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Report of the Bureau on non-cooperation

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I. Introduction

1. Article 112, paragraph (2) (f), of the Rome Statute provides that “the Assembly shall consider pursuant to article 87, paragraphs 5 and 7, any question relating to non-cooperation.”
2. At its tenth session, the Assembly of States Parties (“the Assembly”) adopted the Assembly procedures relating to non-cooperation (“the Procedures”).¹ At its subsequent sessions the Assembly approved mandates with regard to non-cooperation and requested the Bureau to submit reports on the implementation of the Procedures. At its seventeenth session, the Assembly adopted the revised Procedures and approved mandates accordingly with its request for the Bureau to submit reports on the implementation of the revised Procedures.² The present report is submitted pursuant to the mandate approved at the twenty-second session of the Assembly.³
3. In operative paragraph 32 of resolution ICC-ASP/22/Res.3, the Assembly also “[r]ecall[ed] the Procedures relating to non-cooperation adopted by the Assembly in ICC-ASP/10/Res.5 and revised by the Assembly in resolution ICC-ASP/17/Res.5, recognize[d] with concern the negative impact that the non-execution of Court requests continue[d] to have on the ability of the Court to execute its mandate, and [took] note of the past decisions of the Court on non-cooperation”.⁴
4. In operative paragraph 33 of resolution ICC-ASP/22/Res.3, the Assembly also “[r]ecall[ed] the Toolkit for the implementation of the informal dimension of the Assembly procedures relating to non-cooperation, which [had been] revised as annex III to ICC-ASP/17/31 and encourage[d] States Parties to make use of it as they [saw] fit in order to improve the implementation of the Assembly procedures relating to non-cooperation”.⁵
5. In operative paragraph 34 of resolution ICC-ASP/22/Res.3, the Assembly also “[took] note of the report of the Bureau on non-cooperation, welcome[d] the efforts of the President of the Assembly in implementing the Assembly procedures relating to non-cooperation, recall[ed] that the President serves ex officio as focal point for his or her region, and call[ed] upon all stakeholders, at all levels, to continue assisting the President of the Assembly, including when accomplishing his or her task with the support of the regional focal points for non-cooperation”.⁶
6. In operative paragraph 35 of resolution ICC-ASP/22/Res.3, the Assembly also “[r]ecall[ed] the role of the Assembly of States Parties and the Security Council with respect to non-cooperation as provided for by articles 87, paragraph 5, and 87, paragraph 7, of the Rome Statute, and welcome[d] the efforts of States Parties to strengthen the relationship between the Court and the Council”.⁷
7. In operative paragraph 37 of resolution ICC-ASP/22/Res.3, the Assembly also “[c]all[ed] upon States Parties to continue their efforts to ensure that the Security Council addresses the communications received from the Court on non-cooperation pursuant to the Rome Statute, encourage[d] the President of the Assembly and the Bureau to continue consulting with the Security Council and also encourage[d] both the Assembly and the Security Council to strengthen their mutual engagement on this matter”.⁸
8. In operative paragraph 38 of resolution ICC-ASP/22/Res.3, the Assembly “encourage[d] the authorities in Sudan to effectively cooperate with the Court in accordance with Security Council resolution 1593, while expressing concern about the military takeover in Sudan on 25 October 2021”.⁹
9. In operative paragraph 39 of resolution ICC-ASP/22/Res.3, the Assembly further “not[ed] the past orders of the Pre-Trial Chamber to the Registrar concerning action to be taken in case of information relating to the travel of suspects, urge[d] States to share with the

¹ ICC-ASP/10/Res.5, para. 9 and annex, amended via ICC-ASP/11/Res.8, para. 10 and annex I.

² ICC-ASP/17/Res.5, para. 31 and annex II.

³ ICC-ASP/22/Res.3, annex I, paras.3(l)-(n).

⁴ ICC-ASP/22/Res.3, para. 32.

⁵ ICC-ASP/22/Res.3, para. 33.

⁶ ICC-ASP/22/Res.3, para. 34.

⁷ ICC-ASP/22/Res.3, para. 35.

⁸ ICC-ASP/22/Res.3, para. 37.

⁹ ICC-ASP/22/Res.3, para. 38.

focal points on non-cooperation any information concerning potential or confirmed travel of persons against whom an arrest warrant [had been] issued”.¹⁰

10. At its twenty-second session, the Assembly “request[ed] the President of the Assembly to continue to engage actively and constructively with all relevant stakeholders, in accordance with the Assembly procedures relating to non-cooperation, both to prevent instances of non-cooperation and to follow up on any matter of non-cooperation referred by the Court to the Assembly”.¹¹ The Assembly also “request[ed] that any information concerning potential or confirmed travel of persons against whom an arrest warrant [had] been issued be promptly shared with the Court by the focal points on non-cooperation”.¹² The Assembly further “request[ed] the Bureau to continue to actively engage throughout the intersessional period with all relevant stakeholders to continue to ensure effective implementation of the Assembly procedures relating to non-cooperation and to submit a report on its activities to the Assembly at its twenty-second session”.¹³

11. Paragraph 17 of the Procedures on non-cooperation calls for the appointment of four or, if so, requested by the President of the Assembly, five focal points from among all States Parties, on the basis of equitable geographical representation; the President serves ex officio as focal point for her own region.¹⁴

12. The Bureau appointed Mexico, Sierra Leone and Vanuatu at its third meeting on 6 March 2024 as ad country focal points on non-cooperation (“focal points”) for their respective regional groups.¹⁵ The Bureau further appointed Poland as ad country focal point for non-cooperation for the Eastern European group on 1 May 2024.¹⁶ The President of the Assembly, Päivi Kaukoranta of Finland serves ex officio as focal point for her region. The focal points are appointed on an ad country mandate, which implies that the respective countries are engaged at high diplomatic and political levels in New York, The Hague, capitals and in other embassies, where appropriate.

13. The present report covers activities during the inter-sessional period between the twenty-third session of the Assembly.

14. The focal points on non-cooperation recall 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 and reiterate the obligation of States Parties to cooperate with the Court. The focal points also recall that the Rome Statute, in article 112(2)(f), provides that the Assembly shall consider any question relating to non-cooperation, and pursuant to article 112(2)(g), entrusts the Assembly to “[p]erform any other function consistent with this Statute or the Rules of Procedure and Evidence”.

15. The focal points on non-cooperation also recall the 2013 UN guidance on contacts with persons who are subject to arrest warrants or summons to appear issued by the International Criminal Court,¹⁷ as well as the Assembly resolution ICC-ASP/22/Res.5, which “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 Parties, 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”.¹⁸

16. The focal points on non-cooperation also recall that recommendations 284, 286 and 289 of the Independent Expert Review (IER) were allocated to the non-cooperation focal points, in conjunction with the cooperation facilitation (recommendations 284 and 289), the Office of the Prosecutor (recommendations 286 and 289) and the Registry (recommendation

¹⁰ ICC-ASP/22/Res.3, para. 39.

¹¹ ICC-ASP/22/Res.3, annex I, para. 3(l).

¹² ICC-ASP/22/Res.3, annex I, para. 3(m).

¹³ ICC-ASP/22/Res.3, annex I, para. 3(n).

¹⁴ ICC-ASP/17/Res.5, annex II, para. 17.

¹⁵ Decision of the Bureau of the Assembly of States Parties, 6 March 2024, available at https://asp.icc-cpi.int/sites/default/files/asp_docs/2024-Bureau3-Agenda-Decisions.pdf.

¹⁶ Decision of the Bureau of the Assembly of States Parties, 8 May 2024, available at https://asp.icc-cpi.int/sites/default/files/asp_docs/2024-Bureau5-Agenda-Decisions.pdf.

¹⁷ A/67/828-S/2013/210.

¹⁸ ICC-ASP/22/Res.5, para. 7.

289). Following the positive assessment and implementation of the recommendations, the focal points for non-cooperation look forward to continuing on-going efforts to implement recommendations R284, R286 and R289 in cooperation with other relevant stakeholders.

II. Court proceedings and findings: States Parties

17. Pursuant to article 86 of the Rome Statute, States Parties shall, in accordance with the provisions of the Statute, cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court. Pursuant to article 89, States Parties are obliged to execute the Court's pending orders for the arrest and surrender of a person.

18. In relation to the situation in Ukraine, during the period covered by this report President Vladimir Vladimirovich Putin of Russia visited Mongolia, a State Party to the Statute, on 2 and 3 September 2024.

19. The Pre-Trial Chamber II was seized, under article 87(7) of the Rome Statute, with the question of whether Mongolia had failed to comply with the Court's request for arrest and surrender of Vladimir Vladimirovich Putin, contrary to the Provisions of the Statute.

20. On 24 October 2024, the Pre-Trial Chamber II issued a "Finding under article 87(7) of the Rome Statute on the non-compliance by Mongolia with the request by the Court to cooperate in the arrest and surrender of Vladimir Vladimirovich Putin and referral to the Assembly of States Parties".¹⁹

21. In accordance with the Pre-Trial Chamber II's Finding under article 87(7) of the Rome Statute on the non-compliance by Mongolia, and pursuant to article 87(7) of the Rome Statute and regulation 109(4) of the Regulations of the Court, the Presidency of the Court transmitted the decision and referred the matter to the Assembly of States Parties on 25 October 2024.

22. On 29 October 2024, Mongolia submitted an application for disqualification of certain judges²⁰, and requests for temporary stay of the proceedings²¹ and for leave to appeal the article 87(7) Finding.²² In its 29 November 2024 decision, the Pre-Trial Chamber II dismissed Mongolia's request for stay of the proceedings, rejected Mongolia's request for hearing and amici curiae submissions, and rejected Mongolia's request for leave to appeal and the other requests contained therein.²³

23. On 2 December 2024, Mongolia submitted a request for reconsideration of the "Decision on Mongolia's requests for leave to appeal, temporary stay of the proceedings, and related matters"²⁴ and a request for partial reconsideration of the decision on the application for the disqualification of Judges.²⁵

III. Court proceedings and findings: States under an obligation to cooperate with the Court pursuant to a decision of the United Nations Security Council

24. Pursuant to Security Council resolution 1593 (2005), "the Government of Sudan and all other parties to the conflict in Darfur, shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor."²⁶

25. Pursuant to Security Council resolution 1970 (2011), the Libyan authorities shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor.

¹⁹ ICC-01/22-90.

²⁰ ICC-01/22-92-Anx., pp. 4-8.

²¹ ICC-01/22-91-Anx., pp. 9-10.

²² ICC-01/22-91-Anx., pp. 4-8.

²³ ICC-01/22-111.

²⁴ ICC-01/22-112.

²⁵ ICC-01/22-113.

²⁶ S/RES/1593 (2005), para. 2.

26. No Court proceedings concerning non-cooperation took place in relation to States under an obligation to cooperate with the Court pursuant to a decision of the United Nations Security Council.

IV. Court proceedings and findings: States not Parties

27. While States not party to the Rome Statute have no obligation under it, pursuant to Security Council resolutions 1593 (2005) and 1970 (2011), all States and concerned regional and other international organizations are urged to fully cooperate with the Court and the Prosecutor.

28. No Court proceedings concerning non-cooperation took place regarding States not Parties to the Statute.

V. Actions undertaken by the President of the Assembly and the Bureau, States Parties and other stakeholders

29. Throughout the year, the President of the Assembly recalled the importance for States to spare no effort in executing the arrest warrants issued by the Court, and the importance of avoiding non-essential contacts.

30. On 23 October 2024, the President of the Assembly of States Parties and another representative of the focal points participated as panelists in a side event entitled “Cooperation with the International Criminal Court: Tools and strategies to prevent and address non-cooperation” organized by the Permanent Missions of Finland, Poland, Sierra Leone and Vanuatu in New York. In that connection, the Assembly’s non-cooperation procedures (ICC-ASP/10/Res.5, para. 9 and annex, amended via ICC-ASP/11/Res.8, para. 10 and annex I) and the Toolkit for the implementation of the informal dimension of the Assembly procedures relating to non-cooperation ICC-ASP/15/31/Add.1 as revised by ICC-ASP/17/31, annex III, were once again brought to the attention of States Parties, Observer and Invited States and non-governmental organizations.

31. The focal points were grateful to receive information about the possible travel of persons subject to warrants of arrest issued by the Court known to have engaged in international travel during the reporting period, from the Court, from various States Parties and from representatives of civil society.

32. Where such information originated from States Parties or civil society, the focal points shared such information with the Court.

33. Working through their respective regional groups, the focal points also underlined the need to keep States Parties informed regarding any proposed travel.

34. The focal points were grateful that States Parties kept them informed of their diplomatic action with respect to such travel. The focal points commend those States Parties that took steps to encourage other States to meet their cooperation obligations in full.

35. The President of the Assembly of States Parties conveyed a letter, dated 2 September 2024, to the Minister of Foreign Affairs of Mongolia, in accordance with the Assembly procedures relating to non-cooperation.

36. Pursuant to paragraph 14(c) of the Assembly procedures relating to non-cooperation, a representative of Mongolia was invited to the Bureau meeting of 6 November 2024.

37. The Bureau took note of the 24 October 2024 finding of Pre-Trial Chamber II in the situation in Ukraine (ICC-01/22-90).

38. The Bureau also took note of the statement delivered by the requested State Party and of its request for leave to Appeal to Pre-Trial Chamber II, alongside its application for the disqualification of certain judges to the Presidency of the Court and its urgent request with the Appeals Chamber.

39. The Bureau decided to defer the matter until all proceedings before the Court had concluded.

40. Informal consultations on the draft resolution language continued during the twenty-third session of the Assembly, the outcome of which is reflected in Annex I of this report.

VI. The United Nations Security Council

41. During the reporting period, the Prosecutor presented his thirty-eight and thirty-ninth reports to the Security Council pursuant to resolution 1593 (2005), on 29 January and 5 August 2024, respectively. The Prosecutor renewed his appeal to the Council to provide the necessary support to enable the Court to carry out its mandate under the Rome Statute following the referral in resolution 1593.²⁷

40. The Prosecutor presented the twenty-seventh and twenty-eight reports to the Security Council pursuant to resolution 1970 (2011), with reference to several aspects relevant to cooperation and non-cooperation, on 14 May and 19 November 2024, respectively, calling for greater support from, inter alia, the Council, including for the arrest and surrender of suspects against whom arrest warrants have been issued by the Court in the situation.²⁸

VII. Consultations on non-cooperation

41. Pursuant to the mandate of the Bureau, the focal points on non-cooperation engaged in consultations with relevant stakeholders in order to ensure effective implementation of the Procedures and to submit a report on its activities to the Assembly at its twenty-third session.

42. The focal points held a strategic planning meeting on 20 March 2024, to discuss and update the programme of work for 2024, as well as two subsequent meetings on 18 September 2024 and 14 November 2024 to discuss issues pertaining to their mandate. The focal points participated in the meetings of mandate-holders with the President of the Assembly on 9 April 2024 and 22 October 2024, to discuss the work of the facilitation during the intersessional period. The focal points also participated virtually and provided a briefing in the meeting of the Cooperation facilitation on 15 May 2024.

VIII. Recommendations

43. The focal points recommend that the Assembly take note of the present report and adopt the proposed language concerning mandates on non-cooperation that is contained in annex I to this report.

44. The focal points consider that they and the President of the Assembly should continue to engage in any necessary measures that ensure knowledge, understanding and implementation of measures by States Parties and the Assembly, to prevent instances of non-cooperation.

45. With respect to the application of the Procedures on non-cooperation, the Assembly should request the Bureau, including the President and the focal points, to implement the Procedures more consistently.

46. The focal points suggest that future sessions of the Assembly include an agenda item to consider non-cooperation issues arising throughout the inter-sessional periods.

47. Additionally, during the inter-sessional period, the focal points will continue consultations on means to strengthen the application of the Procedures and the Toolkit, including through possible updates to their content.

48. The focal points should continue to monitor judicial developments as well as travels of persons against whom warrants of arrest have been issued with the assistance of States Parties, and promptly inform the Court of any relevant information.

²⁷ Id.

²⁸ See Twenty-fifth and twenty-sixth Reports of the Prosecutor of the International Criminal Court to the United Nations Security Council pursuant to UNSCR 1970 (2011), available at <https://www.icc-cpi.int/about/otp/Pages/otp-reports.aspx>; see also the relevant meeting records of the United Nations Security Council for the briefing of the Prosecutor of the International Criminal Court.

49. The focal points consider that the Court should continue to provide up-to-date information to the Assembly on judicial developments related to non-cooperation via the President and the focal points.

50. The focal points further recommend that States Parties continue efforts to prevent or to address instances of non-cooperation and inform them of any measures undertaken.

Annex I

Language for the omnibus resolution

1. The following paragraphs of the 2023 omnibus resolution (ICC-ASP/22/Res.3), located in in the section on cooperation, are to be amended as follows:

32. *Recalls* the Procedures relating to non-cooperation adopted by the Assembly in ICC-ASP/10/Res.5 and revised by the Assembly in resolution ICC-ASP/17/Res.5, *recognizes* with concern the negative impact that the non-execution of Court requests *continues* to have on the ability of the Court to execute its mandate, and *takes note* of the past decisions of the Court on non-cooperation;

33. *Also recalls* the Toolkit for the implementation of the informal dimension of the Assembly procedures relating to non-cooperation,¹ which was revised as annex III to ICC-ASP/17/31 and *encourages* States Parties to make use of it as they see fit in order to improve the implementation of the Assembly procedures relating to non-cooperation;

34. *Takes note* of the report of the Bureau on non-cooperation,² *welcomes* the efforts of the President of the Assembly in implementing the Assembly procedures relating to non-cooperation and *recalls* that the President serves ex officio as focal point for his or her region,³ *calls upon* all stakeholders, at all levels, to continue assisting the President of the Assembly, including when accomplishing his or her task with the support of the regional focal points for non-cooperation;

35. *Takes note* of the 24 October 2024 finding on the non-compliance by Mongolia and the 29 November 2024 decision of the Pre-Trial Chamber II in the situation in Ukraine;⁴

36. *Urges* States Parties to engage in effective consultations with the Court in accordance with Article 97 of the Rome Statute;

37. *Decides* to include on the agenda of future sessions of the Assembly the consideration of non-cooperation issues arising during the inter-sessional period;

38. *Recalls* the role of the Assembly of States Parties and the Security Council with respect to non-cooperation as provided for by articles 87, paragraph 5, and 87, paragraph 7, of the Rome Statute, and *welcomes* the efforts of States Parties to strengthen the relationship between the Court and the Council;

39. *Calls upon* States Parties to continue their efforts to ensure that the Security Council addresses the communications received from the Court on non-cooperation pursuant to the Rome Statute, *encourages* the President of the Assembly and the Bureau to continue consulting with the Security Council and also encourages both the Assembly and the Security Council to strengthen their mutual engagement on this matter;

40. *Encourages* the authorities in Sudan to effectively cooperate with the Court in accordance with Security Council resolution 1593 (2005), while expressing continued concern about the military conflict that erupted in the Sudan on 15 April 2023;

41. *Noting* the past orders of the Pre-Trial Chamber to the Registrar concerning action to be taken in case of information relating to travel of suspects, *urges* States to share with the focal points on non-cooperation any information concerning potential or confirmed travel of persons against whom an arrest warrant has been issued;

¹ ICC-ASP/15/31, Add.1, annex II.

² ICC-ASP/23/31.

³ ICC-ASP/11/29, para. 12.

⁴ ICC-01/22-90, of 24 October 2024 and ICC-01/22-111 of 29 November 2024.

Language for omnibus resolution mandates annex

2. The following subparagraphs of paragraph 3 of annex I (Mandates) of the 2023 omnibus resolution (ICC-ASP/22/Res.3) is replaced by the following:

(l) *requests* the President of the Assembly to continue to engage actively and constructively with all relevant stakeholders in accordance with the Assembly procedures relating to non-cooperation, both to prevent instances of non-cooperation and to follow up on any matter of non-cooperation referred by the Court to the Assembly;

(m) *requests* that any information concerning potential or confirmed travel of persons against whom an arrest warrant has been issued be promptly shared with the Court by the focal points on non-cooperation; and

(n) *requests* the Bureau to continue to actively engage throughout the intersessional period with all relevant stakeholders to continue to ensure effective implementation of the Assembly procedures relating to non-cooperation and to submit a report on its activities to the Assembly at its twenty-~~third~~**fourth** session.

Annex II

Assembly procedures relating to non-cooperation

The Assembly procedures relating to non-cooperation to address and respond to the failure by any State Party, or another State required to comply with a specific Court request for cooperation, can be found in annex II of resolution ICC-ASP/17/Res.5 at:

https://asp.icc-cpi.int/sites/asp/files/asp_docs/ASP17/RES-5-ENG.pdf.

Annex III

Toolkit for the implementation of the informal dimension of the Assembly procedures relating to non-cooperation

The toolkit for the implementation of the informal dimension of the Assembly procedures relating to non-cooperation has been developed by the non-cooperation focal points as a resource for States Parties to improve the implementation of the informal measures of the procedures on non-cooperation. Its text can be found in annex III of the report of the Bureau on non-cooperation (ICC-ASP/17/31) at:

https://asp.icc-cpi.int/sites/asp/files/asp_docs/ASP17/ICC-ASP-17-31-ENG.pdf#page=14.