

Resolution ICC-ASP/17/Res.3

Adopted at the 11th plenary meeting, on 11 December 2018, by consensus

ICC-ASP/17/Res.3 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, ICC-ASP/16/Res.2 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/16/Res.2,

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 from the Secretary General of the United Nations to the President of the General Assembly and the President of the Security Council,²

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

¹ ICC-ASP/17/16.

² A/67/828-S/2013/210.

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;

2. *Expresses* serious concerns that arrest warrants or surrender requests against 15 persons remain outstanding,³ 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 secure 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. *Welcomes* the seminar organized by the co-facilitators on cooperation with the Court entitled “Arrests: a key challenge in the fight against impunity” held on 7 November 2018 at the Court’s premises in The Hague, *appreciates* the contributions of the participating international and national experts aimed at identifying practical solutions to improve cooperation between States and the Court with a view to enhancing prospects for the implementation of pending arrest warrants, and *underlines* the necessity to continue the discussions on these and other proposals contributing to ensuring the arrest and surrender of suspects;

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 Court 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. *Recalls* the report to the thirteenth session of the Assembly on the feasibility study of establishing a coordinating mechanism of national authorities, and *encourages* States Parties to continue the discussion;

10. *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;

11. *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;

12. *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

³ As of 12 November 2018, see ICC-ASP/17/16, para. 38.

put in place and further improve effective procedures and mechanisms in this regard, with a view to facilitating cooperation between the Court, States Parties, other States and international organizations;

13. *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;

14. *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;

15. *Acknowledges* the importance of protective measures for victims and witnesses for the execution of the Court's mandate, *welcomes* the new relocation agreement concluded since the last resolution on cooperation,⁴ and *stresses* the need for more such agreements or arrangements with the Court for the expeditious relocation of witnesses;

16. *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;

17. *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;

18. *Welcomes* the conclusion of two agreements between the Court and the Republic of Argentina on Interim Release and Release of Persons;

19. *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;

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 the Rome Statute and guaranteeing the rights of convicted persons and *urges* all States Parties to consider strengthening cooperation in these areas;

21. *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 eighteenth session;

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

23. *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;

24. *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;

25. *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

⁴ ICC-ASP/16/2.

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;

26. *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;

27. *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 the exchange of information with the purpose of enhancing cooperation and constructively seeking solutions to identified challenges;

28. *Welcomes* the plenary session on cooperation held during the seventeenth session of the Assembly of States Parties which offered an opportunity for an enhanced dialogue between States Parties, the Court and members of civil society on the issues of financial investigations, arrests and voluntary agreements, and *welcomes* the signing of an enforcement of sentences cooperation agreement concluded between Slovenia and the Court during the cooperation plenary of the seventeenth session of the Assembly;

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

30. *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;

31. *Recognizes* the importance of the Court's contribution to the Assembly's efforts to enhance cooperation and *requests* the Court to submit an updated report on cooperation to the Assembly at its eighteenth session and annually thereafter.

⁵ ICC-ASP/6/Res.2, annex II.