2007⁵ as a step in the reviewing process of the implementation of the 66 recommendations, *recalls* the flyer prepared by the Court that can be used by all stakeholders to promote the 66 recommendations and increase their understanding and implementation by relevant national actors and the Court, and, *requests* the Bureau, through its Working Groups, to continue its review of the implementation of the 66 recommendations, in close cooperation with the Court, where appropriate;

28. *Welcomes* the organization by the Court, with the support of States Parties and international and regional organizations, of seminars on cooperation, and *encourages* all stakeholders, including civil society organizations, to continue organizing events that allow for exchange of information with the purpose of enhancing cooperation and constructively seeking solutions to identified challenges;

29. [Placeholder for text based on ASP cooperation debate].

30. *Encourages* the Bureau to identify issues for the Assembly to continue holding plenary discussions on specific topics related to cooperation, including on the issue of financial investigations;

31. *Requests* the Bureau to maintain a facilitation of the Assembly of States Parties for cooperation to consult with States Parties, the Court, other interested States, relevant organizations and non-governmental organizations in order to further strengthen cooperation with the Court;

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

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

Appendix

Declaration of Paris

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

1. *Reaffirming* that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation, as stipulated in the Preamble of the Rome Statute of the International Criminal Court (hereinafter referred to as “the Rome Statute”),
2. *Emphasising* the obligation of States Parties enshrined in Part 9 of the Rome Statute concerning International Cooperation and Judicial Assistance, to cooperate fully with the ICC in its investigation and prosecution of crimes within the jurisdiction of the ICC, and reaffirming full respect for domestic procedures set forth by national legislations,
3. *Further emphasising* the obligation of States Parties to, in accordance with the provisions of Part 9 of the Rome Statute and under procedures of national law, comply with requests issued by the ICC to assist in the identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes for the purpose of eventual forfeiture, without prejudice to the rights of bona fide third parties, as stipulated in article 93(1)(k) of the Rome Statute,
4. *Mindful of existing* applicable international treaties governing asset recovery and of the related obligations for the jurisdictions concerned to afford one another the widest measure of cooperation and assistance with regard to the return of assets,
5. *Recalling* the recommendations on cooperation endorsed by the ICC Assembly of States Parties (ASP) during its sixth session¹, particularly recommendations on the identification, seizing and freezing of assets and, if appropriate their implementation,
6. *Further noting* the importance of keeping effective procedures and mechanisms that enable States Parties and other States to cooperate with the Court in relation to the identification, tracing and freezing or seizure of proceeds, property and assets as expeditiously as possible², as well as the importance of cooperation requests by the Court being as specific as possible,
7. *Recalling* the conclusions of the Workshop on Financial Investigations organised at the seat of the ICC on 26-27 October 2015, as well as the follow up observations made at the 18 November 2016 ASP panel discussion on strengthening financial criminal investigations, and the need to further discuss and clarify the mandate and the requirements of the ICC in relation to financial investigations and asset recovery,
8. *Willing* to advance cooperation with the ICC in the area of financial investigations and asset recovery, in accordance with national legislations, for the purposes of potentially providing evidence to demonstrate linkage between the crimes and assets, *as well as* securing funds for possible reparations to victims if the accused person is found guilty and, for recovering the costs arising from legal aid.

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

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

¹ Resolution ICC-ASP/6/Res.2.

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

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

Invite the International Criminal Court to,

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

Annex II

Proposed text for omnibus resolution

Cooperation

1. *Refers* to its resolution ICC-ASP/16/Res.... on cooperation;
2. *Calls upon* States Parties to comply with their obligations under the Rome Statute, in particular the obligation to cooperate in accordance with Part 9, and *also calls upon* States Parties to ensure full and effective cooperation with the Court in accordance with the Rome Statute, in particular in the areas of implementing constitutional and legislative framework, enforcement of Court decisions and execution of arrest warrants;
3. *Further calls upon* States Parties to continue to express their political and diplomatic support to the Court, *recalls* the sixty-six recommendations annexed to resolution ICC-ASP/6/Res.2 and *encourages* States Parties and the Court to consider further measures to enhance their implementation and to strengthen their efforts to ensure full and effective cooperation with the Court;
4. *Takes note* of the report on arrest strategies by the Rapporteur¹ and *also takes note* of the draft Action Plan on arrest strategies;² and *urges* the Bureau to continue consideration of the recommendations of the draft Action Plan on Arrest Strategies with a view to its adoption, and to report thereon to the seventeenth session of the Assembly;
5. *Welcomes* the conclusion of *two* agreements between the Court and the Republic of Argentina and Sweden on the enforcement of sentences;
6. [Placeholder for text based on ASP cooperation debate];
7. *Underlines* the importance of effective procedures and mechanisms that enable States Parties and other States to cooperate with the Court in relation to the identification, tracing and freezing or seizure of proceeds, property and assets as expeditiously as possible, *welcomes* the Court's report and comprehensive presentation on cooperation challenges faced by the Court with respect to financial investigation and *calls on* all States Parties to put in place and further improve effective procedures and mechanisms in this regard, with a view to facilitate cooperation between the Court, States Parties, other States and international organizations;
8. *Endorses* the non-legally binding Declaration of Paris on asset recovery³ to reinforce cooperation between the Court and States Parties;

Mandates of the Assembly of States Parties for the intersessional period

With regard to **cooperation**,

- (a) *urges* the Bureau to continue consideration of the recommendations of the draft Action Plan on Arrest Strategies⁴ with a view to its adoption, and to report thereon to the seventeenth session of the Assembly;
- (b) *requests* the Bureau, through its Working Groups, to continue the discussions on voluntary framework agreements or arrangements, and to report thereon to the Assembly at its seventeenth session;
- (c) *invites* the Bureau, through its Working Groups, to discuss the feasibility of establishing a coordinating mechanism of national authorities, taking into consideration, inter alia, the study in annex II of the report of the Bureau on cooperation to the thirteenth session⁵ as well as the presentation made by Belgium on 27 July 2017, contained in

¹ ICC-ASP/14/26/Add.1, annex IV.

² *Ibid.*, appendix.

³ ICC-ASP/16/17, declaration annexed to the resolution on cooperation.

⁴ ICC-ASP/14/26/Add.1, appendix.

⁵ ICC-ASP/13/29.

annex III of the report of the Bureau on cooperation⁶, and to report to the Assembly well in advance of the eighteenth session;

(d) *invites* the Court to continue improving its practice in transmitting specific, complete and timely requests for cooperation and assistance, including by considering consultations with the State Party concerned when necessary;

(e) *requests* the Bureau, through its Working Groups, to continue its review of the implementation of the 66 recommendations on cooperation adopted by States Parties in 2007,⁷ in close cooperation with the Court, where appropriate;

(f) *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;

(g) *requests* the Court to submit an updated report on cooperation to the Assembly at its seventeenth session and annually thereafter.

(h) *mandates* the Bureau, through its Working Groups, to continue discussions on cooperation on financial investigations and the freezing and seizing of assets as set out in the Declaration of Paris annexed to the resolution on cooperation.

⁶ ICC-ASP/16/17, annex III.

⁷ ICC-ASP/6/Res.2, annex II.

Annex III

Proposal submitted by Belgium to establish a coordinating mechanism of national authorities dealing with cooperation

A. Reference documents

1. Report ICC-ASP/13/29 of 21 November 2014 - §16, Appendix II (Report of the Feasibility study on the establishment of a coordinating mechanism of national authorities dealing with cooperation) and Appendix (Background paper of the Feasibility study on the establishment of a coordinating mechanism of national authorities dealing with cooperation).
2. Resolution ICC-ASP/12/Res.3 of 27 November 2013, §18.
3. Resolution ICC-ASP/13/Res.3 of 17 December 2014, §16.
4. Resolution ICC-ASP/14/Res.3 of 26 November 2015, §10.
5. Resolution ICC-ASP/15/Res.3 of 24 November 2016, §10.

B. Introduction

6. The objective to establish a coordinating mechanism of national authorities dealing with cooperation was first mooted in 2013. In paragraph 18 of its resolution on cooperation, adopted at its twelfth session (ICC-ASP/12/Res. 3 of 27 November 2013), the Assembly of States Parties (ASP) 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”. On 11 June 2014, Belgium (Mr DIVE) gave a PowerPoint presentation and submitted a document.

7. On 17 December 2014, the ASP adopted resolution (ICC-ASP/13/Res.3, §16,) which set out the intention to extend the report on the feasibility study of establishing a coordinating mechanism of national authorities dealing with cooperation (Doc. ICC-ASP/13/29 of 21 November 2014) and to report back prior to the fourteenth session of the ASP (2015). The States Parties were invited to evaluate the feasibility study (impact, cost). After 2014, coordination on cooperation ceased its involvement. At the 2015 ASP session, Belgium secured a repeat invitation to the Bureau (ICC-ASP/14/Res.3, §10, of 26 November 2015). The resolution provided for a report to be made to the ASP well in advance of the sixteenth session in 2017. This deadline is repeated in the resolution adopted by the ASP at its fifteenth session (ICC-ASP/15/Res.3, §10, of 24 November 2016).

8. Sharing skills, knowledge and know-how: a benefit for the Court and the national authorities involved in the coordinating mechanism.

9. The objective is to discuss technical aspects to do with cooperation and judicial assistance and sharing knowledge and know-how in this area.

10. The mechanism is not a way of naming and shaming States Parties whose cooperation with the Court is perhaps not as effective as it could be.

11. Nor does it intend to discuss or share detailed information about a specific cooperation request which contains confidential documents.

12. Its mandate does not include non-cooperation either. The ASP is responsible for the political aspect.

C. What technical aspects are involved?

13. Subjects which may be raised include, for example:

- (a) Exchange of information about the different cooperation structures at national level and their benefits;

- (b) Exchange of information on practical coordination of national authorities tasked with implementing cooperation requests;
- (c) Exchange of information on the national legislation on cooperation;
- (d) Sharing experience which does not involve a specific request in the following areas: witness hearings, identifying witnesses who are refugees or asylum seekers, the link between investigations by the Court and national investigations, arrest and surrender procedures, transmitting enforcement documents and the confidentiality thereof, the transfer (generally by air) of witnesses and detainees (transit and transport), freezing, seizing and confiscation of assets, conditional release, the right of residence of persons who have been acquitted or who have served their sentence, the technical or legal obstacles to witness protection, coordination of requests for cooperation involving several countries (e.g.: coordination of several arrests at the request of the Court taking place simultaneously in several States; simultaneous search and seizure in several States; reconstruction by several States of a file on asset concealment or the creation of shell companies; exchange of information between States which is necessary for the smooth execution of a request for cooperation such as cross-border monitoring of movements involving a vehicle or a person);
- (e) Drawing up a list of contacts which in the long term will form a genuine network of professionals intended to improve the exchange of knowledge and know-how.

14. As these are only examples, the above list is by definition non-exhaustive and other subjects can therefore be addressed by the mechanism within the limits of its mandate mentioned above.

15. An open mechanism is also a modest contribution towards achieving the universality of the Court.

16. The mechanism is open to practitioners (from national authorities dealing with cooperation with the Court) from States Parties and non-States Parties which agree to cooperate voluntarily with the Court and also to representatives from the Registry and/or the Office of the Prosecutor.

D. The mechanism is funded by voluntary contributions.

17. There is no question of increasing the contribution of States Parties to the ordinary budget of the Court, especially since the mechanism is also open to non-States Parties.

18. The mechanism will therefore be funded by contributions to a Voluntary fund. On this subject, the Registry could be asked to share its experience with States Parties of meetings which receive financial assistance from the European Union.

19. It goes without saying that the test meeting and, if there is a positive evaluation, the mechanism itself will be funded by the participant States. The contribution cannot be less than [€1000]. Other sources of funding are also being sought.

E. Who will head the mechanism?

20. By a decision of the ASP, adopted at its sixteenth session if possible, Belgium proposes that a questionnaire be sent to all the States Parties [and to those non-States Parties which have signed the Final Act] to ask them whether they wish to:

- (a) Attend the test meeting and participate in the mechanism itself if the evaluation is positive.
- (b) Pilot the group of States which have decided to attend the test meeting and participate in the mechanism once it is established.

21. The pilot for the test meeting will be selected from those candidates wishing to steer the group. The pilot will be able to count on assistance from a co-pilot by geographical region. States wishing to steer the group of States which has decided to attend the test meeting will appoint the pilot and the co-pilot at the start of the test meeting from those present. If the test meeting receives a positive evaluation, the ASP will adopt a new decision which will mark the actual creation of the mechanism and the launch of the

voluntary Fund. Any surplus generated by fund-raising to hold the test meeting will be either returned to States which attended or will be used to finance the new voluntary Fund.

F. Frequency, dates and location of the meetings for the mechanism

22. An annual meeting of this human network at the seat of the Court seems logical and a sensible frequency, in particular to follow-up work and establish a human network of professionals directly concerned by the same subject, to enable each person to benefit from the experience of others and to take away what he or she wishes from the successes and failures of others.

23. To ensure that the mechanism is as cost-effective as possible in terms of financial and human resources, Belgium suggests three options:

(a) Take advantage of meetings with situation States which are already organised by the Registry of the Court. These meetings could be expanded to all participants in the mechanism, either before or after the original meeting. This would enable savings to be made in terms of time and personnel with minimum support from the Registry and help from the mechanism's steering group. The Fund will be housed at the Court. This would be the simplest option since it would depend on the Registry and the Court. With this approach it will be necessary to avoid any confusion regarding the role to be allocated to the Court. This assumes its role is clearly defined.

(b) The ASP option: the mechanism would become a recognised organ of the ASP and could then receive administrative support from the ASP Secretariat. The Fund would be managed by the ASP and the first steering group for the mechanism would be set up by the ASP (editor's note: the States taking part in the mechanism would be asked to set up the steering group).

(c) A group of States sets itself up independently and does not depend on either the ASP or the Court. The Court simply makes premises available to the mechanism. An independent fund would be set up. However, this is not the most attractive option.

24. Based on an initial exchange of views with the co-facilitators, the three organs of the Court and the representative from the European network "Genocide Network" which took place on 13 February 2017, Belgium notes that the channel could be the ASP Secretariat but the Registry would intervene since it already has useful contact details for a network of national contacts. Similarly, in terms of the agenda for the meeting, the consultative role of the various organs of the Court would be vital. It would also be appropriate to determine who is responsible, probably within the Assembly Secretariat, for issuing the agenda and the practical details involved in holding meetings of the mechanism.

G. Schedule for establishing the mechanism

25. Before the launch of the test meeting, which will be held prior to the mechanism potentially being set up, additional information is required and questions must be asked which will need to be explored with assistance from the ASP and the organs of the Court but also in a sui generis manner (with a group of volunteer States) because the mechanism is specific and not provided for by the Statute. This is why a meeting will first need to be held with a panel of participants: a co-facilitator or Belgium could explain the project, the Registry and the Office of the Prosecutor could explain the benefit of cooperation for the Court and the ASP Secretariat would talk about the role of the States and of the ASP. In order to obtain an estimate of the cost of the planned meetings, the Registry should also be invited to provide details of the annual cost of a meeting with situation States. The representative from the Genocide network would also explain the benefits of establishing the network and would talk about how States were persuaded to take part in the network. This does not mean, however, that the Genocide network, which relies on subject-matter experts, can be transposed unchanged to the mechanism project, which would be based on a separate institution and different objectives.

26. The facilitators would then explain the next steps involved in setting up and operating the mechanism after 2019. The aim is to establish a sound and sustainable mechanism. In the resolution to be adopted at the sixteenth ASP, concrete information

would need to be provided to progress in 2018 and to hold the test meeting in the second half of 2019, followed by an evaluation and a draft decision to be submitted to the ASP preferably the same year.

H. Conclusion

27. By ratifying the Rome Statute, the States Parties have undertaken to support the Court and to cooperate with it.

28. Participation by the States Parties in the Coordinating Mechanism of national authorities dealing with cooperation would make the afore-mentioned commitment a reality. In doing so the States Parties could enable the Court to act more swiftly and more effectively and therefore probably at a lower cost too.

29. It is clear that not all the States Parties will attend the test meeting and join the future mechanism. It will be a gradual and voluntary process. Belgium is of the view that the small group of initial volunteers will spark interest among the other States and that there will then be a snowball effect.

30. Belgium is patient because it considers that it is essential to establish a sound and sustainable mechanism from the outset.
