



# Assembly of States Parties

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### Report of the Bureau on cooperation

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## I. Background

1. The resolution ICC-ASP/21/Res.3 on Cooperation, adopted by the Assembly of States Parties (“the Assembly”) on 9 December 2022, requested the Bureau “to maintain a facilitation of the Assembly of States Parties for cooperation to consult with States Parties, the Court, other interested States and relevant organizations and non-governmental organizations in order to further strengthen cooperation with the Court”.<sup>1</sup>
2. The resolution also requested the Bureau, through the facilitation on cooperation, in accordance with the resolution on the Review of the International Criminal Court<sup>2</sup> and the Review Mechanism’s Comprehensive Action Plan,<sup>3</sup> to continue to assess the recommendations related to cooperation and their follow-up, including their implementation as appropriate, and to report thereon to the Assembly at its twenty-second session.<sup>4</sup> The resolution further requested the Bureau, through the facilitation on cooperation, to continue to address a number of issues that have been priorities in recent years, and as a matter of priority, namely: to continue the work to further develop the content of the Secured Platform on Cooperation; to hold consultations on the advisability of developing regional thematic focal points on cooperation, of creating a permanent structure for a network of national practitioners and focal points on cooperation, and; on the deepening of the relationship between the UN and its agencies and entities, including for capacity building purpose in order to foster cooperation with the Court.<sup>5</sup>
3. The resolution additionally requested the Bureau, through its Working Groups, to continue the discussions on voluntary framework agreements or arrangements and to report thereon to the Assembly at its twenty-second session.<sup>6</sup> It also encouraged the Bureau, through its Working Groups, to continue its review of the implementation of the 66 recommendations, in close cooperation with the Court, where appropriate.<sup>7</sup>
4. On 31 January 2023 the Bureau re-appointed Ambassador Momar Guèye (Senegal) and Ambassador François Alabrune (France) as co-facilitators on cooperation.

## II. Organization of work and main issues considered

5. In 2023, The Hague Working Group (“the working group”) held a total of four meetings or informal consultations on the issues of cooperation. Informal consultations were held throughout the year with representatives of the Court on the elaboration of the interactive platform on cooperation and on the future priorities of the facilitation on cooperation.

### *First meeting*

6. At its first meeting on 5 May 2023, the facilitators presented the programme of work of the facilitation and continued the work on the IER recommendations related to cooperation. The facilitation then addressed the last recommendation for assessment, namely R280, which dealt with the establishment of a framework for informal operational contacts in all situation countries. In this regard, the Office of the Prosecutor (OTP) noted that this recommendation was positively assessed by the OTP and was implemented by the Unified teams with the support of the Office of External Relations. This would be reinforced by a greater presence in the field with the opening of offices in Ukraine, Libya, Darfur, Cox Bazar and Venezuela. The OTP noted that regular consultation mechanisms such as the focal point seminars held at the Court’s headquarters make it possible to strengthen ties, harmonize and standardize practices but also promote collaboration between contact points. The Registry together with the Presidency agreed with the facilitate assessment of R280.
7. The point was made that engaging with informal contacts before requests are made was beneficial to help shape the request for it to comply with national procedures. It was noted that while informal exchanges are useful, cooperation cannot be provided without a

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<sup>1</sup> ICC-ASP/21/Res.3, para 31.

<sup>2</sup> ICC-ASP/21/ Res.4.

<sup>3</sup> [https://asp.icc-cpi.int/iccdocs/asp\\_docs/ASP20/RM-Comprehensive\\_Action\\_Plan-ENG.pdf](https://asp.icc-cpi.int/iccdocs/asp_docs/ASP20/RM-Comprehensive_Action_Plan-ENG.pdf).

<sup>4</sup> ICC-ASP/21/Res.3, para 33.

<sup>5</sup> ICC-ASP/21/Res.3, para 34.

<sup>6</sup> ICC-ASP/21/Res.3, para 24.

<sup>7</sup> ICC-ASP/21/Res.3, para 32.

formal request of assistance and that such requests must be as precise as possible. It was also suggested to include embassy representatives in informal exchanges in order to ensure follow-up and maintain continuity.

8. The facilitation then moved to the update on the implementation of the IER recommendations relating to cooperation which had been assessed positively. R150 and R151 would be discussed at a later meeting as they required an exchange with the New York Liaison Office. OTP indicated that R152, on regular consultations with heads of UN agencies, and R153, on active exchanges with regional organizations, had already been implemented. Two concrete examples were highlighted such as the initiative to organise an annual retreat between the OTP and the office of the High Commissioner for Human Rights, as well as the reinforcement of the relations between the OTP and the African Union.

9. With regards R268 to R271, relating to investigation strategies, the OTP noted that the working group set up to develop the operations manual has almost completed its work and the consolidated version of the manual was presented to the Prosecutor and the Deputy Prosecutors on 12 April. This new fully updated version will guide and unite staff under the new process management model which will be accompanied by a training program with dedicated focal points to facilitate compliance and other timely updates. For this group of recommendations, implementation was on-going.

10. On R272 to R279, regarding cooperation in the collection of evidence, the OTP highlighted innovations made through a process of preliminary contacts and ongoing consultations with the countries concerned to ensure that requests for assistance are formulated correctly and with sufficient precision to achieve the desired objectives and avoid delays. OTP noted also the creation of a technological platform for the analysis of mass data as well as the rotation model of the survey teams which ensure a permanent and/or continuous presence in the field. While commitment is ongoing, implementation of these recommendations is in place.

11. The OTP indicated that the implementation of R281 (making the RFA database being made more accessible to appropriate leadership of the Prosecution and the Investigation Divisions) and R282 (requests for cooperation should take into account recommendations made on staff quantity R71-R75) was complete, noting that the database is now accessible to Unified Teams whose creation has also enabled flexible and efficient use of resources within teams and even across pillars.

12. On R283 and R287, relating to financial investigations, implementation was on-going. The OTP noted with regret that not only the resources requested in the regular budget for the establishment of the new Financial Investigations Unit were not approved by the Assembly but even the staff who were made available to serve in this unit unfortunately left at the end of their secondment which was not renewed by their country. There is good coordination between the OTP and the Registry in this regard. In relation to R287, the Registry noted that a questionnaire, which had been developed in relation to the digital platform on cooperation launched in 2020, was updated and circulated by the facilitators on 19 April 2023. The Registry also encouraged States to designate a national focal point on matters related to financial investigations and asset recovery to support the Court with such technical exchanges.

13. On R285, R286, R288 and R290 concerning the location and arrest of fugitives, implementation was on-going. The OTP would continue to work with informal cooperation networks and strengthen coordination mechanisms. The capacity building of the team responsible for locating suspects known as SALT had enabled it to switch to proactive mode and weekly coordination with the Registry.

14. The OTP noted with regret that R290 on special operations funds to assist teams responsible for locating and apprehending suspects, to plan and cover expenses in the field, although positively assessed, had not yet been implemented, and made a call to the ASP to address this. The OTP noted that a strategy on tracking and apprehension methods, incorporating increased use of technology and intelligence-based actions, was being produced to strengthen the Office's ability to track and apprehend suspects. The Registry added that exchanges take place on a weekly basis at the technical level between the experts of the OTP and representatives of the Registry, to develop strategies for further implementation by management.

15. With regard to R291 and R292, on remote surveys, the OTP indicated that implementation had been finalized. The new technological tools put in place integrate this aspect into their component and the lessons learned from the pandemic have been reflected in the new operations manual. R293 to R298 on deployment to the field have been implemented. The OTP noted that for the operationalization of the five field offices, the OTP had implemented a three-pronged approach to move from a centred model headquarters to a more field-focused model including: (1) multi-skill new and vacant posts upon recruitment, (2) use the national expert system, and (3) a phased transition plan consisting in transferring existing and occupied positions to the field while fully respecting the rights of staff.

16. Concerning R299 to R304, on the collection and analysis of evidence, implementation was on-going. The OTP embarked on an ambitious technological modernization, that would make it possible to work more efficiently with more connected systems with better information management. As a result, productivity would increase through the reduction of time and effort spent on tasks with the use of automation and artificial intelligence.

### *Second meeting*

17. At its second meeting on 28 June 2023, the facilitation heard presentations from the Registrar, a representative from the ICC Presidency and the OTP on voluntary agreements. The Registrar noted that voluntary cooperation is vital to the Court's operations. He recalled that these agreements are flexible in nature and aim at increasing the legal certainty for both States and the Court; are subject to the dual consent principle, meaning that the State retains the decision making power of whether to accept a specific person; are confidential; their implementation can be cost-neutral for the State; represent an opportunity to share good practices and technical knowledge; are an effective way to prevent delays or mitigate costs related to judicial proceedings; are a demonstration of States' concrete commitment to the Court's work. The Registrar noted that another matter of great importance for the Court, especially in the current context regarding security concerns, remains the signature of Agreements on Privileges and Immunities (APIC), and called upon the States who had not yet become parties to APIC to engage in this process.

18. The Registrar noted that he intended to reinforce the judicial cooperation arm of the Registry to better deliver in the area of arrests but noted that the Court would need the States Parties' strong and consistent cooperation. He added that transport of suspects to the ICC is extremely important with regards to the execution of arrests but has proven to be extremely expensive. He indicated that for this reason a model transportation agreement for States that have aircraft facilities was developed by the Court and shared with States Parties. He called upon States to consider signing this important agreement, which would assist the Court in creating further efficiencies.

19. Regarding the way forward, the Registrar indicated that voluntary cooperation is a matter that requires solid partnerships as well as sustained, multilateral and concrete actions, honing in the required political will and relying on creative mindsets, in order to find effective long-term solutions. For its part, he noted that the Registry had been driving several initiatives and demarches over the years at the bilateral level, while addressing the matter of cooperation agreements at the political, regional and technical expert levels, notably through the regional seminars sponsored by the European Commission grant, and with the aim of advancing the matter of cooperation agreements. He concluded noting that, for example, a burden-sharing type of exercise could be an effective way forward, whereby a number of countries decide to get together and share amongst themselves the requests for voluntary cooperation coming from the Court for a number of years, with a new group taking over afterwards. Spearheading efforts in each geographical region by a "champion State" on one or all cooperation agreements can be another way of advancing the matter.

20. The ICC Presidency highlighted that cooperation in the enforcement of sentences of persons convicted by the Court is voluntary under the Rome Statute, and therefore the Court depends on the goodwill of States Parties. The conclusion of these agreements also allows the Court to take into consideration the specific needs of the State concerned. The key principles included for example that the prison sentence is enforceable for the States Parties, which cannot in any case modify it; conditions of detention are governed by the law of the enforcement State and must comply with widely accepted international treaty standards governing the treatment of prisoners; and the enforcement of a prison sentence is subject to review by the Court.

21. A double consent or two-step consent is required, this means that by signing an agreement on the enforcement of sentences pronounced by the Court, a State declares its willingness in principle to receive convicted persons to serve their sentence, however this agreement does not constitute a commitment to receive a particular person. Consent to serve the sentence of a particular convict is always given separately and at a later stage. To date, 13 sentence enforcement agreements with the Court are in force, with the majority of regional groups being represented.

22. Under the Rome Statute and the Host State Agreement, the enforcement of sentences in the Netherlands is only provided for exceptional circumstances when the sentence remaining to be served is less than six months or temporarily in waiting for the designation by the Presidency of a State responsible for the enforcement of the sentence. He emphasized that the Presidency is therefore required to identify a State which will be responsible for the enforcement of the sentence. In addition, human rights principles regarding the separation of sentenced persons from persons awaiting trial require that the sentenced person be transferred to an enforcement State as soon as possible.

23. The OTP presented on the work of the Office in terms of cooperation agreements, taken in a broad sense, in particular with situation countries. The promotion of such agreements, generally in the form of a Memorandum of Understanding (MoU), has been strongly encouraged and developed by the Prosecutor since the beginning of his mandate. MoUs pursue different goals, for example, facilitating judicial cooperation, making contributions to national procedures, sharing knowledge, defining common operational standards, and establishing a dialogue with local, regional and international partners.

24. Another purpose of MoUs is to encourage national procedures to promote complementarity to the extent possible, while increasing its vigilance to ensure that the investigations it opens and the cases it brings itself are not ruled inadmissible because of concurrent cases in national courts, while ensuring that the essence and substance of such proceedings can be reliably assessed. At the same time, the Office will endeavour to strengthen cooperation with specialized courts. Other MoUs are used for situations where the OTP has closed the preliminary examination or announced the closure of the investigation phase, to allow national authorities to continue to benefit from the dialogue with and support from the OTP, while ensuring an efficient and responsible closure of investigations and preliminary examinations. Another signature of MoUs is for the opening of field offices to allow the OTP to be closer to the field and communities affected. And finally, she noted that some MoUs allow the provision of expertise in order to strengthen the means of the Prosecutor's office and to promote exchanges with the national authorities. OTP also highlighted cooperation agreements concluded at the level of the Court (signed by the ICC President), establishing a new mode of cooperation with Europol in April 2023.

25. The ICC Bar Association (ICCBA) noted there are many challenges in securing cooperation for the defence. For example, the issue of uncertainty as to the State-by-State procedure, particularly whether the defence can request cooperation from the State directly, through the Registry or only via a Chamber decision. States should clearly communicate to the Registry the criteria required to be able to grant defence requests, as well as granting privileges and immunities during investigative missions. There are also internal barriers, given that each defence counsel operates completely independently, there is a lack of specific training or expertise to formulate requests for cooperation. There are no opportunities to create links, working relationships as the OTP and the Registry do, which have specialized units on cooperation. There is no possibility to communicate directly with the specialist unit within the Registry and everything must pass through the Counsel Support Section. A person specializing in cooperation matters should be able to act within the Office of Public Counsel for the defence and adequately advise the defence teams. Another issue mentioned was States' own internal challenges in assessing and answering to requests. It was recommended to improve communication, simplify internal processes if possible, and apply the same procedures for the defence as for the other organs of the Court.

26. Concerning agreements on provisional releases or sentences, the ICCBA noted that only 2 States have signed agreements of provisional releases and that this represented a major problem, in a system where the rule is freedom and not detention. In this regard, the matter of provisional release in the Mr. Mokom case was an issue of fundamental rights of detained persons. With regards to acquittal, it stated the case of Mr. Gbagbo and Mr. Blé Goudé who

returned to Côte d'Ivoire in 2022, well after the end of the proceedings against them. With regards convicted persons, the possibility of serving sentences in a State of the region was highlighted, recalling that Mr. Ntaganda was instead serving his sentence in Belgium, which practically makes it very difficult to receive family visits. In this respect, the trust fund for family visits had a crucial role. The ICCBA concluded noting that the Court must be prepared to deal with these challenges and invited States to commit themselves and find compromises to resolve these challenges.

27. The co-facilitator, Ambassador Alabrune noted that the 25th anniversary of the adoption of the Rome Statute was going to be held at the UN headquarters in New York on 17 July 2023, and would be an excellent opportunity to announce the signing or ratification of voluntary cooperation agreements. He recalled that France would announce the deposit of the instrument of ratification of the agreement on the enforcement of sentences that was signed in 2021 with the Court. A representative of Belgium announced that the country had negotiated and finalized a voluntary framework agreement with the ICC Presidency in case of release of persons and that it would sign the agreement during the 25th anniversary in New York.

28. Concerning the conclusion on the implementation updates by the Court of the remaining IER recommendations R150 and R151, the Court's New York Liaison Office (NYLO) noted that the Court established a working group in mid-2022, which developed a questionnaire for internal stakeholders (including relevant sections in the three organs of the Court, and to the Trust Fund for victims) and another one for external stakeholders (States Parties, UN and civil society). The working group analysed and compiled all the responses received into a draft report that was then submitted to the Court Principals for consideration. Once approved, it will be submitted to the facilitation for consideration by States Parties.

29. Based on the views received from external stakeholders, the Registry started implementation of some measures to improve coordination and communications with NYLO, through regular meetings with different sections of the Court. To address the staffing needs of NYLO, the Registry is looking at various possibilities for supporting NYLO in its substantive work. Some interim measures such as assigning interns/visiting professionals to remotely assist NYLO in covering relevant UN meetings that are streamed online, and analysing relevant UN reports, are being discussed. More concrete measures will be proposed in the report after consideration by the Principals of the Court. The facilitation noted that the implementation of these recommendations was progressing in the right direction and would look forward to receiving the finalized report.

### ***Third meeting***

30. At its third meeting on 17 October 2023, concerning financial investigations and the freezing and recovery of criminal assets, the OTP indicated that a Financial Investigations Unit was included in the OTP Budget Proposal for 2023. OTP noted that in terms of resources, in the 2023 and again in the 2024 budget proposals, the OTP had requested Financial Investigators positions to establish a dedicated, exclusive, and specialized capacity for financial investigations within the Unit to enhance the financial investigations capabilities of each team. OTP noted that while getting seconded experts was a positive development, their departure once their term is over left a gap within the team that is difficult to fill. OTP indicated that it was already developing financial lines of inquiry and financial profiling of future suspects with the objective of initiating litigation but also to be able to pass on to the Registry already a good idea where targeted bank accounts or assets are or could be located. But for this to function, both better coordination and additional resources for both the Registry and the OTP were needed.

31. The internal framework of the OTP's financial investigations has been drafted in a section of the internal OTP Operations Manual. OTP noted that the 2023 training plan for OTP staff included a training on financial investigations, covering both general awareness and specialized training for a selected few staff members. Other areas to be developed include a contact network in this field with identified operational focal points to obtain information on how to make a request about a bank account or specific assets before putting a formal request of assistance, as these can be quite technical and might even require the involvement of the judiciary, so that the Office has a better sense in advance on how each State is organized and can reply to a request made by the OTP. Other areas include general referrals to State Parties requesting support on asset tracing activities within their jurisdictions.

32. The Registry indicated that the general legal framework for asset recovery at the Court could be divided into two main stages: the financial investigations are led by the OTP and then the recovery of assets is subsequently carried out by the Registry under the request and supervision of the Chambers, as it is the Chambers which deliberate and render decisions relating to the identification, tracing, freezing and confiscation of assets, on the basis of requests from the OTP. The Registry has then to approach States to request their assistance, including with respect to provisional measures while awaiting a verdict and in case of conviction, confiscation measures. This is quite a demanding and complex process that can trigger numerous exchanges resulting in a continuous dialogue between the Registry and the requested States. In addition, the Registry also carries out financial investigation work to ensure that public funds are not misused and therefore requests the assistance of States to verify the indigence of the person being tried.

33. In 2022 the Registry carried out an exercise with the French authorities in this specific area of asset recovery which was very useful. One of the findings was that in spite of the existence of political will to cooperate with the Court, there were a number of obstacles at the legal level which prevented rapid implementation of the Court's requests for cooperation. For the Registry, it was interesting to understand the path followed by the request for cooperation, the actors concerned and the procedural hurdles to overcome. The Court would like to carry out similar exercises with other States, ideally before a request is sent. In this regard, the responses to the questionnaire that the facilitators circulate each year helps the Registry assess whether the respective legislations allow States to respond to the requests of cooperation by the Court in this complex area. Such measures like working closely with States which receive cooperation requests, completing the questionnaire for the platform, and developing a network of focal points, will make it possible to establish a sustainable system on this area of cooperation. The Registry would continue to work on these matters within the new Judicial Cooperation Support Section that it proposes to create.

34. Concerning the issue of arrests, the Registry noted that arrests are essential for the Court to start its proceedings. Currently, there are 16 arrest warrants pending. These arrest warrants are not subject to time limits, so they are valid until a Chamber decides to withdraw them. While the Court can have these warrants of arrest open for a long time, when looking into the experience of other jurisdictions and international tribunals, the Registry highlighted the challenges posed by bringing individuals to justice when they are too old and ill to stand trial. The Registry further highlighted the diverse ways States can support the Court in this area, by, for example, setting rewards systems that allow and encourage the transmission of important information of the suspects' whereabouts to the Court, providing information on the location of suspects, transmitting satellite images or phone tapping which would enable the Court to locate suspects. States can also assist the Court by securing aerial transport to transfer suspects to The Hague or providing additional financial resources for this purpose. The Registry would like to establish a Tracking Unit solely focused on arrests, as is the case in other tribunals.

35. In response to a question of efficiency and timing, in order to succeed in making arrests, the Registry indicated that time is a factor taken into account when devising strategies. For example, the timing of the publication of an arrest warrant is important. The OTP indicated that coordination with the Registry was very important in this regard, and that is why the Office, similarly to the Registry, also wanted to dedicate more means to this effort to facilitate the work of States when it comes to execute the arrest warrant. The ICC Presidency noted that capacity of the Court to do the work on tracking and preparing to securing arrests is critical for the Court to be able to approach States at the right time with concrete information and make concrete requests to secure cooperation on arrests. The same way there should be incentives to cooperate there should also be disincentives to not cooperate, which is why the non-cooperation facilitation is so important for the Assembly reacting to instances of non-cooperation but also preventing them in a proactive manner.

36. With regards to the platform on cooperation, the Secretariat of the Assembly of States Parties noted that this is a secure digital, interactive platform developed by the co-facilitators for cooperation in consultation with States Parties and the Court's focal points for cooperation. The idea to create this platform began to develop during facilitation conversations throughout 2019 which aimed to operationalize and put into motion the ideas behind the 2018 Paris Declaration on Asset Recovery. With the resolution on cooperation adopted by consensus at

the 4th plenary session, on 16 December 2020 (ICC-ASP/19/Res.2), the Assembly of States Parties welcomed the launch of the platform.

37. The Secretariat noted that the main objectives of the platform were to serve as a forum for better exchange of relevant information between States Parties in order to encourage intergovernmental cooperation with a view to strengthening the capacity of States to cooperate with the Court; identifying the main difficulties and challenges States face when executing cooperation requests of the Court effectively and efficiently; and, raising awareness among States Parties about the mandate and requirements of the Court and its needs regarding financial investigations and asset recovery, including the nature and scope of cooperation obligations. Each year, the Secretariat transmits on behalf of the facilitators a note verbale inviting States Parties to complete the questionnaire annexed to it, in order to collect specific information on the procedures followed by their respective administrations in response to requests cooperation of the Court in general and those relating to the identification, freezing and seizure of property and financial assets in particular. The responses submitted by States Parties to the questionnaire are shared with the Court and published on the platform. The Platform also includes interactive features that States Parties are invited to use to improve exchange of relevant information between States Parties and the Court. The Secretariat invited States Parties to make use of this platform.

#### ***Fourth meeting***

38. At its fourth meeting on 20 November 2023, the facilitation discussed a proposal by a State Party on resolution draft language to be included in the omnibus resolution, under the cooperation section, relating to immunities of elected officials and staff of the Court, including after the expiry of their terms of office or respectively after termination of their employment with the Court, and any further actions as necessary to ensure their security, safety and protection. The facilitation also discussed the overall draft report of the facilitation on cooperation and the preliminary preparations for the Plenary session during the Assembly in New York.

39. It was highlighted that the draft proposal had no intention to create any new obligations for the States Parties, but only to give full effect to existing obligations. These obligations are clearly outlined in the provisions of the Rome Statute and the Agreement on the Privileges and Immunities of the International Criminal Court and were referenced in the footnotes of the proposal. There was an overwhelming support for the proposal following additional suggestions made by a few delegations. It was agreed that a draft text would be incorporated into the respective annex of the report of the facilitation on cooperation which would subsequently be circulated for approval under a silence procedure.

40. During the meeting the facilitators indicated that given the facilitation's involvement in the topic of security, a text proposal would be made to be included in the cooperation resolution on the current security risks faced by the Court, including threats or measures against the Court and its officials, and reiterating the unwavering support of the States Parties for the Court.

41. Discussions on the draft resolution language continued during the twenty second Assembly, the outcome of which is reflected in Annex I and II of this report.

### **III. Recommendations**

42. The working group recommended that the Assembly continue to monitor cooperation with a view to facilitating States Parties in sharing their experiences and considering other initiatives to enhance cooperation with the Court. The working group also recommended to continue the implementation of the recommendations of the Report of the Independent Expert Review bearing in mind the past activities already undertaken, including the 66 recommendations adopted by the Assembly on cooperation in 2007, in order to take further action to improve cooperation with the Court and to continue to include cooperation as a standing agenda item for future sessions of the Assembly, pursuant to operative paragraph 30 of resolution ICC-ASP/17/Res.3. The working group further recommended that the draft resolution in annex I be adopted by the Assembly.



## Annex I

### Proposed Resolution on Cooperation

*The Assembly of States Parties,*

*Recalling* the provisions of the Rome Statute, the Declaration on Cooperation (RC/Dec.2) agreed by States Parties at the Review Conference in Kampala and previous resolutions and declarations of the Assembly of States Parties with regard to cooperation, including ICC-ASP/8/Res.2, ICC-ASP/9/Res.3, ICC-ASP/10/Res.2, ICC-ASP/11/Res.5, ICC-ASP/12/Res.3, ICC-ASP/13/Res.3, ICC-ASP/14/Res.3, ICC-ASP/15/Res.3, ICC-ASP/16/Res.2, ICC-ASP/17/Res.3, ICC-ASP-18/Res.3, ICC-ASP-19/Res.2, ICC-ASP-20/Res.2, **ICC-ASP-21/Res.3** and the sixty-six recommendations annexed to resolution ICC-ASP/6/Res.2,

*Determined* to put an end to impunity by holding to account the perpetrators of the most serious crimes of concern to the international community as a whole, and reaffirming that the effective and expeditious prosecution of such crimes must be strengthened, inter alia, by enhancing international cooperation,

*Stressing* the importance of effective and comprehensive cooperation and assistance by States Parties, other States, and international and regional organizations, to enable the Court to fulfil its mandate as set out in the Rome Statute and that States Parties have a general obligation to cooperate fully with the Court in its investigation and prosecution of crimes within its jurisdiction, including with regard to the execution of arrest warrants and surrender requests, as well as other forms of cooperation set out in article 93 of the Rome Statute,

*Welcoming* the report of the Court on cooperation,<sup>1</sup> submitted pursuant to paragraph 4038 of resolution ICC-ASP/210/Res.23,

*Noting* that contacts with persons in respect of whom an arrest warrant issued by the Court is outstanding should be avoided when such contacts undermine the objectives of the Rome Statute,

*Further noting* the arrest guidelines issued by the Office of the Prosecutor for the consideration of States, including inter alia, the elimination of non-essential contacts with individuals subject to an arrest warrant issued by the Court and that, when contacts are necessary, an attempt is first made to interact with individuals not subject to an arrest warrant,

***PP 7 bis Recognizing that such contacts may be deemed essential by the State Party.***

*Noting* the guidelines setting out the policy of the United Nations Secretariat on contacts between United Nations officials and persons who are the subject of arrest warrants or summonses issued by the Court, as annexed to a letter dated 3 April 2013 by the Secretary General of the United Nations to the President of the General Assembly and the President of the Security Council,

*Recognizing* that requests for cooperation and the implementation thereof should take into account the rights of the accused,

*Commending* international and regional organizations' support for strengthening cooperation in the area of voluntary agreements,

*Recalling* the pledges relating to cooperation made by States Parties at the Review Conference in Kampala and noting the importance of ensuring adequate follow-up with regard to the implementation of pledges,

***Taking note also of the "Independent Expert Review of the International Criminal Court and the Rome Statute System, Final Report",<sup>2</sup> dated 30 September 2020, prepared by the Independent Experts,***

<sup>1</sup> ICC-ASP/201/35.

<sup>2</sup> ICC-ASP/19/16.

*Taking note* of the resolution on Review of the International Criminal Court and the Rome Statute system<sup>3</sup> adopted by the ASP at its eighteen session requesting “the **relevant Assembly mandates designated as responsible for assessing and taking possible further action as appropriate on relevant recommendations to continue with the assessment and, where appropriate, implementation in 2024 and to submit to the Bureau the outcome of its consideration, Bureau to address the following issues as a matter of priority in 2020 through its working groups and facilitations, in a fully inclusive manner, in line with their mandates [...]: (a) Strengthening cooperation**”; the “**Matrix over possible areas of strengthening the Court and the Rome Statute System**”, dated 11 October 2019, prepared by the Presidency of the Assembly, which identifies as a priority issue to be addressed by the Bureau and its working groups, the strengthening of cooperation;

*Taking note* also of the “Independent Expert Review of the International Criminal Court and the Rome Statute System, Final Report”,<sup>4</sup> dated 30 September 2020, prepared by the Independent Experts;

**Deeply concerned by the current security risks faced by the Court, including coercive measures taken against Court officials, the recent major cyber security breach, and ongoing attempts to undermine the Court’s cybersecurity, and reiterating the unwavering support of the States Parties for the Court, including through continuing to provide full and timely cooperation to the Court;**

1. *Emphasizes* the importance of timely and effective cooperation and assistance from States Parties and other States under an obligation or encouraged to cooperate fully with the Court pursuant to Part 9 of the Rome Statute or a United Nations Security Council resolution, as the failure to provide such cooperation in the context of judicial proceedings affects the efficiency of the Court and stresses that the non-execution of cooperation requests has a negative impact on the ability of the Court to execute its mandate, in particular when it concerns the arrest and surrender of individuals subject to arrest warrants;

#### **Execution of arrest warrants**

2. *Expresses* serious concerns that arrest warrants or surrender requests against 1416 individuals remain outstanding despite the arrest and surrender to the Court of one suspects in January 2021 and urges States to cooperate fully in accordance with their obligation to arrest and surrender to the Court;

**OP2bis Recalls that international cooperation and judicial assistance is governed by Part 9 (Articles 86-102) of the Rome Statute;**

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

4. *Reaffirms* that concrete steps and measures to securing arrests need to be considered in a structured and systematic manner, based on the experience developed in national systems, the international ad hoc and mixed tribunals, as well as by the Court, regarding both tracking efforts and operational support;

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

6. *Urges* States Parties to avoid contact with persons subject to a warrant of arrest issued by the Court, unless such contact is deemed essential by the State Party, welcomes the efforts of States and international and regional organizations in this regard, and acknowledges that States Parties may, on a voluntary basis, advise the Court of their own contacts with persons subject to a warrant of arrest made as a result of such an assessment;

<sup>3</sup> ICC-ASP/21/Res.4.

<sup>4</sup> ICC-ASP/19/16.

### **Implementation legislation of the Rome Statute**

7. *Recalls* that the ratification of the Rome Statute must be matched by national implementation of the obligations emanating therefrom, in particular through implementing legislation and, in this regard, *urges* States Parties to the Rome Statute that have not yet done so to adopt such legislative and to set up effective procedures and structures so as to ensure that they can fully meet their obligations under the Rome Statute regarding cooperation and judicial assistance;

8. *Acknowledges* efforts by States, by civil society organizations and by the Court, including through the Legal Tools Project, to facilitate exchange of information and experiences, with a view to raising awareness and facilitating the drafting of national implementing legislation and underlines the need to further exchange experience and best practices between States Parties;

### **Informal consultations and establishment of focal points**

9. *Encourages* States to establish a national focal point and/or a national central authority or working group tasked with the coordination and mainstreaming of Court-related issues, including requests for assistance, within and across government institutions, as part of efforts aimed at making national procedures for cooperation more efficient, where appropriate;

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

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

### **Financial investigations and freezing of assets**

12. *Recognizes* that effective and expeditious cooperation with regard to the Court's requests for the identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crime is crucial to the provision of reparations to victims and for potentially addressing the costs of legal aid;

13. *Underlines* the importance of effective procedures and mechanisms that enable States Parties and other States to cooperate with the Court in relation to the identification, tracing and freezing or seizure of proceeds, property and assets as expeditiously as possible, and; *calls on* all States Parties to put in place and further improve effective procedures and mechanisms in this regard, with a view to facilitating cooperation between the Court, States Parties, other States and international organizations;

14. *Recalls* the importance of the non-legally binding Paris Declaration on asset recovery, annexed to resolution ICC-ASP/16/Res.2;

15. *Welcomes* the development of the digital platform to reinforce the exchange of relevant information between States Parties to encourage inter-State cooperation and to strengthen States' capacity to cooperate with the Court; to identify the practical challenges to the effective execution of the Court's requests for cooperation and to further raise awareness of the Court's mandate and requirements for financial investigations and asset recovery, and *decides* to continue the work with the Court and the Secretariat of the Assembly in order to enhance the platform further in 2022~~3~~;

16. ~~*Welcomes* the preparatory work launched by the Court in order to set up a~~ ***Underlines* the importance of the Court's** network of operational focal points in States

Parties to enhance cooperation with the Court regarding financial investigations, tracing and freezing of assets, *encourages* the Court to continue this work in order to ~~launch in 2022~~ pursue the activities of ~~this~~ network and encourages States Parties to support the functioning of that network;

#### **Cooperation with the Defence**

17. *Urges* States Parties to cooperate with requests of the Court made in the interest of Defence teams, in order to ensure the fairness of proceedings before the Court;

#### **Agreement on the Privileges and Immunities of the International Criminal Court**

18. *Calls upon* States Parties as well as non-States Parties that have not yet done so to become parties to the Agreement on Privileges and Immunities of the International Criminal Court as a matter of priority, and to incorporate it in their national legislation, as appropriate;

#### **Voluntary Cooperation**

19. *Acknowledges* the importance of protective measures for victims and witnesses for the execution of the Court's mandate, *welcomes* the new **Enforcement of sentences and interim final release Relocation** agreements concluded since the last resolution on cooperation,<sup>5</sup> and *stresses* the need for more ~~relocation~~ **enforcement of sentences and final and interim release** agreements or arrangements with the Court for the expeditious ~~relocation of witnesses~~ **enforcement of sentences for convicted accused and interim release of accused**;

20. *Calls upon* all States Parties and other States, to consider strengthening their cooperation with the Court by entering into agreements or arrangements with the Court, or any other means concerning, inter alia, protective measures for victims and witnesses, their families and others who are at risk on account of testimony given by witnesses;

21. *Acknowledges* that, when relocation of witnesses and their families proves necessary, due account should be given to finding solutions that, while fulfilling the strict safety requirements, also minimize the humanitarian costs of geographical distance and change of linguistic and cultural environment and *urges* all States Parties to consider making voluntary contributions to the Special Fund for Relocations;

22. *Emphasizes* that the need for cooperation with the Court on the enforcement of sentences and on interim and final release is likely to increase in the coming years as more cases proceed toward conclusion, *recalls* the principle enshrined in the Rome Statute that States Parties should share the responsibility for enforcing sentences of imprisonment and for the interim and final release, in accordance with principles of equitable distribution, and *calls upon* States Parties to actively consider the conclusion of agreements with the Court to this end;

23. *Commends and further encourages* the work of the Court on framework agreements or arrangements, or any other means in areas such as interim release, final release - also in cases of acquittal - and sentence enforcement which may be essential to ensuring the rights of suspects and accused persons, in accordance with Rome Statute, and guaranteeing the rights of convicted persons and *urges* all States Parties to consider strengthening cooperation in these areas;

24. *Requests* the Bureau, through its Working Groups, to continue the discussions on voluntary framework agreements or arrangements and to report thereon to the Assembly at its twenty-~~first~~**second** session;

#### **Cooperation with United Nations**

25. *Welcomes and further encourages* the increased cooperation between the Court and the United Nations, and other international and regional organizations, relevant

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<sup>5</sup> ICC-ASP/19/Res.2.

mechanisms for collecting and preserving evidence, and other inter-governmental institutions with a view to fostering the prosecution of crimes falling within the jurisdiction of the Court;

26. *Urges* States Parties to explore possibilities for facilitating further cooperation and communication between the Court and international and regional organizations, including by securing adequate and clear mandates when the United Nations Security Council refers situations to the Court, ensuring diplomatic and financial support, cooperation by all United Nations Member States and follow-up of such referrals, as well as taking into account the Court's mandate in the context of other areas of work of the Security Council, including the drafting of Security Council resolutions on sanctions and relevant thematic debates and resolutions;

#### **Diplomatic support**

27. *Emphasizes* the importance of States Parties enhancing and mainstreaming diplomatic, political and other forms of support for, as well as promoting greater awareness and understanding of the activities of the Court at the international level, and *encourages* States Parties to use their capacity as members of international and regional organizations to that end;

**27bis Encourages all States Parties to continue to strongly demonstrate their diplomatic and political support for the Court, undeterred by any threats or measures against the Court, and to provide full support to the Court so that it can continue to operate effectively in the current enhanced threat environment.**

#### **Promoting dialogue with all stakeholders**

28. *Welcomes* the work undertaken on the implementation of the 66 recommendations on cooperation adopted by States Parties in 2007,<sup>6</sup> *recalls* the flyer prepared by the Court that can be used by all stakeholders to promote the 66 recommendations and increase their understanding and implementation by relevant national actors and the Court;

~~29. Welcomes the joint panel discussion on strengthening cooperation with the Court organized by the co-facilitators on cooperation and the focal points on non-cooperation on 5 October 2020;~~

30. *Takes note* of the Bureau's Report on cooperation,<sup>7</sup> covering inter alia, the follow up to the Paris Declaration on financial investigations and asset recovery and the work on a secured digital platform on cooperation; considerations on the Court's relationship with the United Nations; and proposals concerning the follow-up action regarding cooperation issues identified in the framework of the review and strengthening process of the Court and the Rome Statute System, and priority areas for 2022<sup>3</sup>;

31. *Requests* the Bureau to maintain a facilitation of the Assembly of States Parties for cooperation to consult with States Parties, the Court, other interested States and relevant organizations and non-governmental organizations in order to further strengthen cooperation with the Court;

32. *Encourages* the Bureau, through its Working Groups to continue its review of the implementation of the 66 recommendations, in close cooperation with the Court, where appropriate;

33. *Requests* the Bureau, through the facilitation on cooperation, in accordance with the resolution on the Review of the International Criminal Court<sup>8</sup> and the Review Mechanism's Comprehensive Action Plan,<sup>9</sup> to continue to ~~assess~~ **review the implementation** of the recommendations related to cooperation ~~and their follow up, including their implementation~~ as appropriate, and to report thereon to the Assembly at its ~~twenty-second~~ **third** session;

<sup>6</sup> Resolution ICC-ASP/6/Res.2, annex II.

<sup>7</sup> ICC-ASP/22/27.

<sup>8</sup> ICC-ASP/1921/ Res.74.

<sup>9</sup> [https://asp.icc-cpi.int/iccdocs/asp\\_docs/ASP20/RM-Comprehensive\\_Action\\_Plan-ENG.pdf](https://asp.icc-cpi.int/iccdocs/asp_docs/ASP20/RM-Comprehensive_Action_Plan-ENG.pdf).

34. *Requests* the Bureau, through the facilitation on cooperation, to continue to address a number of issues that have been priorities in recent years, and as a matter of priority: to continue the work to further develop the content of the Secured Platform on Cooperation; to hold consultations on the advisability of developing regional thematic focal points on cooperation, of creating a permanent structure for a network of national practitioners and focal points on cooperation, and on the deepening of the relationship between the UN and its agencies and entities, including for capacity building purpose in order to foster cooperation with the Court;

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

36. *Recognizes* the importance of ensuring a safe environment for strengthening and fostering cooperation between civil society and the Court and of taking all necessary action to address threats and intimidation directed at civil society organizations;

37. ***Welcomes the plenary session on cooperation held during the twenty-second session of the Assembly of States Parties which offered an opportunity for a reflection between States Parties, the Court and members of civil society on 25 years of cooperation, as well as a more technical discussion regarding the issue of arrests;***

38. *Recognizing* the importance of the Court's contribution to the Assembly's efforts to enhance cooperation, welcomes the Court report on cooperation,<sup>10</sup> which contained disaggregated data over the responses provided by States Parties, including highlighting the main challenges, and *requests* the Court to submit an updated report on cooperation to the Assembly at its twenty-~~second~~**third** session.

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<sup>10</sup> ICC-ASP/22/24.

## Annex II

### Proposed text for omnibus resolution

#### A. Cooperation

15. *Refers* to its resolution ICC-ASP/242/Res.[...] on cooperation;

16. *Calls upon* States Parties to comply with their obligations under the Rome Statute, in particular the obligation to cooperate in accordance with Part 9, and *also calls upon* States Parties to ensure full and effective cooperation with the Court in accordance with the Rome Statute, in particular in the areas of implementing constitutional and legislative framework, enforcement of Court decisions and execution of arrest warrants;

17. *Reaffirms* the importance of supporting all those cooperating with the Court, including States and relevant international bodies and entities, in order to secure the ability of the Court to fulfil its critical mandate of holding accountable perpetrators of the most serious crimes of concern to the international community and delivering justice to victims;

18. *Further calls upon* States Parties to continue to express their political and diplomatic support to the Court, *recalls* the sixty-six recommendations annexed to resolution ICC-ASP/6/Res.2 and *encourages* States Parties and the Court to consider further measures to enhance their implementation and to strengthen their efforts to ensure full and effective cooperation with the Court;

**18bis. Urges States Parties, in the face of the recent coercive measures taken against the elected officials of the Court, to give full effect to the relevant provisions of the Rome Statute<sup>1</sup> and, as appropriate, the Agreement on the Privileges and Immunities of the International Criminal Court<sup>2</sup> concerning the privileges and immunities of elected officials, staff of the Court, counsel and persons assisting defence counsel, including their immunity which shall continue to be accorded after the expiry of their terms of office, termination of their employment with the Court or cessation of their functions, and to take any action if deemed necessary by the security or other assessment made by a State Party, in accordance with existing legal framework, to ensure their security, safety and protection against any undue hindrance created by such coercive measures;**

19. *Welcomes* the Court's report and comprehensive presentation on cooperation,<sup>3</sup> which contained disaggregated data over the responses provided by States Parties, including highlighting the main challenges;

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

**OP20 bis Recalls that international cooperation and judicial assistance is governed by part 9 (Articles 86-102) of the Rome Statute;**

21. *Underlines also* the necessity to continue the discussions between the co-facilitators on cooperation and the focal points no-cooperation and the Court, ~~following the joint panel discussion on strengthening cooperation with the Court held on 5 October 2020;~~

22. *Welcomes the plenary session on cooperation held during the twenty-second session of the Assembly of States Parties which offered an opportunity for a reflection between States Parties, the Court and members of civil society on 25 years of cooperation, as well as a more technical discussion regarding the issue of arrests;*

23. *Underlines* the importance of effective procedures and mechanisms that enable States Parties and other States to cooperate with the Court in relation to the identification, tracing and freezing or seizure of proceeds, property and assets as expeditiously as possible, and *calls on* all States Parties to

<sup>1</sup> Article 48, paragraph 2 and 3 of the Rome Statute of the International Criminal Court.

<sup>2</sup> Article 15, paragraph 1, Article 16, paragraph 1 (b) and Article 18, paragraph 1 (b) of the Agreement on the Privileges and Immunities of the International Criminal Court.

<sup>3</sup> ICC-ASP/242/24.

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

24. *Recalls* the importance of the non-legally binding Declaration of Paris on asset recovery annexed to resolution ICC-ASP/16/Res.2;

25. *Recalls* the existence of the secured digital platform for States Parties to exchange relevant information on cooperation and financial investigations and assets recovery; -

26. *Recalls* the recommendations on cooperation contained in the 30 September 2020 Independent Experts Report;<sup>4</sup>

## B. Mandates of the Assembly of States Parties for the intersessional period

With regard to **cooperation**,

a) *urges* the Bureau, through The Hague Working Group, to continue the discussions on the proposals resulting from the seminar of the co-facilitation held in The Hague on 7 November 2018 entitled “Arrests: a key challenge in the fight against impunity”;

b) *requests* the Bureau, through its Working Groups, to continue the discussions on voluntary framework agreements or arrangements, and to report thereon to the Assembly at its twenty-second~~second~~<sup>third</sup> session;

c) *invites* the Bureau, through its Working Groups, to discuss the feasibility of establishing a coordinating mechanism of national authorities;

d) *invites* the Bureau, through its Working Groups, to continue to strengthen the relationship between the UN and its agencies and entities, including for capacity building, the ICC and States Parties, to foster cooperation with the Court;

e) *invites* the Court to continue improving its practice in transmitting specific, complete and timely requests for cooperation and assistance, including by considering consultations with the State Party concerned when necessary;

f) *encourages* the Bureau, through its Working Groups, to continue its review of the implementation of the 66 recommendations on cooperation adopted by States Parties in 2007,<sup>5</sup> in close cooperation with the Court, where appropriate;

g) *requests* the Bureau to maintain a facilitation of the Assembly of States Parties for cooperation to consult with States Parties, the Court, other interested States, relevant organizations and non-governmental organizations in order to further strengthen cooperation with the Court;

h) *requests* the Bureau, through the facilitation on cooperation, in accordance with the resolution on the Review of the International Criminal Court<sup>6</sup> and the Review Mechanism’s Comprehensive Action Plan<sup>7</sup>, to continue to ~~assess~~ **review the implementation of** the recommendations related to cooperation ~~and their follow-up including their implementation~~ as appropriate, and to report thereon to the Assembly at its twenty-second~~second~~<sup>third</sup> session;

i) *requests* the Court to continue to submit an updated report on cooperation to the Assembly at its annual session, containing disaggregated data over the responses provided by States Parties, including highlighting the main challenges;

j) *mandates* the Bureau, through its Working Groups, to continue discussions on cooperation on financial investigations and the freezing and seizing of assets as set out in the Declaration of Paris, including by continuing the work to further develop the secured digital platform;

k) ***requests the Registrar to engage with States Parties with regard to issues outlined in the OP18bis and to report to the Bureau, through the cooperation facilitation, in the first half of 2024 on the outcome of these discussions.***

<sup>4</sup> ICC-ASP/19/16.

<sup>5</sup> ICC-ASP/6/Res.2, annex II.

<sup>6</sup> ICC-ASP/19/Res.7.

<sup>7</sup> [https://asp.icc-cpi.int/iccdocs/asp\\_docs/ASP20/RM-Comprehensive\\_Action\\_Plan-ENG.pdf](https://asp.icc-cpi.int/iccdocs/asp_docs/ASP20/RM-Comprehensive_Action_Plan-ENG.pdf).



