

## Twenty-fourth session of the Assembly of States Parties

### Non-cooperation plenary session

3 December 2025, 15:00 to 17:00 hours

### Concept note

#### Overview

**The Assembly of States Parties, at its twenty-third session, decided to include the consideration of non-cooperation issues arising during the intersessional period on the agenda of future sessions of the Assembly.**

**The first Plenary session on non-cooperation will focus on the prevention of non-compliance with States Parties' obligation to cooperate, with specific reference to consultations under article 97 of the Statute and the Assembly procedures on non-cooperation.**

**The format of the Plenary session will be a panel discussion followed by interventions from the floor (maximum of three minutes).**

#### Background

1. The Assembly of States Parties, at its twenty-third session, decided to include on the agenda of future sessions of the Assembly the consideration of non-cooperation issues arising during the intersessional period.<sup>1</sup> The Assembly also urged States Parties to engage in effective consultations with the Court in accordance with article 97 of the Rome Statute;<sup>2</sup>

2. Article 86 of the Rome Statute provides that 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*”. Article 87 of the Statute provides that “[t]he Court shall have the authority to make requests to States Parties for cooperation”, including requests for the arrest and surrender of a person pursuant to article 89 of the Statute.

3. Article 97 of the Statute provides that States Parties shall consult with the Court without delay to resolve problems identified in relation to a cooperation request which may impede or prevent the execution of the request.<sup>3</sup>

4. Article 112 paragraph (2)(f) of the Statute provides that “*the Assembly shall consider pursuant to article 87, paragraphs 5 and 7, any question relating to non-cooperation*”. The Assembly has adopted the Assembly procedures relating to non-cooperation<sup>4</sup> and the Toolkit for the implementation of the informal dimension of the Assembly procedures<sup>5</sup>.

5. The informal response procedure and the Toolkit for its implementation provide guidance on the use of the good offices of the President and the *ad country* focal points on non-cooperation to respond to an impending or ongoing situation of non-cooperation, including in respect of a request for arrest and surrender, in which urgent action may help bring about cooperation in that specific case. The Toolkit has been developed as a resource for States Parties to improve the implementation of the informal

<sup>1</sup> ICC-ASP-23-Res.1, paragraph 36.

<sup>2</sup> ICC-ASP-23-Res.1, paragraph 35.

<sup>3</sup> Article 97 Consultations

Where a State Party receives a request under this Part in relation to which it identifies problems which may impede or prevent the execution of the request, that State shall consult with the Court without delay in order to resolve the matter. Such problems may include, inter alia:

- (a) Insufficient information to execute the request;
- (b) In the case of a request for surrender, the fact that despite best efforts, the person sought cannot be located or that the investigation conducted has determined that the person in the requested State is clearly not the person named in the warrant; or
- (c) The fact that execution of the request in its current form would require the requested State to breach a pre-existing treaty obligation undertaken with respect to another State.

<sup>4</sup> ICC-ASP/17/Res.5, para. 31 and annex II.

<sup>5</sup> ICC-ASP/15/31, Add.1, annex II.

measures of the procedures on non-cooperation. States Parties may draw on the resources included in the Toolkit in encouraging States to meet their obligations to cooperate with the Court in relation to the arrest and surrender of persons subject to a warrant of arrest.

## Objective

6. The first Plenary session on non-cooperation will focus on the prevention of non-compliance with States Parties' obligation to cooperate, with specific reference to article 97 of the Statute and the Assembly procedures on non-cooperation.

7. Article 97 contains an obligation for States Parties to consult with the Court to resolve difficulties in executing cooperation requests. The consultation is to take place without delay and applies to any problems "*which may impede or prevent execution of the request*". Article 97 subparagraphs contain a non-exhaustive list of the types of difficulties that may arise requiring consultation with the Court.

8. The article intends to allow the Court and States to work together to resolve such problems and to minimize any circumstance where a request would be denied and to encourage successful cooperation with the Court. Ultimately the goal of article 97 consultations is to prevent non-compliance by addressing issues that could obstruct cooperation, thereby ensuring that the Court's requests are carried out effectively.

9. The legal obligation to consult under article 97 has been confirmed in the jurisprudence of the Court.<sup>6</sup> Furthermore, the Court has clarified that consultations under article 97 do not trigger any suspension or stay of that obligation.<sup>7</sup>

10. At the fourteenth session of the Assembly, States Parties agreed to consider proposals to develop procedures for the implementation of article 97.<sup>8</sup> The Bureau subsequently established a Working Group to examine the application of article 97 in close consultation with the Court.

11. At its sixteenth session, the Assembly adopted resolution ICC-ASP/16/Res.3 on consultations pursuant to article 97(c) of the Rome Statute of the International Criminal Court, with an annex entitled "*Understanding with respect to article 97(c)*" ("*Understanding*").<sup>9</sup> The *Understanding* serves to clarify the process for consultations between a State Party and the Court in cases as provided for in article 97(c). The *Understanding* also clarifies that requests for consultations, the consultations, nor any outcome of consultations has suspensive effect, unless a competent Chamber so orders.

12. The importance of consultations with the Court has been highlighted in the Court's most recent findings of non-compliance. In light of these findings<sup>10</sup>, it is timely and relevant for the Assembly to discuss consultations under article 97 as a concrete tool to prevent instances of non-cooperation.

13. At the same time, the existing Assembly procedures on non-cooperation and the accompanying Toolkit should continue to be actively used by all relevant stakeholders to engage with States Parties in impeding situations of non-cooperation.

## Format

14. The Plenary session on non-cooperation will be chaired by the President of the Assembly. It will comprise a panel discussion, followed by interventions from the floor. States Parties and other participants will have the opportunity to request the floor, for an intervention of a maximum of three minutes. Requests for inscription on the speakers' list should be sent to the Secretariat at the following dedicated email address: [ASP.noncooperation@gmail.com](mailto:ASP.noncooperation@gmail.com)

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<sup>6</sup> *Bashir* (ICC-02.05-01/09), Decision on the Non-compliance of the Republic of Chad with the Cooperation Requests Issued by the Court Regarding the Arrest and Surrender of Omar Hassan Ahmad Al-Bashir, 26 March 2015.

<sup>7</sup> *Bashir* (ICC-02/05-01/09), Decision following the Prosecutor's request for an order further clarifying that the Republic of South Africa is under the obligation to immediately arrest and surrender Omar Al Bashir, 13 June 2015.

<sup>8</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Fourteenth session, The Hague, 18-26 November 2015* (ICC-ASP/14/20), vol I, part I.B. para. 59.

<sup>9</sup> ICC-ASP/16/Res.3, annex: [https://asp.icc-cpi.int/sites/asp/files/asp\\_docs/Resolutions/ASP16/ICC-ASP-16-Res3-ENG.pdf](https://asp.icc-cpi.int/sites/asp/files/asp_docs/Resolutions/ASP16/ICC-ASP-16-Res3-ENG.pdf)

<sup>10</sup> See ICC-ASP/24/33 Report of the Bureau on non-cooperation.

15. Interventions should focus on the prevention of non-cooperation and on resolving challenges related to the execution of cooperation requests, in particular in light of article 97 of the Statute and the Assembly procedures on non-cooperation. Participants are encouraged to refer to concrete steps that could be taken to prevent and respond to non-cooperation.
16. Participants are reminded that, in accordance with paragraph 12 of the Assembly procedures on non-cooperation, the procedures are to be carried out in full respect for the authority and independence of the Court and its proceedings, as enshrined in the Rome Statute and the Rules of Procedure and Evidence. The procedures are aimed at enhancing the implementation of the Court's decisions. All actors involved must ensure that their participation in procedures does not lead to discussions on the merits of the Court request or otherwise undermine the findings of the Court.
17. Issues to be explored by the panel include:
  - (a) How to encourage States Parties to engage in article 97 consultations when facing problems which may impede or prevent cooperation?
  - (b) How has the Court addressed article 97 in its jurisprudence?
  - (c) What lessons have been drawn from past consultations under article 97?
  - (d) How is a consultative process instituted in practice, what can States Parties expect and what guidelines has the jurisprudence of the Court set in relation to that process?
  - (e) Should the Assembly revisit the idea of formalizing procedures for consultations under article 97 beyond the current *Understanding* adopted in 2017?
  - (f) Should the Assembly *ad country* focal points on non-cooperation play a role in monitoring and supporting article 97 consultations?
  - (g) What are the tools available for the Assembly and the States Parties to prevent and address non-cooperation? How can the different stakeholders use the Assembly procedures relating to non-cooperation and the Toolkit to promote cooperation with the Court?

**Panel members**

1. Representative of the Registry Judicial Cooperation Section
  2. Representative of the Office of the Prosecutor (Cooperation Section)
  3. Representative of civil society
  4. Representative of States Parties and *ad country* focal points on non-cooperation
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