


Fourteenth session

The Hague, 18-26 November 2015

Report of the Bureau on cooperation
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I. Background

1. Operative paragraph 26 of resolution ICC-ASP/13/Res.3 entitled “Cooperation”, adopted by the Assembly of States Parties (“the Assembly”) on 17 December 2014, requested the Bureau to maintain a facilitation of the Assembly for cooperation to consult with States Parties, the Court and non-governmental organizations as well as other interested States and relevant organizations in order to further strengthen cooperation with the Court.
2. The Bureau appointed Ambassadors Maymouna Diop Sy (Senegal) and Jan Lucas van Hoorn (Netherlands) as co-facilitators for cooperation on 18 February 2015.

II. Organization of work and general findings

3. In 2015, The Hague Working Group (“the working group”) held a total of 14 informal consultations on the issues of cooperation. Meetings were held on 31 March, 8 April, 11, 13 and 27 May, 2, 5 and 16 June, 3 and 21 July, 25 August, 25 September, 15 and 20 October 2015. Meetings and consultations have been held with a number of stakeholders, including States, Court officials and representatives of civil society.
4. At the first 2015 meeting, held on 31 March, the co-facilitators presented their programme of work which included the following set of issues on which to focus the efforts of the working group, pursuant to the mandates outlined in the resolution on cooperation (ICC-ASP/13/Res.3),¹ as well as in the omnibus resolution (ICC-ASP/13/Res.5, including annex I):
 - (a) The 66 recommendations on cooperation from 2007;²
 - (b) Voluntary agreements and arrangements;³
 - (c) Coordinating mechanism of national authorities;⁴ and
 - (d) Arrest strategies.
5. The co-facilitators organized a one day retreat on cooperation, on 11 May 2015 in Santpoort, The Netherlands, with the participation of the President of the Assembly, representatives of States Parties, the President of the Court, a representative of the Office of the Prosecutor as well as the Registrar.
6. During the retreat, the President of the Court emphasized the fact that cooperation of States with the Court constituted a cornerstone of the Rome Statute System and was crucial for the Court as it could not execute its mandate effectively without the assistance of States. The Office of the Prosecutor highlighted three aspects of cooperation which could be further developed: arrest and surrender of indictees, on which a substantial amount of progress had been made but where more work was still required; establishing and streamlining channels of communication with the Court, including relevant national procedures, so that States Parties could contribute to the Court with investigations; as well as mainstreaming Court related issues at the bilateral and multilateral level, including at the United Nations General Assembly and the Security Council, where issues such as the harmonization of sanction regimes and the requisite follow ups to referrals made by the Council and the Council’s replies to the judges decisions on non-cooperation were important. The Registrar highlighted some of the priorities in the field of cooperation, such as the need for strong support and cooperation in the field of witness protection, freezing of assets, defence, as well as security and logistics.
7. As regards the 66 recommendations from 2007, there was broad agreement by the Court and States Parties that they were still valid and relevant, and should therefore not be rewritten but rather be made more practical and tangible, for example by a flyer to be used at conferences and seminars. The review of the recommendations should be structured in

¹ ICC-ASP/13/Res.3, adopted at the 12th plenary meeting, on 17 December 2014, by consensus.

² Ibid., operative paragraph 24.

³ Ibid., operative paragraph 21.

⁴ ICC-ASP/13/Res.3, operative paragraph 16.

order to reflect priorities for the Court in the field of cooperation, after a stocktaking-exercise had been carried out to look at established practices of both the Court and States Parties since 2007. Priorities need to be identified and practical measures to be formulated into proposals and concrete statements of action in order to find a way to implement the 66 recommendations efficiently and effectively.

8. In subsequent meetings, the discussion initiated at the retreat on the status of implementation of the relevant recommendations in national systems continued with participants highlighting specific activities by their governments with a view to putting the recommendations in practice, such as: promoting the Court within the framework of the United Nations Security Council or the General Assembly, the ratification of the Agreement on Privileges and Immunities (APIC), the appointment of a focal point dealing with matters related to the Court at the capital or an embassy, or the organization of seminars in support of the Court's activities.

9. The Working Group benefited from the active participation of Court representatives at informal consultations. Indeed, on 25 August officials from the Presidency, the Office of the Prosecutor and the Registry touched upon different topics that provided more information to delegates on the legal framework and the needs of the Court. The Presidency stressed the critical role played by political and diplomatic support from States to the Court at different levels (national and international in bilateral, regional and multilateral relationships and/or fora). The Office of the Prosecutor clarified that States have an obligation to cooperate with the Court, according to Part 9 of the Statute, during its investigations and prosecutions; the Office also referred to a certain level of flexibility that exists, within the limits of Part 9, concerning the modalities of cooperation (channels of communication, existence of a focal point or a central mechanism, etc); the Office emphasized the importance of the consultation proceedings enshrined in article 97, as well as the importance of national implementing legislation in light of the duty of States Parties, pursuant to article 88 of the Statute, to ensure that there are procedures available under national law for all forms of cooperation specified under Part. Finally, the Registry dealt with forms of voluntary cooperation, such as entering into agreements *inter alia* on enforcement of sentences, witness relocation and interim release.

10. In addition, a high-level seminar on fostering cooperation between the Court and States Parties was held in San José for Spanish speaking Central and North American States on 9 and 10 July 2015. The seminar was organized by the Court, in consultation with the co-facilitators for cooperation, Ambassadors Maymouna Diop Sy (Senegal) and Jan Lucas van Hoorn (Netherlands); and was funded by the European Commission. The seminar was organized with the support of Costa Rica. They gathered Government representatives and high-level officials from Costa Rica, El Salvador, Guatemala, Mexico and Panama, as well as regional experts. Court officials were also present. In-depth discussions on cooperation between the Court and States Parties were held, emphasizing witness protection and voluntary agreements. The summary from the seminar in Costa Rica may be found in annex III. A similar seminar for Southern African States took place in Botswana, at the end of October 2015 (annex V).⁵

A. 66 recommendations on cooperation from 2007

11. Pursuant to the mandate of the Assembly to conduct a review of the 66 recommendations adopted by the Assembly in 2007,⁶ in close cooperation with the Court, the co-facilitators conducted consultations with different stakeholders. The Court was of the view that the recommendations were still valid and should continue to be supported by all stakeholders.⁷

12. After consultations with the Court, the co-facilitators proposed to restructure the 66 recommendations on cooperation, so that the lengthy and sometimes repetitive document would be downsized to a more user-friendly format and presentation. The proposed "flyer" would provide an overview over the 66 recommendations and relevant issues linked to

⁵ ICC-ASP/14/26/Add.2

⁶ ICC-ASP/6/Res.2, annex II.

⁷ See also the report of the Court on cooperation (ICC-ASP/14/27, paragraphs 32 to 43).

them, which will help States and other stakeholders to identify priorities and ways to better implement the recommendations.⁸ After discussions with different stakeholders in that endeavour, the working group considered the text proposed in annex II.

13. The Court indicated that although the Identification, seizure and freezing of assets was an issue which was mentioned in the report containing the 66 recommendations, but was perhaps not very well reflected therein. In this connection, the Court informed that it was conducting a gap analysis on the subject.

B. Voluntary agreements

14. Pursuant to paragraph 21 of resolution ICC-ASP/13/Res.3, voluntary agreements/arrangements were discussed during the consultations. The Court presented its work on framework agreements and underlined the need for such voluntary agreements. The Court also underlined that States always retain the prerogative to enter into such agreements, and to make a final decision whether or not to accept a specific witness or sentenced person. Ad-hoc arrangements might also be feasible in the absence of an agreement. The Court had in a few cases managed to relocate witnesses to States that had not signed relocation agreements. However, the Court stressed that such ad-hoc solutions were not ideal, as in the absence of a framework agreement many matters had to be negotiated on a case by case basis.

15. The working group discussed the issue of voluntary agreements in relation to relocation of witnesses, enforcement of sentences, interim release of detained persons, and final release - also in cases of acquittal.

16. The co-facilitators noted that there was only one agreement on interim release, and recalled the need for more such voluntary agreements.

1. Witness relocation

17. Witness protection, and in particular entering into voluntary agreements with the Court on the relocation of witnesses, was one of the agenda items discussed during the consultations. During the past year, one new relocation agreement between the Court and States Parties has been entered into, bringing the total number of such agreements up to 15.

2. Enforcement of sentences

18. The Court has signed eight agreements on the enforcement of sentences with States Parties,⁹ noting concern however that since 2012 no new agreements had been concluded. The Court recalled its wish to have a broad range of agreements in different geographical areas and different normative regimes, so as to be ready to determine enforcements.¹⁰

3. Interim release

19. The Registry recalled that conditional interim release was a fundamental right of an accused person. The implementation of such release needed to be possible in practice, and the Registry encouraged States to sign framework agreements thereon in order to facilitate the process.

4. Final release – also in cases of acquittal

20. The Registry recalled that the agreement on the release in case of acquittal only applied to individuals who were unable to return to their home country. In such cases, the Court would need to find a State that would receive the acquitted individual. The Registry also recalled that the draft framework agreement had been finalized by the Court and was

⁸ See also the report of the Court on cooperation (ICC-ASP/14/27, paragraphs 37 to 43).

⁹ Five are with WEOG States, one is with a GRULAC State, one is with an Eastern European State, and one is with an African State.

¹⁰ See also the report of the Court on cooperation (ICC-ASP/14/27, paragraph 42).

ready for discussion. States were thus encouraged to consider the agreement and to contact the Registry should they be interested.

C. Study on the feasibility of establishing a coordinating mechanism of national authorities dealing with cooperation

21. At its thirteenth session the Assembly had welcomed the study on the feasibility of establishing a coordinating mechanism of national authorities dealing with cooperation with the Court¹¹ and had invited the Bureau to discuss the feasibility of establishing such a mechanism, taking into consideration the study.

D. Arrest strategies

22. The Bureau decided on 18 February 2015 to re-appoint Mr. Roberto Bellelli (Italy) as rapporteur on arrest strategies. The roadmap and concept document on arrest strategies, which had been appended to the report of the Bureau on cooperation submitted to the twelfth session of the Assembly,¹² formed the basis for the mandate of the rapporteur in 2014. At its thirteenth session, the Assembly took note of the report on arrest strategies submitted by the Rapporteur¹³ which had annexed a draft Action Plan, and invited the Bureau to continue discussions on the topic with a view to submitting a consolidated draft Action Plan on arrest strategies for consideration by the Assembly.

23. Mr. Bellelli held consultations on the draft Action Plan on 24 April, 13 and 27 May, 5 June, 3 July, 25 and 30 September and 1 October 2015,¹⁴ and submitted his report and the draft consolidated Action Plan to the Working Group on 9 October 2015.

24. The Working Group expressed its appreciation for the Rapporteur's work and the Report on the draft Action Plan on arrest strategies (annex IV)¹⁵.

III. Recommendations

25. 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, and to include cooperation as a standing agenda item for future sessions of the Assembly, pursuant to paragraph 26 of resolution ICC-ASP/13/Res.3.

26. The working group further recommended that the draft resolution in annex I be adopted by the Assembly following the plenary session on cooperation.

¹¹ ICC-ASP/13/29, annex II.

¹² ICC-ASP/12/36.

¹³ ICC-ASP/13/29/Add.1.

¹⁴ See also the report of the Court on cooperation (ICC-ASP/14/27, paragraphs 29 to 31).

¹⁵ ICC-ASP/14/26/Add.1

Annex I

Draft 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, 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, submitted pursuant to paragraph 27 of resolution ICC-ASP/13/Res.3,

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,

Noting the redrafted and redistributed 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,

Welcoming the memorandum of understanding concluded between the Court and UNODC aimed at increasing the capacity of States receiving witnesses and victims of the Court for protection purposes, *recalling* the memorandum of understanding concluded last year between the Court and UNODC on strengthening the capacity of States to enforce sentences, and *commending* international 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,

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;

2. *Expresses* serious concerns that arrest warrants or surrender requests against 12 persons remain outstanding,¹ and *urges* States to cooperate fully in accordance with their obligation to arrest and surrender to the Court;

3. *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;

3 *bis*. *Takes note* of the report on arrest strategies by the Rapporteur, and [*takes note of*] [*adopts*] the Action Plan on Arrest Strategies;

3*ter*. *Requests* the Bureau to consider the implementation of the Action Plan, and to report thereon to the fifteenth session of the Assembly;

4. *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 ICC of their own contacts with persons subject to a warrant of arrest made as a result of such an assessment;

5. *Welcomes* the continued efforts of the President of the Assembly in implementing the non-cooperation procedures adopted by the Assembly in resolution ICC-ASP/10/Res.5, and *encourages* the Assembly to keep said procedures and their implementation under review in order to secure their effectiveness, including with regard to ensuring early notification to States Parties of opportunities to work together to avoid non-cooperation;

6. *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 other measures so as to ensure that they can fully meet their obligations under the Rome Statute;

7. *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;

8. *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;

9. *Welcomes* the report to the thirteenth session of the Assembly on the feasibility study of establishing a coordinating mechanism of national authorities and *invites* the Bureau, through its working groups, to discuss the feasibility of establishing a coordinating mechanism of national authorities, taking into consideration the study in annex II of the report of the Bureau on cooperation to the thirteenth session² and to report to the Assembly well in advance of the [sixteenth] session;

10. *Emphasizes* also 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, and *invites* the Court to continue improving its practice in transmitting specific, complete and timely requests for cooperation and assistance;

11. *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, can be of value to provide for reparation to victims and address the costs of legal aid;

¹ As at 21 August 2015.

² ICC-ASP/13/29.

12. *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 facilitate cooperation between the Court, States Parties, other States and international organizations;
13. *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;
14. *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;
15. *Acknowledges* the importance of protective measures for victims and witnesses for the execution of the Court's mandate, *welcomes* the relocation agreements concluded with the Court in 2015, and *stresses* the need for more such agreements or arrangements with the Court for the expeditious relocation of witnesses;
16. *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;
17. *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;
18. *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;
19. *Recalls* the conclusion last year of the first voluntary agreement between the Court and a State Party on interim release and *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 fifteenth session;
20. *Welcomes* the increased cooperation between the Court and the United Nations, and other international and regional organizations, and other inter-governmental institutions;
21. *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;
22. *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;
23. *Welcomes* the exchange of information on the implementation of the 66 recommendations on cooperation adopted by States Parties in 2007³ as a first step in the reviewing process of the 66 recommendations, *takes note of* the flyer prepared by the Court

³ Resolution ICC-ASP/6/Res.2, annex II.

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, and, *requests* 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;

24. *Welcomes* the organization by the Court, with the support of States Parties and international and regional organizations, of seminars on cooperation, and *encourages* all stakeholders, including civil society organizations, to continue organizing events that allow for exchange of information with the purpose of enhancing cooperation and constructively seeking solutions to identified challenges.

25. *[Placeholder - ASP discussion]*

26. *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;

27. *Recognizing* the importance of the Court's contribution to the Assembly's efforts to enhance cooperation, *requests* the Court to submit an updated report on cooperation to the Assembly at its fifteenth session and annually thereafter.

Annex II

Recommendations on States' Cooperation with the International Criminal Court (ICC): Experiences and Priorities

A. Why is cooperation important?

1. Without cooperation the **ICC cannot function**, because it relies on its States Parties as its **enforcement pillar**.
2. When States adopted the ICC's founding treaty, the Rome Statute, they decided that the Court would not have enforcement powers of its own; rather, the **States Parties have the responsibility to support the ICC's judicial and prosecutorial functions** by providing concrete cooperation at all stages of the Court's activities, including investigations, arrest and transfer of suspects, access to evidence and witnesses, protection of individuals, and the enforcement of judicial decisions and sentences.
3. **Part IX of the Rome Statute** clearly stipulates States Parties' **legal obligations** to support and facilitate the work of the Court throughout its judicial proceedings. Furthermore, various forms of **voluntary cooperation**, such as the relocation of witnesses, are essential to ensure the efficient functioning of the Court, and a fair and expeditious trial.

B. What are the 66 Recommendations?

4. In 2007, the Assembly of States Parties to the Rome Statute (ASP) adopted a document that contains a comprehensive list of 66 recommendations on cooperation. These recommendations are a **useful tool for States Parties and the ICC**, as they:
 - (a) Identify **key areas of priority and challenges** regarding cooperation; and
 - (b) Give **guidance** and suggest **possible remedies** for overcoming challenges.

C. The priority is now the full implementation of the 66 Recommendations

5. Taking stock of their experiences, States Parties and the Court have identified specific **challenges and lessons learned in terms of the implementation** of the 66 recommendations, as well as some new cooperation challenges that were not adequately addressed by them.
6. Looking forward, the following **seven key areas requiring attention** have been identified:
 - (a) Enacting the **legal mechanisms** set in the Rome Statute and setting up **effective procedures and structures** regarding cooperation and judicial assistance
 - (i) Key issues include adoption of **comprehensive implementing legislation** of Part IX of the Rome Statute, and **ratification of the Agreement on the Privileges and Immunities of the Court**¹.
 - (ii) **Designating national focal points** for ICC matters and adopting **simplified and centralized national procedures** have been identified as useful practices for effective cooperation.
 - (b) Cooperation in support of **preliminary examinations, investigations, prosecutions and judicial proceedings** (including with the Defence)
 - (i) Full cooperation is essential to enable the ICC to **carry out its mandate effectively and efficiently**, and to ensure that justice is done.

¹ Done at New York on 9 September 2002, in force on 22 July 2004, United Nations, Treaty Series, vol. 2271, No.40446, Depositary: Secretary-General of the United Nations, https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-13&chapter=18&lang=en.

- (ii) Increased attention is required to prevent and address instances of **non-cooperation** and to incentivize full compliance with States Parties' legal obligations under the Rome Statute.
- (c) **Arrest and surrender**
 - (i) Several ICC suspects **remain at large**, some for more than 10 years.
 - (ii) Concrete **arrest strategies** are required.
- (d) Identification, seizing and freezing of **assets**
 - (i) Important for the purposes of potentially providing evidence to demonstrate **linkage** between the crimes and the individuals identified, securing funds for possible **reparations** to victims if the accused person is found guilty, covering costs of **legal aid**; as well as contributing to the **prevention** of further crimes.
 - (ii) The Court and the States Parties need to work together to identify **effective legal and practical mechanisms** for enhanced cooperation in this area.
- (e) **Voluntary cooperation**
 - (i) Certain highly important forms of cooperation such as the **relocation of witnesses** under threat, the **enforcement of sentences**, and **receiving acquitted persons** or suspects or accused on **interim release**, are not strict obligations for States Parties under the Rome Statute, but the ICC cannot perform these functions on its own and it needs the cooperation of States.
 - (ii) A limited number of States Parties have concluded **cooperation agreements** with the ICC on the abovementioned issues, but much more support is needed, also to ensure that the burden of cooperation is shared collectively by States.
 - (iii) Cooperation is also important in areas such as logistics, security and personnel.
- (f) **Diplomatic and public support** in national, bilateral, regional and international settings
 - (i) The ICC is a relatively young permanent international institution; active efforts by States to **raise awareness and to enhance understanding** of the Court are essential for broadening international support for the Rome Statute system of international criminal justice.
 - (ii) States can express their support by making **public statements** in international fora, as well as through **diplomatic dialogue** in various settings.
 - (iii) States Parties play a key role in ensuring the support of the **United Nations**, and **regional and other intergovernmental organizations** for the ICC.
- (g) **Inter-State cooperation** in the context of the Rome Statute system
 - (i) While concrete cooperation requests are usually addressed by each State individually, helping the ICC to fulfil its mandate is the collective responsibility of the community of States Parties. Progress on many of the concrete steps discussed above will benefit from **further exchanges of experience** and **mutual assistance** where appropriate between States, the Court and other relevant partners, including civil society.

7. **To see all the 66 recommendations**, go to http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/ICC-ASP-ASP6-Res-02-ENG.pdf#page=10

Annex III

Summary of the Costa Rica seminar on fostering cooperation (9-10 July 2015)

A. Introduction

1. On 9 and 10 July 2015, a high level seminar for fostering cooperation between States and the International Criminal Court ("Court") was held in San José, Costa Rica. Government representatives and other high level officials from six Latin American States Parties and non-Parties – Costa Rica, Dominican Republic, El Salvador, Guatemala, Mexico and Panama – as well as the Court officials and experts, held in-depth discussions on cooperation, with an emphasis on cooperation agreements, witness protection and cooperation during investigations and prosecutions. The seminar highlighted the importance of judicial cooperation nationally, regionally and with the Court, and explored avenues on how the capacity of States in this regard could be strengthened. The seminar was held in Spanish and was a continuation of the seminars that took place last year in Buenos Aires, Argentina on 20-21 May 2014, Accra, Ghana on 3-4 July 2014, and Cotonou, Bénin on 3-4 November 2014.

2. In her opening address, the Court's President, Judge Silvia Fernández de Gurmendi, expressed gratitude for the strong support that the Court has received from the region. "Latin American countries have steadily supported the establishment and functioning of the Court from its inception, in recognition that in order to prevent and combat international crimes, it is also necessary to have a complementary institution that can, under certain circumstances, remedy the lack of genuine action by States" said the President. The President also noted that there are still "areas of opportunity to enhance support from the region."

3. Representing the seminar's host State of Costa Rica, the Minister of Foreign Affairs Manuel González Sanz stated, at the opening of the seminar, that "[Costa Rica] stands firm against those who instead of seeing this triumph of the international community, which is the International Criminal Court, try to minimize it. We have cultural, political, economic and religious differences, but that is why we have achieved a vital consensus to establish this emblematic institutional justice."

4. In all of its activities, the Court relies on strong and consistent cooperation of States and international organizations, including in arresting and surrendering suspects, seizing and freezing assets, enforcing sentences of imprisonment pronounced by the Court, implementing decisions on interim release, or relocating victims and witnesses. The Court may enter into framework arrangements or agreements for the purpose of voluntary forms of cooperation not foreseen in Part 9 of the Rome Statute, such as agreements on witness relocation or interim release. The successful implementation of the cooperation region set up in the Rome Statute also depends on a mutual understanding between the Court and States Parties of the needs and requirements pertaining to the relevant cooperation issues.

5. The event was organized by the ICC in close cooperation with the Government of Costa Rica and in consultation with the Bureau co-facilitators on cooperation, the Permanent Representative of the Netherlands to the Court and the Ambassador of Senegal to the Netherlands. It was funded by the European Commission.

B. Voluntary agreements

6. The seminar allowed for an open and constructive dialogue among the participating States and the Court on the implications of entering into voluntary agreements with the Court on witness relocation, enforcement agreements, agreements on interim release and release of acquitted persons. These agreements create a framework that enables States to adapt the provisions to their legal systems in a manner that facilitates cooperation with the Court. The decision to accept specific persons under these agreements is nonetheless subject to approval in each case.

C. Witness protection

7. Participants had privileged and fruitful exchanges of views on: the system of witness protection in place at the Court, the challenges faced by States and the Court in ensuring the protection of witnesses, the relocation agreements and the Special Fund for relocations, and the complementary role of national systems of protection. The Court, while recognizing its responsibility for protecting both the prosecution and defence witnesses, emphasized the crucial importance of States Parties' cooperation in this area, through the signature of relocation agreements or ad hoc arrangements. However, even if relocation of witnesses to other States was a measure of last resort, the Court was facing a strain on its capacity to relocate. It was stressed that the current number of agreements was not sufficient and that the Court approached States Parties in all regions to enhance the capacity. Broad regional capacity would also allow for finding solutions that, while fulfilling the strict safety requirements, would minimize the humanitarian costs of geographical distance and the change of linguistic and cultural environment when relocating witnesses and their families.

8. The Court also made it clear that the emphasis of witness protection was a global recent development. However, even realizing that legal systems vary, minimum standards for witness protection exist and can be applied in all countries. Substantial knowledge has now been assembled on what works and what does not, and this knowledge can and must be shared. The Court, for its part, was able to gain valuable feedback on the individual countries specific situations and needs.

9. Through the use of the Special Fund for relocations, States can benefit from assistance from the Court and are able to receive witnesses on a cost neutral basis. States could also benefit from the assistance of partners of the Court whose mandate is to provide capacity building in the area of the protection of witnesses. Such assistance will strengthen the national witness protection capacities in general. A substantial number of States representatives made it clear that the increase in serious cross border crimes, as well as the crucial role of witnesses with regard to successful investigations and prosecutions, called for enhanced efforts. Improved capacities in this field in a larger number of countries might prove crucial in ensuring effective bilateral and regional cooperation for the investigation and prosecution of all serious crimes.

D. Universality of the Rome Statute

10. The seminar offered an opportunity for high-level delegation from El Salvador, still not party to the Rome Statute, to engage with the Court and a number of States Parties to the Rome Statute from the region on various issues, with the purpose of finding more about the actual operations and functioning of the Court and facilitating El Salvador's ratification of the Rome Statute. El Salvador expressed their commitment to ratifying the Rome Statute in the near future, but also stressed the importance of adopting implementing legislation in order to be able to fully and effectively cooperate with the Court once it has become party to the Rome Statute.

E. How to take cooperation further

11. The participants discussed the recommendations which could be given to the Court and the States Parties in order to take cooperation further. The issues discussed included: agreements and arrangements on witness relocation, developing and strengthening regional networks, identifying national focal points, capacity building initiatives developed by States or other relevant stakeholders in the justice sector, implementing legislation, as well as improved routines for communication between States Parties and the Court.

Annex IV

Report on the Draft Action Plan on arrest strategies submitted by the Rapporteur

[See ICC-ASP/14/26/Add.1]

Annex V

Summary of the Botswana seminar on fostering cooperation (29-30 October 2015)

[See ICC-ASP/14/26/Add.2]
