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Report of the Bureau on cooperation*Content*

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I. Background

1. Operative paragraph 27 of resolution ICC-ASP/14/Res.3 entitled “Cooperation”, adopted by the Assembly of States Parties (“the Assembly”) on 26 November 2015, 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 24 February 2016. Ambassador Paul Wilke (Netherlands) temporarily took the place of Ambassador van Hoorn as of 3 May 2016.

II. Organization of work and general findings

3. In 2016, The Hague Working Group (“the working group”) held a total of four informal consultations on the issues of cooperation. Meetings were held on 17 May, 23 June, 8 September and 13 October 2016. Meetings and consultations have been held with a number of stakeholders, including States, Court officials and representatives of civil society.
4. At the first 2016 meeting, held on 17 May, 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/14/Res.3),¹ as well as in the omnibus resolution (ICC-ASP/14/Res.4, 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.

A. 66 recommendations on cooperation from 2007

5. Pursuant to the mandate of the Assembly to conduct a review of the 66 recommendations adopted by the Assembly in 2007,⁵ in close cooperation with the Court, in 2015 the co-facilitators had conducted consultations with different stakeholders and had prepared a “flyer” which provided an overview over the 66 recommendations and relevant issues linked to them, in order to help States and other stakeholders to identify priorities and ways to better implement the recommendations.⁶
6. In 2016, as part of the continuation of that review the co-facilitators sent States Parties a questionnaire on the status of implementation of the seven key areas of cooperation which had been identified in the 2015 flyer.⁷ A total of 13 States replied to the questionnaire by 30 September 2016. The material contained in the responses could form the basis for future discussions on cooperation.

B. Voluntary agreements

7. As regards voluntary agreements, the Court presented its work on framework agreements and underlined once more the need for voluntary agreements in relation to relocation of witnesses, enforcement of sentences, interim release of detained persons, and

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.

⁵ ICC-ASP/6/Res.2, annex II.

⁶ See also the report of the Court on cooperation (ICC-ASP/14/27, paragraphs 37 to 43).

⁷ ICC-ASP/14/26/Rev.1, annex II.

final release - also in cases of acquittal. Furthermore, the Court emphasized 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.

8. The Court recalled that it had concluded eight voluntary agreements on the enforcement of sentences with States, had signed an agreement with one State Party which had not yet entered into force, and had concluded a memorandum of understanding (MOU) with the United Nations Office on Drugs and Crime (UNODC).

9. The MOU with the UNODC aimed to assist States that were willing to conclude enforcement of sentences agreements with the Court but faced challenges in doing so in accordance with international standards. The President of the Court had written to all States Parties reminding them of the importance of concluding agreements on the enforcement of sentences and reminding them also of the avenue presented by the MOU with the UNODC.

10. The Court also recalled that two of the persons convicted by the Court were serving their sentences in their State of nationality, on their request, which had required the Court to conclude two ad hoc agreements with the Democratic Republic of the Congo.

11. The Court also indicated that two new witness relocation agreements had been signed since the Assembly session in November 2015.

C. Cooperation challenges with respect to financial investigations

12. As regards the identification, seizure and freezing of assets, which had been mentioned in the 2007 report containing the 66 recommendations, the Court presented a report on cooperation challenges faced by the Court with respect to financial investigations. That report set out the forward-looking conclusions of a 26-27 October 2015 workshop held in The Hague, Netherlands, as well as recommendations addressed to three categories of actors, i.e. States Parties, the Court, and States Parties and the Court. The Court highlighted, *inter alia*, the importance of national authorities being aware that the Court's requests for cooperation were of a different nature from requests under mutual legal assistance agreements; and that the Court had no jurisdiction to investigate the crimes of money-laundering and corruption, whereas States did. Furthermore, the Court indicated that it would be useful to have a better understanding of the procedure governing the seizure of assets in different jurisdictions and in relation to the work of other international organizations.

13. Some States noted the importance of support for the Court in its investigations. The Court's report was viewed as a good starting point for further discussion of cooperation; the importance of experience-sharing to strengthen the capacity of the Court as well as of States Parties was highlighted. It was however noted that such cooperation should be on a voluntary basis and not have financial implications. A point was made that laws governing some national criminal procedures had restrictions on financial investigations and that the respective States could, consequently, have difficulty in carrying out requests for cooperation in that area. It would therefore be useful for the Court to have relevant information on national systems. It was further noted that some developing countries would need to build their capacity in financial investigations of a national as well as transnational nature.

14. For its part, the Secretariat of the Trust Fund for Victims stressed that the assets of the accused were important for the purpose of reparations, therefore cooperation on asset recovery was essential.

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

15. 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 Court⁸ and had invited the Bureau to discuss the feasibility of establishing such a

⁸ ICC-ASP/13/29, annex II.

mechanism, taking into consideration the study. At its fourteenth session the Assembly had invited the Bureau, through its working groups, to discuss the feasibility of establishing a coordinating mechanisms of national authorities, taking into account the respective background document, and to report to the Assembly well in advance of its sixteenth session.⁹

16. In this connection, a preparatory meeting would take place in early 2017 to discuss, inter alia, the goal and financing of the future coordinating mechanism and how to facilitate completion of the feasibility study with a view to providing a report to the Assembly at its sixteenth session. In the resolution on cooperation to be presented to the Assembly at its sixteenth session, a mandate would be given to the Bureau to organize together with a group of interested States Parties a test meeting concerning the coordinating mechanism before the end of 2019.

E. Arrest strategies

17. At its thirteenth session, the Assembly had taken note of the report on arrest strategies submitted by the Rapporteur¹⁰ which had annexed a draft Action Plan, and had 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.¹¹

18. At its fourteenth session, the Assembly had taken note of the report on arrest strategies, as well as of the draft Action Plan on Arrest Strategies,¹² and had urged the Bureau “to continue consideration of the recommendations of the draft Action Plan on Arrest Strategies with a view to its adoption, and to report thereon to the fifteenth session of the Assembly.”¹³

F. Seminars

19. The Court had indicated that its focus for 2016 would be technical seminars, with a focus on specific areas where it had identified priority needs, e.g. financial investigations, voluntary agreements, and cooperation. The seminars, which included a high-level seminar for Central and Eastern European countries, held in Bucharest from 21 to 22 March 2016, were being organized with the financial support provided by the European Commission.

III. Recommendations

20. 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.

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

⁹ ICC-ASP/14/Res.3, para. 10.

¹⁰ ICC-ASP/13/29/Add.1.

¹¹ ICC-ASP/13/Res.3, para. 4 and ICC-ASP/13/Res.5, para.11.

¹² ICC-ASP/14/Res.3, para. 4 and ICC-ASP/14/Res.4, para. 11.

¹³ ICC-ASP/14/Res.3, para. 4.

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, ICC-ASP/14/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 28 of resolution ICC-ASP/14/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,

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,

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 13 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;
4. *Takes note* of the report on arrest strategies by the Rapporteur² and *takes note* of the draft Action Plan on Arrest Strategies, and *urges* the Bureau to continue consideration of the recommendations of the draft Action Plan on Arrest Strategies with a view to its adoption, and to report thereon to the sixteenth session of the Assembly;
5. *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;
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 organization by the Court, with the support of the European Commission and other donors, of a yearly seminar on cooperation with its main focal points;
10. *Recalls* 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 session³ and to report to the Assembly well in advance of the sixteenth session;
11. *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;
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; *welcomes* the Court's report and comprehensive presentation on cooperation challenges faced by the Court with respect to financial investigation and *calls on* all States Parties to

¹ As at 5 September 2016.

² ICC-ASP/14/26/Add.1, appendix.

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;

14. *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;

15. *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;

16. *Acknowledges* the importance of protective measures for victims and witnesses for the execution of the Court's mandate, *welcomes* the two new relocation agreements concluded since the last resolution on cooperation, and *stresses* the need for more such agreements or arrangements with the Court for the expeditious relocation of witnesses;

17. *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;

18. *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;

19. *Welcomes* the conclusion of *ad hoc* agreements between the Court and the Democratic Republic of the Congo on the enforcement of two sentences of imprisonment pronounced by the Court and the conclusion of a framework agreement on the enforcement of sentences between the Court and Norway, which brings the total number of such framework agreements in force to eight;

20. *Emphasizes* that the need for cooperation with the Court on the enforcement of sentences 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, 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;

21. *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;

22. *Recalls* the conclusion in 2014 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 sixteenth session;

23. *Welcomes* the increased cooperation between the Court and the United Nations, and other international and regional organizations, and other inter-governmental institutions;

24. *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;

25. *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;

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;

27. *Welcomes* the replies to the 2016 questionnaire and the exchange of information on the implementation of the 66 recommendations on cooperation adopted by States Parties in 2007³ as a step in the reviewing process of the implementation of the 66 recommendations, *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, 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;

28. *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;

29. [Placeholder for text based on ASP cooperation debate].

30. *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;

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, relevant organizations and non-governmental organizations in order to further strengthen cooperation with the Court;

32. *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 sixteenth session and annually thereafter.

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

Annex II

Mandates of the Assembly of States Parties for the intersessional period

With regard to **cooperation**,

(a) *requests* the Bureau to continue consideration of the recommendations of the draft Action Plan on Arrest Strategies¹ with a view to its adoption, and to report thereon to the sixteenth session of the Assembly;

(b) *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;

(c) *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;

(d) *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 sixteenth session;

(e) *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;

(f) *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;

(g) *requests* the Court to submit an updated report on cooperation to the Assembly at its sixteenth session and annually thereafter.

¹ ICC-ASP/14/26/Add.1, appendix.

² ICC-ASP/13/29.