

## **Resolution ICC-ASP/16/Res.3**

*Adopted at the 12th plenary meeting, on 14 December 2017, by consensus*

### **ICC-ASP/16/Res.3**

#### **Resolution on consultations pursuant to article 97 (c) of the Rome Statute of the International Criminal Court**

*The Assembly of States Parties,*

*Bearing in mind* the provisions of Part 9 of the Rome Statute on international cooperation and judicial assistance, as well as relevant Rules of Procedure and Evidence,

*Convinced that* full respect for the principles and provisions of the Rome Statute is essential for effective international cooperation and judicial assistance,

*Conscious* of the importance of procedures and mechanisms enabling States Parties to cooperate with the Court, particularly when a State Party receives a request under Part 9 of the Rome Statute in relation to which it identifies problems which may impede or prevent the execution of the request,

*Mindful* of the central role of international cooperation and judicial assistance between States Parties and the Court with respect to the issues described in article 97(c) of the Rome Statute,

*Recalling* that at its fourteenth session the Assembly of States Parties discussed the issue of the application and implementation of article 97 of the Rome Statute,

*Considering* that on 3 June 2016 the Bureau established a working group to examine the application of article 97 in close consultation with the Court, while observing the judicial independence of the Court, and that this working group was open to all States Parties,

*Further considering* the request of the Assembly of States Parties at its fifteenth session, that the working group continue to explore all possible means to improve the application of article 97 of the Rome Statute, in particular regarding problems identified under subparagraph c), in close consultations with the Court,

*Acknowledging* the active participation and contributions of States Parties to the deliberations of the working group by providing their views and proposals on cooperation with the Court,

*Reaffirming* its commitment to the principle of judicial independence of the Court,

1. *Adopts the* “Understanding with respect to article 97(c) consultations” contained in the annex to this resolution.

## Annex

### Understanding with respect to article 97 (c) consultations

The following serves to clarify the process for consultations between a State Party and the Court in cases as provided for in article 97 (c) of the Rome Statute:

1. Where a request for cooperation originates from the Office of the Prosecutor, the requested State should, without delay, make a request in writing to the Office of the Prosecutor for a consultation in accordance with rule 176 of the Rules of Procedure and Evidence.
2. (a) Where a request for cooperation originates from a Chamber of the Court, the requested State should, without delay, make a request for consultations in writing to:
  - (i) The Chamber of the Court that issued the request for cooperation; or
  - (ii) The Presidency of the Court. Such consultations will not be of a judicial nature.
- (b) Such a request for consultations should be transmitted through the Registrar.
3. Subject to article 40 (1), article 42 (1) and (2) and article 43 (1) and (2) of the Rome Statute, for consultations carried out under paragraph 2, the Chamber or Presidency may invite the participation in the consultation of any other relevant organ or official in a position to assist, if appropriate and the requested organ or official consents.
4. Upon receipt of a request for consultations under paragraph 1 or 2, the Office of the Prosecutor, Registrar, or Presidency, as appropriate, should, without delay, inform the State Party and any other relevant organ or official in writing about the proposed date, location and/or other modalities of the consultation process.
5. The consultation should proceed and be completed without delay.
6. (a) If the organ issuing the request, the Presidency or the requested State Party considers that the consultations have been exhausted, it should give written notification to the other participants in the consultations.
- (b) Following receipt of such notice, the matter may be addressed in accordance with article 87 and other applicable provisions of the Rome Statute as required.
7. Neither the request for consultations, the consultations, nor any outcome of consultations has suspensive effect, unless a competent Chamber so orders.
8. The above is without prejudice to the principle of judicial independence and the flexible nature and scope of consultations as provided for elsewhere in article 97 of the Rome Statute.
9. The above will be interpreted and implemented consistently with the Rome Statute and the Rules of Procedure and Evidence, including rule 176.