

Resolution ICC-ASP/19/Res.2

Adopted at the 4th plenary meeting, on 16 December 2020, by consensus

ICC-ASP/19/Res.2

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, ICC-ASP/17/Res.3, ICC-ASP-18/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 36 of resolution ICC-ASP/18/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 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,

Taking note of the resolution on Review of the International Criminal Court and the Rome Statute system² adopted by the ASP at its eighteen session requesting "the Bureau to address the following issues as a matter of priority in 2020 through its working groups and facilitations, in a fully inclusive manner, in line with their mandates [...]: (a) Strengthening cooperation"; the "Matrix over possible areas of strengthening the Court and the Rome

¹ ICC-ASP/19/25.

² Resolution ICC-ASP/18/Res.7, adopted at the 9th plenary meeting, on 6 December 2019.

Statute System”, dated 11 October 2019, prepared by the Presidency of the Assembly, which identifies as a priority issue to be addressed by the Bureau and its working groups, the strengthening of cooperation,

Taking note also of the “Independent Expert Review of the International Criminal Court and the Rome Statute System, Final Report”, dated 30 September 2020, prepared by the Independent Experts,

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;

Execution of arrest warrants

2. *Expresses* serious concerns that arrest warrants or surrender requests against 13 individuals remain outstanding despite the arrest and surrender to the Court of two suspects in June 2020 and November 2020 and *urges* States to cooperate fully in accordance with their obligation to arrest and surrender to the Court;

3. *Notes* the OTP and the Registry common efforts to devise and implement common strategies and missions to foster the arrest of suspects within the inter-organ working group on arrest strategies created in March 2016;

4. *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, regarding both tracking efforts and operational support;

5. *Underlines* the necessity to continue the discussions on practical solutions to improve cooperation between States and the Court with a view to enhancing prospects for the implementation of pending arrest warrants following the seminar organized by the facilitators on cooperation on 7 November 2018 in The Hague;

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 *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;

Implementation legislation of the Rome Statute

7. *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 to set up effective procedures and structures so as to ensure that they can fully meet their obligations under the Rome Statute regarding cooperation and judicial assistance;

8. *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 and underlines the need to further exchange experience and best practices between States Parties;

Informal consultations and establishment of focal points

9. *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;

10. *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;

11. *Emphasizes* 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, *invites* the Court to continue improving its practice in transmitting specific, complete and timely requests for cooperation and assistance and *invites* the States to consider offering consultations and facilitating meetings between the Court organs formulating the requests and the competent national authorities ultimately in charge of executing them with a view to finding solutions together on ways to assist or transmit the information sought and when appropriate, to follow up on execution of requests and discuss on the most efficient way forward;

Financial investigations and freezing of assets

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, tracing and freezing or seizure of proceeds, property and assets as expeditiously as possible; *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. *Recalls* the importance of the non-legally binding Paris Declaration on asset recovery annexed to resolution ICC-ASP/16/Res.2;

15. *Welcomes* the launch of the digital platform to reinforce exchange of relevant information between States Parties to encourage inter-State cooperation and to strengthening States' capacity to cooperate with the Court; to identify the practical challenges to the effective execution of the Court's requests for cooperation and to further raise awareness of the Court's mandate and requirements for financial investigations and asset recovery, and *decides* to continue the work with the Court and the Secretariat of the Assembly in order to enhance the platform in 2021;

Cooperation with the defence

16. *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;

Agreement on Privileges and Immunities of the International Criminal Court

17. *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;

Voluntary cooperation

18. *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, and *stresses* the need for more relocation agreements or arrangements with the Court for the expeditious relocation of witnesses;

19. *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;

20. *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;

21. *Emphasizes* that the need for cooperation with the Court on the enforcement of sentences, and on interim and final release 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 and for the interim and final release, 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;

22. *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;

23. *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 twentieth session;

Cooperation with United Nations

24. *Welcomes and further encourages* the increased cooperation between the Court and the United Nations, and other international and regional organizations, relevant mechanisms for collecting and preserving evidence, and other inter-governmental institutions with a view to foster prosecution of crimes falling within the jurisdiction of the Court;

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 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;

Diplomatic support

26. *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;

Promoting dialogue with all stakeholders

27. *Welcomes* the work undertaken on the implementation of the 66 recommendations on cooperation adopted by States Parties in 2007,³ *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;

28. *Welcomes* the joint panel discussion on strengthening cooperation with the Court organised by the co-facilitators on cooperation and the focal points on non-cooperation on 5 October 2020;

29. *Takes note* of the Bureau's Report on cooperation,⁴ covering inter alia, the follow up to the Paris Declaration on financial investigations and asset recovery and the work on a secured digital platform on cooperation; considerations on the Court's relationship with the United Nations; and proposals concerning the follow-up action regarding cooperation issues identified in the framework of the review and strengthening process of the Court and the Rome Statute System, and priority areas for 2021;

³ Resolution ICC-ASP/6/Res.2, annex II.

⁴ ICC-ASP/19/33.

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. *Requests* the Bureau, through its Working Groups to speed up its review of the implementation of the 66 recommendations, in close cooperation with the Court, where appropriate;
32. *Requests* the Bureau, through the facilitation on cooperation, bearing in mind the [mechanism] created to follow-up the assessment and the implementation of the independent experts' recommendations to examine the issues and challenges related to cooperation, with a view to identify concrete measures and follow-up action in order to address those challenges and to report thereon to the Assembly at its twentieth session, in line with the overall reporting framework set by the Assembly for the Mechanism;
33. *Requests* the Bureau, through the facilitation on cooperation, to continue to address a number of issues that have been priorities in recent years, and with a matter of priority: to continue the work to further develop the content of the Secured Platform on Cooperation; to hold consultations on the advisability of developing regional thematic focal points on cooperation, of creating a permanent structure for a network of national practitioners and focal points on cooperation, and on the deepening of the relationship between the UN and its agencies and entities, including for capacity building purpose in order to foster cooperation with the Court;
34. *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 and arrests;
35. *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;
36. *Takes note* that due to the COVID-19 pandemic, the Court was not able to organize its 7th Focal Points Seminar on Cooperation during the reporting period, which is expected to take place in 2021, *underlines* that those seminars constitute important platforms to enhance dialogue and cooperation between the Court and States Parties including on new developments in technical areas of 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;
37. *Recognizing* the importance of the Court's contribution to the Assembly's efforts to enhance cooperation, *welcomes* the Court report on cooperation,⁵ which contained disaggregated data over the responses provided by States Parties, including highlighting the main challenges, *requests* the Court to submit an updated report on cooperation to the Assembly at its twentieth session.

⁵ ICC-ASP/19/33.