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Report of the Bureau on cooperation

Note by the Secretariat

Pursuant to paragraph 44 of resolution ICC-ASP/7/Res.3, of 21 November 2008, the Bureau of the Assembly of States Parties hereby submits for consideration by the Assembly its report on cooperation. The present report reflects the outcome of the informal consultations held by The Hague Working Group of the Bureau.

Report of the Bureau on cooperation

A. Introduction

1. Following the adoption of resolution ICC-ASP/6/Res.2 by the Assembly of States Parties (“the Assembly”) on 14 December 2007,¹ the Bureau of the Assembly, at its eighteenth meeting on 14 December 2007, approved the appointment of Ambassador Yves Haesendonck (Belgium) as the focal point of the Assembly for cooperation.

B. Organization of work

2. In accordance with the conclusions of the 2007 Report of the Bureau on cooperation,² which recommended an approach that singles out specific aspects for preferential treatment, the focal point held informal consultations with representatives of States Parties, the organs of the Court, international organizations and non-governmental organizations, in order to determine priority guidelines for further developing the work on cooperation.

3. At the fourth meeting of The Hague Working Group of the Bureau (“the Working Group”), the focal point gave a briefing on the actions that he had undertaken. On the first day of the resumed sixth session of the Assembly of States Parties, held from 2 to 6 June 2008 at United Nations Headquarters in New York, the focal point held a public meeting with States. On 4 June, at the same session, he took part in an informal meeting with States and non-governmental organizations.

4. On 29 October 2008, pursuant to paragraph 40 of resolution ICC-ASP/6/Res.2, the Bureau submitted to the Assembly its report on the issue of cooperation,³ in which progress was noted in the following areas, deemed to be priority matters:

- a) Keeping a register of permanent contact points with diplomatic missions in The Hague, Brussels or New York;
 - b) Developing a framework of action for the adoption of national legislation pursuant to article 88 of the Rome Statute;
 - c) Developing the Court’s expertise in financial investigation and freezing of assets;
 - d) Examining possible forms of assistance regarding witness protection;
 - e) Organizing regular contacts at the technical level with the United Nations Secretariat.
5. It was also proposed that new issues related to cooperation be addressed, including:
- a) Developing, depending upon possibilities and circumstances, closer relations between the Court and other international and regional organizations;
 - b) Examining the means of contributing, within States Parties’ administrations and international or regional organizations, to enhanced awareness of the Court and of its activities; and

¹ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Sixth session, New York, 30 November-14 December 2007* (International Criminal Court publication, ICC-ASP/6/20), vol. I, part III, resolution ICC-ASP/6/Res.2.

² Report of the Bureau on cooperation (ICC-ASP/6/21).

³ Report of the Bureau on cooperation (ICC-ASP/7/18).

- c) Setting up, with the assistance of States with experience of cooperation with the Court or with the ad hoc tribunals, information exchanges on best practices relating to cooperation.

6. On 29 April 2009, the focal point submitted to The Hague Working Group a discussion paper regarding the progress on implementing the report of the Bureau on cooperation. It was noted that:

- a) More than 40 States Parties had not yet designated a permanent contact point responsible for cooperation with their diplomatic missions in The Hague, Brussels or New York. A new letter would be sent to the States Parties who had not yet replied. A decision should also be taken as to whether the Secretariat of the Assembly should be entrusted with the keeping and updating of the list.
- b) A roundtable discussion with non-governmental organizations had been held in October 2008, for the purpose of assessing progress made in areas of implementing legislation and sharing experiences on implementing legislation activities, in order to develop strategies for effective cooperation and coordination. In addition to note verbale ICC-ASP/8/S/PA/19, dated 24 April 2009, requesting States to convey the information referred to in the Plan of action for achieving universality and full implementation of the Rome Statute, the Secretariat had sent a questionnaire, in which States Parties were requested to provide information on, inter alia, the steps undertaken and the obstacles which they have faced in adopting implementing legislation.
- c) International organizations and experts had been identified who had expressed their readiness to assist the Court in developing its expertise in financial investigation and freezing of assets. In the meantime, the Court had joined Europol's CARIN Asset Freezing Network, but it remained crucial for the Court to develop further its capacities for financial investigations, both for the purposes of prosecutions and reparations, as well as for indigence determination and legal aid.
- d) A roundtable on the protection of victims and witnesses, as well as on the protection of and support to the defence, had been held from 29 to 30 January 2009, with the participation of representatives of different stakeholders (the ad hoc tribunals, United Nations International Children's Emergency Fund (UNICEF), Office of the High Commissioner for Refugees (UNHCR), United Nations Office on Drugs and Crime (UNODC), EUROJUST, and non-governmental organizations. On this occasion, it was found, inter alia, that UNODC would be prepared to cooperate with the Court for the provision of technical assistance in respect of up to three pilot countries. While the conclusion of individual agreements for the protection or relocation of witnesses remained of vital importance for the Court, it was considered that other, innovative approaches should also be examined, such as trilateral agreements, sponsorship of agreements for local or regional protection of victims or witnesses, direct assistance to States for the establishment of national protection programmes in situation countries, synergies between the Court and bilateral and multilateral actors working in the wider area of the rule of law, as well as capacity-building and institutional reforms.
- e) The resumption of a yearly meeting with the United Nations Secretariat was considered, and thus far one meeting had been held.

7. With a view to determining further actions to be taken on the issue of cooperation, the focal point requested the Court to submit to the Working Group its assessment of cooperation in the form of the appended Report (Annex I), which was discussed by the Working Group on 23 September and 22 and 28 October 2009. The discussions focused in particular on the necessity for a clearer distinction in the Report of the Court between obligatory cooperation on the one hand, as set out in Part 9 of the Rome Statute, and other forms of diplomatic support and requests for assistance. The Working Group expressed the view that a clear distinction had to be made between what was mandatory and what was necessary in the view of the Court, but not mandatory under the Rome Statute. Furthermore, some States questioned the legal basis for the inclusion of interim release as a mandatory form of cooperation and questioned the Court's interpretation of article 86. Some States expressed the view that the obligation of general cooperation was limited to investigation and prosecution. The Working Group also sought to have a more certain and predictable cooperation regime, in particular regarding matters relating to general obligations and other forms of cooperation as set out in article 93, paragraph 1, of the Rome Statute.

C. Recommendations

8. Based on the progress reports of the focal point and the Report of the Court on international cooperation and assistance (annex I), the Working Group recommended that a stand-alone resolution on the issue of cooperation be adopted by the Assembly at its eighth session (annex II).

Annex I*

Report of the Court on international cooperation and assistance

A. Introduction

1. Securing full, proper and timely cooperation between the International Criminal Court and States, as well as inter-governmental organizations is an essential basis for the effective functioning of the Court. The present report is submitted to the Hague Working Group of the Bureau of the Assembly of States Parties pursuant to the request of the Working Group's facilitator on cooperation, H.E. Yves Haesendonck. It follows and builds on the Report of the Bureau on Cooperation of 19 October 2007 (ICC-ASP/6/21) and the subsequent 66 recommendations annexed to the ASP resolution¹ (referred to below as "ASP Recommendations").

2. The present report follows, where possible, the structure of the 2007 Report of the Bureau on cooperation, and sets out the framework for cooperation and assistance as well as analysing the types of cooperation and assistance requested and received by the Court and States and intergovernmental organizations. Where possible, it offers tentative conclusions and suggestions.

3. Cooperation and assistance with the Court encompasses cooperation and assistance with all organs specified in article 34 of the Rome Statute. It may also include cooperation and assistance with the Secretariat of the Assembly of States Parties (see, e.g. article 1(2) of the Relationship Agreement between the International Criminal Court and the United Nations), but in light of the separate reporting line from the Secretariat to the Assembly, such cooperation and assistance is outside the scope of this report.

4. Each organ of the Court may request cooperation and assistance within its respective mandate. Cooperation and assistance requests of the Presidency, judicial divisions and Registry are coordinated, and, as set out in rule 13 of the Rules of Procedure and Evidence, the Registrar serves as the channel of communication for these organs of the Court. In a number of cases, requests are to be made in consultation and/or coordination with the Office of the Prosecutor (arrest warrants, arrangements for voluntary surrender).

5. The Office of the Prosecutor acts independently as a separate organ of the Court, including establishing and maintaining its own channels of communication for receiving, obtaining and providing information. While the Office of the Prosecutor coordinates with the Presidency and Registry on cooperation matters of common concern, e.g., the conclusion of cooperation agreements of Court-wide applicability, requests for cooperation and assistance by the Office of the Prosecutor are managed independently. The OTP specifically identifies in the report the cooperation and assistance needed to meet the five objectives of its Prosecutorial Strategy for 2009-2012².

* Annex I remains unedited, as submitted by the Court.

¹ ICC-ASP/6/Res.2. Annex II.

² 18 August 2009, ICC website, » Structure of the Court » Office of the Prosecutor » Reports and Statements » [http://www.icc-cpi.int/menus/icc/structureof the court/office of the prosecutor/reports and statements/statement/prosecutorial strategy 2009_2012](http://www.icc-cpi.int/menus/icc/structureof%20the%20court/office%20of%20the%20prosecutor/reports%20and%20statements/statement/prosecutorial%20strategy%202009_2012). The objectives are : (1) Further improve the quality of prosecutions, completing three trials, starting at least one new trial and efficiently litigating in appellate proceedings; (2) Continue seven ongoing investigations and conduct up to four new investigations in current or new situations and to be ready to start another investigation at all times; (3) Conduct up to ten preliminary examinations in current or new situations; (4) Continue to improve

6. An analysis of past experience shows that cooperation with the Court has been generally forthcoming. Nevertheless, the Prosecutor has called the UN Security Council's attention to the lack of cooperation of the Government of Sudan in the Darfur case. More generally, efforts continue to ensure that adequate cooperation is forthcoming in the future.

7. In particular, public and diplomatic support remains priority in the galvanization of arrest efforts. With respect to the protection of victims and witnesses, the enforcement of sentences, and interim release, more agreements are needed to provide cooperation and increased cooperation in this respect also remains a priority.

8. Further, the analysis of responses to cooperation requests has indicated two general trends which states may consider addressing. First, a considerable number of requests of the Registry to States are not met with a response. In limited circumstances, the Registry's notification of cooperation requests has even been rejected. Second, a number of States have indicated a lack of available procedures under national law to provide the requested cooperation. Pursuant to Article 88 of the Rome Statute, there is an obligation to ensure such procedures are available

9. Lack of cooperation and assistance or delays may bear a cost. They may lead to delays in the proceedings pending before the Court, thereby affecting the Court's efficiency and a consequent increase in running costs. These delays may also affect the integrity of the proceedings. It should also not be forgotten that requests for cooperation that do not meet with a response need to be reiterated by the Court, thereby generating additional costs, notably in terms of human resources.

B. International Cooperation and Assistance

1. The Rome Statute and Rules of Procedure and Evidence

10. The measures stipulated in the Statute represent the minimum and guaranteed obligations accepted by States upon becoming Parties. Part 9 of the Statute defines types of judicial cooperation the Court may request, and States Parties are obliged to ensure that procedures are available under national law for such forms of cooperation (article 88)³. Part 10 addresses cooperation for enforcement. Under article 86 of the Rome Statute, all States Parties have a general obligation to cooperate with the Court with respect to investigations and prosecutions. The same obligation may also be extended to non-States Parties where the situation on their territory has been referred to the Court by a resolution of the Security Council under Chapter VII of the UN Charter, as is presently the case for Sudan, under Resolution 1593 (2005).

11. Judicial cooperation is specifically addressed in Part 9 of the Rome Statute (art. 86-102) and in Part 10. States' obligations to cooperate as listed therein are subject to no further specific agreement, unless the Statute or Rules of Procedure and Evidence ("RPE") specifically indicate otherwise. This is the case, for instance, with respect to enforcement of sentences (article 103) or relocation of witnesses (Rule 16(4) of the RPE). Practical arrangements may also be concluded to facilitate cooperation and assistance with the Court.

cooperation with States and relevant actors, in particular to execute the arrest warrants issued by the Court; (5) Maximize the OTP's contribution to the fight against impunity and the prevention of future crimes.

³ *Availability of procedures under national law ... States Parties shall ensure that there are procedures available under their national law for all of the forms of cooperation which are specified under this Part (IX).*

12. The specific forms of mandatory judicial cooperation contemplated in Parts 9 and 10 of the Rome Statute, as well as in the RPE are summarized in the chart presented in Appendix I of the present Report.

13. Other forms of assistance detailed elsewhere in the Statute or RPE may require the conclusion of further agreements between the Court and States willing to assist the Court in the furtherance of its mandate, as specified in the relevant statutory provision. A list of these is provided in Appendix II of the present Report. These forms of assistance are indispensable for the proper fulfilment of the Court's mandate and the Court urges States Parties to seriously consider entering agreements on these forms of cooperation.

14. There may be other forms of cooperation and assistance, which although not specifically listed in the Statute or RPE, can nevertheless also be requested by the Court to States in order to assist in its investigations and prosecutions. In this respect, and in close coordination with States, the Court will seek to further specify the forms of cooperation and assistance it requires from States as well as the best modalities to obtain these.

2. National implementing legislation

15. The first obligation of States with respect to cooperation is to implement the Rome Statute in their domestic legislation and thereby provide, in particular, pursuant to article 88 procedures for "all of the forms of cooperation" specified in Part 9. Fulfilling this obligation constitutes a first step in order to ensure full cooperation with the Court. Without such implementing legislation, cooperation requests may encounter domestic legal hurdles in practice, since the legal and judicial authorities in charge of undertaking the requested measures may lack jurisdiction and power to proceed. Such implementing legislation is also likely to be necessary to set appropriate detailed procedural mechanisms.

16. Availability of domestic procedures for all the forms of judicial cooperation is an obligation under article 88 of the Rome Statute. In 2007 the ASP recommended that all State Parties secure enactment of implementing legislation, . Legislation relevant to the investigation and prosecution of crimes under the Statute and ratify the agreement on Privileges and Immunities of the Court (Rec. 1). Further, the Court notes the need for additional efforts by States to provide for procedures pursuant to Article 88, in particular provisions on *surrender* pursuant to Article 89⁴ and provisions on direct execution of requests by OTP pursuant to 99(4)⁵. Absence of such provisions hampers the smooth execution of requests.

17. The primary responsibility for full and effective implementation of the Rome Statute lies with States Parties themselves. In its Plan of Action for achieving universality and full implementation of the Rome Statute, adopted at its 5th session, the Assembly asked States to provide to the Secretariat of the ASP all information relevant to this issue, including the status of any implementing legislation, any obstacles to its drafting or adoption and any technical assistance required. On this basis, the Secretariat of the Assembly has been writing yearly to States Parties seeking information on the status of any implementing legislation, any obstacles encountered and technical assistance needed, as well as to find out what efforts States Parties

⁴ *Surrender of person to the Court...* States Parties shall, in accordance with the provisions of this Part and the procedure under their national law, comply with requests for arrest and surrender.

⁵ *Execution of requests under Articles 93 and 96...* where it is necessary for the successful execution of a request which can be executed without any compulsory measures, including specifically the interview of or taking evidence from a person on a voluntary basis, including doing so without the presence of the authorities of the requested State Party if it is essential for the request to be executed, and the examination without modification of a public site or other public place, the Prosecutor may execute such request directly on the territory of a States...

have undertaken to promote full implementation by other States Parties. These requests and the answers provided by States are posted on the website of the Court.

18. In the framework of the Plan of action for achieving universality, the lead is being taken by the Secretariat of the Assembly of States Parties, on behalf of States Parties. The Court has developed initiatives to support efforts in this regard. The Registry has also been writing every year since 2007 to States Parties asking for official copies of any implementing legislation they may have. In cooperation with the University of Nottingham's Human Rights Law Centre, a database has been created and when official copies are received by the Registry, the University of Nottingham places them on the database which is accessible to the public at large. This database that is accessible from the ICC Legal Tools website.

19. The database indicates that 39 State Parties to date have adopted some forms of implementing legislation. A review of Registry cooperation records reveals that one out of three State Parties that have provided reasons for not answering positively a request for cooperation sent by Registry cited the absence or insufficiencies of implementing legislation

20. Although there are difficulties for the Court to provide technical assistance or advice in respect of implementing legislation, as it may come under review in the course of future judicial proceedings, the Court is reviewing what further actions it could take. It must be noted that the Court does, already, put States in contact with organizations that do provide such assistance and advice.

C. Methodology

21. More than 100 reports of the Registrar to Chambers on the implementation of Chambers' requests for cooperation were reviewed in the preparation of the present Report. The present section attempts to synthesize this information with respect to (i) the number of notifications, (ii) the number of responses, (iii) the number of negative responses, if any, (iv) the number of positive responses, if any and (v) notified States' requests for additional information.

22. Positive responses are not necessarily those successfully fulfilling the requests (e.g. actual arrest and surrender of a person). Responses informing the Court that States have carried out requested measures or investigations are considered positive responses, even though the related measures/investigation may have proved unsuccessful (e.g. unsuccessful search of property).

23. Negative responses also include rejections of notification. When States gave reasons for their negative responses, these were also analyzed.

24. Negative responses as such do not constitute non-cooperation. Pursuant to Regulation 109 ("Failure to comply with a Request for Cooperation"), a finding of failure to cooperate under Article 87(7) can only be made by a Chamber. To date, the Court has never made such a finding.

25. Requests for cooperation are related to different forms of assistance that States may provide to the Court. Chambers can issue Requests for arrest and surrender and for the identification, localization and freeze or seizure of assets (Art. 93(1)(k)). The Registry, as the organ in charge of transmitting requests for cooperation by chambers pursuant to Rule 176 is in charge of transmitting these requests to States in consultation with the OTP. The Registry can request directly other other forms of judicial cooperation and assistance, such as the protection of witnesses or the transit of arrested persons.

26. OTP issues directly all its cooperation requests. All requests for judicial assistance and their follow up are processed through an automated database managed by the Jurisdiction, Complementarity and Cooperation Division (“JCCD”). Support to preliminary examinations and positive complementarity activities, as well as diplomatic support to arrest efforts are registered in different databases. In 2009, pursuant to its policy of relying on implementing legislation for cooperation, the OTP has entered into agreement with only one State (Judicial Cooperation Agreement with the Government of Central African Republic).

D. State Parties and the Court

1. Diplomatic and Public Support including mainstreaming of Court issues domestically

a) Designation and Preparedness of National Focal Points

27. Over and above the cooperation and assistance provided by States in responses to requests described in section 2(a) below, diplomatic and public support can also create an environment conducive to better and more efficient interaction between States and the Court. A key element for efficient cooperation and assistance could be the designation readily available and preparedness of national focal points for cooperation. These national focal points differ from diplomatic channels designated under Article 87(1)(a) of the Rome Statute. Their function would be the coordination and mainstreaming of Court issues within and across government institutions (e.g. ministry or other departments dealing with the UN, Africa and the Middle East, and development/capability building units within ministries). Creation of networks to share information and knowledge could be an important means of generating capacity to respond to concrete requests for cooperation in a timely manner. Such focal points are of importance both for public support and for investigations.

28. The ASP resolution recommended the establishment of coordinating structures ranging from single national focal points “tasked with the coordination and mainstreaming of Court-issues within and across government institutions” (Recommendation 7) to inter-institutional structures, which may also facilitate the resolution of conflicts between different national entities, in the form of a working group or task force (Recommendation 8). These options could be complementary, rather than mutually exclusive.

29. The Court observes that the functions of such an inter-institutional task force may overlap with those of national International Humanitarian Law (IHL) Commissions, which exist in 58 States Parties. These States may consider tasking those Commissions with the above-mentioned function of coordinating and mainstreaming Court issues within and across government institutions.

30. These National Commissions, or other specific task forces, may also review existing implementing legislation and propose amendments, where appropriate (ASP Recommendation 3).

31. In its 2007 resolution, the ASP also recommended providing appropriate training to focal points involved in drafting and executing implementing legislation with (Recommendation 4). The Court is following this recommendation, and is contributing to the organization of trainings at the national, regional or global level in coordination with other intergovernmental or non-governmental agencies active in judicial capacity building, penal reform, rule of law and other related fields of activities and/or with the support of interested States Parties.

32. Finally, the quality and self-enforceability of a request for cooperation may be improved by better knowledge of the procedural framework applicable within a State's domestic system. National focal points could assist by providing the Court with relevant information on applicable procedures and facilitating the mainstreaming of cooperation requests within a State's administration. In its 2007 resolution, the ASP also recommended that States prepare procedural manuals for the processing of cooperation requests (Recommendation 15). On the basis of the information provided, the Court could then create State-specific checklists of steps to be taken with regard to different cooperation requests, as recommended by the Bureau with respect to transfer (Recommendation 19).

b) Promoting ICC Work in Bilateral and Multilateral Contacts

33. In Rec. 11, the ASP recommended that States Parties whenever possible express support for the Court and promote its general and situation-specific activities in their bilateral contacts. A number of States Parties regularly raise Court wide or OTP related issues in bilateral contacts at the level of Ministers of Foreign Affairs and, increasingly, contact the Court or OTP both prior and after such contacts.

34. The Court would find it beneficial if such support for the Court's general or situational policies is also consistently expressed by officials of financial and development agencies from States Parties, again highlighting the need to mainstream to streamline the Court within State Party institutions.

2. Cooperation and Assistance in Support of Analysis, Investigations, Prosecutions and Judicial Proceedings

a) Cooperation and Assistance in the Context of Preliminary Examinations

35. Recent years have shown that the preliminary examination phase offers potential for deterring crimes. Based on Article 15 of the Statute, the OTP proactively analyses situations where crimes are alleged to have been committed by State Party nationals, or on the territory of a State Party, or where a State not Party has lodged an article 12 (3) declaration. The aim is to determine whether to open a new investigation, and to contribute to preventing crimes and promoting national proceedings.

36. Seven situations under preliminary examination are public: Afghanistan, Colombia, Georgia, Guinea, Kenya, Côte d'Ivoire and Palestine. The OTP makes its monitoring public, subject to confidentiality requirements, when it believes it can contribute to preventing crimes.

37. During this preliminary phase, the OTP is not vested with full investigative powers. Nonetheless, in line with Rec. 12 and 14, States Parties should, whenever possible, in the context of preliminary examination, provide the Court with relevant background information as requested and should where relevant ...engage in active dialogue with the Court and assess... whether they may have background information. In this context, the OTP collects information on alleged crimes under the jurisdiction of the Court and on relevant national proceedings from States and international organisations ("IOs"). 64 requests were sent in 2007- 2009 (until 20 August 2009), a drastic increase from previous years. 34% (22 requests) were answered positively.

38. Recipients of the requests: 59% (38 requests) were addressed to 15 States Parties; 14% (9 requests) were addressed to 4 non-State Parties; 9% (6 requests) were addressed to 4 UN bodies; and 17% (11 requests) were addressed to 2 other organizations.

39. Nature of cooperation and assistance requested: the majority of requests were for additional information under Article 15 (2). 86% (55 requests) were for information on crimes and/or national proceedings; 9% (6 requests) were for screening and/or transmission of documents; 5% (3 requests) were for consultations with national authorities on the situation, or for paying an official visit.

b) Cooperation and Assistance in Support of Investigations and Prosecutions

40. A total number of 352 requests were addressed to States and IOs by the OTP in connection with its investigative and prosecutorial activities in the period 2007-2009. In 2009, 113 requests have already been sent by 20 August, as compared to 100 requests in the whole year of 2007. Execution rate is about 85 %. Timeliness of response is the main issue.

41. Recipients of Requests; 75% (265 requests) were addressed to 28 State Parties; 3% (10 requests) were addressed to 6 Non-States Parties; 21% (74 requests) were addressed to 13 UN bodies and; 1% (3 requests) were addressed to 2 other organizations. Geographically, more than 50 % of the requests were addressed to African States. Approximately 20 % were addressed to European and other Western States. The OTP has thus addressed States recommendation to diversify its interlocutors and ensure “burden-sharing”.

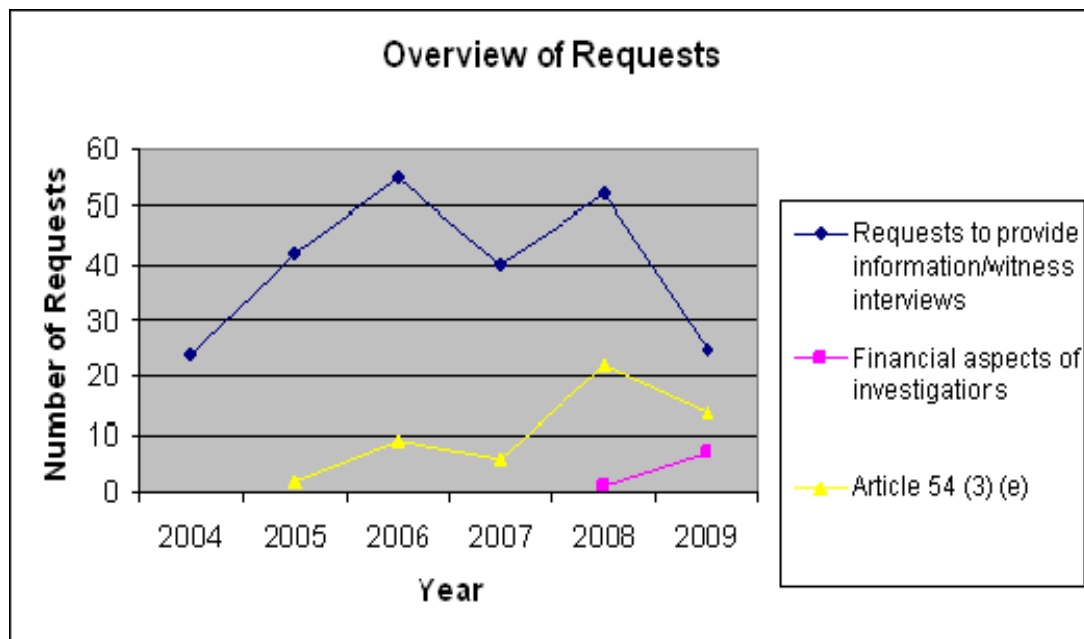
42. Nature of cooperation and assistance requested: 37% (130 requests) were notification for the facilitation of investigative activities by the OTP on the territory of a State; 16% (57 requests) were for transmission of information and documents; 15% (54 requests) were for interviews⁶; and 12% (43 requests) were for lifting of Article 54(3) (e) confidentiality restrictions.

43. A major trend since 2007 was a hundred-percent increase of the requests connected with financial aspects of investigations, in particular access to bank records and locating assets. Such requests by the OTP are meant to establish linkages in an investigation between the organizers and the direct perpetrators, to identify assets for the ultimate purpose of benefiting victims, and to assist in the tracing and ultimate arrests of persons who are the object of an arrest warrant. The OTP developed its networks of cooperation with the financial sector, States, IOs (World Bank), networks such as the Camden Assets Recovery Inter-Agency Network (CARIN), Europol, the Egmont Group and Institutes (such as the Basel Institute on Governance).

44. Another trend is the decrease in requests for documents and information as the OTP has better factored in issues of confidentiality, particularly in relation to the disclosure process, and issues of security on the ground. The number of requests addressed to organisations (UN and others) for lifting of confidentiality restrictions was still high in 2008 in the context of the first trial. But in the last two years, the OTP has implemented screening procedures in order to limit the requests to only relevant information and documents, in light of their potentially exculpatory and material for the defense value and their incriminating value.

⁶ Request for “interview” refers to interviews requiring permission from States, *inter alia*, the interview of (former/current) officials, potential suspect.

45. The Chart below illustrates key trends in requests sent from the OTP.



46. In 2007-2009, OTP has also received 7 spontaneous transmissions of information from States. This has allowed the OTP to follow-up with the relevant authorities and, if applicable, to proceed with screening and subsequent request for transmission.

47. In line with Rec. 53 to share information on concrete needs of the Court with relevant States Parties as early as possible, the OTP has publicized in its Prosecutorial Strategy for 2009-2012 the forms of cooperation and assistance needed to improve the quality of investigations by:

- Increasing reliance on new types of evidence, in particular financial information to prove the responsibility of those most responsible and to assist in the victims' reparations scheme;
- Reducing reliance on confidential information, developing an approach whereby the OTP initially screens the documents for relevance. The goal is to be efficient in the collection of information;
- Developing a network of national law enforcement agencies conducting national investigations on Rome Statute crimes; and
- Ensuring a consistent approach to investigations and training its personnel.

48. The OTP would appreciate States' giving particular importance to requests in these 4 areas: cooperation on new types of evidence; procedures for screening documents; participation of national agencies to its law enforcement network (LEN), and assistance with training.

49. In order for the OTP to be able to carry out short investigation and propose expeditious trials, rapid execution of the requests is crucial. The OTP will continue its efforts to make its requests as specific as possible and to prepare flexible mean of interaction (screening procedure).

50. In line with Rec.16 asking that “States Parties should, where relevant, facilitate access to witnesses for Court officials, inter alia by issuing ‘emergency’ visas if required”, the OTP would stress the importance of its requests for emergency visas for witnesses or third parties for the purpose of conducting screenings and interviews. The OTP will send a non paper to interested States to detail the parameters of such requests.

51. In addition, the OTP consolidated a positive approach to complementarity, encouraging genuine national investigations and prosecutions. This also required cooperation and assistance of States and IOs, including, *inter alia*:

- Developing a network of law enforcement agencies (“LEN”)

52. After meetings to exchange experience with war crime units and chiefs of police from around the world, the OTP has started the LEN project with interested national law enforcement officials – including from situation countries – and INTERPOL to define investigations and projects that could be undertaken domestically to support efforts against crimes under the Statute. 32 officials from 14 States participated in 2007-2009.

- a) Enhancing situation countries’ capabilities by:
 - i) calling experts and lawyers to participate in investigative activities;
 - ii) inviting experts from situation countries to participate in LEN meetings; and (iii) brokering support in favour of national judiciary by approaching IOs (World Bank Bureau for fragile states, UN Peace Building Commission, EU REJUSCO) and bilateral donors with a focus on national witness protection programs and judicial independence. As described in the Prosecutorial Strategy for 2009-2012, “*the UN Peace Building Commission could be one avenue to pursue such complementary efforts, ensuring that the international donor community adopt a policy of engagement in favour of justice efforts, not disengagement, while ensuring at the same time that such efforts seek to complement the ICC, instead of promoting ambiguous ‘alternative solutions’ or encouraging ‘Court shopping’*”⁷.
- b) Providing information to national judiciaries upon request.

53. In 2007- 2009, the OTP received 13 requests for cooperation from States and provided assistance to the extent allowed by confidentiality requirements. In our third investigation in the DRC, the OTP is aiming at a coordinated approach whereby it would transfer "dossiers d'instruction" on low level perpetrators to national judicial authorities in the region - and beyond - depending on the development of local protection systems for witnesses and judges.

54. The importance of such cooperation and assistance cannot be underestimated. In this report however, it should be noted that the Court does not address the issue of positive complementarity as a whole, although in the areas of preliminary examinations, investigations and witness protection, some initiatives are detailed. Positive complementarity issues, Court policies and views in this regard can be addressed separately with the ASP.

⁷ Draft Prosecutorial Strategy 2009-2012, 18 August 2009, p. 15

c) Cooperation and Assistance in Support of Judicial Proceedings

55. The different forms of cooperation and assistance that the Court has requested from States in support of judicial proceedings are as follows: (a) arrest and surrender of persons; (b) identification, localization and freezing or seizure of property and assets (c) interim release; (d) enforcement of sentences; and (e) witness protection. These are analysed individually in the relevant sections below:

d) Arrest and Surrender of Persons (See section below 3.)

e) Identification, Localization and Freezing or Seizure of Assets

56. Persons charged before the ICC may have their assets and property frozen or seized for various purposes, including the enforcement of fines and forfeiture penalties under Article 77(2) of the Rome Statute, reparation orders in favour of victims under Article 75, and full or partial payment of Counsel fees under regulations 83-85 of the Regulations of the Court. The identification and localization of property and assets is also undertaken to determine charged persons' wealth for purposes of assessing indigence and potential payment of legal assistance by the Court, where the Registrar declares the charged person indigent.

57. Requests for identification, localization and freezing or seizure of assets have been made by the Registry at the request of Chambers in six pending cases:

- In one case, a first request for identification, tracing and freezing or seizure of assets was notified to all States Parties. Twenty-eight States responded. Among these, twenty-two States informed the Registry that they had undertaken positive actions to trace assets, but that their investigations had been unsuccessful. Four States replied by requesting additional information in order to be able to undertake their investigation. The Registry made a second request of fifteen States, including three non-States Parties. Five States, including one non-State Party, responded. One State Party requested additional information and another State Party informed the Registry that it was undertaking an investigation. Consultations with States are ongoing.
- In three different cases, one single State Party was approached on the issue of tracing of assets, but no response has been received on any of these requests. Consultations with States are ongoing.
- In another case, the Registry communicated several requests for the tracing of assets to a total of nine States, including one non-State Party. Most of these requests received positive responses from the notified States, and these even informed the Court of the positive action they were undertaking in furtherance of the request for cooperation and assistance. The only negative response emanated from the non-State Party and was based on the lack of legal basis for action. The Registry replied by entering negotiations on a memorandum of understanding with that State. Consultations with all States are ongoing.
- In another case, requests for identification, tracing and freezing or seizure of property and assets were sent to all States Parties, to four non-States Parties on the UN Security Council, to Sudan, and to five of its neighbouring States. The Registry notified a total of one hundred and sixteen States, and there were twenty-nine responses. The only negative reply came from Sudan which refused to accept the notification. Four States requested additional information. One State responded positively, providing the Court with information. Consultations with all States are ongoing.

f) Interim Release

58. Under Article 60(2) of the Rome Statute, a person subject to a warrant of arrest may apply for interim release pending trial and the Pre-Trial Chamber shall release the person, with or without conditions, if it finds that conditions for detention pending trial set forth in Article 58(1) are no longer fulfilled. This raises the issue of the State on the territory of which a person on interim release may stay pending trial. In applications for interim release filed thus far before the Court, the detained persons identified a list of States where they would wish to be released, should the Chamber find that the conditions for their detention are no longer fulfilled. In two cases, the Court has entered consultation with those States identified by the claimants.

59. Thus far in these two cases, no State contacted by the Court in this regard has indicated an immediate willingness to accept a person on interim release, although discussions are ongoing. In all, twelve such requests have been made.

60. The Chamber's ability to grant interim release to an accused if certain criteria are met is specifically foreseen in article 60(2). It is of concern to the Court that an eventuality could arise in which it proves impossible to find a State, other than the State of nationality of the detained person, which would be willing to accept such person on its territory on interim release pending trial at the Court. In order to seek a pro-active solution to this matter, the Court will immediately initiate wide consultation with a broader group of States with regard to entering into framework agreements on interim release.

g) Enforcement of Sentences

61. Under Part 10 of the Statute and Chapter 12 of the Rules, the Presidency is the organ of the Court with overall responsibility for the enforcement of sentences. The enforcement functions are twofold: the enforcement of sentences of imprisonment, including the supervision of conditions of imprisonment; and the enforcement of fines, forfeiture and reparations measures, as well as the ongoing monitoring of the financial situations of sentenced persons, which includes the tracing and freezing of the sentenced person's assets. To ensure that the Presidency is able to comply with its obligations, regulation 113 of the Regulations of the Court foresees the creation of an Enforcement Unit within the Presidency.

62. Prior to the first convictions, the Presidency has focused efforts on negotiating and concluding further enforcement agreements. As provided in Article 103(1)(a) of the Statute "*a sentence of imprisonment shall be served in a State designated by the Court from a list of States which have indicated to the Court their willingness to accept sentenced persons*". Pursuant to Rule 200 of the Rules, the Court may enter into bilateral arrangements with States with an aim to regulate the acceptance of persons sentenced by the Court.

63. The Statute as well as the Rules set forth the steps to be taken by the Court when designating a State of enforcement of imprisonment and when a State accepts such enforcement. A Model Agreement on the Enforcement of Sentences ('MAES') has been prepared by the Court with an aim of providing, in a more concise manner, a general framework consisting of the above-mentioned provisions. The MAES which is sent to each State, is the basis of case-by-case negotiations with the view to conclude final Agreements on Enforcement of Sentences between the State and the Court. The Court must eventually conclude these with as many States as possible, bearing in mind the necessity of striking a balance between international law and the national laws of enforcing States, whilst being consistent with the Statute.

64. Since 2004, the President of the Court has been inviting States Parties to indicate their willingness to accept sentenced persons. So far two Agreements have been concluded with the Government of Austria and The United Kingdom, on 27 October 2005 and 8 November 2007, respectively. As a result of the responses the President has received, the following general trends may be noticed.

65. Over fifty States have responded and the majority of these have done so favourably. A significant minority have indicated their unwillingness to enter into an agreement. Within the first category, most have made their acceptance conditional on various conditions:

- a) the sentence should be in accordance with the national legislation on the maximum duration of sentences
- b) assistance should be provided with regard to the construction of high security prisons, or equipment and training of the personnel
- c) prisoners should be that State's nationals and permanent residents.

66. States that have indicated their unwillingness to enter into an agreement cite reasons including:

- a) Their prisons do not meet international standards
- b) They have overcrowded prisons and/or limited prison capacity
- c) They would have to modify national legislation
- d) No other State has signed the agreement

67. The Court is exploring the possibility of concluding tripartite agreements with States Parties that are willing to consider funding requests for the enforcement of the sentence of a convicted person on the territory of another State Party.

h) Witness Protection and Support (see section below 4.)

3. Execution of Arrest Warrants and Summons to Appear

68. Cases where persons voluntarily surrender to the Court remain exceptional. The Court, which has no independent police force, has to rely on the cooperation and assistance of States with respect to the arrest and surrender of persons to the Court. To date, four persons have been arrested on the territory of States Parties and transferred to the Court.

69. They are currently in the Court's detention facility, either on trial or awaiting trial. Eight other persons against whom warrants of arrest have been made public by the Court remain at large : Joseph Kony, Okot Odhiambo, Dominic Ongwen, and Vincent Otti in the Uganda situation; Bosco Ntaganda in the DRC situation; Ahmad Harun, Ali Kushayb and Omar Al Bashir in the Darfur situation. They have been outstanding since 2005 for the Uganda suspects, since 2006 for Bosco Ntaganda, since 2007 for Ahmad Harun and Ali Kushayb, and since March 2009 in the case of Omar Al-Bashir.

a) Requests for Arrest and Surrender

70. The Court has issued requests for arrest and surrender with respect to all of these persons. Another person voluntarily appeared before the Court in May 2009 and the hearing on the confirmation of charges is scheduled to start on 19 October.

71. All States Parties and some non-States Parties have been addressed requests for arrest and surrender of persons by the Court.

72. A distinction can be made between targeted requests for arrest and surrender, which are sent to those few States where the person is likely to be found, and global requests made to all States Parties:

- In two cases, requests for arrest and surrender were addressed to one State only and were answered positively, resulting in the successful arrest and surrender of the persons.
- In one case, requests for arrest and surrender were notified to two States. Notified States have not replied these requests. Consultations with these States continue.
- In another case, requests for arrest and surrender were notified to four States, including one non-State Party. All States acknowledged receipt. One State informed the Court that it was not in a position to comply with the request on the ground that the Rome Statute had not been implemented in its domestic legislation as yet. Consultations with these States are ongoing.
- In two other cases, the Chamber ordered notification of requests for arrest and surrender to all States Parties to the Rome Statute, to four non-States Parties that were members of the UN Security Council, to Sudan, and to five of its neighbouring States. The Court notified the requests to a total of 116 States. Nearly 20% of the notified States replied to the notification. In one of these cases, 8-9% of notified States replied in the negative, including by refusing to accept notification of the request. Half of these States are States Parties to the Rome Statute. Another 8-9% answered positively, by taking positive action in furtherance of the request. Consultations with all States are ongoing. The Court relies on the cooperation and assistance of States for successful arrest and surrender operations, and would align itself fully with Rec. 17 on the need to generate political support and momentum for the timely arrest and surrender of wanted persons both in bilateral contacts and activities in regional and international organizations and Rec. 48 asking State Parties to remind States of their duty to cooperate with the Court, in particular when it concerns arrest and surrender.

73. The Court has benefited from the cooperation and assistance of many States and IOs in 2007-2009⁸:

- For the arrest of Germain Katanga: the Democratic Republic of the Congo (“DRC”), The Netherlands, the United Nations Organization Mission in the DRC (“MONUC”);
- For the arrest of Mathieu Ngudjolo: Belgium, DRC, The Netherlands, MONUC;
- For the arrest of Jean-Pierre Bemba: Belgium, DRC, The Netherlands, Portugal;
- For the voluntary appearance of Abu Garda: in order to locate and facilitate the voluntary surrender of alleged perpetrators in the Haskanita case, the OTP received the assistance of a number of African and European States, including Chad, Nigeria, Mali, Senegal, the Gambia and The Netherlands. Other States requested that their assistance remain confidential. But the OTP also notes that 3 requests were either denied or the subject of too many conditions on the basis of immigration or security assessments by States, thus making the operation more complex than it should have been.

⁸ For Thomas Lubanga Dyilo, cooperation was given by Chad, the DRC, France, The Netherlands.

b. OTP Efforts to Galvanize Arrests

74. In line with Rec.17, the Prosecutor has publicly stated that “*in pursuance of its independent mandate, the OTP developed guidelines for the arrest and surrender of individuals subject to arrest warrants issued by the Court*”, and these were presented in Diplomatic briefings and in the Draft Prosecutorial Strategy. The following guidelines are for the consideration of States:

- Eliminate non-essential contacts with individuals subject to an arrest warrant issued by the Court. When contacts are necessary, attempt first to interact with individuals not subject to an arrest warrant by the Court;
- In bilateral and multilateral meetings, proactively express their support to the enforcement of the Court’s decisions, request cooperation with the Court, and demand that crimes, if ongoing, cease immediately;
- Contribute to the marginalization of fugitives and take steps to prevent the diversion of aid/funds meant for humanitarian purposes or peace talks to the benefit of persons subject to an arrest warrant issued by the Court; and
- Make collaborative efforts to plan and execute arrests of individuals subject to an arrest warrant issued by the Court, including by providing operational or financial support to countries willing to conduct such operations but lacking the capacity to do so.

75. The OTP will continue disseminating its guidelines on measures States should take to eradicate the support networks that provide safe havens, logistical, political and financial support to suspects. The OTP will recommend that States officials demonstrate their support for ICC warrants by considering abstaining from high-level to participation in international meetings in the presence of persons sought by the Court. While presumed innocent, those persons are subject to an ICC arrest warrant.

76. The OTP would also appreciate spontaneous action by States to control supply networks, for example those linked to diaspora communities, or to audit aid provided to States or movements that the OTP assesses is being diverted towards supporting persons who are the subject of an ICC warrant.

77. In order to implement Rec. 42 on contacts with the Secretary General, other high-level United Nations officials as well as relevant United Nations staff regarding the interests and mandate of the Court, the OTP finds it useful that States actively express their support to arrests when they meet with officials of the UN or other organizations in headquarters and on the ground so that arrests, when there is a specific mandate peacekeeping forces, are given priority in terms of allocating resources.

78. These *guidelines* have been operationalized by OTP in each situation.

Uganda Lord’s Resistance Army (“LRA”) leaders

79. In order to cut off the supply and support network of the persons subject to arrest warrant, the OTP sent 5 requests to States for information on networks providing the LRA leaders with supplies or money, and encouraged States to take domestic action to deter such support.

80. In order to support collaborative efforts to plan/execute arrests, the OTP had contacts with the authorities of the DRC (President Kabila, Minister of Justice Luzolo), CAR (Minister of Defense Bozize) and Uganda (periodic meetings with Minister for Security Mbabazi, Prosecutor Moreno-Ocampo’s meeting of 13 July 2009 with President Museveni). The OTP

shared with other supportive States the need for enhanced international support for arrest efforts, emphasizing the UN Security Council Presidential Statement 48 of 22 December 2008 that “*reaffirms that ending impunity is essential for a society recovering from conflict to come to terms with past abuses committed against civilians and to prevent their recurrence... commends the States in the region for their increased cooperation, and welcomes the joint efforts they have made to address the security threat posed by the LRA*”.

81. In line with Rec. 20 (“All States Parties should consider whether it would be possible, on request, to provide a State on whose territory suspects are located with technical assistance and support such as information-sharing and specialised training of law enforcement personnel”), the OTP has encouraged territorial States to request assistance from other States in the planning, logistics and other aspects (protection of civilians...) of the arrest of LRA leaders and other States to grant this assistance.

Bosco Ntaganda (DRC)

82. In order to galvanize efforts to arrest Bosco Ntaganda, the OTP has monitored with other partners his recent criminal activities, showing that Bosco Ntaganda is still active and forces under his command are involved in ongoing crimes, including sexual crimes in the Kivus.

83. The OTP also encouraged operationalization of UNSC Resolutions mandating MONUC to cooperate with the DRC government to ensure that war criminals are brought to justice. The OTP has needed to clarify various times the existence and scope of such agreements with States and IOs.

84. The OTP understands the difficulties presented by the circumstances in Eastern DRC, and the demands on MONUC’s resources. The OTP is confident that the DRC, with MONUC support, will tackle this arrest in good time.

Situation in Darfur, Sudan

85. In 2007-2009, the Prosecutor briefed the Security Council 5 times and reported that the Sudan is not complying with its obligations under UNSC resolution 1593 (2005) to enforce the judicial decisions of the Court. The Sudan, as the territorial State, has the legal duty and the capacity to execute the warrants. In its unanimous Presidential Statement 21 of 16 June 2008, the Council “*urges the Government of Sudan and all other parties to the conflict in Darfur to cooperate fully with the Court, consistent with resolution 1593 (2005), in order to put an end to impunity for the crimes committed in Darfur.*”

86. The OTP approached States Parties to ensure severance of contacts with the 3 persons who are subject to an ICC arrest warrant. Positive responses have ranged from official statements to the effect that they would act upon the warrants⁹ to refusing meetings/pictures with President Al Bashir in international meetings.

⁹ Chadian President Déby in August 2009: “*J’approuve [le mandat d’arrêt international lancé par la CPI contre El-Béchar], et j’affirme même la pleine détermination de mon pays à coopérer avec la CPI dans ce dossier*” [“*I endorse [the international arrest warrant issued by the ICC against Al Bashir], and affirm my country’s full determination to cooperate with the ICC in this matter*”]; South African Director General, Department of International Relations, Ayanda Ntsaluba “*If today President Al-Bashir landed in terms of the provision (of the Rome Statute) he would have to be arrested; [...] There is not the slightest hint that South Africa will renege on its international obligations*”; Brazilian Foreign Affairs Minister Celso Amorim told the Congress on 13 May 2009 that President Al Bashir would be immediately arrested if he entered Brazilian territory; the EU Presidency statement on 14 July 2008, “*The EU reiterates in particular its call that the arrest warrants issued by the Court against Mr. Ahmad Harun and Mr. Ali Kushayb be executed*”.

4. Witnesses Protection and Support

87. Under the Rome Statute and the Rules of Procedure and Evidence, the Court is responsible for the safety, physical and psychological well-being, and the dignity and privacy of its witnesses, victims and their families. The Court must be able to ensure that witnesses and victims are adequately protected. The Registry, in accordance with Article 43(6) of the Rome Statute and Rule 16 of the Rules of Procedure and Evidence, has at its disposal a variety of mechanisms to ensure the protection of witnesses in the countries where the Court operates.

a) Local protection measures

88. An important element in any protection system lies in adherence to good practices and confidentiality when interacting with victims and witnesses. These are aimed at concealing a witness's interaction with the Court from the community where the witness resides and from the general public. The Registry's Victim and Witnesses Unit (VWU) makes training available to all parts of the Court that have direct contact with victims or witnesses.

89. The Court can apply a number of operational protective measures. One of these is the Initial Response System (IRS). It is an around-the-clock emergency response system that enables the Court to extract to a safe local location witnesses who are afraid of being immediately targeted or who have, in fact, been targeted. Other local protective measures aim at enhancing the personal security of witnesses by educating them about the importance of confidentiality and cover stories, giving clear instructions on how to activate the IRS, providing access to communications, agreeing on an emergency back-up plan and regular contact and improving the physical security of the places where the witnesses reside.

b) International relocations

90. An operational protective measure of last resort is entry into the Court's Protection Programme (ICCPP) and through this the relocation of a witness and his or her close relatives away from the source of the threat. Relocation is always a measure of last resort as it significantly impacts on and disrupts the life of the individual. For these international relocations, the Court is fully dependent on the cooperation and support of States Parties. As detailed in the following paragraph, the Court is seeking to enter into framework relocation agreements with States in order to facilitate specific requests for relocation. Alternatively, the Court may enter into ad hoc agreements in specific cases.

91. At the time of the submission of the present report, all but 13 States Parties have received *notes-verbales* from the Court requesting their cooperation and assistance in reaching such agreements. A total of 210 *notes-verbales* have been sent to States Parties. A total of 31 States Parties responded. Among these:

- a) six States Parties have expressed their readiness to enter into negotiations with the Court on the relocation of witnesses;
- b) nine States Parties signed a framework agreement on the relocation of witnesses on their territory;
- c) two States Parties entered an ad hoc agreement on specific cases;
- d) one State Party signed a pilot sponsoring agreement, by which it may finance the cost of the relocation of witnesses on the territory of third States.
- e) nine States Parties explained that they could not enter an agreement on the relocation of witnesses on their territory because of the lack of a legal basis for doing so;

92. To date, four relocation requests have been successful, leading to the actual relocation of 17 persons. Four other requests were unsuccessful, leading to the issuance of requests to other States. At the time of the present report, four relocation requests are still pending, concerning a total of 25 persons. The total rate of successful relocations is 40%.

c) Other efforts

93. The Registry is exploring new avenues of enhancing States' cooperation and assistance on witness relocation. In particular, the Registry is considering the possibility for a State Party to donate funds to a special trust fund for witness relocations. The Presidency and Registry could then approach other States Parties to see whether they would agree to enter into a cost-neutral witness relocation agreement financed by the special trust fund. On the basis of such agreements, the Court would relocate witnesses to those States using monies from the special trust fund. The special trust fund would need to have enough funds for the Court to finance a minimum of a two-year commitment, allowing creation of conditions for the witness to become self sufficient. In some cases, that commitment could extend much longer. The funding would cover direct witness expenses, such as housing, language and vocational training, medical care, appropriate clothing, set up costs, etc. The receiving State authorities should endeavour to facilitate the witness' adjustment and setting up of a new life in the new location. The Court already has one such pilot agreement with one State Party.

94. States Parties may also support the establishment of witness protection capabilities in other States lacking in capacity. This could be done either bilaterally or through multilateral institutions. A number of countries have already indicated their keen interest in this modality, the development of which would further the principle of complementarity that is central to the Rome Statute system.

95. The OTP works with the Registry and States, in the context of Court-wide efforts, to guarantee the safety of all those who are at risk on account of their interaction with the Court. The OTP has consistently asked that States in their cooperation programmes give particular attention to the setting up of national witness protection programs both in situation countries and countries under preliminary examination as the absence of such programmes is an obstacle to (1) protecting OTP witnesses locally and (2) conducting genuine national proceedings.

5. Logistics and Security

a) Logistics

96. The Court's field presence in situation countries is regulated through memorandums of understating and exchanges of letters with local authorities. To date, three MoUs and one exchange of letters have been concluded with the Republic of Uganda, the Democratic Republic of the Congo, Central African Republic and Chad, respectively. These documents facilitate the Court's proper functioning, in particular with regard to its needs in the areas of investigations, victim and witness protection, safety and security, and logistical support for its operations. The Court has established five field offices, in Kampala (Uganda), Kinshasa and Bunia (Democratic Republic of the Congo), Bangui (Central African Republic) and Abeche (Chad).

97. The assistance of local authorities required by the Court covers the provision of security support for Court staff and high officials travelling on their territory, issuance of travel documents for witnesses and victims to facilitate their appearance before the Court, operational support in witness protection activities undertaken by the Court in relation to witness protection, and provision of transportation for movement of counsel, witness, staff throughout territory. Such cooperation and assistance has been satisfactory, although in one case, the obligations of the MOU were not respected on repeated occasions.

b) Security

98. Security is another key aspect of cooperation with the Court, encompassing practical assistance and information sharing. In its 2007 Report on Cooperation, the Bureau recommended in particular the sharing of intelligence and security information between States Parties and the Court (Rec. 25-26). The Court appreciates that the overall cooperation and assistance of States Parties on these issues is satisfactory.

99. In the Host State, the Court is considered as a National Security Object and is subject to ongoing security assessment. Such assessment is conducted on a quarterly basis and a summary of the assessment is provided to the Court, whose Security and Safety Section meets regularly with the Host State Security Services. During these meetings relevant security and threat related information and issues are discussed. On a tactical level, the Security and Safety Section has established clear and effective communication lines with applicable support agencies. Operational procedures have been established, tested and amended as required, particularly in relation to support in the transport of accused persons. Similarly, cooperation and assistance with ongoing joint planning and operational-level liaison in relation to the Court's activities at the Headquarters is satisfactory. The Court welcomes the establishment of the Diplomatic Front Office, which will provide a single point of support for International Organizations in The Hague and further strengthen security-related cooperation.

100. In States Parties that are situation countries, the security support provided by the authorities has been satisfactory. In each of these States, the Court receives full military and/or police support for its premises and in support of missions. In the case of the Sudan, the OTP has decided to investigate from outside the Sudan because there were no guarantees for witness protection

101. With respect to other States, the Court recently has intensified the management of the security aspects of the travel of its senior officials. The Court now notifies a State of the visit of senior officials in their territory so as to give notice of the visit and allow for any appropriate security measures, with an aim to maintain a consistent standard of security for such officials. States have received this protocol with mixed responses; some acknowledge the visit, some are prepared to provide direct security support and some remain silent.

6. Defence-related issues

102. There is no fair trial without providing the Defence with adequate facilities to prepare its case, in particular in terms of investigation and collection of evidence, access to information, protection of witnesses, etc. The principles of the rights of the Defence are enshrined in Article 67 of the Rome Statute. In its 2007 Report on Cooperation, the Bureau recommended that States accommodate, to the extent possible, requests from defence teams for operational support and that the Court explore ways in which defence teams can benefit from existing agreements between the Court and States Parties (Rec. 28).

103. The assistance that the Registrar provides to the defence teams acting before the Court pursuant to Rule 20 of the *Rules of Procedure and Evidence* includes, as necessary, securing the cooperation and assistance of States and international organizations for different purposes. Cooperation and coordination with national authorities and relevant international organizations are key to ensuring that counsel and their teams can provide effective and efficient legal representation to suspects and accused persons. This enhances the quality and credibility of ICC proceedings. In accords entered into by the Court with states such as the *Agreement on the Privileges and Immunities of the ICC* (ICC-ASP/1/3 (Part. II-E) *bis*), defence counsel and their team members are given specific considerations, privileges and immunities. The Court relies on cooperation with States to ensure that these important legal responsibilities and rights are respected in practice.

104. Most of the instances of cooperation and assistance requested to States by the Court/Registry on behalf of the defence are related to defence investigative missions in the field, and have generally been satisfactory. In this respect, defence counsel and their teams receive the same security, logistical and administrative assistance as Court staff. Such assistance is primarily provided by the Court's field offices, but also by United Nations offices and States. Below is a non-exhaustive list detailing the type of assistance and cooperation and assistance the Registry requires from States to facilitate the work and rights of the defence:

- a) Visa requests for counsel and members of their teams to travel to The Hague and in the field where applicable;
- b) Respecting and executing *Note Verbales* issued by the Registry to facilitate defence missions to the field to, *inter alia*, meet witnesses in prisons, in government etc.;
- c) Respecting and executing official Certificates issued by the Registrar pursuant to Article 18 of the *Agreement on the Privileges and Immunities of the ICC* or based on any other applicable legal basis (*e.g. Interim memoranda of understanding*);
- d) Enable the Court's field offices to operate effectively in the execution of their mandates in providing services to Court staff and defence counsel and their team members when in the field.

7. Personnel

105. Rec 29 refers to rosters of experts as well as the provision by States of expert assistance on favorable financial terms"). Cooperation and assistance in this regard is forthcoming especially in the field of forensics. The OTP will endeavor to diversify its roster of individual experts, associations and state agencies and associate as many experts as possible, including from situation countries, to investigative activities.

106. In addition, and as outlined in the Prosecutorial Strategy for 2009-2012, the OTP will continue to: (i) appoint advisers in accordance with Article 42(9) of the Statute in different fields of expertise for its advisory council; (ii) interact with, and contribute to, the Justice Rapid Reaction initiative by some States to compile a roster of experts who would be available to assist with the investigation of massive crimes upon request by a State; and (iii) work with external actors with regard to sexual and gender crimes, and to constantly update as appropriate its investigative and prosecutorial techniques.

E. Cooperation in the United Nations context

1. Cooperation between the Court and the United Nations

107. Cooperation with the United Nations is based on the Relationship Agreement between the United Nations and the International Criminal Court concluded in 2004 as well as subsidiary agreements such as the Memorandum of Understanding with MONUC, and two Protocols with the World Food Programme and the United Nations Development Programme.

108. Cooperation with the United Nations on the basis of these agreements is satisfactory. Illustrative of this are the following examples:

109. **Security:** The Court is a member of the United Nations Security Management System, and is invited to participate in the United Nations' Inter-Agency Security Management network meetings twice a year. This allows the Court to fully align its standards, regulations and operations with the UN and other member agencies in the field. In the field, the Court is fully integrated in the security management structures of the United Nations. It follows the same guidelines for procedures and compliance adopted by the UN and other agencies, such as Minimum Operating Security Standards (MOSS), travel notifications, training and travel of senior officials. In the Host States as well, the Court is a member of the United Nations Security Management System (through an MOU established between the ICC and United Nations Department of Safety and Security (UNDSS) in 2005).

110. **Field Operations:** The support and assistance received by the Court from the United Nations in the field is of crucial importance and ranges from the provision of fuel for the Court's vehicles, to the use of their air assets. Since the start of the Court's operations in the situation countries, the Court has made use of 960 flights operated by the UN in support of approximately 2000 missions. Discussions are ongoing with the UNOPS for provision of procurement and other support services for the Court.

111. Particular mention should also be made of the public support expressed by the UN on many occasions, *inter alia* in the context of the Secretary-General's 8 April 2009 report on mediation (S/2009/189, para. 37): "*Where serious crimes have been committed, pursuing international justice during mediation can generate considerable tension and affect the outcome, since indicted parties may cease cooperation and actively obstruct the process. Ignoring the administration of justice, however, leads to a culture of impunity that will undermine sustainable peace. Now that the International Criminal Court has been established, mediators should make the international legal position clear to the parties. They should understand that, if the jurisdiction of the ICC is established in a particular situation, then, as an independent judicial body, the Court will proceed to deal with it in accordance with the relevant provisions of the Rome Statute and the process of justice will take its course.*"

112. In order to implement Rec. 32 ("To ensure mutually sufficient knowledge of and understanding for the mandates and activities of the two organizations, regular contacts between Court officials and United Nations staff should be ensured. Apart from contacts by email and phone, direct contacts, for example in the form of a yearly meeting or workshop, or in the margins of visits, could be envisaged") and 34 ("In addition to the regular meetings with the OLA, the Court should jointly with the United Nations assess periodically the status of cooperation, with a view to improve it..."), the Court will continue to organize an annual ICC-UN workshop, which includes an OTP specific session. The Court focal points for cooperation with the UN and for situations are in quasi daily contact with their UN counterparts.

113. In order to implement Rec. 33 (“The practice of regular high-level visits as well as working visits to the United Nations should be continued...”) and 36 (“...the Court should keep the relevant entities of the United Nations informed of progress in specific cases and situations”), the Court will continue briefing the Office of Legal Affairs (“OLA”), in particular with respect to the testimony of United Nations officials, the provision of information and the mainstreaming of the Court throughout the United Nations system. On each occasion, the OTP will also brief on its cases inter alia the Cabinets of the Secretary General and deputy Secretary General, the Department of Peacekeeping Operations (“DPKO”), the Department of Political Affairs (“DPA”), the Office for the Coordination of Humanitarian Affairs (“OCHA”), the United Nations International Children’s Emergency Fund (“UNICEF”), the SRSG on children and armed conflict and other relevant actors).

114. In line with Rec. 41 (“The NYLO should continue to enable concrete cooperation ...”), the Court will increase reliance on the Liaison Office to disseminate information to Permanent Missions and UN Departments and to be informed of developments in UN meetings. The excellent briefings provided by the head of NYLO enhance the Court’s capability to plan its UN activities. In order to increase interaction with the UN system and the permanent missions, the Court has recommended further efforts to strengthen the NYLO.

115. In line with Rec. 54 asking the organs of the Court to schedule their high-level visits to New York in such a way as to ensure an equal spread throughout the year and coincide with the most significant and relevant United Nations events and Rec. 55 asking High-level Court visitors to continue to be available in the margins of such visits to brief the Group of Friends of the ICC as well as Court membership of regional groups, , the President and Registrar aim to travel to New York at least 2 times a year each; the Prosecutor and Deputy Prosecutor travel to New York at least 4 times a year, to brief partners on situations and cases, including for the UNGA opening (September) and the bi-annual UNSC briefings (June, December). The Principals are available to meet the Friends and regional groups.

116. The OTP has entered into agreements with 2 Organizations of the UN family: Arrangement¹⁰ with the Office of Legal Affairs (“OLA”) of the UN on the process for requesting disclosure of documents obtained from the UN¹¹; and Memorandum of Understanding between the OTP and the International Development Law Organization (“IDLO”).

2. Cooperation by States Parties in the United Nations context

117. In line with Rec. 47 and 48, a number of States Parties include the Court in statements they make in different relevant forums, for example during the general debate of the General Assembly, and remind States of their duty to cooperate, in particular when it concerns arrest and surrender. The Court encourages States to continue in their practice to refer to the ICC work in their speeches to the UN General Assembly, which is a tremendous indicator of the level of support enjoyed by the Court, and as appropriate in UN Security Council debates on situations, conflict resolution, human rights and the rule of law.

118. In line with Rec. 51 asking States Parties that are members of the Security Council to ensure that the Court’s interests, needs for assistance and mandate are taken into account, the Court emphasizes the important role that States Parties which are non permanent members of the UNSC can play, beyond referrals, regarding ICC relevant topics such as conflict resolution, humanitarian missions, children in armed conflict, gender crimes, etc. An example

¹⁰ Pursuant to Article 18 of the Relationship Agreement between the UN and the ICC.

¹¹ The arrangement first was achieved for the proceedings of *The Prosecutor v. Thomas Lubanga* and later the same procedure was agreed to be followed for all other proceedings.

is the leading role of Costa Rica in securing Presidential Statement 21 of June 2008 supporting cooperation with the ICC in the Darfur situation.

F. International and Regional Organizations and the Court

119. Aside from the UN, the Court is building its relationship with a number of regional bodies. The Court has a relationship agreement with the EU, and is in the process of working on relationship agreements with the OAS and the AU. The Court is also committed to developing and deepening its relationship with the Arab League, and with the OIC.

120. The Court has also entered into relationships with other multilateral organizations, such as ICPO-INTERPOL which has issued red notices against the persons charged in the Kony et al. case, and the ICRC with whom a MoU was signed on visiting prisoners in the Detention Facility. The Court has also joined EUROPOL's CARIN Asset Freezing Network.

121. As mentioned above, 22 % of the requests from the OTP are addressed to agencies of the UN and to regional organizations. To create an environment conducive to cooperation, the OTP has increased exchanges with regional organizations. In 2009 alone, the Office participated in 4 meetings with the OAS, 4 with LAS and 4 with the AU. The OTP entered into 2 new agreements: Letter of Understanding on Cooperation between the OTP and Eurojust; MoU between OTP and World Bank Vice Presidency on fraud and corruption.

122. To better achieve Rec 61 ("States Parties should through their membership of international and regional organisations work to promote the mainstreaming of Court issues") and 62 ("States Parties should, where appropriate, initiate and support joint statements, positions, declarations and resolutions to be issued through regional and international organisations promoting the Court and its general and situational activities") the OTP has designated focal points within the Office for OTP specific cooperation with international and thematic organizations, the AU, the ASEAN, the EU, IDLO, INTERPOL, the League of Arab States (LAS), the Organization of American States (OAS), and the Organization of the Islamic Conference (OIC), amongst others, and most organizations did the same within their structures. The Presidency and Registry also have focal points with international and regional organizations.

123. The Court has also continued to arrange and encourage regular high-level and working-level meetings with these organizations in order to maximize the understanding of its work and to ensure its predictability.

G. Concluding Observations of the Court

124. The Court would like to thank the focal point for cooperation for his willingness to advise and assist it in its interaction with States and International Organizations. The Court would support continuation of such a flexible mechanism, which has proved both efficient and sensitive to the Court's needs as a whole, as well as respectful of the OTP's independent mandate. The Court would also like to note its appreciation for States and International Organizations that have remained engaged in a dialogue with it in order to better anticipate and respond to its needs.

Appendix I

Forms of Mandatory Cooperation and Assistance	Relevant Provisions
Arrest and surrender of persons to the Court	Art. 89
Authorization of transportation through territory - Transit	Art. 89(3)
Provisional arrest	Art. 92
Identification and whereabouts or the location of items	Art. 93(1)(a)
Taking of evidence, including testimony under oath, and the production of evidence, including expert opinions and reports necessary to the Court	Art. 93(1)(b)
Questioning of persons being investigated or prosecuted	Art. 93(1)(c)
Service of documents, including judicial documents	Art. 93(1)(d)
Facilitating voluntary appearance of persons as witnesses or experts before the Court	Art. 93(1)(e)
Temporary transfer of persons in custody	Art. 93(1)(f), 93(7)
Examination of places or sites, including exhumation/examination of grave sites	Art. 93(1)(g)
Execution of searches and seizures	Art. 93(1)(h)
Provision of records and documents, including official records and documents	Art. 93(1)(i)
Protection of victims and witnesses and preservation of evidence	Art. 93(1)(j)
Identification, tracing, freezing or seizure of proceeds, property and assets and instrumentalities of crimes for the purpose of eventual forfeiture	Art. 93(1)(k)
Any other type of assistance which is not prohibited by the law of the requested State with a view to facilitating the investigation and prosecution of crimes within the jurisdiction of the Court	Art. 93(1)(l)
Issuance of safe-conducts	Art. 93(2)
Bearing the ordinary cost of execution of cooperation requests, with the exception of costs specifically mentioned	Article 100(1)
Transfer of persons upon completion of sentence to States obliged to receive them	Art. 107
Enforcement of fines and forfeitures measures	Art. 109

Appendix II

Forms of Contractual Cooperation and assistance	Relevant Provisions
Ad hoc agreement for cooperation with non-State Party	Art. 87(5)
Waiver of State or diplomatic immunity	Art. 98
Enforcement of sentences	Art. 103
Transfer of released persons upon completion of sentence to States that have no obligation to receive them	Art. 107
Relocation of witnesses	Rule 16(4)
Transfer of released persons other than upon completion of sentence to States that have no obligation to receive them	Rule 185

Annex II

Draft resolution on the issue of cooperation

The Assembly of States Parties,

Recalling that at its seventh session the Assembly encouraged the Bureau to continue to work on cooperation in close coordination with the Court and to report on significant developments to the Assembly at its eighth session,¹

Noting the Report of the Court on International Cooperation and Assistance,

1. *Requests* the Bureau to appoint a new facilitator of the Assembly of States Parties for cooperation for a period of two years, and further *recommends* that, in close consultation with States Parties, the Court and non-governmental organizations, as well as via liaising with other interested States and relevant organizations, the following issues be dealt with as a matter of priority by such facilitation:

a) Exploring ways to continue enhancing public and diplomatic support for the Court;

b) Exploring ways to continue enhancing the enforcement of Court decisions;

c) Undertaking an assessment of other forms of assistance not specifically listed in the Rome Statute, but necessary for the functioning of the Court;

d) Developing a framework of action for the adoption of national legislation pursuant to article 88 of the Rome Statute, which could include the development of a mechanism to collect the records and best practices of States Parties in respect to implementing legislation;

e) Promoting the conclusion of agreements, or other arrangements, for protection or relocation of witnesses, as well as other approaches such as trilateral agreements, and/or sponsoring agreements for local or regional protection of victims or witnesses, including by giving appropriate consideration to completion strategies of other international jurisdictions;

f) Exploring methods of cooperation with States Parties and international organizations for the provision of technical assistance with a view to the establishment of national protection programmes in situation countries and the examination thereof;

g) Exploring ways to facilitate the use of new types of evidence, including financial information;

h) Exploring possibilities for the Court to conclude agreements, or other arrangements, with States Parties on the issue of provisional release under article 60, paragraph 2, of the Rome Statute;

¹ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Seventh session, The Hague, 14-22 November 2008* (International Criminal Court publication, ICC-ASP/7/20), vol. I, part III, resolution ICC-ASP/7/Res.3, para. 42.

i) Promoting the conclusion of agreements or other arrangements on the enforcement of sentences, including the possibility of concluding trilateral agreements with States Parties that are willing to consider funding requests for the enforcement of the sentence of a convicted person on the territory of another State Party, or with international or regional organizations with a view to facilitating sentence enforcement;

j) Exploring synergies between the Court, States and multilateral organizations working in the wider area of the rule of law, with a view to strengthening domestic capacities for the prosecution of serious crimes of international concern;

k) Further exploring the concept of complementarity between the Court and States;

l) Preparing the issue of cooperation for the Review Conference, including examining ways in which the 2007 Report of the Bureau on cooperation,² the 2009 Report of the Court on International Cooperation and Assistance, and the implementation of the present resolution, can be used for “stocktaking”;

2. *Encourages* the Bureau to continue to work on cooperation in close coordination with the Court, including the identification of other specific issues that need to be fully explored in the context of cooperation and assistance, *requests* the Bureau to report on significant developments to the Assembly of States Parties at its ninth session, and *further requests* the Court to submit an updated report on cooperation to the Bureau in advance of the Review Conference and to the Assembly at its tenth session.

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² Report of the Bureau on cooperation (ICC-ASP/6/21).