
Resumed eighth session

New York
22-25 March 2010

Report of the Bureau on stocktaking: Cooperation

Background paper and proposals for outcome

A. Mandate on stocktaking

1. On the basis of resolution ICC-ASP/8/Res.6 the Bureau mandated the focal points to prepare preliminary background materials and proposals for outcomes on their respective topics and to hold consultations thereon in the overall framework of the New York Working Group, but with the possibility for informal consultations in The Hague as well, as appropriate”.

2. Resolution ICC-ASP/8/Res.2 on Cooperation (paragraph 16 (k)) tasked the facilitator with “*preparing the issue of cooperation for the Review Conference, such as examining ways in which the 2007 Report of the Bureau on cooperation and the 2009 Report of the Court on cooperation and the implementation of this resolution, can be used for ‘stocktaking’*”.

B. Objective

3. Stocktaking of cooperation should provide for a comprehensive overview of the challenges and achievements with regard to implementation of Parts 9 and 10 of the Rome Statute. It should foster a common understanding of further steps needed to improve cooperation, in accordance with the provisions of the Rome Statute, between the Court and:

- a) States Parties;
- b) The United Nations system;
- c) International and regional organisations; and
- d) Other stakeholders.

C. Background papers

4. The issue of cooperation is at the core of the Rome Statute. Accordingly the Assembly of States Parties and its Bureau have considered the issue on a number of occasions. In resolution ICC-ASP/5/Res.3 adopted in 2006, the Assembly requested a report of the Bureau on Cooperation.

5. The report of the Bureau as set out in document ICC-ASP/6/21 and its 66 recommendations was endorsed in resolution ICC-ASP/6/Res.2. Subsequent reports of the Bureau and the Court on cooperation have considered the issue with reference to the 66 recommendations. These recommendations constitute a comprehensive approach to the issue.

6. The most recent document produced by the Court¹ is set out in annex I to the 2009 Report of the Bureau on Cooperation (ICC-ASP/8/44). Paragraph 17 of resolution ICC-ASP/8/Res.2 requested the Court to submit an updated report on cooperation to the Bureau in advance of the Review Conference. This will be available in April 2010.

7. Issues relating, inter alia, to cooperation are addressed in the note verbale and accompanying questionnaire issued by the Secretariat of the Assembly on 24 April 2009 (ICC-ASP/8/S/PA/19). The level of response to this questionnaire has been low. Consideration could be given to re-issuing this questionnaire (or a revised version) in advance of the Review Conference with a view to providing a further basis for an assessment of the present status of cooperation and the challenges thereto.

D. Issues

8. Cooperation with the Court is a complex and dynamic process. The Rome Statute obliges States Parties to cooperate with the Court in a number of ways, whilst other forms of cooperation are non mandatory. States Parties can learn from each other's experience in the area of cooperation. In this context, in their statements to the Review Conference participants could be encouraged to address the steps they have taken or intend to take to give effect to the provisions of the Rome Statute relating to cooperation. Such statements and announcements would demonstrate political support for the full implementation of the Rome Statute.

9. The 66 recommendations annexed to resolution ICC-ASP/6/Res.2 provide a comprehensive plan of action. However, not every recommendation can have equal impact. In this regard priority should be attached to those recommendations which are most likely to have a significant impact on the effectiveness of the Court and on a State Party's cooperation with it.

10. The Report of the Court on international cooperation and assistance (ICC-ASP/8/44, annex I) notes, in paragraphs 6 and 7, that although cooperation with the Court has generally been forthcoming, public and diplomatic support remains a priority in the galvanization of arrest efforts, as does the conclusion of more agreements for the enforcement of sentences, the relocation of witnesses and interim release. Attention might be drawn to the possible need, and appropriateness, that such agreements would cover any situation of a release from custody.

11. Paragraph 8 notes two general trends which States may consider addressing. Firstly, a considerable number of requests of the Registry to States do not meet with a response. Secondly, a number of States have indicated a lack of available procedures under national law to provide the requested cooperation.

12. The first obligation of States Parties, as identified by the Assembly of States Parties and the Court in their respective reports, is the need to enact implementing legislation. The 2009 Report of the Court on international cooperation and assistance points out that the measures "*stipulated in the Statute represent the minimum and guaranteed obligations accepted by States upon becoming Parties*".

¹ Report of the Court on international cooperation and assistance (ICC-ASP8/44, annex 1).

13. A crucial issue is having procedures in place to process requests for cooperation and assistance with respect to investigations, prosecutions and judicial proceedings. This includes the appointment of a national focal point or other mechanism to mainstream the Court in national systems. The Review Conference should provide an opportunity to consider the various challenges in this area and to distil best practice.

14. While the Review Conference provides an opportunity for States Parties to share their experiences in cooperating with and assisting the Court on their mandatory and non-mandatory cooperation and to note progress made in implementing the recommendations annexed to resolution ICC-ASP/6/Res.2, consideration could be given to regular discussion of progress in this area. In this context the facilitator has proposed that the Assembly of States Parties consider on a regular basis (possibly biennially) progress achieved with regard to cooperation. This would enable States Parties to benefit from each others' experiences and would help to identify good practice in this area.

15. Regular discussions along the lines suggested in the preceding paragraph could provide an opportunity to consider developments with regard to assistance available to States Parties to enhance their cooperation with the Court. The Review Conference could consider whether the Court and/or the Assembly of States Parties can be more effective in facilitating linkages between States Parties seeking technical advice on best practice and assistance in implementing this aspect of the Rome Statute, and those which might be in a position to provide such assistance.

16. Some of the challenges faced by the Court have characterised the experience of other international judicial tribunals. This includes issues such as witness relocation and sentence enforcement agreements. An important consideration would be the experiences of States which have concluded such agreements and how this can assist and encourage more States to conclude such agreements, which are essential to the day-to-day operation of the Court. The experience of the operation of similar agreements in other tribunals could also be considered whilst being mindful of the different mandates.

17. Cooperation with the Court may involve legal obligations. At the same time, cooperation takes place within specific political, legal and administrative contexts. In this regard, there is a particular need to ensure broad understanding and support for the work of the Court through sustained diplomatic action and the mainstreaming of the Court in national systems. The importance of an active engagement in this area amongst all parties should not be underestimated

E. Method of work

18. Three meetings on stocktaking on cooperation were held in the context of The Hague Working Group. The focal points were available to meet with individual and groups of stakeholders. The focal points on cooperation met with the focal points on complementarity to consider areas of possible overlap. The focal points made contact with the facilitators in the New York Working Group.

F. Format of discussion at the Review Conference

19. The format for discussions whether in a round table format or led by panellists should provide for an interactive debate, between all relevant stakeholders, on the challenges and ways in which obligations relating to cooperation can be properly given effect.

20. The draft programme of work for the Review Conference envisages one half-day session devoted to stocktaking on cooperation. Given the time constraints it might be feasible to divide the time into two separate segments with 2 - 3 panellists addressing the following topics with the aim of ensuring an interactive discussion:

Cluster I

- a) Implementing legislation: this could take account of particular issues which individual States Parties have encountered and good practices in this area.
- b) Supplementary agreements and arrangements and other forms of cooperation and assistance: experiences in relation to the Court and other international judicial bodies – a consideration of the challenges and how these might be overcome.
- c) Challenges encountered by States Parties in relation to requests for cooperation: how these might be overcome.

Cluster II

- d) Cooperation with the United Nations and other intergovernmental bodies, including regional bodies: consideration of the present situation and ways in which it can be developed.
- e) Enhancing knowledge, awareness and support for the Court: including through mainstreaming and galvanizing public support to and cooperation with the Court within States including for the enforcement of Court decisions and arrest warrants.

21. A report of the discussion might identify the main themes and conclusions of the discussion.

G. Outcome

22. While based on a common assessment of the achievements of the past seven years, the outcome should provide guidance/impetus to efforts to ensure better cooperation. It should:

- a) Reaffirm the importance of all stakeholders meeting fully their obligations under Parts 9 and 10 of the Rome Statute and note in particular the need to have in place adequate implementing legislation to enable cooperation with the Court.
- b) Take note of any announcements on steps to increase cooperation made by States Parties at the Review Conference with respect, inter alia, to implementing legislation, conclusion of agreements for the enforcement of sentences, the relocation of witnesses and interim release, appointment of a national ICC focal point.
- c) Emphasise the importance of mainstreaming support to the Court within national administrations.
- d) Note the importance of the enforcement of Court decisions including arrest warrants.
- e) Urge States Parties and the Court together with other stakeholders to explore innovative ways to provide assistance to States seeking to enhance their cooperation with the Court.

- f) Decide to include on the agenda of future Assemblies of States Parties (on a biennial or some other regular basis) an item on cooperation with a particular focus on sharing experiences and distilling best practice.
- g) Encourage the development of a public information strategy by the Court to enhance an understanding of its remit and request the Assembly and individual States Parties as well as other relevant stakeholders to complement such a strategy with public information campaigns on the Court.

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