

**Assembly of States Parties to  
the Rome Statute of the  
International Criminal Court**

**Sixteenth session  
New York, 4-14 December 2017**

**Official Records  
Volume I**

*Note*

Symbols of documents of the Assembly of States Parties to the Rome Statute of the International Criminal Court are composed of capital letters combined with figures. Mention of such a symbol indicates a reference to a document of the Assembly of States Parties to the Rome Statute of the International Criminal Court. Resolutions of the Assembly bear the letters “Res.”, while its decisions bear the letters “Dec.”.

Pursuant to resolution ICC-ASP/7/Res.6, the Official Records are available in Arabic, English, French and Spanish.

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## Part I Proceedings

### A. Introduction

1. In accordance with the decision of the Assembly of States Parties to the Rome Statute of the International Criminal Court (hereinafter “the Assembly”), taken at the 11th meeting of its fifteenth session, on 24 November 2016, the Assembly held its sixteenth session from 4 to 14 December 2017.
2. In accordance with the Rules of Procedure of the Assembly,<sup>1</sup> the President of the Assembly invited all States Parties to the Rome Statute to participate in the session. Other States that had signed the Statute or the Final Act were also invited to participate in the session as observers.
3. In accordance with rule 92 of the Rules of Procedure of the Assembly (hereinafter “the Rules of Procedure”), invitations to participate in the session as observers were also extended to representatives of intergovernmental organizations and other entities that had received a standing invitation from the General Assembly of the United Nations pursuant to its relevant resolutions<sup>2</sup> as well as to representatives of regional intergovernmental organizations and other international bodies invited to the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court (Rome, June/July 1998), accredited to the Preparatory Commission for the International Criminal Court or invited by the Assembly.
4. Furthermore, in accordance with rule 93 of the Rules of Procedure, non-governmental organizations invited to the Rome Conference, registered to the Preparatory Commission for the International Criminal Court, or in consultative status with the Economic and Social Council of the United Nations, whose activities were relevant to the activities of the Court or that had been invited by the Assembly, attended and participated in the work of the Assembly.
5. In accordance with rule 94 of the Rules of Procedure, the following States were invited to be present during the work of the Assembly: Bhutan, Democratic People’s Republic of Korea, Equatorial Guinea, Lao People’s Democratic Republic, Lebanon, Mauritania, Micronesia (Federated States of), Myanmar, Niue, Palau, Papua New Guinea, Rwanda, Somalia, South Sudan, Swaziland, Tonga, Turkmenistan and Tuvalu.
6. The list of delegations to the session is contained in document ICC-ASP/16/INF.1.
7. The session was opened by the President of the Assembly of States Parties, Mr. Sidiki Kaba (Senegal), who had been elected for the thirteenth to sixteenth sessions.
8. In accordance with rule 25 of its Rules of Procedure, the following States were appointed to serve on the Credentials Committee: Chile, Costa Rica, Czech Republic, Republic of Korea, Senegal, Slovakia, Sweden, Uganda and United Kingdom of Great Britain and Northern Ireland.
9. At its 1st plenary, the Assembly appointed Ms. Barbara Krezmar (Slovenia) as Rapporteur.
10. The Director of the Secretariat of the Assembly, Mr. Renan Villacis, acted as Secretary of the Assembly. The Assembly was serviced by the Secretariat.
11. At its 1st plenary meeting, on 4 December 2017, the Assembly observed one minute of silence dedicated to prayer or meditation, in accordance with rule 43 of the Rules of Procedure of the Assembly.

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<sup>1</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First session, New York, 3-10 September 2002* (ICC-ASP/1/3 and Corr.1), part II.C.

<sup>2</sup> General Assembly resolutions 253 (III), 477 (V), 2011 (XX), 3208 (XXIX), 3237 (XXIX), 3369 (XXX), 31/3, 33/18, 35/2, 35/3, 36/4, 42/10, 43/6, 44/6, 45/6, 46/8, 47/4, 48/2, 48/3, 48/4, 48/5, 48/237, 48/265, 49/1, 49/2, 50/2, 51/1, 51/6, 51/204, 52/6, 53/5, 53/6, 53/216, 54/5, 54/10, 54/195, 55/160, 55/161, 56/90, 56/91, 56/92, 57/29, 57/30, 57/31, 57/32, 58/83, 58/84, 58/85, 58/86, 59/48, 59/49, 59/50, 59/51, 59/52, 59/53, 61/43, 61/259, 63/131, 63/132, 64/3, 64/121, 64/122, 64/123, 64/124, and decision 56/475.

12. At the same meeting, the Assembly adopted the following agenda (ICC-ASP/16/1):
  1. Opening of the session by the President.
  2. Silent prayer or meditation.
  3. Election of the President for the seventeenth to nineteenth sessions.
  4. Election of two Vice-Presidents and eighteen members of the Bureau for the seventeenth to nineteenth sessions.
  5. Adoption of the agenda.
  6. States in arrears.
  7. Credentials of representatives of States at the sixteenth session:
    - (a) Appointment of the Credentials Committee; and
    - (b) Report of the Credentials Committee.
  8. Organization of work.
  9. General debate.
  10. Report on the activities of the Bureau.
  11. Report on the activities of the Court.
  12. Report of the Board of Directors of the Trust Fund for Victims.
  13. Advisory Committee on the nominations of judges.
  14. Election of six judges.
  15. Election of six members of the Committee on Budget and Finance.
  16. Election of the Registrar.
  17. Consideration and adoption of the budget for the sixteenth financial year.
  18. Consideration of the audit reports.
  19. Activation of the Court's jurisdiction over the crime of aggression.
  20. Amendments to the Rome Statute and the Rules of Procedure and Evidence.
  21. Cooperation.
  22. Review of the working methods of the subsidiary bodies of the Bureau and the Assembly.
  23. Twentieth anniversary of the adoption of the Rome Statute.
  24. Amended provisional Staff Rules of the International Criminal Court.
  25. Decision concerning the date of the next session of the Assembly of States Parties.
  26. Decisions concerning the dates and venue of the next sessions of the Committee on Budget and Finance.
  27. Other matters.
13. The annotated list of items included in the provisional agenda was contained in a note by the Secretariat (ICC-ASP/16/1/Add.1/Rev.1).
14. Also at its 1st plenary meeting, the Assembly agreed on a programme of work and decided to meet in plenary session as well as in the working group format. The Assembly established a Working Group on the Programme Budget for 2018.
15. Mr. Per Holmström (Sweden) was appointed Chair of the Working Group on the Programme Budget for 2018. Ms. May-Elin Stener (Norway) was appointed Chair of the Working Group on Amendments for the duration of the sixteenth session. Ms. Nadia Kalb (Austria) was appointed Coordinator for the discussions on the activation of the Court's jurisdiction over the crime of aggression, in accordance with resolution RC/Res.6. Ms.

Damaris Carnal (Switzerland) was appointed Coordinator for the consultations on the omnibus resolution.

## **B. Consideration of issues on the agenda of the Assembly at its sixteenth session**

### **1. Election of the President for the seventeenth to nineteenth sessions**

16. On 5 July 2017, the Bureau decided to recommend that Mr. O-Gon Kwon (Republic of Korea) be elected President of the Assembly for the three-year period commencing at the close of the sixteenth session of the Assembly on 14 December 2017. In accordance with article 112, paragraph 3, of the Rome Statute and rule 29 of the Rules of Procedure of the Assembly of States Parties, as amended by resolution ICC-ASP/12/Res.8, annex III, the Assembly, at its 1st plenary meeting, on 4 December 2017, elected Mr. O-Gon Kwon (Republic of Korea) by acclamation as President of the Assembly for the seventeenth to nineteenth sessions.

### **2. Election of two Vice-Presidents and eighteen members of the Bureau for the seventeenth to nineteenth sessions**

17. At its 1st, 3rd and 12th plenary meetings, on 4, 6 and 14 December 2017, the Assembly, pursuant to rule 29 of its Rules of Procedure, elected two Vice-Presidents and 18 members of the Bureau for the seventeenth to nineteenth sessions of the Assembly, as follows:<sup>3</sup>

*Vice-Presidents:*

Mr. Momar Diop (Senegal); and

Mr. Michal Mlynár (Slovakia).

*Other members of the Bureau:*

Argentina, Australia, Austria, Colombia, Côte d'Ivoire, Denmark, Ecuador, Estonia, France, Gambia, Ghana, Japan, Mexico, Netherlands, Serbia, Slovenia, State of Palestine and Uganda.

### **3. States in arrears**

18. At the 1st plenary meeting, on 4 December 2017, the Assembly was informed that article 112, paragraph 8, first sentence, of the Rome Statute was applicable to eight States Parties.

19. The President of the Assembly renewed the appeal to States Parties in arrears to settle their accounts with the Court as soon as possible. The President also appealed to all States Parties to pay their assessed contributions for 2018 in a timely manner.

### **4. Credentials of representatives of States Parties at the sixteenth session**

20. At its 13th plenary meeting, on 14 December 2017, the Assembly adopted the report of the Credentials Committee (see annex I).

### **5. General debate**

21. At the 1st plenary meeting, H.E. Mr. António Guterres, United Nations Secretary-General, addressed the Assembly. At the 4th, 5th, 6th and 8th plenary meetings, on 6, 7 and 8 December 2017, statements were made by the representatives of Afghanistan; Andorra; Argentina; Australia; Austria; Bangladesh; Belgium; Benin; Bolivia (Plurinational State of); Botswana; Brazil; Burkina Faso; Canada; Chile; Colombia; Costa Rica; Côte d'Ivoire;

<sup>3</sup> See: Agenda and decisions of the 4 December 2017 meeting of the Bureau.



Cyprus; Czech Republic; Democratic Republic of the Congo; Denmark; Ecuador; El Salvador; Estonia (on behalf of the European Union); Finland; France; Gabon; Gambia; Georgia; Germany; Ghana; Guatemala; Hungary; Iceland; Ireland; Japan; Jordan (Hashemite Kingdom of); Kenya; Latvia; Lesotho; Liechtenstein; Lithuania; Luxembourg; Mali; Mexico; the Netherlands; New Zealand; Nigeria; Norway; Panama; Paraguay; Peru; Philippines; Poland; Portugal; Republic of Korea; Romania; Samoa; Senegal; Slovakia; Slovenia; South Africa; Spain; State of Palestine; Sweden; Switzerland; Trinidad and Tobago; Tunisia; Uganda; United Kingdom of Great Britain and Northern Ireland; Uruguay; and Venezuela (Bolivarian Republic of). Statements were also made by China; Iran (Islamic Republic of); Ukraine; and the United States of America. The following international organization made a statement: Organisation internationale de la Francophonie. Statements were also made by the Sovereign Order of Malta and the International Criminal Court Bar Association. The following civil society organizations also made statements: American Bar Association; Burundian Coalition for the International Criminal Court; Coalition for the International Criminal Court; Côte d'Ivoire Coalition for the International Criminal Court; Human Rights Watch; International Federation for Human Rights; Kenyans for Peace with Truth and Justice; Moroccan Coalition for the International Criminal Court; and Nigerian Coalition for the International Criminal Court.

#### **6. Report on the activities of the Bureau**

22. At its 1st plenary meeting, on 4 December 2017, the Assembly took note of the oral report on the activities of the Bureau, presented by the President of the Assembly, H.E. Mr. Sidiki Kaba.<sup>4</sup>

#### **7. Report on the activities of the Court**

23. At its 1st plenary meeting, on 4 December 2017, the Assembly heard statements by Judge Silvia Fernández de Gurmendi, President of the Court, and by Ms. Fatou Bensouda, Prosecutor of the Court. At the same meeting, the Assembly took note of the report on the activities of the International Criminal Court.<sup>5</sup>

#### **8. Report of the Board of Directors of the Trust Fund for Victims**

24. At its 1st meeting, on 4 December 2017, the Assembly heard a statement by Mr. Motoo Noguchi, Chairperson of the Board of Directors of the Trust Fund for Victims. The Assembly considered and took note of the report on the projects and the activities of the Board of Directors of the Trust Fund for Victims for the period 1 July 2016 to 30 June 2017.<sup>6</sup>

#### **9. Advisory Committee on Nominations of Judges**

25. The Assembly took note of the report of the Advisory Committee on Nominations of Judges on the work of its sixth meeting.<sup>7</sup>

#### **10. Election of six judges**

26. At its 2nd meeting, on 4, 5 and 6 December 2017, the Assembly, on the recommendation of the Bureau, decided that for the purposes of electing judges of the International Criminal Court, any meeting of the Assembly should continue until as many candidates as were required for all seats to be filled had obtained, in one or more ballots, the highest number of votes and a two-thirds majority of the States Parties present and voting. Consequently, all candidates elected as judges should be considered as having been elected at the same meeting irrespective of whether or not the ballot continued for one or more days.

<sup>4</sup> See annex II of these Official Records.

<sup>5</sup> ICC-ASP/16/9.

<sup>6</sup> ICC-ASP/16/14.

<sup>7</sup> ICC-ASP/16/7.

27. At the same meeting, the Assembly recommended that the candidates should not be present in the conference room when the Assembly was engaged in the process of voting.

28. At its 2nd meeting, held from 4 to 6 December 2017, the Assembly proceeded to elect six judges of the International Criminal Court in accordance with the relevant provisions of the Rome Statute, as well as of resolution ICC-ASP/3/Res.6.<sup>8</sup>

29. The following candidates were elected judges of the International Criminal Court:

- (a) Rosario Salvatore Aitala (Italy), (WEO, list A, M);
- (b) Tomoko Akane (Japan) (ASIA-PACIFIC, list A, F);
- (c) Reine Alapini-Gansou (Benin) (AFR, list B, F);
- (d) Solomy Balungi Bossa (Uganda) (AFR, list A, F);
- (e) Luz del Carmen Ibañez Carranza (Peru) (GRULAC, list A, F); and
- (f) Kimberly Prost (Canada) (WEO, list A, F).<sup>9</sup>

30. The Assembly conducted nine ballots. In the first round, 119 ballots were cast, of which 10 were invalid and 109 were valid; the number of States Parties voting was 109 and the required two-thirds majority was 73. The following candidates obtained the highest number of votes and a two-thirds majority of the States Parties present and voting: Tomoko Akane (88) and Luz del Carmen Ibañez Carranza (77).

31. In the fourth round, 123 ballots were cast, of which three were invalid and 120 were valid; the number of States Parties voting was 120 and the required two-thirds majority was 80. The following candidates obtained the highest number of votes and a two-thirds majority of the States Parties present and voting: Reine Alapini-Gansou (83) and Solomy Balungi Bossa (81).

32. In the sixth round, 123 ballots were cast, of which none was invalid and 123 were valid; the number of States Parties voting was 123 and the required two-thirds majority was 82. Kimberly Prost obtained the highest number of votes (92) and a two-thirds majority of the States Parties present and voting.

33. In the ninth round, 123 ballots were cast, of which none was invalid and 123 were valid; the number of States Parties voting was 123 and the required two-thirds majority was 82. Rosario Salvatore Aitala obtained the highest number of votes (84) and a two-thirds majority of the States Parties present and voting.

#### *Commencement of terms of office of judges*

34. At its 2nd meeting, the Assembly, on the recommendation of the Bureau, decided that the terms of office of judges of the International Criminal Court elected by the Assembly shall begin to run as from 11 March following the date of their election.

## **11. Election of six members of the Committee on Budget and Finance**

35. In a note dated 17 October 2017, the Secretariat informed States that it had received eight candidatures and submitted to the Assembly a list of the eight candidates nominated by States Parties for election to the Committee on Budget and Finance.<sup>10</sup> By a communication, dated 1 November 2017, the Embassy of Canada to the Netherlands informed the Secretariat of the withdrawal of its candidate.<sup>11</sup>

<sup>8</sup> As amended by resolutions ICC-ASP/5/Res.5, ICC-ASP/12/Res.8, annex II, ICC-ASP/13/Res.5, annex II and ICC-ASP/14/Res.4, annex II.

<sup>9</sup> WEO = Western European and other States; AFR = African States; ASIA-PACIFIC = Asia-Pacific States; EEG = Eastern European States; GRULAC = Group of Latin American and Caribbean States; M = male; and F = female.

<sup>10</sup> ICC-ASP/16/6.

<sup>11</sup> ICC-ASP/16/6/Add.1.

36. At its 1st plenary meeting, on 4 December 2017, the Assembly elected the following six members of the Committee on Budget and Finance, in accordance with resolution ICC-ASP/1/Res.5<sup>12</sup> of 12 September 2003:<sup>13</sup>

- (a) Ms. Ingrid Eiken Holmgren (Sweden);
- (b) Mr. Fawzi Gharaibeh (Jordan);
- (c) Mr. Hitoshi Kozaki (Japan);
- (d) Ms. Mónica Sánchez (Écuador);
- (e) Ms. Margaret Wambui Ngugi Shava (Kenya); and
- (f) Ms. Elena Sopková (Slovakia).

37. In accordance with paragraph 11 of resolution ICC-ASP/1/Res.5, the Assembly dispensed with a secret ballot and elected the six members of the Committee on Budget and Finance by consensus. The term of office of the six members of the Committee shall begin to run on 21 April 2018.<sup>14</sup>

## 12. Election of the Registrar

38. At its 12th meeting, on 14 December 2017, the Assembly recalled that a list of candidates for the post of Registrar (ICC-ASP/16/28) had been received from the Presidency.

39. At the same meeting, the Assembly, on the recommendation of the Bureau, adopted by consensus recommendation ICC-ASP/16/Rec.1 (part III.B of this report).

## 13. Consideration and adoption of the budget for the sixteenth financial year

40. At its 7th meeting, on 8 December 2017, the Assembly heard statements by Mr. Herman von Hebel, Registrar of the Court, and Mr. Hitoshi Kozaki (Japan), Chair of the Committee on Budget and Finance.<sup>15</sup>

41. The Assembly, through its working group, considered the 2018 proposed programme budget, the reports of the Committee on Budget and Finance<sup>16</sup> and the reports of the External Auditor.

42. At its 12th meeting, on 14 December 2017, the Assembly adopted the report of the Working Group on the Programme Budget (ICC-ASP/16/WGPB/CRP.1), wherein it, *inter alia*, conveyed the recommendation of the working group that the Assembly endorse the recommendations of the Committee on Budget and Finance at its twenty-ninth session, with an additional adjustment to Major Programme I, as reflected in resolution ICC-ASP/16/Res.1.

43. At its 12th meeting, the Assembly also considered and approved, by consensus, the programme budget for 2018.

44. At the same meeting, the Assembly adopted, by consensus, resolution ICC-ASP/16/Res.1, concerning the programme budget in relation to the following:

- (a) Programme budget for 2018, including appropriations totalling €147,431,500 for the major programmes and staffing tables for each of the major programmes. This amount is reduced by the payments corresponding to Major Programme VII-2 Host State Loan;
- (b) Working Capital Fund for 2018;
- (c) Outstanding contributions;
- (d) Contingency Fund;

<sup>12</sup> As amended by resolution ICC-ASP/2/Res.4.

<sup>13</sup> See: Agenda and decisions of the 4 December 2017 meeting of the Bureau.

<sup>14</sup> See also ICC-ASP/16/6.

<sup>15</sup> See annex III of these Official Records.

<sup>16</sup> *Official Records ... Sixteenth session ... 2017* (ICC-ASP/16/20), vol. II, parts B.1 and B.2.

- (e) Scale of assessment for the apportionment of expenses of the Court;
- (f) Financing of appropriations for 2018;
- (g) Premises of the Court;
- (h) Transfer of funds between major programmes under the 2017 approved programme budget;
- (i) Audit
- (j) Budget Management Oversight
- (k) Development of budget proposals
- (l) A strategic approach to an improved budgetary process
- (m) Human Resources
- (n) Salaries of the judges of the International Criminal Court;
- (o) Referrals by the Security Council; and
- (p) Financial obligations of States Parties withdrawing from the Rome Statute.

#### **14. Consideration of the audit reports**

45. At its 7th meeting, on 8 December 2017, the Assembly heard a statement by Mr. Lionel Vareille, representative of the External Auditor. The Assembly took note with appreciation of the reports of the External Auditor on the audit of the financial statements of the Court for the period 1 January to 31 December 2016<sup>17</sup> and of the Trust Fund for Victims for the same period,<sup>18</sup> as well as the External Auditor's final audit report on the implementation of a division of external operations.<sup>19</sup>

#### **15. Activation of the Court's jurisdiction over the crime of aggression**

46. At its 13th meeting, on 14 December 2017, the Assembly took note of the report on the activation of the jurisdiction of the International Criminal Court over the crime of aggression.<sup>20</sup> The Assembly adopted resolution ICC-ASP/16/Res.5.

#### **16. Amendments to the Rome Statute and the Rules of Procedure and Evidence**

47. At its 12th plenary meeting, on 14 December 2017, the Assembly took note of the report of the Working Group on Amendments.<sup>21</sup> At the same meeting, the Assembly adopted, by consensus, resolution ICC-ASP/16/Res.4 on amendments to article 8 of the Rome Statute of the International Criminal Court.

#### **17. Cooperation**

48. At its 9th meeting, on 11 December 2017, the Assembly considered the topic of cooperation with the Court, in a two segment plenary discussion on financial investigations and the challenges of asset recovery and on the future of cooperation with the International Criminal Court on the eve of the twentieth anniversary of the Rome Statute.

49. At its 12th plenary meeting, on 14 December 2017, the Assembly adopted, by consensus, resolution ICC-ASP/16/Res.2 on cooperation.

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<sup>17</sup> Ibid., part C.1.

<sup>18</sup> Ibid., part C.2.

<sup>19</sup> ICC-ASP/16/27.

<sup>20</sup> ICC-ASP/16/24.

<sup>21</sup> ICC-ASP/16/22, Add.1 and Add.2.

**18. Review of the working methods of the subsidiary bodies of the Bureau and the Assembly**

50. During 2017, the Bureau discussed the issue of the participation of Observer States in the work of the Assembly and, on 18 October 2017, adopted a decision thereon, together with an Understanding on the participation of Observer States in meetings of the Assembly of States Parties.<sup>22</sup>

**19. Twentieth anniversary of the adoption of the Rome Statute**

51. At its 11th plenary meeting, on 13 December 2017, the Assembly held a panel discussion in plenary session to hold an exchange of views among States Parties, the Court and stakeholders. They considered, inter alia, the achievements of the Court and the key challenges to be addressed in order to strengthen the Rome Statute system to ensure that the Court could effectively carry out its mandate of putting an end to impunity and ensuring justice for the victims of the most heinous crimes.

**20. Amended provisional Staff Rules of the International Criminal Court**

52. In its resolution ICC-ASP/16/Res.1,<sup>23</sup> the Assembly took note of the text of the amended provisional Staff Rules of the International Criminal Court submitted to the Assembly by the Registrar pursuant to resolution ICC-ASP/15/Res.1.

**21. Decision concerning the dates and venues of the next sessions of the Assembly of States Parties**

53. At its 11th meeting, on 14 December 2017, the Assembly decided to hold its seventeenth session in The Hague from 5 to 12 December 2018, and to hold its eighteenth session in The Hague.

**22. Decisions concerning the dates and venue of the next sessions of the Committee on Budget and Finance**

54. At its 11th meeting, on 14 December 2017, the Assembly decided that the Committee on Budget and Finance would hold its thirtieth and thirty-first sessions in The Hague, from 16 to 20 April 2018 and 3 to 14 September 2018, respectively.

**23. Other matters**

*Trust Fund for the participation of the least developed countries and other developing States in the work of the Assembly*

55. The Assembly expressed its appreciation to Ireland and Finland for their contributions to the Trust Fund for the participation of the least developed countries and other developing States in the work of the Assembly.

56. The Assembly noted with satisfaction that six delegations had made use of the Trust Fund to attend the sixteenth session of the Assembly.

<sup>22</sup> [https://asp.icc-cpi.int/iccdocs/asp\\_docs/Bureau/ASP2017-Bureau06-decision-ENG-ObsvrStates.pdf](https://asp.icc-cpi.int/iccdocs/asp_docs/Bureau/ASP2017-Bureau06-decision-ENG-ObsvrStates.pdf).

<sup>23</sup> ICC-ASP/16/Res.1, section M.

## Part II

### External audit, programme budget for 2018 and related documents

#### A. Introduction

1. The Assembly of States Parties (the Assembly) had before it the 2018 proposed programme budget submitted by the Registrar of the International Criminal Court (the Court), in an advance version, on 9 August 2017,<sup>1</sup> the reports of the twenty-eighth<sup>2</sup> and twenty-ninth<sup>3</sup> sessions of the Committee on Budget and Finance (the Committee), the financial statements for the period 1 January to 31 December 2016,<sup>4</sup> and the Trust Fund for Victims financial statements for the period 1 January to 31 December 2016.<sup>5</sup> The Assembly also had before it annex III of the report of the Committee on the work of its twenty-ninth session, in which the Court outlined the budgetary implications of the Committee's recommendations on the budgets of the major programmes.

2. At its 7th plenary meeting, the Assembly heard the statements made by the Registrar of the Court, Mr. Herman von Hebel, the Chair of the Committee, Mr. Hitoshi Kozaki, and the representative of the External Auditor (*la Cour des comptes* (France)), Mr. Lionel Vareille. The Assembly was further assisted by the Vice-Chair of the Committee, Ms. Monica Sánchez Izquierdo.

3. The Working Group on the Programme Budget met on 12 and 13 December 2017. During the meetings the draft resolution was considered and finalized.

#### B. External audit

4. The Assembly noted with appreciation the reports of the External Auditor and the related comments of the Committee, contained in the report on the work of its twenty-ninth session.

#### C. Amount of appropriation

5. The Court's 2018 proposed programme budget amounted to €151,475,700, including €3,585,200 for Major Programme VII-2 (Host State Loan).

6. The Committee considered the Court's 2018 proposed programme budget at its twenty-ninth session and concluded that there were a number of areas where, based on actual and forecast expenditure, as well as accumulated experience, savings could be made. Accordingly, the Committee recommended that the budget allocation be reduced to a total of €148,012,400, including €3,585,200 for Major Programme VII-2 (Host State Loan).

7. The Assembly endorsed the recommendations contained in the report of the Committee, with an additional adjustment to Major Programme I (Judiciary), as reflected in resolution ICC-ASP/16/Res.1.

8. The Assembly therefore approved a budget appropriation for 2018 of €147,431,500.

9. The Assembly noted that without Major Programme VII-2 (Host State Loan) the total level of assessed contributions for the 2018 programme budget amounted to €143,846,300.

10. States Parties noted that the outcome reflected in resolution ICC-ASP/16/Res.1 was the product of extensive consultations on the proposed programme budget. A point was made that consultations on the budget should be more inclusive and transparent.

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<sup>1</sup> *Official Records ... Sixteenth session ... 2017*, (ICC-ASP/16/20), vol. II, part A.

<sup>2</sup> *Ibid.*, part B.1.

<sup>3</sup> *Ibid.*, part B.2.

<sup>4</sup> *Ibid.*, part C.1.

<sup>5</sup> *Ibid.*, part C.2.

## **D. Contingency Fund**

11. The Assembly decided to maintain the notional level of the Contingency Fund at €7 million.

12. The Assembly authorized the Court to transfer funds between major programmes at year end if the costs of unforeseen activities could not be absorbed within one major programme while a surplus existed in other major programmes, to ensure that all appropriations for 2017 were exhausted before accessing the Contingency Fund.

13. The Assembly requested the Court to make all possible efforts to absorb within its approved budget for 2018 any additional resources required in relation to judicial developments that occurred after the twenty-ninth session of the Committee on Budget and Finance and before the date of approval of the 2018 budget. The Assembly decided that, only after all possible efforts have been exhausted, the Court may exceptionally resort to the Contingency Fund for such additional resources.

14. The Assembly also decided that, should the Contingency Fund fall below €5.8 million by the seventeenth session of the Assembly, then the Assembly will assess the need for its replenishment in the budget facilitation for the 2019 programme budget, bearing in mind the report of the Committee and regulation 6.6 of the Financial Regulations and Rules.

## **E. Working Capital Fund**

15. The Assembly took note of the recommendations of the Committee on Budget and Finance and decided that the Working Capital Fund for 2018 shall be established in the amount of €11.6 million. The Assembly also decided that the Court may only use the surplus funds and funds received from the payment of outstanding contributions to reach the established level of the Working Capital Fund.

## **F. Financing of appropriations for 2018**

16. The Assembly resolved that, for 2018, the total assessed contributions amounted to €143,846,300.

## Part III

### Resolutions and recommendation adopted by the Assembly of States Parties

#### A. Resolutions adopted by the Assembly of States Parties

##### Resolution ICC-ASP/16/Res.1

*Adopted at the 12th plenary meeting, on 14 December 2017, by consensus*

##### ICC-ASP/16/Res.1

#### **Resolution of the Assembly of States Parties on the proposed programme budget for 2018, the Working Capital Fund for 2018, the scale of assessment for the apportionment of expenses of the International Criminal Court, financing appropriations for 2018 and the Contingency Fund**

*The Assembly of States Parties,*

*Having considered* the 2018 proposed programme budget of the International Criminal Court (“the Court”) and the related conclusions and recommendations contained in the reports of the Committee on Budget and Finance (“the Committee”) on the work of its twenty-eighth and twenty-ninth sessions,

#### A. Programme budget for 2018

1. *Approves* appropriations totalling €147,431,500 in the appropriation sections described in the following table:

<i>Appropriation section</i>	<i>Thousands of euros</i>
Major Programme I    Judiciary	12,712.0
Major Programme II    Office of the Prosecutor	45,991.8
Major Programme III    Registry	77,142.5
Major Programme IV    Secretariat of the Assembly of States Parties	2,718.2
Major Programme V    Premises	1,498.5
Major Programme VI    Secretariat of the Trust Fund for Victims	2,541.5
Major Programme VII-5    Independent Oversight Mechanism	534.5
Major Programme VII-6    Office of Internal Audit	707.3
<i>Subtotal</i>	<i>143,846.3</i>
Major Programme VII-2    Host State Loan	3,585.2
<b>Total</b>	<b>147,431.5</b>

2. *Notes* that those States Parties that have opted for the one-time payment in respect of the permanent premises, and have made such payments in full, will not be assessed for the contributions corresponding to Major Programme VII-2 Host State Loan, amounting to €3,585,200;

3. *Further notes* that these contributions will bring down the level of the 2018 programme budget appropriations that need to be assessed for contributions by States Parties from €147,431,500 to €143,846,300, and that this amount will be assessed following the principles described in section E;



4. *Further approves* the following staffing tables for each of the above appropriation sections:

	Office of the Judiciary	Prosecutor Registry	Secretariat, Assembly of States Parties	Secretariat, Trust Fund for Victims	Independent Oversight Mechanism	Office of Internal Audit	Total
USG	-	1	-	-	-	-	1
ASG	-	1	1	-	-	-	2
D-2	-	-	-	-	-	-	-
D-1	-	3	3	1	1	1	9
P-5	4	17	22	1	-	1	45
P-4	3	36	43	1	4	1	89
P-3	21	77	84	1	2	-	186
P-2	12	71	89	1	-	1	174
P-1	-	33	5	-	-	-	38
<i>Subtotal</i>	<i>40</i>	<i>239</i>	<i>247</i>	<i>5</i>	<i>7</i>	<i>3</i>	<i>544</i>
GS-PL	1	1	15	2	-	-	19
GS-OL	12	79	311	3	2	1	409
<i>Subtotal</i>	<i>13</i>	<i>80</i>	<i>326</i>	<i>5</i>	<i>2</i>	<i>1</i>	<i>428</i>
<b>Total</b>	<b>53</b>	<b>319</b>	<b>573</b>	<b>10</b>	<b>9</b>	<b>4</b>	<b>972</b>

## B. Working Capital Fund for 2018

*The Assembly of States Parties,*

*Noting* the recommendation of the Committee on Budget and Finance at its twenty-seventh session to reinstate the Working Capital Fund to represent approximately one month's expenditure of the Court's 2016 approved budget (€11.6 million),<sup>1</sup>

*Further noting* that the Committee recommended a consideration of a multi-year funding timetable,<sup>2</sup>

1. *Notes* that the Working Capital Fund for 2017 was established in the amount of €11.6 million;
2. *Further notes* that the current level of the Working Capital Fund is €9 million;
3. *Resolves* that the Working Capital Fund for 2018 shall be established in the amount of €11.6 million, and *authorizes* the Registrar to make advances from the Fund in accordance with the relevant provisions of the Financial Regulations and Rules of the Court;
4. *Decides* that the Court may only use the surplus funds and funds received from the payment of outstanding contributions to reach the established level of the Working Capital Fund.

## C. Outstanding contributions

*The Assembly of States Parties,*

1. *Urges* all States Parties to make timely payments of assessed contributions and *requests* the Court and States Parties to make serious efforts and take necessary steps to reduce the level of arrears and outstanding contributions as far as possible to avoid liquidity issues for the Court, and *further requests* the Court to communicate to the Committee on

<sup>1</sup> *Official Records ... Fifteenth session ... 2016* (ICC-ASP/15/20), vol. II, part B.2., para. 144.

<sup>2</sup> *Ibid.*, para. 148.

Budget and Finance all information concerning outstanding contributions in advance of the seventeenth session of the Assembly of States Parties.

## **D. Contingency Fund**

*The Assembly of States Parties,*

*Recalling* its resolutions ICC-ASP/3/Res.4 establishing the Contingency Fund in the amount of €10,000,000 and ICC-ASP/7/Res.4 requesting the Bureau to consider options for replenishing both the Contingency Fund and the Working Capital Fund,

*Taking note* of the advice of the Committee in the reports on the work of its eleventh, thirteenth, nineteenth and twenty-first sessions,

1. *Notes* that the current level of the Contingency Fund is €5.8 million;
2. *Decides* to maintain the Contingency Fund at the notional level of €7.0 million for 2018;
3. *Requests* that the Court make all possible efforts to absorb within its approved budget for 2018 any additional resources required in relation to judicial developments that occurred after the twenty-ninth session of the Committee on Budget and Finance and before the date of approval of the 2018 budget; and *decides* that, only after all possible efforts have been exhausted, the Court may exceptionally resort to the Contingency Fund for such additional resources, with due observance of the provisions set out in regulations 6.7 and 6.8 of the Financial Regulations and Rules;
4. *Decides* that, should the Contingency Fund, based on the Court's forecast on its budget implementation for 2018, fall below €5.8 million by the seventeenth session of the Assembly of States Parties, the Assembly will assess the need for its replenishment in the budget facilitation for the 2019 programme budget, bearing in mind the report of the Committee on Budget and Finance, and regulation 6.6 of the Financial Regulations and Rules;
5. *Requests* the Bureau to keep the €7.0 million threshold under review in light of further experience on the functioning of the Contingency Fund.

## **E. Scale of assessment for the apportionment of expenses of the Court**

*The Assembly of States Parties,*

1. *Decides* that for 2018, the contributions of States Parties shall be assessed in accordance with an agreed scale of assessment, based on the scale adopted by the United Nations for its regular budget applied for 2016-2018, and adjusted in accordance with the principles on which the scale is based;<sup>3</sup> and
2. *Notes* that, in addition, any maximum assessment rate for the largest contributors and for the least developed countries applicable for the United Nations regular budget will apply to the Court's scale of assessment.

## **F. Financing of appropriations for 2018**

*The Assembly of States Parties,*

1. *Notes* that the payments corresponding to Major Programme VII-2 Host State Loan will reduce the level of the budget appropriations to be assessed for contributions by States Parties to €143,846,300; and
2. *Resolves* that, for 2018, assessed contributions for the budget amounting to €143,846,300, approved by the Assembly under section A, paragraph 1 of the present resolution, will be financed in accordance with regulations 5.1 and 5.2 of the Financial Regulations and Rules of the Court.

<sup>3</sup> Rome Statute of the International Criminal Court, article 117.

## G. Premises of the Court

*The Assembly of States Parties,*

*Recalling* the work undertaken by the Oversight Committee on the Total Cost of Ownership,<sup>4</sup>

*Reiterating* the need to ensure sufficient and continuous oversight by the States Parties on the permanent premises in which they have invested significant financial resources,<sup>5</sup>

1. *Welcomes* the information provided by the Court on Capital replacements<sup>6</sup> and on its mechanisms to monitor and control the maintenance costs of its premises;<sup>7</sup> *welcomes further* the recommendations made by the Committee on Budget and Finance as regards preventive and corrective maintenance costs as well as capital replacements,<sup>8</sup> as well as the recommendations made by the External Auditor on financial reporting and management of the permanent premises project;<sup>9</sup>
2. *Requests* the Court to summarize the maintenance and operating costs of the Court's premises in an overview table in future proposed programme budgets;
3. *Requests* the Court to seek a second opinion regarding capital investments from the incoming main contractor in advance of its seventeenth session, bearing in mind the following factors:
  - (a) Urgency of replacements, by taking into account actual usage;
  - (b) Value for money, in particular whether alternative product brands offer better value for money in terms of reliability, durability, ease of repair, etc.;
  - (c) Pricing assumptions with surveys of most recent market trends;
  - (d) Opportunities from (joint) procurement; and
  - (e) Lessons learned, for instance, from other The Hague based institutions.
4. *Requests further* the Court to present, to the Assembly via the Committee on Budget and Finance and ahead of the seventeenth session of the Assembly, a report on different options for funding long-term maintenance and replacement based on the experience of other international organizations;
5. *Reaffirms* that the Bureau is entrusted with the mandate concerning the governance structure and total cost of ownership, via its Hague Working Group which has a facilitation on the budget, or, if necessary, a subcommittee thereof;
6. *Welcomes with appreciation* that several States Parties made artwork donations to the permanent premises.

## H. Transfer of funds between major programmes under the 2017 approved programme budget

*The Assembly of States Parties,*

*Recognizing* that under regulation 4.8 of the Financial Regulations and Rules no transfer between appropriation sections may be made without authorization by the Assembly,

1. *Decides* that, in line with established practice, the Court may transfer any remaining funds between major programmes at the conclusion of 2017 should costs for activities

<sup>4</sup> ICC-ASP/14/Res.5, annex II and ICC-ASP/15/Res.2, para. 35.

<sup>5</sup> ICC-ASP/14/Res.5, para. 56.

<sup>6</sup> ICC-ASP/16/26.

<sup>7</sup> ICC-ASP/16/25.

<sup>8</sup> *Official Records...Sixteenth session ...2017* (ICC-ASP/16/20), vol.II, part B.2, paras. 216-235.

<sup>9</sup> *Official Records ... Fifteenth session ... 2016* (ICC-ASP/15/20), vol. II, part C.1., p. 439, recommendation No. 1: "The External Auditor recommends that, at its next session, or as soon as possible in 2017, the Assembly review cost estimates of capital replacements and implement a funding solution which does not jeopardize the prudential level of the working capital fund."

which were unforeseen or could not be accurately estimated be unable to be absorbed within one major programme, whilst a surplus exists in other major programmes, in order to ensure that appropriations for each major programme are exhausted prior to accessing the Contingency Fund.

## **I. Audit**

*The Assembly of States Parties,*

1. *Welcomes* the Annual Report of the Audit Committee;<sup>10</sup>
2. *Notes* that the term of the External Auditor, the *Cour des comptes*, will end with the financial statements of the Court and the Trust Fund for Victims for 2019, and *further notes* that a detailed selection procedure for procurement of an External Auditor will need to be undertaken in time for the eighteenth session of the Assembly of States Parties.

## **J. Budget Management Oversight**

*The Assembly of States Parties,*

1. *Notes* that the strategic plans of the Court and the Office of the Prosecutor are dynamic and updated on a regular basis;
2. *Notes* the intention of the Court to extend its current Strategic Plan to 2018, and to prepare a new Strategic Plan in 2018, for the period 2019-2021;
3. *Reiterates* the importance of strengthening the relationship and coherence between the strategic planning process and the budgetary process, which is crucial for the credibility and sustainability of the longer-term strategic approach;
4. *Recalls* its invitation to the Court to hold annual consultations with the Bureau in the first trimester on the implementation of its strategic plans during the previous calendar year, with a view to improving performance indicators;
5. *Also recalls* its invitation to the Office of the Prosecutor to inform the Bureau on the implementation of its Strategic Plan for 2016-2018;
6. *Requests* the Bureau to continue to engage in a dialogue with the Court on the development of a comprehensive risk-management strategy and to report thereon to the seventeenth session of the Assembly;
7. *Welcomes* the presentations made to States Parties by representatives of the Audit Committee, the Committee on Budget and Finance, the External Auditor, the Independent Oversight Mechanism, and the Office of Internal Audit, providing information on their respective mandates and means of coordination between them; and
8. *Recommends* these subsidiary bodies to expand their coordination in order to improve the timely exchange of information and report results amongst them, the organs of the Court, the Bureau, and the Assembly, to optimize their oversight capacities.

## **K. Development of budget proposals**

*The Assembly of States Parties,*

1. *Requests* the Court to present a sustainable budget proposal for its 2019 programme budget, whereby proposed increases above the level of the 2018 approved budget are requested only when necessary for the purpose of its mandated activities and after all possible steps have been taken to finance such increases through savings and efficiencies;
2. *Requests* the Court to set Court-wide annual efficiency targets and to present an annex to the 2019 programme budget on the achievements of these efficiency targets, as well as detailed information on savings, efficiencies, non-recurrent cost reductions and additional cost reductions achieved in 2018 and estimations for 2019; and *welcomes* the

<sup>10</sup> *Official Records...Sixteenth session ...2017* (ICC-ASP/16/20), vol.II, part B.2, annex V.

recommendations of the Committee on Budget and Finance in relation to the presentation of this information. The Committee on Budget and Finance will be updated ahead of its thirty-first session on the measures taken by the Court and will include its comments in its reports to the Assembly of States Parties;

3. *Further recalls* that the proposed programme budget should present the costs for the following year by first highlighting the costs of maintaining current activities, then proposing changes to those activities including full costings of such changes.

## **L. A strategic approach to an improved budgetary process**

*The Assembly of States Parties,*

*Bearing in mind* the need for the respect of the independence and confidentiality required to allow the Judiciary and the Office of the Prosecutor to carry out its duties,

1. *Calls upon* the Court to continue to base its programmes and activities on careful, transparent and strict financial assessments, resulting in a consistent budgetary proposal;

2. *Invites* the Court to continue to ensure a stringent internal budgetary process steered by the Registry as part of an annual cycle taking into account past expenditure and leading to a sound and transparent budget proposal, thus allowing the Court to manage its financial situation responsibly;

3. *Emphasizes* the central role that the report of the Committee on Budget and Finance has on budget discussions in preparation for the Assembly sessions, and *requests* the Committee to ensure that its reports are published as soon as possible after each session;

4. *Stresses* the utmost importance of achieving economies of scale, streamlining activities, identifying potential duplications and promoting synergies within as well as between the different organs of the Court;

5. *Welcomes* the Court's continued efforts to fully implement the "One-Court-principle" when establishing the proposed programme budget, which has resulted in improvements to the budgetary process such as more frequent and more efficient use of the Coordination Council and other inter-organ coordination mechanisms, as well as a more coherent and consistent Court-wide budget proposal and an improved process and format of the budget document, thus ensuring higher consistency of message and policy of expenditures across the Court;

6. *Invites* the Court, in consultation with the Committee on Budget and Finance, to continue developing its budgetary process with a view to building on the progress made, by focusing on improved context setting, better planning and presentation of cross-Court expenditures, assessing delivery and efficiency, establishing fundamental budgetary principles, and synergies; and *welcomes* the Court's assurances to continue to improve future budget processes with a view to submitting sustainable and realistic budget proposals, including by:

(a) Further strengthening the "One-Court-principle" by continuing to ensure that the Principals' high-level strategic vision continues to guide the budgetary process from the outset;

(b) Further enhancing the dialogue and information sharing between the Court and States Parties on the assumptions, objectives and priorities which underpin the draft programme budget at an early stage in the budget process, mindful of the Court's judicial independence;

(c) Continuing to find appropriate ways to preserve the Court's long-term ability to deliver on its mandate effectively and efficiently, while being mindful of the financial constraints of States Parties;

(d) Enhancing the dialogue and information sharing between the Court and States Parties on potential medium-term cost drivers with a view to enhancing budget predictability;

7. *Notes* the efforts of the Court to attain synergies among the different organs, reiterates its prior requests to the Court in this regard, *invites* the Court to strengthen the inter-organ dialogue so as to avoid potential duplication of work, *further notes* the Court's efforts to make more frequent and efficient use of its inter-organ coordination mechanisms in order to advance the process of identification of areas of joint optimization;

8. *Reiterates* that in principle documentation should be submitted at least 45 days before the beginning of the respective session of the Committee on Budget and Finance in both working languages of the Court;
9. *Requests* the Court to continue submitting its annual report on activities and programme performance including, as appropriate, relevant information on the approved budget, expenditure and variance at the sub-programme level with all budget lines, as well as the provisional expenditures and revenues for all trust funds administered by the Court, also being provided by the Court in its financial statements;
10. *Commits* itself to financial practices which give utmost priority to the annual budget cycle and *calls for* a restrictive use of multi-annual funds administered outside the cycle;
11. *Recalls* the work undertaken by the Court in 2016 to evaluate the full impact of the “Basic Size” model developed by the Office of the Prosecutor, which seeks to increase the predictability and certainty of the budgetary resources the Court considers necessary in order to carry out its mandate, *stresses* that the approval by the Assembly of the budget for 2018 is not to be understood as an endorsement of its budgetary implications as the budget for each year should be considered on its own merits as it is prepared by the Court on the basis of the actual needs foreseen for the specific year, and it is considered and approved by the Assembly on an annual basis;

## M. Human Resources

*The Assembly of States Parties,*

*Recalling* its decision, during its fifteenth session, to (i) approve the implementation of all the elements of a new compensation package in alignment with the changes and timelines approved by the United Nations General Assembly; and (ii) request the Court to submit to the Assembly, during its sixteenth session, the full text of the amended provisional Staff Rules related to the United Nations compensation package, and applicable as of 1 January 2017, pursuant to regulation 12.2 of the Staff Regulations,

*Further noting* the report of the Committee on Budget and Finance on the work of its twenty-eighth session, which welcomed the development of the policy put forward by the Court regarding the compensation review package,<sup>11</sup>

*Also noting* the report of the Committee on Budget and Finance on the work of its twenty-ninth session, which emphasized that the reclassification requests both upward and downward should be examined Court-wide and not for certain posts in isolation, and recommended not to approve any requested reclassifications awaiting a Court-wide review of the current policy on reclassifications,<sup>12</sup>

1. *Welcomes* the work undertaken by the Court to implement the changes with respect to the new compensation package for staff members in the Professional and higher categories in conformity with the United Nations common system standards;
2. *Takes note* of the text of the amended provisional Staff Rules and *considers* that these amendments are consistent with the intent and purpose of the Staff Regulations of the Court;
3. *Notes* that the provisional amended Staff Rules related to education grant and special education grant shall be promulgated at a later stage and after the United Nations Secretariat officially promulgates its administrative instruction on this topic;
4. *Requests* the Court to submit to the Assembly, during its seventeenth session, the full text of the amended provisional Staff Rules related to the education grant, special education grant and related benefits, pursuant to regulation 12.2 of the Staff Regulations;
5. *Also requests* the Court to conduct a Court-wide review of the current policy on reclassifications and to report the outcome to the Committee on Budget and Finance, during its thirtieth session, and to the Assembly at its seventeenth session.

<sup>11</sup> *Official Records...Sixteenth session ...2017* (ICC-ASP/16/20), vol.II, part B.1, para. 105.

<sup>12</sup> *Official Records...Sixteenth session ...2017* (ICC-ASP/16/20), vol.II, part B.2, paras. 38, 48, 64 and 79.

## N. Salaries of the judges of the International Criminal Court

*The Assembly of States Parties,*

*Noting* the request by the Court for a revision of the judges' remuneration in implementation of resolution ICC-ASP/3/Res.3,<sup>13</sup>

*Considering* the conclusion of the Committee on Budget and Finance that the annual remuneration of judges would have to be considered by the Assembly as a policy matter and would require a procedure to review the salary scheme for judges,<sup>14</sup>

1. *Requests* the Bureau to establish a working group, based in The Hague and open only to States Parties, to discuss a mechanism to consider a revision of the judges' remuneration in implementation of resolution ICC-ASP/3/Res.3 and to report thereon to the Assembly at its seventeenth session.

## O. Referrals by the Security Council

*The Assembly of States Parties,*

*Noting with concern* that, to date, expenses incurred by the Court due to referrals by the United Nations Security Council<sup>15</sup> have been borne exclusively by States Parties,

*Recalling* that, pursuant to article 115 of the Rome Statute, expenses of the Court and the Assembly shall be provided, inter alia, by funds of the United Nations, subject to the approval of the General Assembly, in particular in relation to the expenses incurred due to referrals by the Security Council,

*Mindful* that, pursuant to article 13, paragraph 1, of the Relationship Agreement between the Court and the United Nations, the conditions under which any funds may be provided to the Court by a decision of the General Assembly of the United Nations shall be subject to separate arrangements,

1. *Notes* the report of the Registry on the approximate costs allocated so far within the Court in relation to referrals by the Security Council,<sup>16</sup> and *notes* that to date the approved budget allocated in relation to the referrals amounts to approximately €58 million borne exclusively by States Parties;

2. *Encourages* States Parties to continue discussions on a possible way forward on this issue;

3. *Invites* the Court to continue including this matter in its institutional dialogue with the United Nations and to report thereon to the seventeenth session of the Assembly.

## P. Financial obligations of States Parties withdrawing from the Rome Statute

*The Assembly of States Parties,*

*Taking note* of the recommendations of the Committee on Budget and Finance in the report on the work of its twenty-ninth session with regard to financial obligations of States Parties withdrawing from the Rome Statute,<sup>17</sup>

1. *Decides* to adopt the course of action in relation to the withdrawal that came into effect in 2017, as proposed by the Court, and as considered by the Committee;<sup>18</sup>

2. *Further requests* the Court to propose amendments to the Financial Regulations and Rules in this regard, for consideration of the Committee at its thirtieth session and adoption by the Assembly, as appropriate, at its seventeenth session.

<sup>13</sup> *Official Records ... Fifteenth session ... 2016* (ICC-ASP/15/20), vol. II, part A, para. 164.

<sup>14</sup> *Ibid*, part B.2., paras. 37 and 43.

<sup>15</sup> United Nations Security Council resolutions 1593 and 1970.

<sup>16</sup> ICC-ASP/16/23.

<sup>17</sup> *Official Records...Sixteenth session ...2017* (ICC-ASP/16/20), vol.II, part B.2, paras. 241-244.

<sup>18</sup> *Official Records...Sixteenth session ...2017* (ICC-ASP/16/20), vol.II, part B.2, para. 241.

## Resolution ICC-ASP/16/Res.2

*Adopted at the 12th plenary meeting, on 14 December 2017, by consensus*

### ICC-ASP/16/Res.2 Resolution on cooperation

*The Assembly of States Parties,*

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

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

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

*Welcoming* the report of the Court on cooperation<sup>1</sup>, submitted pursuant to paragraph 32 of resolution ICC-ASP/15/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

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<sup>1</sup> ICC-ASP/16/16.



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 15 persons remain outstanding,<sup>2</sup> 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 Rapporteur<sup>3</sup> 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 seventeenth 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 such a mechanism, taking into consideration, inter alia, the study in annex II of the report of the Bureau on cooperation to the thirteenth session of the Assembly<sup>3</sup>, as well as the presentation made by Belgium on 27 July 2017 contained in annex III of the report of the Bureau on cooperation to the sixteenth session of the Assembly<sup>4</sup>, and to report to the Assembly well in advance of the eighteenth 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;

<sup>2</sup> As of 27 October 2017, see ICC-ASP/16/9.

<sup>3</sup> ICC-ASP/13/29.

<sup>4</sup> ICC-ASP/16/17, annex III.

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 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 *two* agreements between the Court and the Republic of Argentina and Sweden on the enforcement of sentences;
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 seventeenth 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 2007<sup>5</sup> 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. *Welcomes* the enhanced dialogue between States Parties, the Court, members of civil society and the International Criminal Court Bar Association offered by the plenary discussion on cooperation held during the sixteenth session of the Assembly, with a special focus on financial investigations and the challenges of asset recovery as well as the future of cooperation with the International Criminal Court on the eve of the twentieth anniversary of the Rome Statute;

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 seventeenth session and annually thereafter.

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

## Annex

### Declaration of Paris

*The States Parties to the Rome Statute of the International Criminal Court (ICC),*

1. *Reaffirming* that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation, as stipulated in the Preamble of the Rome Statute of the International Criminal Court (hereinafter referred to as “the Rome Statute”),
2. *Emphasizing* the obligation of States Parties enshrined in Part 9 of the Rome Statute concerning International Cooperation and Judicial Assistance, to cooperate fully with the ICC in its investigation and prosecution of crimes within the jurisdiction of the ICC, and reaffirming full respect for domestic procedures set forth by national legislations,
3. *Further emphasizing* the obligation of States Parties to, in accordance with the provisions of Part 9 of the Rome Statute and under procedures of national law, comply with requests issued by the ICC to assist in the identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes for the purpose of eventual forfeiture, without prejudice to the rights of bona fide third parties, as stipulated in article 93(1)(k) of the Rome Statute,
4. *Mindful of* existing applicable international treaties governing asset recovery and of the related obligations for the jurisdictions concerned to afford one another the widest measure of cooperation and assistance with regard to the return of assets,
5. *Recalling* the recommendations on cooperation endorsed by the ICC Assembly of States Parties (ASP) during its sixth session,<sup>1</sup> particularly recommendations on the identification, seizing and freezing of assets and, if appropriate their implementation,
6. *Further noting* the importance of keeping 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,<sup>2</sup> as well as the importance of cooperation requests by the Court being as specific as possible,
7. *Recalling* the conclusions of the Workshop on Financial Investigations organized at the seat of the ICC on 26-27 October 2015, as well as the follow up observations made at the 18 November 2016 ASP panel discussion on strengthening financial criminal investigations, and the need to further discuss and clarify the mandate and the requirements of the ICC in relation to financial investigations and asset recovery,
8. *Willing* to advance cooperation with the ICC in the area of financial investigations and asset recovery, in accordance with national legislations, for the purposes of potentially providing evidence to demonstrate linkage between the crimes and assets, *as well as* securing funds for possible reparations to victims if the accused person is found guilty and, for recovering the costs arising from legal aid.

*Invite the States Parties to the Rome Statute of the International Criminal Court to,*

1. *Consider* the possibility of setting up, reviewing or strengthening the implementation of domestic cooperation laws, procedures and policies, to increase the ability of States Parties to cooperate fully with the ICC in the area of financial investigations and asset recovery, in accordance with the Rome Statute,
2. *Raise* awareness among relevant national authorities about the mandate and the requirements of the ICC in relation to financial investigations and asset recovery, and the nature and extent of the obligation to cooperate under Part 9 of the Rome Statute,

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<sup>1</sup> Resolution ICC-ASP/6/Res.2.

<sup>2</sup> Resolution ICC-ASP/15/Res.3, para 13.

3. *Maintain* the dialogue with the ICC to provide the necessary assistance in the preparation and execution of its requests for cooperation for the purpose of ICC's financial investigations,
4. *Encourage* national authorities and officials to engage with the ICC and look for opportunities to cooperate with the ICC in the area of financial investigations and asset recovery, and consider how to overcome any cooperation challenges,
5. *Consider* initiating discussion at the national level, where relevant, on the possibility of sharing information and best practices, through the appropriate channels, between the ICC and competent national authorities,
6. *Encourage* national authorities to keep under review the possibility of domestic investigation on financial crimes based on relevant information received through requests for cooperation by the ICC in the course of its investigations or prosecutions,
7. *Reinforce* cooperation in relation to investigations or prosecutions already opened before national jurisdictions with respect to crimes within the jurisdiction of the ICC, or serious crimes under the relevant national law, where relevant information would be identified and could be requested from the ICC, as provided for in article 93 (10) of the Rome Statute,
8. *Insert* and *mainstream* the ICC specific mandate, legal framework and cooperation needs in the context of meetings and exchanges between relevant specialized, regional and international networks that deal with financial investigations and asset recovery,
9. *Consider* the possibility of secondments and visiting professionals from the competent national authorities to the ICC, and other specialized trainings, for the purpose of increasing knowledge and understanding, cooperation, and mutual capacity in the area of financial investigations and asset recovery,
10. *Continue* to place emphasis on cooperation regarding financial investigations and asset recovery and follow up to the Paris Conference by inviting the Assembly of States Parties to consider the present declaration at its sixteenth session.

*Invite the International Criminal Court to*

11. *Create* and *strengthen* the ICC's partnerships with national authorities responsible for international cooperation in criminal matters and international organizations, and with the aim to share information and best practices on the identification, tracing and freezing or seizure of proceeds, property and assets and instrumentalities of crimes under jurisdiction of the ICC,
12. *Raise* awareness of the ICC's mandate by providing States with relevant information to this end in a timely manner,
13. *Conduct* efficient and effective financial investigations at all stages of investigation and trial, with the aim to use relevant information as evidence, and to obtain freezing and seizure of assets with the view to contribute to reparations to victims and, to recover the costs arising from legal aid, in accordance with the relevant Rules of Procedure and Evidence of the Rome Statute, in particular rule 221.

## Resolution ICC-ASP/16/Res.3

*Adopted at the 12th plenary meeting, on 14 December 2017, by consensus*

### ICC-ASP/16/Res.3

#### **Resolution on consultations pursuant to article 97 (c) of the Rome Statute of the International Criminal Court**

*The Assembly of States Parties,*

*Bearing in mind* the provisions of Part 9 of the Rome Statute on international cooperation and judicial assistance, as well as relevant Rules of Procedure and Evidence,

*Convinced that* full respect for the principles and provisions of the Rome Statute is essential for effective international cooperation and judicial assistance,

*Conscious* of the importance of procedures and mechanisms enabling States Parties to cooperate with the Court, particularly when a State Party receives a request under Part 9 of the Rome Statute in relation to which it identifies problems which may impede or prevent the execution of the request,

*Mindful* of the central role of international cooperation and judicial assistance between States Parties and the Court with respect to the issues described in article 97(c) of the Rome Statute,

*Recalling* that at its fourteenth session the Assembly of States Parties discussed the issue of the application and implementation of article 97 of the Rome Statute,

*Considering* that on 3 June 2016 the Bureau established a working group to examine the application of article 97 in close consultation with the Court, while observing the judicial independence of the Court, and that this working group was open to all States Parties,

*Further considering* the request of the Assembly of States Parties at its fifteenth session, that the working group continue to explore all possible means to improve the application of article 97 of the Rome Statute, in particular regarding problems identified under subparagraph c), in close consultations with the Court,

*Acknowledging* the active participation and contributions of States Parties to the deliberations of the working group by providing their views and proposals on cooperation with the Court,

*Reaffirming* its commitment to the principle of judicial independence of the Court,

1. *Adopts the* “Understanding with respect to article 97(c) consultations” contained in the annex to this resolution.

## Annex

### Understanding with respect to article 97 (c) consultations

The following serves to clarify the process for consultations between a State Party and the Court in cases as provided for in article 97 (c) of the Rome Statute:

1. Where a request for cooperation originates from the Office of the Prosecutor, the requested State should, without delay, make a request in writing to the Office of the Prosecutor for a consultation in accordance with rule 176 of the Rules of Procedure and Evidence.
2. (a) Where a request for cooperation originates from a Chamber of the Court, the requested State should, without delay, make a request for consultations in writing to:
  - (i) The Chamber of the Court that issued the request for cooperation; or
  - (ii) The Presidency of the Court. Such consultations will not be of a judicial nature.
- (b) Such a request for consultations should be transmitted through the Registrar.
3. Subject to article 40 (1), article 42 (1) and (2) and article 43 (1) and (2) of the Rome Statute, for consultations carried out under paragraph 2, the Chamber or Presidency may invite the participation in the consultation of any other relevant organ or official in a position to assist, if appropriate and the requested organ or official consents.
4. Upon receipt of a request for consultations under paragraph 1 or 2, the Office of the Prosecutor, Registrar, or Presidency, as appropriate, should, without delay, inform the State Party and any other relevant organ or official in writing about the proposed date, location and/or other modalities of the consultation process.
5. The consultation should proceed and be completed without delay.
6. (a) If the organ issuing the request, the Presidency or the requested State Party considers that the consultations have been exhausted, it should give written notification to the other participants in the consultations.
- (b) Following receipt of such notice, the matter may be addressed in accordance with article 87 and other applicable provisions of the Rome Statute as required.
7. Neither the request for consultations, the consultations, nor any outcome of consultations has suspensive effect, unless a competent Chamber so orders.
8. The above is without prejudice to the principle of judicial independence and the flexible nature and scope of consultations as provided for elsewhere in article 97 of the Rome Statute.
9. The above will be interpreted and implemented consistently with the Rome Statute and the Rules of Procedure and Evidence, including rule 176.

## Resolution ICC-ASP/16/Res.4

*Adopted at the 12th plenary meeting, on 14 December 2017, by consensus*

### ICC-ASP/16/Res.4

## Resolution on amendments to article 8 of the Rome Statute of the International Criminal Court

*The Assembly of the States Parties*

*Noting* article 121, paragraphs 1 and 2, of the Rome Statute of the International Criminal Court which permits the Assembly of States Parties to adopt any proposed amendment to the Rome Statute after the expiry of seven years from the entry into force of the Statute,

*Noting also* article 121, paragraph 5, of the Statute which states that any amendment to articles 5, 6, 7 and 8 of the Statute shall enter into force for those States Parties which have accepted the amendment one year after the deposit of their instruments of ratification or acceptance and that in respect of a State Party which has not accepted the amendment, the Court shall not exercise its jurisdiction regarding the crime covered by the amendment when committed by that State Party's nationals or on its territory, and *confirming* its understanding that in respect to this amendment the same principle that applies in respect of a State Party which has not accepted this amendment applies also in respect of States that are not parties to the Statute,

*Confirming* that, in light of the provision of article 40, paragraph 5, of the Vienna Convention on the Law of Treaties, States that subsequently become States Parties to the Statute will be allowed to decide whether to accept the amendments contained in this resolution at the time of ratification, acceptance or approval of, or accession to the Statute,

*Confirming also* that States Parties to the Statute and States that subsequently become States Parties to the Statute will be allowed to ratify or accept all or some of the three amendments contained in annex I to III of this resolution,

*Noting* article 9 of the Statute on the Elements of Crimes which states that such Elements shall assist the Court in the interpretation and application of the provisions of the crimes within its jurisdiction,

*Considering* that where the elements of the crimes specify that the conduct took place in the context of and was associated with an armed conflict, they consequently confirm the exclusion from the Court's jurisdiction of law enforcement situations,

*Considering also* that the crimes referred to in article 8, paragraph 2 (b) (xxvii) and article 8, paragraph 2 (e) (xvi) (employing microbial, biological or toxin weapons); in article 8, paragraph 2 (b) (xxviii) and article 8, paragraph 2 (e) (xvii) (employing weapons that injure by fragments undetectable by X-rays) and in article 8, paragraph 2 (b) (xxix) and article 8, paragraph 2 (e) (xviii) (employing laser blinding weapons) are serious violations of the laws applicable in international armed conflict and in armed conflict not of an international character,

1. *Decides* to adopt the three amendments to article 8, paragraph 2 (b) and to article 8, paragraph 2 (e), of the Rome Statute of the International Criminal Court contained in annex I to III to the present resolution, which are subject to ratification or acceptance and shall enter into force in accordance with article 121, paragraph 5, of the Statute;
2. *Also decides* to adopt the relevant elements to be added to the Elements of Crimes, as contained in annex IV to VI to the present resolution.



## **Annex I**

### **Amendment to be inserted as article 8-2-b)xxvii) and article 8-2-e)xvi) of the Rome Statute**

Employing weapons, which use microbial or other biological agents, or toxins, whatever their origin or method of production;

## **Annex II**

### **Amendment to be inserted as article 8-2-b)xxviii) and article 8-2-e)xvii)**

Employing weapons the primary effect of which is to injure by fragments which in the human body escape detection by X-rays;

## **Annex III**

### **Amendment to be inserted as article 8-2-b)xxix) and article 8-2-e)xviii)**

Employing laser weapons specifically designed, as their sole combat function or as one of their combat functions, to cause permanent blindness to unenhanced vision, that is to the naked eye or to the eye with corrective eyesight devices;

## **Annex IV**

### **Elements of crime of new article 8-2-b)xxvii)**

1. The perpetrator employed-weapons which use microbial or other biological agents, or toxins, whatever their origin or method of production.
2. The conduct took place in the context of and was associated with an international armed conflict.
3. The perpetrator was aware of the factual circumstances that established the existence of an armed conflict.

### **Elements of crime of new article 8-2-e)xvi)**

1. The perpetrator employed weapons which use microbial or other biological agents, or toxins, whatever their origin or method of production.
2. The conduct took place in the context of and was associated with an armed conflict not of an international character.
3. The perpetrator was aware of the factual circumstances that established the existence of an armed conflict.

## Annex V

### **Elements of crime of new article 8-2-b)xxviii)**

1. The perpetrator employed weapons the primary effect of which is to injure by fragments which in the human body escape detection by X-rays.
2. The conduct took place in the context of and was associated with an international armed conflict.
3. The perpetrator was aware of the factual circumstances that established the existence of an armed conflict.

### **Elements of crime of new article 8-2-e)xvii)**

1. The perpetrator employed weapons the primary effect of which is to injure by fragments which in the human body escape detection by X-rays.
2. The conduct took place in the context of and was associated with an armed conflict not of an international character.
3. The perpetrator was aware of the factual circumstances that established the existence of an armed conflict.

## Annex VI

### **Elements of crime of new article 8-2-b)xxix)**

1. The perpetrator employed laser weapons specifically designed, as their sole combat function or as one of their combat functions, to cause permanent blindness<sup>1</sup> to unenhanced vision, that is to the naked eye or to the eye with corrective eyesight devices.
2. The blinding was not an incidental or collateral effect of the legitimate military employment of laser systems, including laser systems used against optical equipment.
3. The conduct took place in the context of and was associated with an international armed conflict.
4. The perpetrator was aware of the factual circumstances that established the existence of an armed conflict.

### **Elements of crime of new article 8-2-e)xviii)**

1. The perpetrator employed laser weapons specifically designed, as their sole combat function or as one of their combat functions, to cause permanent blindness<sup>2</sup> to unenhanced vision, that is to the naked eye or to the eye with corrective eyesight devices.
2. The blinding was not an incidental or collateral effect of the legitimate military employment of laser systems, including laser systems used against optical equipment.
3. The conduct took place in the context of and was associated with an armed conflict not of an international character.
4. The perpetrator was aware of the factual circumstances that established the existence of an armed conflict.

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<sup>1</sup> The terms “permanent blindness” mean “irreversible and uncorrectable loss of vision which is seriously disabling with no prospect of recovery”.

<sup>2</sup> The terms “permanent blindness” mean “irreversible and uncorrectable loss of vision which is seriously disabling with no prospect of recovery”.

## Resolution ICC-ASP/16/Res.5

*Adopted at the 13th plenary meeting, on 14 December 2017, by consensus*

### ICC-ASP/16/Res.5

#### Activation of the jurisdiction of the Court over the crime of aggression

*The Assembly of States Parties,*

*Recognizing* the historic significance of the consensual decision at the Kampala Review Conference to adopt the amendments to the Rome Statute on the crime of aggression, and in this regard *recalling* resolution RC/Res.6,

*Reaffirming* the purposes and principles of the Charter of the United Nations,

*Recalling* its resolve to activate the Court's jurisdiction over the crime of aggression as early as possible, subject to a decision according to paragraphs 3 of article 15 *bis* and article 15 *ter*,

*Noting with appreciation* the report on the facilitation on the activation of the jurisdiction of the International Criminal Court over the crime of aggression,<sup>1</sup> which summarizes the views of States Parties,

*Recalling* paragraph 4 of article 15 *bis* and paragraph 5 of article 121,

*Recalling also* that in paragraph 1 of RC/Res.6 the Review Conference decided to adopt, in accordance with paragraph 2 of article 5 the amendments regarding the crime of aggression, which are subject to ratification or acceptance and shall enter into force in accordance with paragraph 5 of article 121; and noted that any State Party may lodge a declaration referred to in article 15 *bis* prior to ratification or acceptance of the amendments,

1. *Decides* to activate the Court's jurisdiction over the crime of aggression as of 17 July 2018;
2. *Confirms* that, in accordance with the Rome Statute, the amendments to the Statute regarding the crime of aggression adopted at the Kampala Review Conference enter into force for those States Parties which have accepted the amendments one year after the deposit of their instruments of ratification or acceptance and that in the case of a State referral or *proprio motu* investigation the Court shall not exercise its jurisdiction regarding a crime of aggression when committed by a national or on the territory of a State Party that has not ratified or accepted these amendments;
3. *Reaffirms* paragraph 1 of article 40 and paragraph 1 of article 119 of the Rome Statute in relation to the judicial independence of the judges of the Court;
4. *Renews* its call upon all States Parties which have not yet done so to ratify or accept the amendments to the Rome Statute on the crime of aggression.

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<sup>1</sup> ICC-ASP/16/24.

## Resolution ICC-ASP/16/Res.6

*Adopted at the 13th plenary meeting, on 14 December 2017, by consensus*

### ICC-ASP/16/Res.6

#### **Strengthening the International Criminal Court and the Assembly of States Parties**

*The Assembly of States Parties,*

*Mindful* that each individual State has the responsibility to protect its population from the crime of genocide, war crimes, and crimes against humanity, that the conscience of humanity continues to be deeply shocked by unimaginable atrocities in various parts of the world, and that the need to prevent and the duty to end the most serious crimes of concern to the international community and to put an end to the impunity of the perpetrators of such crimes is now widely acknowledged,

*Convinced* that the International Criminal Court (“the Court”) is an essential means of promoting respect for international humanitarian law and human rights, thus contributing to freedom, security, justice and the rule of law, as well as to the prevention of armed conflicts, the preservation of peace and the strengthening of international security and the advancement of post-conflict peacebuilding and reconciliation with a view to achieving sustainable peace, in accordance with the purposes and principles of the Charter of the United Nations,

*Convinced also* that justice and peace are complementary and mutually reinforce each other,

*Welcoming* that the international community has agreed to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels and, in this regard, encouraging societies facing conflicts to move from war to peace through peaceful solutions,

*Convinced* that justice and the fight against impunity and holding to account the perpetrators of the most serious crimes of concern to the international community and persons criminally responsible under the Statute are, and must remain, indivisible and that in this regard universal adherence to the Rome Statute of the International Criminal Court is essential,

*Welcoming* the Court’s central role as the only permanent international criminal court within an evolving system of international criminal justice and the contribution of the Court to guarantee lasting respect for and the enforcement of international justice,

*Noting* the primary responsibility of national jurisdictions to prosecute the most serious crimes of international concern and the increased need for cooperation in ensuring that national legal systems are capable of prosecuting such crimes,

*Reaffirming* its commitment to the Rome Statute and its determination that the most serious crimes of concern to the international community as a whole must not go unpunished, and *underlining* the importance of the willingness and ability of States to genuinely investigate and prosecute such crimes,

*Welcoming* the efforts and achievements of the Court in bringing those most responsible for the crimes under the Rome Statute to justice and thus to contribute to the prevention of such crimes and *noting* the jurisprudence of the Court on the issue of complementarity,

*Recalling* that the application of articles 17, 18 and 19 of the Rome Statute concerning the admissibility of cases before the Court is a judicial matter to be determined by the judges of the Court,

*Recalling also* that greater consideration should be given to how the Court will complete its activities in a situation country and that possible completion strategies could provide guidance on how a situation country can be assisted in carrying on national proceedings when the Court completes its activities in a given situation,

*Recognizing* that crimes within the jurisdiction of the Court threaten the peace, security and well-being of the world and, in consequence, that these are values protected by the Rome Statute,

*Underscoring* its respect for the judicial independence of the Court and its commitment to ensuring respect for and the implementation of the Court's judicial decisions,

*Taking note with appreciation* of the annual United Nations General Assembly resolutions concerning the Court,

*Welcoming* the statement by the President of the Security Council of 12 February 2013 in which the Council stated its intention to continue fighting impunity, reiterated its previous call regarding the importance of State cooperation with the Court in accordance with the respective obligations of States and expressed its commitment to effective follow-up of Council decisions in this regard,

*Deeply concerned* by the ongoing lack of effective follow up by the Security Council to its resolutions referring situations to the Court and its consequences, despite efforts by States Parties,

*Recalling* the full range of justice and reconciliation mechanisms with restorative measures that are complementary to criminal justice processes, including truth and reconciliation commissions, national reparation programmes and institutional and legal reforms, including guarantees of non-recurrence,

*Acknowledging* relevant decisions of the Court that have recognized that contributions to the promotion of peace and reconciliation may be a relevant consideration in sentencing decisions, on a case by case basis,

*Recalling* the success of the first Review Conference of the Rome Statute, held in Kampala, Uganda, from 31 May to 11 June 2010,

*Recalling also* the decision by the Assembly of States Parties ("the Assembly") to establish a representation of the Court at the African Union Headquarters in Addis Ababa, and *reiterating* that such presence would promote dialogue with the Court and the understanding of its mission within the African Union and among African States, individually and collectively,

*Appreciating* the invaluable assistance that has been provided by civil society to the Court,

*Reaffirming* the importance of States Parties' cooperation with the Court to the fulfilment of its mandate, and gravely concerned by attempts at intimidation to deter cooperation,

*Concerned* by the recent reports of threats and intimidation directed at some civil society organizations cooperating with the Court,

*Emphasizing* the importance of equitable geographical representation and gender balance in the organs of the Court, and, as appropriate, in the work of the Assembly and its subsidiary bodies,

*Mindful* of the need to encourage the full participation of States Parties, Observers and States not having observer status in the sessions of the Assembly and to ensure the broadest visibility of the Court and the Assembly,

*Recognizing* that victims' rights to equal and effective access to justice, protection and support; adequate and prompt reparation for harm suffered; and access to relevant information concerning violations and redress mechanisms are essential components of justice, *emphasizing* the importance of effective outreach to victims and affected communities in order to give effect to the unique mandate of the Court towards victims and *determined* to ensure the effective implementation of victims' rights, which constitute a cornerstone of the Rome Statute system,

*Conscious* of the vital role of field operations in the Court's work in situation countries and the importance of stakeholders working together to create suitable conditions for field operations,

*Conscious also* of the risks faced by personnel of the Court in the field,

*Recalling* that the Court acts within the constraints of an annual programme budget approved by the Assembly,

## A. Universality of the Rome Statute

1. *Invites* States not yet parties to the Rome Statute of the International Criminal Court to become parties to the Rome Statute, as amended, as soon as possible and *calls upon* all States Parties to intensify their efforts to promote universality;
2. *Notes with deep regret* the entry into force of the notification of withdrawal submitted by a State Party under article 127(1) of the Statute on 27 October 2017, and *calls upon* that State to reconsider its withdrawal;<sup>1</sup>
3. *Welcomes with appreciation* the withdrawal by two States Parties of their notifications submitted under article 127(1);
4. *Also welcomes with appreciation* the continuation by the President of the Assembly and by the Bureau of the dialogue on the “Relationship between Africa and the International Criminal Court” initiated by the Bureau during the fifteenth session of the Assembly;
5. *Welcomes* the initiatives undertaken to celebrate 17 July as Day of International Criminal Justice<sup>2</sup> and *recommends* that, on the basis of lessons learnt, all relevant stakeholders, together with the Court, continue to engage in preparation of appropriate activities and share information with other stakeholders to that effect through the Secretariat of the Assembly<sup>3</sup> and otherwise;
6. *Calls upon* all international and regional organizations as well as civil society to intensify their efforts to promote universality;
7. *Decides* to keep the status of ratifications under review and to monitor developments in the field of implementing legislation, inter alia with a view to facilitating the provision of technical assistance that States Parties to the Rome Statute, or States wishing to become parties thereto, may wish to request from other States Parties or institutions in relevant areas;
8. *Recalls* that the ratification of the Rome Statute must be matched by national implementation of the obligations emanating therefrom, notably through implementing legislation, in particular in the areas of criminal law, criminal procedural law and international cooperation and judicial assistance with the Court and, in this regard, *urges* States Parties to the Rome Statute that have not yet done so to adopt such implementing legislation as a priority and *encourages* the adoption of victims-related provisions, as and when appropriate;
9. *Welcomes* the report of the Bureau on the Plan of action for achieving universality and full implementation of the Rome Statute<sup>4</sup> and *notes with appreciation* the efforts of the Court’s President, the Office of the Prosecutor, the President of the Assembly, the Assembly, States Parties and of civil society to enhance the effectiveness of universality-related efforts and to encourage States to become parties to the Rome Statute, as amended, and to the Agreement on Privileges and Immunities, as well as relevant efforts undertaken in the framework of the Universal Periodic Review of the Human Rights Council;
10. *Considers* that the 20th anniversary of the adoption of the Rome Statute provides a unique opportunity to acknowledge achievements, revitalize commitment to the treaty and increase efforts to address the challenges the Court faces to the effective implementation of its mandate;

<sup>1</sup> Depositary Notification C.N.805.2016.TREATIES-XVIII.10, see: <https://treaties.un.org/doc/publication/cn/2016/cn.805.2016-eng.pdf>.

<sup>2</sup> *Official Records ... Review Conference ... 2010* (RC/11), part II.B, Kampala declaration (RC/Decl.1), para. 12.

<sup>3</sup> See ICC - Secretariat of the Assembly of States Parties at: [https://asp.icc-cpi.int/en\\_menus/asp/asp%20events/ICJD/Pages/default.aspx](https://asp.icc-cpi.int/en_menus/asp/asp%20events/ICJD/Pages/default.aspx).

<sup>4</sup> ICC-ASP/16/18.

11. *Welcomes with appreciation* the exchange of views between States Parties, the Court and members of civil society offered by the plenary discussion on the 20th anniversary of the Rome Statute held during the sixteenth session of the Assembly, which focused on the achievements of the Rome Statute system and, inter alia, on the key challenges that lie ahead in order to strengthen the system so it can be more effective, efficient and truly global, including by advancing universal adherence to the Rome Statute, enhancing cooperation of States with the Court and ensuring that the Court continues to play a central role in international criminal justice by delivering justice to victims and contributing to preventing future crimes for the protection of all;

12. *Encourages* the Court, States Parties, relevant international organizations and civil society to commemorate the 20th anniversary of the adoption of the Rome Statute in 2018, including by convening conferences, concluding cooperation agreements with the Court, adopting national legislation where required and undertaking additional efforts to promote new ratifications of or accessions to the Statute, and to share, through the Secretariat of the Assembly and otherwise, information on planned commemorative events;

## **B. Agreement on Privileges and Immunities**

13. *Welcomes* the States Parties that have become a Party to the Agreement on the Privileges and Immunities of the International Criminal Court and *recalls* that the Agreement and international practice exempt salaries, emoluments and allowances paid by the Court to its officials and staff from national taxation, and in this regard *calls upon* States Parties, as well as non-States Parties, that have not yet done so to become parties to this Agreement as a matter of priority and to take the necessary legislative or other action, pending their ratification or accession, to exempt their nationals employed by the Court from national income taxation with respect to salaries, emoluments and allowances paid to them by the Court, or to grant relief in any other manner from income taxation in respect of such payments to their nationals;

14. *Welcomes* the pledges made at the pledging ceremony held during the fifteenth session of the Assembly, in view of the ratification of the Agreement on Privileges and Immunities before 17 July 2018, date of the 20th anniversary of the Rome Statute;

15. *Reiterates* the obligations of States Parties to respect on their territories such privileges and immunities of the Court as are necessary for the fulfilment of its purposes and *appeals* to all States which are not party to the Agreement on Privileges and Immunities in which the Court's property and assets are located or through which such property and assets are transported, to protect the property and assets of the Court from search, seizure, requisition and any other form of interference;

## **C. Cooperation**

16. *Refers* to its resolution ICC-ASP/16/Res.2 on cooperation;

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

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

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

20. *Takes note* of the report on arrest strategies by the Rapporteur<sup>5</sup> and *also takes note* of the draft Action Plan on arrest strategies;<sup>6</sup>
21. *Welcomes* the conclusion of two agreements between the Court and the Republic of Argentina and Sweden on the enforcement of sentences;
22. *Also welcomes* the enhanced dialogue between States Parties, the Court, members of civil society and the International Criminal Court Bar Association offered by the plenary discussion on cooperation held during the sixteenth session of the Assembly, with a special focus on financial investigations and the challenges of asset recovery as well as the future of cooperation with the International Criminal Court on the eve of the 20th anniversary of the Rome Statute;
23. *Underlines* the importance of effective procedures and mechanisms that enable States Parties and other States to cooperate with the Court in relation to the identification, tracing and freezing or seizure of proceeds, property and assets as expeditiously as possible, *welcomes* the Court's report and comprehensive presentation on cooperation challenges faced by the Court with respect to financial investigation and *calls upon* 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;
24. *Endorses* the non-legally binding declaration of Paris on financial investigation and asset recovery<sup>7</sup> to foster cooperation between the Court, States Parties and relevant agencies and institutions;
25. *Recalls* the non-cooperation procedures adopted by the Assembly in ICC-ASP/10/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, *takes note* of the decisions of the Court on non-cooperation in relation to South Africa, and of the report of the Bureau on non-cooperation,<sup>8</sup> *welcomes* the efforts of the President of the Assembly in implementing the procedures on non-cooperation during his tenure and *recalls* that the President serves ex officio as focal point for his or her region,<sup>9</sup> *calls upon* all stakeholders, at all levels, to continue assisting the President of the Assembly, including when accomplishing his task with the support of the regional focal points for non-cooperation, and *encourages* all States Parties to continue cooperating towards a successful outcome of the review of the non-cooperation procedures;
26. *Recalls* the role of the Assembly 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;
27. *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;
28. *Noting* the orders of the Pre-Trial Chamber to the Registrar concerning action to be taken in case of information relating to travel of suspects,<sup>10</sup> *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;

<sup>5</sup> ICC-ASP/14/26/Add.1, annex IV.

<sup>6</sup> *Ibid.*, appendix.

<sup>7</sup> ICC-ASP/16/Res.2, annex.

<sup>8</sup> ICC-ASP/16/36.

<sup>9</sup> ICC-ASP/11/29, para. 12.

<sup>10</sup> Orders to the Registrar concerning action to be taken in case of information relating to travel of suspects, ICC-01/04-635 (Situation in the DRC); ICC-02/04-211 (Situation in Uganda); ICC-01/05-83 (Situation in the Central African Republic); ICC-02/05-247 (Situation in Darfur); ICC-01/09-151 (situation in Kenya), PTC-I, ICC-01/11-46 (Situation in Libya); ICC-02/11-47 (Situation in Côte d'Ivoire); ICC-01/12-25 (Situation in Mali); ICC-01/13-16 (Situation regarding the registered vessels of the Comoros, Hellenic Republic and the Kingdom of Cambodia vessels); ICC-01/14-6 (Situation in the Central African Republic II); ICC-02/05-01/09-235-Corr (Al-Bashir case); ICC-02/05-01/07-71 (Harun and Kushayb case); ICC-01/11-01/11-589 (Saif al Islam case); and



29. *Recalls* the Toolkit for the implementation of the informal dimension of the Assembly procedures relating to non-cooperation<sup>11</sup> and *encourages* States Parties to make use of the Toolkit as they see fit in order to improve the implementation of the Assembly procedures relating to non-cooperation;<sup>12</sup>

#### **D. Host State**

30. *Recognizes* the importance of the relationship between the Court and the host State in accordance with the terms of the Headquarters agreement and *notes with appreciation* the ongoing commitment of the host State to the Court with a view to its more efficient functioning;

#### **E. Relationship with the United Nations**

31. *Expresses* its appreciation to the Secretary-General of the United Nations for his support in facilitating the sixteenth session of the Assembly, including the plenary meeting to mark the 20th anniversary of the adoption of the Rome Statute;

32. *Recognizes* the need for enhancing the institutional dialogue with the United Nations, including on Security Council referrals;

33. *Welcomes* the twice-yearly reports of the Prosecutor on the situations referred by the United Nations Security Council pursuant to resolutions 1593 (2005) and 1970 (2011), and *noting* the Prosecutor's repeated requests for effective Security Council follow up, *recognizes* the efforts of some members of the Security Council in this regard, and *urges* all members of the Security Council to support future such requests;

34. *Recognizes* that ratification or accession to the Rome Statute by members of the United Nations Security Council enhances joint efforts to combat impunity for the most serious crimes of concern to the international community as a whole;

35. *Also recognizes* the Security Council's call regarding the importance of State cooperation with the Court and *encourages* further strengthening of the Security Council's relationship with the Court by:

(a) providing effective follow up of situations referred by the Council to the Court and ongoing political support;

(b) enabling financial support by the United Nations for expenses incurred by the Court due to referrals of the Council;

(c) continued support for the work of the Court through cooperation and assistance by peacekeeping and special political missions mandated by the Council, including by considering extending best practices with respect to the drafting of mandates of peacekeeping operations while respecting their basic principles, and increased cooperation between Sanctions Committees and the Court;

(d) considering mandating peacekeeping and special political missions to contribute, where appropriate, to the strengthening of national justice systems through training, outreach and other forms of assistance;

(e) enhanced engagement by the Council with Court representatives and on matters related to the Court in various formats; and

(f) institutionalizing Council cooperation with and support for the Court in this regard;

36. *Recalls* the report of the Court on the status of ongoing cooperation with the United Nations, including in the field;<sup>13</sup>

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ICC-02/05-01/12-31 (Hussain case); ICC-02/11-01/12-73 (Simone Gbagbo case); ICC-01/04-01/12-12 (Lubanga case); ICC-02/04-01/15-222 (Ongwen case); ICC-01/09-01/13-29 (Barasa case); and ICC-01/09-01/15-6 (Gicheru and Bett case).

<sup>11</sup> ICC-ASP/15/31, Add.1, annex II.

<sup>12</sup> ICC-ASP/10/Res.5, annex.

<sup>13</sup> ICC-ASP/12/42.

37. *Encourages* all United Nations Offices, funds and programmes to strengthen their cooperation with the Court, and to collaborate effectively with the Office of Legal Affairs as focal point for cooperation between the United Nations system and the Court;

38. *Commends* the important work of the New York Liaison Office of the Court, *reiterates* its full support for the Office and *stresses* the importance of the continued and further strengthening of the implementation of its functions in accordance with ICC-ASP/4/6, paragraphs 2, 3 and 4;

39. *Welcomes* that States Parties have been informed throughout 2017 on Court-related developments at the United Nations and in particular at the Security Council, notably through regular briefings provided by the designated State Party member of the Security Council, and *calls upon* Bureau members and other States Parties to continue providing States Parties with information about their efforts at the United Nations and in any other international or regional fora to promote the fight against impunity;

40. *Welcomes* the presentation of the annual report of the Court to the General Assembly of the United Nations<sup>14</sup> and in particular its focus on the relationship between the Court and the United Nations, *also welcomes* the adoption of resolutions A/RES/71/253 and A/RES/72/3 by the General Assembly and *encourages* States Parties to continue their constructive engagement with United Nations Member States to further strengthen this resolution;

41. *Notes with concern* that, to date, expenses incurred by the Court due to referrals by the Security Council continue to be borne exclusively by States Parties and *notes* that, to date, the approved budget allocated so far within the Court in relation to the referrals made by the Security Council amount to approximately €58 million;

42. *Stresses* that, if the United Nations is unable to provide funds for the Court to cover the expenses incurred due to referrals by the Security Council, this will, among other factors, continue to exacerbate resource pressure on the Court;

43. *Urges* States Parties to pursue, within the General Assembly of the United Nations, the implementation of article 115, paragraph (b), of the Rome Statute also taking into account that article 13, paragraph 1, of the Relationship Agreement between the Court and the United Nations states that the conditions under which any funds may be provided to the Court by a decision of the General Assembly shall be subject to separate arrangements;

44. *Encourages* the Court to further engage with the relevant Sanctions Committees of the United Nations Security Council with a view to improving their cooperation and achieving better coordination on matters pertaining to areas of mutual concern;

45. *Notes* that all cooperation received by the Court from the United Nations is provided strictly on a reimbursable basis;

## **F. Relationships with other international organizations and bodies**

46. *Welcomes* the efforts undertaken by various regional and other international organizations to support the Court in the fulfilment of its mandate;

47. *Recalls* the memoranda of understanding and agreements on cooperation concluded by the Court with the European Union, the Asian-African Legal Consultative Organization, the Organization of American States, the Commonwealth, the Organisation internationale de la Francophonie, the Parliament of the MERCOSUR, and the Inter-American Court of Human Rights;

48. *Emphasizes* the need to pursue efforts aimed at intensifying dialogue with the African Union and to strengthen the relationship between the Court and the African Union and *welcomes* the Court's further regular engagement in Addis Ababa with the African Union and diplomatic missions in anticipation of establishing its liaison office, *recognizes* the engagement of the President of the Assembly with officials of the African Union in Addis Ababa and *calls upon* all relevant stakeholders to support strengthening the relationship between the Court and the African Union;

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<sup>14</sup> United Nations document A/72/349.

49. *Welcomes* the series of meetings previously held in Addis Ababa which took the form of joint seminars between the Court and the African Union, in July 2011, October 2012, July 2014 and October 2015, and consequent retreats in October 2016 and in November 2017 organized by the Court to enable a frank and constructive dialogue between the Court and the African States Parties to the Rome Statute as a key measure to strengthen relations between the Court and its African partners and address challenges within the context of this relationship;

50. *Also welcomes* the efforts to further the presence of the Court at meetings of regional organizations, including through the organization of a side event at the 48th Pacific Islands Forum in Apia, Samoa;

51. *Recalls* the contribution that the International Humanitarian Fact-finding Commission, established by article 90 of the Additional Protocol I to the 1949 Geneva Convention, could make in ascertaining facts related to alleged violations of international humanitarian law and facilitating, where appropriate, the prosecution of war crimes, both at the national level and before the Court;

## G. Activities of the Court

52. *Takes note* of the latest report on the activities of the Court to the Assembly;<sup>15</sup>

53. *Notes with satisfaction* the fact that owing, not least, to the dedication of its staff, considerable progress continues to be made in the Court's activities including its preliminary examinations, investigations and judicial proceedings in various situations which either States Parties or the United Nations Security Council<sup>16</sup> referred to the Court or which the Prosecutor initiated *proprio motu*;

54. *Recalls* its invitation to the Court to continue to take note of best practices of other relevant international and national organizations and tribunals, including those gained by national institutions that have already investigated and prosecuted crimes that fall within the Court's jurisdiction, in solving challenges similar to those encountered by the Court, while reiterating its respect for the independence of the Court;

55. *Notes with appreciation* the efforts undertaken by the Office of the Prosecutor to achieve the efficiency and transparency of its preliminary examinations, investigations and prosecutions;

56. *Welcomes* the continued implementation by the Office of the Prosecutor of its Policy Papers on Case Selection and Prioritization, on Children, and on Sexual and Gender-Based Crimes, and, in this regard, *stresses* the importance of the effective investigation and prosecution of sexual and gender-based crimes by the Court and by national courts, in order to end impunity for perpetrators of sexual violence crimes, *calls upon* States Parties to consider the Policy Paper to strengthen the investigation and prosecution of sexual and gender-based crimes domestically and *notes* the on-going preparation of the Office of the Prosecutor's Policy Paper on the Protection of Cultural Property within the Rome Statute framework;

57. *Expresses its appreciation* to the Office of the Prosecutor for consulting with States Parties and other stakeholders before the issuance of its policies and strategies and *welcomes* the contributions made by States Parties in this regard;

58. *Also welcomes* the efforts undertaken by the Court to implement the One-Court principle, and to coordinate its activities among its organs at all levels, including through the implementation of measures to increase clarity on the responsibility of different organs, while respecting the independence of the judges and the Prosecutor and the neutrality of the Registry and *encourages* the Court to undertake all necessary efforts to fully implement the One-Court principle, inter alia with a view to ensuring full transparency, good governance, efficient use of financial resources and sound management;

59. *Notes* the intention of the Court to extend its current Strategic Plan to 2018, and to prepare a new Strategic Plan in 2018, for the period 2019-2021;

<sup>15</sup> ICC-ASP/16/9.

<sup>16</sup> United Nations Security Council resolutions 1593 (2005) and 1970 (2011).

60. *Notes with appreciation* the continued efforts undertaken by the Registrar to mitigate the risks faced by the Court in relation to its field offices and to enhance the Court's field operations with a view to increasing their efficiency and visibility and *encourages* the Court to continue to optimize its field offices in order to ensure the Court's continued relevance and impact in States in which it carries out its work;

61. *Welcomes* the ongoing efforts undertaken by the Court to improve its use of alternative sources of information and evidence as well as its capacities to this end, including in the field of financial investigations, *encourages* the Court to continue these efforts and *notes* the importance of providing the Court with the appropriate means for this purpose;

62. *Recognizes* the important work done by the field-based staff of the Court in difficult and complex environments and *expresses its appreciation* for their dedication to the mission of the Court;

63. *Emphasizes* the need for the Court to continue to improve and adapt outreach activities with a view to further developing and implementing effectively and efficiently the Strategic Plan for Outreach<sup>17</sup> in affected countries, including, where appropriate, by early outreach from the outset of the Court's involvement, including during the preliminary examination stage;

64. *Recalls* that the issues of public information and communication about the Court and its activities constitute a shared responsibility of the Court and States Parties, while *acknowledging* the significant contribution of other stakeholders to developing a coordinated and comprehensive approach;

## **H. Elections**

65. *Emphasizes* the importance of nominating and electing the most highly qualified judges in accordance with article 36 of the Rome Statute, and for this purpose *encourages* States Parties to conduct thorough and transparent processes to identify the best candidates;

66. *Stresses* the importance of elected judges who have made their solemn undertaking being available to take up their full-time service when the Court's workload so requires;

67. *Welcomes* the report of the Advisory Committee on Nominations of Judges on the work of its sixth meeting<sup>18</sup> containing recommendations for the election of six judges during the sixteenth session of the Assembly;

68. *Decides* that the Advisory Committee on Nominations hold its sessions in The Hague or in New York, depending on the cost effectiveness of the particular venue;

69. *Reiterates* the importance of face-to-face interviews with candidates to the effective discharge of its mandate and *stresses* the responsibility of the nominating States to ensure candidates attend a face-to-face interview with the Advisory Committee on Nominations;

70. *Recalling* the terms of reference of the Advisory Committee on Nominations of Judges of the International Criminal Court adopted by the Assembly via resolution ICC-ASP/10/Res.5, para. 19, *requests* States Parties which may be considering nominations of their nationals as members of the Advisory Committee to bear in mind that the composition of the Committee should reflect, inter alia, "a fair representation of both genders";

## **I. Secretariat of the Assembly of States Parties**

71. *Recognizes* the important work done by the Secretariat of the Assembly of States Parties ("the Secretariat"), *reiterates* that the relations between the Secretariat and the different organs of the Court shall be governed by principles of cooperation and of sharing and pooling of resources and services, as set out in the annex to resolution ICC-ASP/2/Res.3, and *welcomes* the fact that the Director of the Secretariat participates in the meetings of the Coordination Council when matters of mutual concern are considered;

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<sup>17</sup> ICC-ASP/5/12.

<sup>18</sup> Report of the Advisory Committee on Nominations of Judges on the work of its sixth meeting (ICC-ASP/16/7).

## J. Counsel

72. *Notes* the important work of independent representative bodies of counsel or legal associations, including any international legal association relevant to rule 20, sub-rule 3, of the Rules of Procedure and Evidence;

73. *Takes note* of the report on the constitution and activities of the International Criminal Court Bar Association<sup>19</sup> and *invites* the International Criminal Court Bar Association to report to the Assembly, through the Bureau, on its constitution and activities in advance of the seventeenth session;

74. *Notes* the need to improve gender balance and equitable geographical representation on the list of counsel and thus *continues to encourage* applications to the list of counsel established as required under rule 21, paragraph 2, of the Rules of Procedure and Evidence with a particular view to ensuring equitable geographical representation and gender balance, as well as legal expertise on specific issues such as violence against women or children, as appropriate;

## K. Legal aid

75. *Acknowledges* the Court's efforts to continue implementing the legal aid remuneration policy and *stresses* the need for continuous monitoring of the efficiency of the legal aid system to uphold and strengthen the principles of the legal aid system, namely fair trial, objectivity, transparency, economy, continuity and flexibility;<sup>20</sup>

76. *Takes note* of the information provided by the Registrar and the recommendations made by the Committee on Budget and Finance regarding this matter;<sup>21</sup>

77. *Recalls* the fundamental importance of the legal aid system to ensure the fairness of judicial proceedings as well as the right of the defendants and victims to appropriate legal representation;

## L. Study Group on Governance

78. *Welcomes* the continued structured dialogue between States Parties and the Court with a view to strengthening the institutional framework of the Rome Statute system and enhancing the efficiency and effectiveness of the Court while fully preserving its judicial independence;

79. *Takes note* of the Bureau's report on the Study Group of Governance;<sup>22</sup>

80. *Extends* for another year the mandate of the Study Group, established in resolution ICC-ASP/9/Res.2 and extended in resolutions ICC-ASP/10/Res.5, ICC-ASP/11/Res.8, ICC-ASP/12/Res.8, ICC-ASP/13/Res.5, ICC-ASP/14/Res.4, and ICC-ASP/15/Res.5;

81. *Welcomes* the issuance of the third edition of the Chambers Practice Manual and *encourages* the judges to continue their work on practice issues in 2017, including victims participation;

82. *Calls upon* States Parties to continue considering amendment proposals by the Working Group on Lessons Learnt;

83. *Welcomes* the continued work of the Court on the topic of performance indicators;

84. *Expresses* the Assembly's wish to continue its dialogue with the Court on that topic, bearing in mind that the Court needs to implement its intended approach in order to produce results which can form the basis of further dialogue;

<sup>19</sup> ICC-ASP/16/30.

<sup>20</sup> ICC-ASP/3/16, para. 16.

<sup>21</sup> *Official Records...Sixteenth session ...2017* (ICC-ASP/16/20), vol.II, part B.2, paras. 11, 176-183.

<sup>22</sup> ICC-ASP/16/19.

## M. Proceedings of the Court

85. *Emphasizes* that the effectiveness of proceedings of the Court is essential to the rights of victims and those of the accused, the credibility and authority of the institution and the promotion of the universality of the Statute, as well as the best possible use of the Court's resources;

86. *Welcomes* the Court's efforts to enhance the efficiency and effectiveness of proceedings, as well as the efforts on the part of States Parties and civil society in this regard, *mindful* of the importance of continued dialogue on this matter and *noting* the shared responsibility of the Court and States Parties in this regard;

## N. Working methods review

87. *Recognizes* the benefits of rationalizing the working methods of the subsidiary bodies of the Bureau and the Assembly in order to cope with an increasing workload;

88. *Welcomes* the steps already undertaken by the Bureau for the improvement of the working methods;

89. *Decides* to continue improving the working methods of the Bureau and the governance of the Assembly, and to that effect:

(a) *recalls* the revised general roadmap for facilitations contained in annex II of resolution ICC-ASP/15/Res.5 and *stresses* the need for its full implementation;

(b) *welcomes* the holding of Bureau meetings both in New York and in The Hague;

(c) *acknowledges* the importance of ensuring that the agenda of the Assembly allows sufficient time for substantive discussions;

(d) *recognizes* the importance of exchange of information as well as mutual consultations between the New York Working Group and The Hague Working Group on matters of joint concern with a view to enhancing efficiency while avoiding duplication of efforts;

(e) *encourages* all States Parties to use the Extranet designed for the work of the subsidiary bodies of the Bureau and the Assembly containing all necessary documentation on the work in progress; and

(f) *also encourages* States Parties to deliver statements no longer than five minutes and to submit written statements instead of oral ones;

90. *Recognizes* the importance of the work carried out by the facilitators and the focal points;

91. *Recalling* the representative geographical character of the Bureau, *encourages* Bureau members to strengthen their communication with States Parties of their respective regional group to inform the discussion of the Bureau, including by establishing appropriate mechanisms for providing regular updates on the work of the Bureau;

## O. Victims and affected communities, reparations and Trust Fund for Victims

92. *Refers* to its resolution ICC-ASP/13/Res.4 on victims and affected communities, reparations and Trust Fund for Victims;

93. *Reiterates* that victims' right to present and have considered their views and concerns at stages of the proceedings determined to be appropriate by the Court where their personal interests are affected and to protection of their safety, physical and psychological well-being, dignity and privacy, under article 68 of the Rome Statute, as well as access to relevant information are essential components of justice and, in this regard, *emphasizes* the importance of effective outreach to victims and affected communities in order to give effect to the mandate of the Court;

94. *Stresses* the central importance that the Rome Statute accords to the rights and needs of victims, in particular their right to participate in judicial proceedings and to claim reparations, and *emphasizes* the importance of informing and involving victims and affected communities in order to give effect to the unique mandate of the Court towards victims;

95. *Recalls* article 75 of the Rome Statute and, in this regard, the reparative justice role of the Court, and *notes* that assistance and reparations to victims may promote reconciliation and contribute to peace-building;

96. *Acknowledges* the importance of protective measures for victims and witnesses for the execution of the Court's mandate, *stresses* the need for States to conclude agreements with the Court in order to facilitate expeditious international relocation of persons at risk, *welcomes* the relocation agreements with the Court concluded in 2017, *urges* all States to consider making such relocation agreements and *encourages* all States to contribute to the Special Fund for Relocations;

97. *Stresses* that, since the identification, tracing and freezing or seizure of any assets of the convicted person are indispensable for reparations, it is of paramount importance that all necessary measures are taken to that end, in order for relevant States and relevant entities to provide timely and effective assistance pursuant to articles 75, 93, paragraph 1(k), and 109 of the Rome Statute, and *calls upon* States Parties to enter into voluntary agreements, arrangements or any other means to this end with the Court, as required;

98. *Renews its appreciation* to the Board of Directors and the Secretariat of the Trust Fund for Victims for their continuing commitment towards victims and affected communities;

99. *Notes* the significant growth in the activities of the Trust Fund, to include four on-going reparations proceedings as well as the expansion of assistance programmes to more situations before the Court;

100. *Calls upon* States, international and inter-governmental organizations, individuals, corporations and other entities to make voluntary contributions, in accordance with their financial ability, to the Trust Fund for Victims in order to broaden its resource base, improve the predictability of funding and maintain responsiveness to harm suffered by victims as well as to the Court's judicial developments, and *renews its appreciation* to those that have done so;

101. *Invites* States Parties to respond to requests of the Trust Fund for Victims for earmarked contributions for the purposes of funding specific reparations awards, as well as of replenishing and strengthening the Trust Fund's general reparations reserve, and *expresses its appreciation* to those that have already done so;

102. *Invites* States Parties to consider making earmarked voluntary contributions to the Trust Fund to the benefit of victims of sexual and gender-based violence, and *expresses its appreciation* to those that have already done so;

103. *Notes* the intention of the Trust Fund for Victims to raise €30 million in voluntary contributions and private donations by 2020, in order to implement reparations orders and assistance mandates to the benefit of victims in cases and situations before the Court;

## **P. Recruitment of staff**

104. *Takes note* of the Court's report on human resources,<sup>23</sup> and *encourages* the Court to strengthen its efforts, in the recruitment of staff, to seek equitable geographical representation and gender balance and the highest standards of efficiency, competency and integrity, as well as to seek expertise on specific issues, including, but not limited to, trauma-related psycho-social needs and violence against women or children, and *encourages* further progress in this regard;

<sup>23</sup> *Official Records ... Fifteenth session ... 2016* (ICC-ASP/15/20), vol. II, part B.1, annex II.

105. *Stresses* the importance of the dialogue between the Court and the Bureau with regard to ensuring equitable geographical representation and gender balance in the recruitment of staff members, and *welcomes* the report of the Bureau and its recommendations;<sup>24</sup>

106. *Urges* States Parties to undertake efforts to identify and support outreach to pools of potential applicants to the Court's professional positions from States Parties from non- and under-represented regions and countries, including through the financing by the Assembly of the Court's internship and visiting professional programmes, and by States Parties of the Junior Professional Officer (JPO) programme, through targeted outreach initiatives and through the dissemination among relevant national institutions and organizations of the Court's vacancies;

107. *Notes with appreciation* that three States Parties joined the Court's Junior Professional Officer programme;<sup>25</sup>

## **Q. Complementarity**

108. *Recalls* the primary responsibility of States to investigate and prosecute the most serious crimes of international concern and that, to this end, appropriate measures need to be adopted at the national level, and international cooperation and judicial assistance need to be strengthened, in order to ensure that national legal systems are willing and able genuinely to carry out investigations and prosecutions of such crimes;

109. *Resolves* to continue and strengthen, within the appropriate fora, effective domestic implementation of the Rome Statute, to enhance the capacity of national jurisdictions to prosecute the perpetrators of the most serious crimes of international concern in accordance with internationally recognized fair trial standards, pursuant to the principle of complementarity;

110. *Welcomes* the international community's engagement in strengthening the capacity of domestic jurisdictions and inter-State cooperation to enable States to genuinely prosecute Rome Statute crimes;

111. *Also welcomes* efforts by the United Nations, international and regional organizations, States and civil society in mainstreaming capacity-building activities aimed at strengthening national jurisdictions with regard to investigating and prosecuting Rome Statute crimes into existing and new technical assistance programmes and instruments, and *strongly encourages* additional efforts in this regard by other international and regional organizations, States and civil society;

112. *Welcomes*, in this regard, the adoption of the 2030 Agenda for Sustainable Development<sup>26</sup> and *acknowledges* the important work being undertaken with regard to promoting the rule of law at the national and international levels and ensuring equal access to justice for all;

113. *Stresses* that the proper functioning of the principle of complementarity entails that States incorporate the crimes set out in articles 6, 7 and 8 of the Rome Statute as punishable offences under their national laws, to establish jurisdiction for these crimes and to ensure effective enforcement of those laws, and *urges* States to do so;

114. *Welcomes* the report of the Bureau on complementarity;<sup>27</sup>

115. *Also welcomes* the information by the Secretariat on the progress in giving effect to its mandate to facilitate the exchange of information between the Court, States Parties and other stakeholders, including international organizations and civil society, aimed at strengthening domestic jurisdictions and *further welcomes* the work that has already been undertaken by the Secretariat and the President of the Assembly;

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<sup>24</sup> ICC-ASP/16/35.

<sup>25</sup> Japan on 25 January 2016, the Republic of Korea on 6 September 2017 and Switzerland on 25 October 2017.

<sup>26</sup> United Nations General Assembly resolution 70/1.

<sup>27</sup> ICC-ASP/16/33.



116. *Encourages* States, international and regional organizations and civil society to submit to the Secretariat information on their complementarity-related activities and *welcomes* the efforts made by the international community and national authorities, including national capacity building activities to investigate and prosecute sexual and gender-based crimes that may amount to Rome Statute crimes, in particular the continued efforts on the strategic actions to ensure access to justice and to enhance empowerment of victims at national level, *recalling* the recommendations presented by the International Development Law Organization<sup>28</sup> during the fourteenth session of the Assembly;

117. *Encourages* the Court to continue its efforts in the field of complementarity, including through exchange of information between the Court and other relevant actors, while *recalling* the Court's limited role in strengthening national jurisdictions, and *also encourages* continued inter-State cooperation, including on engaging international, regional and national actors in the justice sector, as well as civil society, in exchange of information and practices on strategic and sustainable efforts to strengthen national capacity to investigate and prosecute Rome Statute crimes and the strengthening of access to justice for victims of such crimes, including through international development assistance;

## R. Independent Oversight Mechanism

118. *Notes* that the Independent Oversight Mechanism is now fully staffed and that it is now operational in respect of its investigation, inspection and evaluation functions;

119. *Also notes* that the Independent Oversight Mechanism has worked closely with the Court to ensure the effective functioning of the Whistleblower and Whistleblower Protection Policy;

120. *Recalls* the recommendation made by the Bureau at its fifth meeting in 2016 that the work and operational mandate of the Independent Oversight Mechanism be fully reviewed by the Assembly at its seventeenth session;

121. *Notes* that interim working procedures concerning areas where the current Independent Oversight Mechanism mandate might conflict with the Court's Rules of Procedure and Evidence have been put in place, and that a proposal to formally align the Court's regulations with the Independent Oversight Mechanism mandate has been submitted for consideration;

122. *Also notes* that discussion on and potential mechanisms for the reporting of areas where the Independent Oversight Mechanism might advise the Bureau to consider requesting that the Independent Oversight Mechanism undertake an inspection or evaluation will be incorporated into the full review of the Independent Oversight Mechanism mandate and organization for Assembly consideration at its seventeenth session;

123. *Reaffirms* the critical importance of the Independent Oversight Mechanism in carrying out its work in an independent, transparent and impartial manner free from any undue influence;

## S. Programme budget

124. *Takes note* of the important work done by the Committee on Budget and Finance, and *reaffirms* the independence of the members of the Committee;

125. *Recalls* that, according to its Rules of Procedure,<sup>29</sup> the Committee on Budget and Finance shall be responsible for the technical examination of any document submitted to the Assembly that contains financial or budgetary implications and *emphasizes* the importance of ensuring that the Committee is represented at all stages of the deliberations of the Assembly at which documents that contain financial or budgetary implications are considered;

<sup>28</sup> International Development Law Organization paper entitled "Complementarity for sexual and gender-based atrocity crimes", November 2015.

<sup>29</sup> *Official Records ... Second session ... 2003* (ICC-ASP/2/10), annex III.

126. *Takes note with concern* of the report of the Bureau on the arrears of States Parties;<sup>30</sup>

127. *Emphasizes* the importance of endowing the Court with the necessary financial resources, and *urges* all States Parties to the Rome Statute to transfer their assessed contributions in full and by the deadline for contributions or, in the event of pre-existing arrears, immediately, in accordance with article 115 of the Rome Statute, rule 105.1 of the Financial Regulations and Rules, and other relevant decisions taken by the Assembly;

128. *Calls upon* States, international organizations, individuals, corporations and other entities to contribute voluntarily to the Court and *expresses its appreciation* to those that have done so;

## T. Review Conference

129. *Recalls* that at the successful first Review Conference of the Rome Statute, held in Kampala, Uganda, from 31 May to 11 June 2010, States Parties adopted amendments to the Rome Statute, in accordance with article 5, paragraph 2, of the Rome Statute to define the crime of aggression and to establish conditions under which the Court could exercise jurisdiction with respect to that crime<sup>31</sup> and adopted amendments to the Rome Statute to expand the jurisdiction of the Court to three additional war crimes when committed in armed conflicts not of an international character;<sup>32</sup>

130. *Notes* that those amendments are subject to ratification or acceptance and shall enter into force in accordance with article 121, paragraph 5, of the Rome Statute, *notes with appreciation* the recent ratifications of the amendments and *notes* that one State Party has lodged a declaration in accordance with article 15 *bis*, paragraph 4, of the Rome Statute;

131. *Calls upon* all States Parties to consider ratifying or accepting these amendments;

132. *Recalls* the discussions on the issue of peace and justice at the stock-taking exercise held at the Review Conference, *notes* the interest to resume the discussions on this issue and *invites* interested States Parties to do so;

133. *Recalls with appreciation* pledges of increased assistance to the Court made by thirty-five States Parties, one observer State, and one regional organization, *calls upon* these States and the regional organization to ensure the swift implementation of these pledges and *also calls upon* States and regional organizations to submit additional pledges and to report further at the seventeenth session of the Assembly, in written form or through their statement at the general debate on the implementation thereof;

## U. Consideration of amendments

134. *Welcomes* the report of the Working Group on Amendments;<sup>33</sup>

135. *Calls upon* all States Parties to ratify or accept the amendment to article 124;

136. *Also calls upon* all States Parties to ratify or accept the amendments to article 8 adopted at the sixteenth session of the Assembly;<sup>34</sup>

## V. Participation in the Assembly of States Parties

137. *Calls upon* States, international organizations, individuals, corporations and other entities to contribute in a timely manner and voluntarily to the Trust Fund to allow the participation of least developed countries and other developing States in the annual session of the Assembly and *expresses its appreciation* to those that have done so;

138. *Encourages* the continuation of efforts undertaken by the President of the Assembly to hold an ongoing dialogue with all stakeholders, including regional organizations and *calls upon* all States Parties to support the President in his undertakings aimed at

<sup>30</sup> ICC-ASP/16/34.

<sup>31</sup> *Official Records ... Review Conference ... 2010* (RC/11), part II, RC/Res.6.

<sup>32</sup> *Ibid.*, RC/Res.5.

<sup>33</sup> ICC-ASP/16/22.

<sup>34</sup> ICC-ASP/16/Res.4.

strengthening the Court, the independence of proceedings and the Rome Statute system as a whole;

139. *Endorses* the Bureau decision of 18 October 2017 whereby it adopted an Understanding on the Participation of Observer States in Meetings of the Assembly of States Parties, and underscores the importance of promoting universality of the Rome Statute and of strengthening the openness and transparency of the Assembly;

140. *Recalls*, in light of the 20th anniversary of the Rome Statute, the long-term and continuing cooperation between the Assembly, States Parties, and non-governmental organizations of civil society, and *reaffirms* resolution ICC-ASP/2/Res.8 on recognition of the coordinating and facilitating role of the NGO Coalition for the ICC;

141. *Decides* to entrust the Court, the President of the Assembly, the Bureau, the Advisory Committee on Nominations, the Working Group on Amendments, the Independent Oversight Mechanism, the Secretariat, and the Board of Directors and the Secretariat of the Trust Fund for Victims, as appropriate, with the mandates contained in the annex to the present resolution.

## Annex

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

1. With regard to **universality of the Rome Statute**,
  - (a) *endorses* the recommendations of the report of the Bureau on the Plan of action for achieving universality and full implementation of the Rome Statute;<sup>1</sup>
  - (b) *requests* the Bureau continue to monitor the implementation of the Plan of action for achieving universality and full implementation of the Rome Statute and to report thereon to the Assembly at its seventeenth session;
  - (c) *invites* the Bureau to further widen and deepen the dialogue on the “Relationship between Africa and the International Criminal Court” initiated by the Bureau during the fifteenth session of the Assembly as needed with all interested States Parties; and
  - (d) *decides* to include a specific item on the 20th anniversary on the agenda of the seventeenth session of the Assembly;
2. With regard to the **Agreement on Privileges and Immunities**, *requests* the Bureau to continue to support the ratification of the Agreement;
3. With regard to **cooperation**,
  - (a) *urges* the Bureau to continue consideration of the recommendations of the draft Action Plan on Arrest Strategies<sup>2</sup> with a view to its adoption, and to report thereon to the seventeenth session of the Assembly;
  - (b) *requests* the Bureau, through its working groups, to continue the discussions on voluntary framework agreements or arrangements and to report thereon to the Assembly at its seventeenth session;
  - (c) *invites* the Bureau, through its working groups, to discuss the feasibility of establishing a coordinating mechanism of national authorities, taking into consideration, inter alia, the study in annex II of the report of the Bureau on cooperation to the thirteenth session<sup>3</sup> as well as the presentation made by Belgium on 27 July 2017, contained in annex III of the report of the Bureau on cooperation,<sup>4</sup> and to report to the Assembly well in advance of the eighteenth session;
  - (d) *mandates* the Bureau, through its working groups, to continue discussions on cooperation on financial investigations and the freezing and seizing of assets as set out in the declaration of Paris annexed to the resolution on cooperation;<sup>5</sup>
  - (e) *invites* the Court to continue improving its practice in transmitting specific, complete and timely requests for cooperation and assistance, including by considering consultations with the State Party concerned when necessary;
  - (f) *requests* the Bureau, through its working groups, to continue its review of the implementation of the 66 recommendations on cooperation adopted by States Parties in 2007,<sup>6</sup> in close cooperation with the Court, where appropriate;
  - (g) *also requests* the Bureau to maintain a facilitation of the Assembly for cooperation to consult with States Parties, the Court, other interested States, relevant organizations and non-governmental organizations in order to further strengthen cooperation with the Court;
  - (h) *requests* the Court to submit an updated report on cooperation to the Assembly at its seventeenth session and annually thereafter;

<sup>1</sup> ICC-ASP/16/18.

<sup>2</sup> ICC-ASP/14/26/Add.1, annex IV, appendix.

<sup>3</sup> ICC-ASP/13/29.

<sup>4</sup> ICC-ASP/16/17, annex III.

<sup>5</sup> ICC-ASP/16/Res.7, annex.

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

(i) *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 a matter of non-cooperation referred by the Court to the Assembly;

(j) *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;

(k) *requests* the Bureau to continue to actively engage throughout the inter-sessional 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 seventeenth session; and

(l) *also requests* the Bureau, through focal points on non-cooperation, to continue engaging with all relevant stakeholders to conduct a review of the Assembly procedures relating to non-cooperation, with a view to recommending any necessary additions or amendments;

4. With regard to the **relationship with the United Nations**,

(a) *invites* the Court to continue its institutional dialogue with the United Nations, based on the Relationship Agreement between the United Nations and the International Criminal Court; and

(b) *requests* the Registry to update its report on the approximate costs allocated so far within the Court in relation to referrals by the Security Council<sup>7</sup> ahead of the seventeenth session of the Assembly;

5. With regard to **relationships with other international organizations and bodies**, *invites* the Court to include in its annual report to the United Nations General Assembly a section on the status and implementation of specific agreements on cooperation with other international organizations;

6. With regard to **elections**,

(a) *decides* to continue to review the procedure for the nomination and election of judges as set forth in resolution ICC-ASP/3/Res.6, as amended, on the occasion of future elections after the sixteenth session with a view to making any improvements as may be necessary, taking into account the work conducted so far as reflected in the facilitator's discussion paper;<sup>8</sup>

(b) *requests* the Bureau to update the Assembly, at its seventeenth session, on the progress of the review of the procedure for the nomination and election of judges;<sup>9</sup>

(c) *also requests* the Bureau to ensure that elections of judges and other Court officials at regular sessions do not disrupt work under other agenda items, notably in light of recent experience at the thirteenth session; and

(d) *requests* the Advisory Committee to report on its work to the Assembly in advance of the session at which an election is to be held;

7. With regard to the **Secretariat**,

(a) *requests* the latter to report on its current establishment and the functions of each post, including by publishing a regularly updated staff directory; and

(b) *noting* the increased workload of the Assembly, *requests* the Bureau to conduct an assessment of the core functions of the Secretariat in assisting and servicing the current needs of the Assembly<sup>10</sup> and to report thereon to the Assembly in advance of its seventeenth session;

<sup>7</sup> ICC-ASP/16/23.

<sup>8</sup> Report to the Bureau on the review of the procedure for the nomination and election of judges (ICC-ASP/15/23), annex I.

<sup>9</sup> *Official Records ... Third session ... 2004* (ICC-ASP/3/25), part III, ICC-ASP/3/Res.6.

<sup>10</sup> See ICC-ASP/16/INF.3.

8. With regard to **Legal Aid**, *mindful* of the recommendation of the Committee on Budget and Finance that the Court make every effort to present a reform that can be achieved within existing resources by exploring opportunities to contain the administrative burden without jeopardizing the need for accountability and by setting priorities accordingly,<sup>11</sup> *requests* the Court to continue its review of the functioning of the legal aid system and to present, in early 2018, as appropriate, proposals for adjustments to the legal aid remuneration policy for the consideration of the Assembly, through the Committee and Budget and Finance, at its seventeenth session;

9. With regard to the **Study Group on Governance**,

(a) *invites* the Court to further engage in a structured dialogue with States Parties with a view to strengthening the institutional framework of the Rome Statute system and enhancing the efficiency and effectiveness of the Court while fully preserving its judicial independence;

(b) *requests* the Study Group to report back to its seventeenth session;

(c) *also requests* the Study Group to consider the amendments to rule 26 of the Rules of Procedure and Evidence proposed by the Head of the Independent Oversight Mechanism, in consultation with the Court, and to convey its recommendations to the Working Group on Amendments to enable the latter to make a recommendation thereon to the seventeenth session of the Assembly;

(d) *further requests* the Study Group to follow up and, where appropriate, continue the dialogue on the evolution of indicators;

(e) *invites* the Court to continue to share with the Study Group any update on the development of qualitative and quantitative indicators;

(f) *also invites* the Court to monitor the use of intermediaries through its Working Group on Intermediaries with a view to safeguarding the integrity of the judicial process and the rights of the accused; and

(g) *requests* the Court to inform States Parties, when appropriate, about important developments pertaining to the use of intermediaries, which might require the Court to amend the Guidelines;

10. With regard to **proceedings of the Court**,

(a) *invites* the Court to intensify its efforts to enhance the efficiency and effectiveness of proceedings including by adopting further changes of practice; and

(b) *encourages* the Bureau, including through the two working groups and the Study Group on Governance, to continue to support the Court's efforts to enhance the efficiency and effectiveness of proceedings;

11. With regard to the **working methods review**,

(a) *decides* that its annual session shall have a duration of seven working days with a possible extension of up to two additional days in election years, as required, and to focus, in such cases, the first two days on the elections of judges;

(b) *also decides* that its annual sessions shall include one or two plenary segments on specific agenda items;

(c) *invites* the facilitators and focal points, when appropriate, to present their work to the Assembly;

(d) *also invites* the facilitators and focal points to commit themselves for a period of up to three years considering the particularities and the complexity of each mandate and to submit, in addition to their regular reports, a final written report to the Assembly at the end of their mandate, including lessons learnt;

<sup>11</sup> *Official Records...Sixteenth session ...2017* (ICC-ASP/16/20), vol.II, part B.2, paras. 11, 176-183.

(e) *invites* the Bureau to implement the recommendations of the 2013 working methods report;<sup>12</sup>

(f) *requests* the Bureau to establish facilitations only if the mandate requires open-ended consultations, and the matter cannot be addressed by a less resource-intensive mechanism, such as a rapporteur or a focal point;<sup>13</sup>

(g) *invites* the Bureau to use existing technologies such as video-conferencing in order to ensure participation of members of the Bureau not represented at the venue of the Bureau meeting; and

(h) *requests* the Bureau to continue conducting evaluations of the established mandates and, where appropriate, consider the inclusion of end-dates and that it prepare recommendations on the reduction of the number and length of reports;

12. With regard to **Victims and affected communities, reparations and Trust Fund for Victims**,

(a) *requests* the Court to continue to establish principles relating to reparations in accordance with article 75, paragraph 1, of the Rome Statute as a priority in the context of its judicial proceedings;

(b) *encourages* the Board of Directors and the Secretariat of the Trust Fund for Victims to continue to strengthen its ongoing dialogue with the organs of the Court, States Parties and the wider international community, including donors as well as non-governmental organizations, who all contribute to the valuable work of the Trust Fund for Victims, so as to ensure increased strategic and operational visibility and to maximize its impact and ensure the continuity and sustainability of the Fund's interventions;

(c) *requests* the Court and the Trust Fund for Victims to continue developing a strong collaborative partnership, mindful of each other's roles and responsibilities, to implement Court-ordered reparations;

(d) *decides* to continue to monitor the implementation of the rights of victims under the Rome Statute, with a view to ensuring that the exercise of these rights is fully realized and that the continued positive impact of the Rome Statute system on victims and affected communities is sustainable;

(e) *mandates* the Bureau to continue considering victims-related issues as necessary or as they arise, having recourse to any appropriate process or mechanism; and

(f) *requests* the Court to make available to the Assembly appropriate statistics in relation to victims admitted to participate in proceedings before the Court when these are publicly submitted to the respective Chambers in the context of the judicial proceedings; such statistics may include, as appropriate, information on gender, criminal offense and situation, among other pertinent criteria as determined by the relevant Chamber;

13. With regard to **recruitment of staff**,

(a) *endorses* the recommendations of the Committee on Budget and Finance in relation to geographical representation and gender balance contained in the reports of its twenty-eighth and twenty-ninth sessions;<sup>14</sup>

(b) *requests* the Court to submit a comprehensive report on human resources to the Assembly at its seventeenth session, which would include an update on the implementation of the recommendations on the topic which would be made by the Committee on Budget and Finance in 2018;

(c) *requests* the Bureau to continue engaging with the Court to identify ways to improve equitable geographical representation and gender balance in professional posts, as well as to remain seized of the issue of geographical representation and gender balance, and to report thereon to the seventeenth session of the Assembly; and

<sup>12</sup> ICC-ASP/12/59.

<sup>13</sup> As outlined, e.g., in paras. 21(a) and 23(b) of the Report on the Evaluation and rationalization of the working methods of the subsidiary bodies of the Bureau (ICC-ASP/12/59).

<sup>14</sup> *Official Records...Sixteenth session ...2017* (ICC-ASP/16/20), vol.II, part B.

(d) *urges* the Court to seize the opportunities of the outstanding and future recruitment processes to implement measures that would contribute to the efforts of meeting the desirable ranges of geographical representation and gender balance;

14. With regard to **complementarity**,

(a) *requests* the Bureau to remain seized of this issue and to continue the dialogue with the Court and other stakeholders on complementarity, including on complementarity-related capacity-building activities by the international community to assist national jurisdictions, on possible situation-specific completion strategies of the Court and the role of partnerships with national authorities and other actors in this regard; and also including to assist on issues such as witness and victims protection and sexual and gender-based crimes; and

(b) *requests* the Secretariat to, within existing resources, continue to develop its efforts in facilitating the exchange of information between the Court, States Parties and other stakeholders, including international organizations and civil society, aimed at strengthening domestic jurisdictions, and to invite States to submit information on their capacity needs for the consideration of States and other actors in a position to provide assistance, and to report on the practical steps taken in this regard to the seventeenth session of the Assembly;

15. With regard to the **Independent Oversight Mechanism**, *decides* that the Assembly will fully review the work and the operational mandate of the Independent Oversight Mechanism at its seventeenth session;

16. With regard to the **programme budget**,

(a) *requests* the Secretariat, together with the Committee on Budget and Finance, to continue to make the necessary arrangements to ensure that the Committee is represented at all stages of the deliberations of the Assembly at which documents that contain financial or budgetary implications are considered;

(b) *decides* that the Bureau, through the President of the Assembly, the coordinator of the working group and the facilitator, should continue to monitor the status of payments received throughout the financial year of the Court and consider additional measures to promote payments by all States Parties, as appropriate, continue to engage in dialogue with States Parties that have outstanding contributions or are in arrears, and report thereon to the Assembly at its seventeenth session; and

(c) *requests* the Secretariat to inform States Parties periodically of States that have recovered their voting rights following payment of their arrears;

17. With regard to the **Review Conference**, *requests* the Secretariat to make publicly available on the Court's website information provided by States and regional organizations on the pledges of increased assistance to the Court made in Kampala;

18. With regard to **consideration of amendments**,

(a) *invites* the Working Group on Amendments to continue its consideration of all amendment proposals, in accordance with the Terms of Reference of the Working Group; and

(b) *requests* the working group to submit a report for the consideration of the Assembly at its seventeenth session;

19. With regard to **participation in the Assembly of States Parties**,

(a) *decides* that the Committee on Budget and Finance shall hold its thirtieth session from 16 to 20 April 2018 and its thirty-first session from 3 to 14 September 2018; and

(b) *also decides* that the Assembly shall hold its seventeenth session in The Hague from 5 to 12 December 2018, and its eighteenth session in The Hague.



## B. Recommendation adopted by the Assembly of States Parties

### Recommendation ICC-ASP/16/Rec.1

*Adopted at the 12th plenary meeting, on 14 December 2017, by consensus*

#### ICC-ASP/16/Rec.1

#### Recommendation concerning the election of the Registrar of the International Criminal Court

*The Assembly of States Parties,*

*Bearing in mind* article 43, paragraph 4, of the Rome Statute of the International Criminal Court,

*Having received* a list of candidates<sup>1</sup> from the Presidency in accordance with rule 12 of the Rules of Procedure and Evidence,

*Taking into account* the recommendations of the Bureau of the Assembly,

1. *Recommends* that the judges proceed to elect the Registrar on the basis of the list submitted by the Presidency in accordance with rule 12 of the Rules of Procedure and Evidence,
2. *Recommends also* that, in considering the list of candidates with a view to electing the Registrar, the judges take into account the following elements, which include criteria governing the employment of staff of the Court provided in the Rome Statute:
  - (a) The highest standards of efficiency, competency and integrity;<sup>2</sup>
  - (b) The criteria set forth in article 36, paragraph 8, on the election of judges, which apply *mutatis mutandis* to the employment of staff,<sup>3</sup> namely:
    - (i) The representation of the principal legal systems of the world;
    - (ii) Equitable geographical representation;
    - (iii) A fair representation of female and male persons; and
    - (iv) The need for a candidate with legal expertise on specific issues, including, but not limited to, violence against women, will be considered an asset.
  - (c) Proven managerial skills, whether acquired within relevant international or national organizations, including leadership experience through having dealt effectively with complex and sensitive situations under pressure;
  - (d) Familiarity with both governmental and intergovernmental processes, and possession of requisite diplomatic skills;
  - (e) The candidate should be a national of a State Party and, in the case of a candidate with dual or multiple nationalities, application of the principle set out in resolution ICC-ASP/1/Res.10, as amended by resolution ICC-ASP/4/Res.4;
  - (f) Essential qualifications of the candidate, including relevant experience, particularly regarding financial and budgetary competencies, as well as the sound and transparent management of public funds;
  - (g) The ability to liaise effectively and regularly with the Assembly, its subsidiary bodies, other organs of the Court and relevant stakeholders, especially facilitators and focal points of the Assembly's subsidiary bodies, including by conveying relevant information they request in an efficient, complete and timely manner, so as to ensure the efficiency in the conduct of work between the Court and States Parties;

<sup>1</sup> ICC-ASP/16/28/Rev.1.

<sup>2</sup> Rome Statute of the International Criminal Court, article 44, paragraph 2.

<sup>3</sup> *Ibid.*

(h) The ability to co-operate well with others, as well as work within and have the ability to lead a team, including by having a strategic awareness which identifies issues, opportunities and risks, and conveys the strategic direction and objectives to all stakeholders;

(i) The ability to communicate effectively, via written and oral means. The candidate shall be fluent in at least one of the working languages of the Court. A working knowledge of the other language is considered an asset. Knowledge of another official language of the Court (Arabic, Chinese, Russian, Spanish) would be an added advantage and asset;

(j) The ability to negotiate effectively through the establishment of constructive interpersonal relationships in a multicultural setting; and

(k) The commitment to strengthen equitable geographic representation and a fair representation of female and male persons at all levels of the Court's staff, bearing in mind that equitable geographic and gender representation can be implemented by means of a rotation of the incumbents of the post of Registrar.

## **Annex**

### **Vacancy Announcement**

#### **Job Title: Registrar (ASG)**

Vacancy announcement number:	13121
Deadline for Applications:	28/06/2017
Organisational Unit:	Registry
Duty Station:	The Hague, the Netherlands
Type of Appointment:	Fixed-term appointment
Post Number:	E-9466
Minimum Net Annual Salary:	€156,987.00
Contract Duration:	Five years, eligible for re-election once.

#### **Special Notice**

Application Procedures are outlined in details at the end of this vacancy announcement. Applicants are kindly requested to comply with the procedures when submitting an application.

#### **THE ORGANISATION**

The International Criminal Court (ICC), governed by the Rome Statute, is the first permanent, treaty based, international criminal court established to help end impunity for the perpetrators of the most serious crimes of concern to the international community.

The ICC is an independent international organisation, and is not part of the United Nations system. Its seat is at The Hague in The Netherlands.

With a budget of over 140 million euro in 2017 and approximately 900 staff based in The Hague and at various field locations around the world, the ICC offers a challenging environment for senior executive level managers.

The ICC is seeking applications from qualified candidates for the position of Registrar.

## **THE REGISTRAR**

The Registrar, head of the Registry, is the principal administrative officer of the Court. He or she is responsible for the non-judicial aspects of the administration and servicing of the ICC. The Registrar, who shall serve on a full time basis, is elected by the plenary of the judges of the Court, taking into account any recommendation of the Assembly of States Parties (Art. 43.4 of the Rome Statute). He or she shall serve a five year term, eligible for re-election once for the same period. The current term of the Registrar expires in April 2018.

## **DUTIES AND RESPONSIBILITIES**

In accordance with the Rome Statute, the Registrar exercises his or her functions under the authority of the President of the Court (Art. 43.2 of the Rome Statute). A substantial component of the work of the incoming Registrar will be related to the efficient management of the Court, including the review of its existing policies and procedures and the implementation of improved working processes.

To be successful in the role, the Registrar will require significant senior leadership experience and a demonstrated ability to deliver results in a diverse range of areas that include the following:

### **Administration**

Maximising the Court's ability to effectively manage its human resources by establishing a framework for measuring and improving staff engagement and leadership practices.

Ensuring that the Financial Regulations and Rules of the Court are administered in a coherent manner.

Developing and maintaining efficient and transparent budget planning and budget tracking processes that support efficient and effective implementation of the Court's mandate.

Managing all administrative areas, such as procurement, facilities management, and logistics.

Being responsible for the security and safety of the Court.

Consulting and coordinating with the Office of the Prosecutor (OTP) on matters of mutual concern.

### **Court Services**

Overseeing design, efficient delivery and quality of services in areas that include the management of judicial records; ensuring the smooth and efficient operation of court proceedings; and providing language services.

Discharging the statutory duties in relation to the defence, including assisting arrested and accused persons in obtaining legal advice and the assistance of legal counsel; providing support, assistance and information to defence counsel; liaising and cooperating with the ICC Bar Association, as well as national and international defence and bar associations as appropriate; and establishing and maintaining a system for the assignment of legal assistance and legal aid.

Being responsible for the management of the detention centre, including security and order.

Discharging statutory duties in relation to victims participation and reparation.

Being responsible for information management services.

### **External Operations**

Managing the field offices and promoting understanding of the mandate and competences of the Court through public information and outreach.

Seeking and ensuring judicial cooperation for the enforcement of judicial decisions (such as warrants of arrest, summonses to appear, requests for freezing of assets or other forms of cooperation) and serving as the channel of communication of the Court.

Providing services to victims and witnesses in accordance with the statutory texts, including ensuring their protection and security, assisting them in obtaining legal advice, organizing their legal representation and facilitating their participation in the proceedings.

**Reporting to and liaising with the Assembly of States Parties, its subsidiary bodies and other relevant stakeholders, in particular the host State**

Maintaining and developing structured and effective dialogue between States Parties and the Court by informing the Assembly of States Parties and its committees on the performance of the Court while preserving its judicial independence. This includes open and transparent reporting in the areas of human, financial and physical resources management, field operations, the Court's budget and security and safety, as well as discussing with the host State all relevant organisational and administrative matters of common concern.

**ESSENTIAL QUALIFICATIONS**

The successful candidate will have to demonstrate that he or she possesses the following competencies and skills to the highest standard:

**Professionalism** – knowledge and experience in management and business administration, including competence in and adherence to the relevant standards of conduct and experience in identification and implementation of best practices; strong conceptual and analytical skills, with the ability to identify problems and propose solutions; conscientious efficiency in honouring commitments, meeting deadlines and achieving results.

**Financial competencies** – established financial and budgetary competencies (as demonstrated by previous experience in efficient management of public funds), in light of the fact that the funds of the Court are provided by States Parties.

**Strategic awareness** - ability to identify strategic issues, opportunities and risks and to generate and communicate broad and compelling organisational and strategic direction and objectives to all stakeholders; ability to identify challenges (in particular, those arising from and related to the specific nature of the Court) and respond effectively thereto; demonstrable ability to provide strategic direction.

**Leadership** – proven and demonstrable track record of excellent management and technical leadership skills; ability to deal effectively with sensitive and contentious matters under pressure; proven ability to develop clear goals that are consistent with the agreed strategies and to establish good relationships and build team spirit with staff of the Court and a broad range of people.

**Planning and Organizing** – excellence in successful planning with strong managerial skills; proven ability to plan and establish priorities and to ensure effective work structure to maximize efficiency and effectiveness and to achieve goals.

**Judgement/decision making** – mature judgement and initiative, imagination and resourcefulness, energy and tact; proven ability to identify key issues in complex situations and to take adequate decisions being aware of the impact on others and on the Court.

**Communication** - excellent oral and written communication and negotiation skills with proven ability to establish and maintain effective interpersonal relationship in a multi-cultural, multi-ethnic environment with sensitivity and respect for diversity.

**Information Technology** – an understanding of the challenges and opportunities of a coherent Information management strategy combined with an appreciation of the technologies involved.

**EDUCATION**

Advanced university degree (Master's degree or equivalent) in law, economic sciences, public or business administration or related areas. A first-level university degree in combination with qualifying experience may be accepted in lieu of the advanced university degree.

## **EXPERIENCE**

At least 15 years of documented progressively responsible managerial experience, whether at a national or international, private or public level, preferably but not necessarily, in judicial institutions and bodies. A proven track record of efficient management of public funds, whether at the national or international level, would be desirable.

## **LANGUAGES**

The candidate shall have an excellent knowledge of and be fluent in at least English or French, the two working languages of the ICC. A working knowledge of the other language is considered an asset. Knowledge of another official language of the Court (Arabic, Chinese, Russian, Spanish) would be considered an added advantage and asset.

## **APPLICATION PROCEDURES**

Applicants are requested to submit their application through the ICC eRecruitment system before the closing date of the vacancy announcement.

As part of the application process for this position, additional documents will be required in addition to the on-line application process which must be completed via the ICC eRecruitment system.

Upon completion of the on-line application through the ICC eRecruitment system, applicants will receive an email message from ICC Recruitment providing a link and instructions on how to submit the below listed documents:

1. Curriculum Vitae (4 pages maximum, in Word format)
2. Summary of relevant experience (1 page maximum, in Word format)
3. Letters of reference from a supervisor, a peer and a supervisee (one (1) letter from each).

Please note that items 1 and 2 above should be based solely on the information provided in the online application completed using the ICC eRecruitment system.

Please also note that items 1 and 2 above may be circulated to the Assembly of States Parties of the International Criminal Court and may be published on the Court's website. Item 3 is for the consideration of the judges only and will not be circulated further.

An application may not be considered if these additional documents are not received by the closing date of the vacancy announcement.

Should there be any assistance required, applicants may contact the ICC Recruitment team via [Recruitment@icc-cpi.int](mailto:Recruitment@icc-cpi.int)

## **GENERAL INFORMATION**

The selected candidate will be subject to a Personnel Security Clearance (PSC) process in accordance with ICC policy. The PSC process will include but will not be limited to, verification of the information provided in the personal history form and a criminal record check;

Applicants may check the status of vacancies on ICC E-Recruitment web-site;

Post to be filled preferably by a national of a State Party to the ICC Statute, or of a State which has signed and is engaged in the ratification process or which is engaged in the accession process, but nationals from non-state parties may also be considered;

In accordance with the Rome Statute, the ICC aims to achieve fair representation of women and men for all positions, representation of the principal legal systems of the world for legal positions, and equitable geographical representation for positions in the professional category;

Applications from female candidates are particularly encouraged.

## Annexes

### Annex I

#### Report of the Credentials Committee

*Chairperson:* Mr. Peter Nagy (Slovakia)

1. At its first plenary meeting, on 4 December 2017, the Assembly of States Parties to the Rome Statute of the International Criminal Court, in accordance with rule 25 of the Rules of Procedure of the Assembly of States Parties, appointed a Credentials Committee for its sixteenth session, consisting of the following States Parties: Chile, Costa Rica, Czech Republic, Republic of Korea, Senegal, Slovakia, Sweden, Uganda and United Kingdom of Great Britain and Northern Ireland.

2. The Credentials Committee held two meetings, on 4 and 13 December 2017.

3. At its meeting on 13 December 2017, the Committee had before it a memorandum by the Secretariat dated 13 December 2017, concerning the credentials of representatives of States Parties to the Rome Statute of the International Criminal Court to the sixteenth session of the Assembly of States Parties. The Chairperson of the Committee updated the information contained therein.

4. As noted in paragraph 1 of the memorandum and the statement relating thereto, formal credentials of representatives to the sixteenth session of the Assembly of States Parties, in the form required by rule 24 of the Rules of Procedure, had been received as at the time of the meeting of the Credentials Committee from the following 74 States Parties:

Andorra, Australia, Austria, Bangladesh, Barbados, Belgium, Bolivia (Plurinational State of), Bosnia and Herzegovina, Brazil, Bulgaria, Canada, Chile, Colombia, Cook Islands, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Ecuador, El Salvador, Estonia, Finland, France, Gabon, Germany, Greece, Guatemala, Hungary, Iceland, Ireland, Italy, Japan, Jordan, Kenya, Latvia, Lesotho, Liechtenstein, Lithuania, Luxembourg, Malawi, Maldives, Malta, Marshall Islands, Mexico, Montenegro, Namibia, Netherlands, New Zealand, Norway, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Samoa, San Marino, Senegal, Serbia, Slovakia, Slovenia, South Africa, Spain, State of Palestine, Sweden, Switzerland, Trinidad and Tobago, Tunisia, Uganda, United Kingdom of Great Britain and Northern Ireland, United Republic of Tanzania and Venezuela (Bolivarian Republic of).

5. As noted in paragraph 2 of the memorandum, information concerning the appointment of the representatives of States Parties to the sixteenth session of the Assembly of States Parties had been communicated to the Secretariat, as at the time of the meeting of the Credentials Committee, by means of a cable or a telefax from the Head of State or Government or the Minister for Foreign Affairs, by the following 40 States Parties:

Afghanistan, Antigua and Barbuda, Argentina, Belize, Benin, Botswana, Burkina Faso, Cabo Verde, Cambodia, Congo, Democratic Republic of the Congo, Denmark, Djibouti, Dominican Republic, Fiji, Gambia, Georgia, Ghana, Grenada, Guinea, Guyana, Honduras, Madagascar, Mali, Mauritius, Mongolia, Nauru, Niger, Nigeria, Panama, Paraguay, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Seychelles, Suriname, Tajikistan, The former Yugoslav Republic of Macedonia, Timor-Leste and Uruguay.

6. The Chairperson recommended that the Committee accept the credentials of the representatives of all States Parties mentioned in the Secretariat's memorandum, on the understanding that formal credentials for representatives of the States Parties referred to in paragraph 5 of the present report would be communicated to the Secretariat as soon as possible.

7. On the proposal of the Chairperson, the Committee adopted the following draft resolution:

*“The Credentials Committee,*

*Having examined the credentials of the representatives to the sixteenth session of the Assembly of States Parties to the Rome Statute of the International Criminal Court, referred to in paragraphs 4 and 5 of the present report;*

*Accepts the credentials of the representatives of the States Parties concerned.”*

8. The draft resolution proposed by the Chairperson was adopted without a vote.

9. The Chairperson then proposed that the Committee recommend to the Assembly of States Parties the adoption of a draft resolution (see paragraph 11 below). The proposal was adopted without a vote.

10. In the light of the foregoing, the present report is submitted to the Assembly of States Parties.

### **Recommendation of the Credentials Committee**

11. The Credentials Committee recommends to the Assembly of States Parties to the Rome Statute of the International Criminal Court the adoption of the following draft resolution:

**“Credentials of representatives to the sixteenth session of the Assembly of States Parties to the Rome Statute of the International Criminal Court**

*The Assembly of States Parties to the Rome Statute of the International Criminal Court,*

*Having considered the report of the Credentials Committee on the credentials of representatives to the sixteenth session of the Assembly and the recommendation contained therein,*

*Approves the report of the Credentials Committee.”*

## Annex II

### Oral report on the activities of the Bureau, presented by the President of the Assembly at its first plenary meeting, on 4 December 2017

1. As the President of the Assembly, I have the honor to report to the Assembly of States Parties, on the activities carried out by its Bureau during the inter-sessional period 2016-2017.

#### A. Meetings and mandates

2. Since the fifteenth session of the Assembly, the Bureau has, in 2017, held seven formal meetings to assist the Assembly in the discharge of its responsibilities under the Rome Statute.

3. Pursuant to the mandates given to the Bureau by the fifteenth session of the Assembly in November 2016, the Bureau assigned mandates to its working groups and appointed, on the basis of recommendations of the working groups, the following facilitators and focal points:

- (a) New York Working Group:
  - (i) Arrears - Mr. Sebastian Rogač (Croatia);
  - (ii) Geographical representation and gender balance in the recruitment of staff of the Court - Mr. Patrick Luna (Brazil); and
  - (iii) Omnibus resolution - Ms. Damaris Carnal (Switzerland).
- (b) The Hague Working Group:
  - (i) Budget - Ambassador Per Holmström (Sweden);
  - (ii) Budget Management Oversight, including strategic planning and legal aid - Ambassador Eduardo Rodríguez (Bolivia), as focal point;
  - (iii) Premises - Ambassador Willys Delvalle (Panama), as focal point; and
  - (iv) Cooperation - Ambassador Philippe Lalliot (France) and Ambassador Momar Diop (Senegal).
- (c) Mandates assigned to *ad country* focal points:
  - (i) Complementarity - Australia and Romania;
  - (ii) Plan of action for achieving universality and full implementation of the Rome Statute - Denmark; and
  - (iii) Non-cooperation (regional focal points): Senegal, on behalf of the President of the Assembly (African group); Japan (Asia-Pacific group); Czech Republic (Eastern European group); Peru (Group of Latin American and Caribbean States); and Australia (Western European and other States group).
- (d) Study Group on Governance:
  - (i) Ambassador Maria Teresa Infante Caffi (Chile) and Ambassador Hiroshi Inomata (Japan);
  - (ii) Cluster I: Ms. Erica Lucero (Argentina) and Mr. Philip Dixon (United Kingdom) as co-focal points; and
  - (iii) Cluster II: Mr. Reinhard Hassenpflug (Germany) and Ms. Lourdes Suinaga (Mexico) and later, her successor Mr. Alfredo Álvarez Cárdenas (Mexico), as co-focal points.



(e) Working Group of the Bureau on the implementation of article 97 of the Rome Statute:

(i) Ambassador Maria Teresa Infante Caffi (Chile).

(f) Activation of the Court's jurisdiction over the crime of aggression - Ms. Nadia Kalb (Austria).

4. At its 3 June 2016 meeting, the Bureau established a working group of the Bureau, chaired by Ambassador María Teresa Infante Caffi (Chile), to examine the application of article 97 of the Rome Statute, in close consultation with the Court. It noted that, in performing this task, the judicial independence of the Court had to be fully respected. At its 20 December 2016 meeting, the Bureau re-appointed Ambassador Infante Caffi as Chairperson of the open-ended working group, which had been mandated by the fifteenth session of the Assembly to continue exploring all possible means to improve the application of article 97 of the Rome Statute, in particular regarding problems identified under subparagraph c), in close consultation with the Court.

5. The Bureau is pleased with the work conducted by its working groups, as well as the Study Group on Governance and the open-ended Working Group on article 97 during 2017, as they have successfully carried out the mandates of the Assembly.

6. I wish to express my appreciation for the work carried out by the two Vice-Presidents of the Assembly, Ambassador Sebastiano Cardi (Italy) and Ambassador Sergio Ugalde (Costa Rica). The Vice-Presidents have served as coordinators of the working groups of the Bureau, and their support has been instrumental in advancing the consideration of the issues in these forums. I also wish to thank them for their crucial work in supporting my Presidency. I wish to recall here that Ambassador Alvaro Moerzinger (Uruguay), who had been elected Vice-President at the fourteenth session, resigned with effect from 20 September 2016, and I am grateful to Ambassador Moerzinger also for his support and excellent work.

## **B. Working Group on Amendments**

7. I would like to express appreciation to Ambassador May-Elin Stener (Norway) for the work and time she has invested in chairing the Working Group on Amendments, which met regularly in New York. Throughout the inter-sessional period, the Working Group on Amendments had before it all proposals of amendments to the Rome Statute, including a new non-paper containing a revised proposal on amendments to article 8, which the working group decided to consider in depth, with a view to making a recommendation to the Assembly at its sixteenth session.

## **C. Independent Oversight Mechanism**

8. Following the establishment of the Independent Oversight Mechanism (IOM) at the eighth session and the adoption of the full framework necessary for its operationalization at the twelfth session, the Head of the IOM, Mr. Ian Fuller, who assumed office on 15 October 2015, carried out the functions of the office, in addition to recruiting the necessary staff to ensure its effective operation. The IOM is now fully staffed and operational, and carries out the three elements of its mandate contained in the Rome Statute. In accordance with the mandate of the Assembly, the Head has submitted periodic reports to the Bureau and the "Annual report of the Head of the Independent Oversight Mechanism to the Assembly".<sup>1</sup>

9. In his report to the sixteenth session, the Head of the IOM proposed amendments to rule 26 of the Rules of Procedure and Evidence relating to the administration and receipt of complaints made against elected officials of the Court. On 18 October, the Bureau requested the Study Group on Governance to consider the proposals and convey its recommendations to the Working Group on Amendments, so that the latter could make a recommendation thereon to the seventeenth session of the Assembly.

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<sup>1</sup> ICC-ASP/16/8.

10. Further, by a letter, dated 18 October 2017, the Head of the IOM informed me that he had resigned from that post, effective 10 December 2017. The Bureau must now consider the measures to be put in place for the recruitment and appointment of a new Head of the IOM.

11. I wish to assure the IOM of the continued support of the Assembly in its important work of inspection, evaluation and investigation entrusted to it by article 112 (4) of the Rome Statute.

#### **D. Working methods**

12. During my tenure, the Bureau and its working groups have continued their discussions on the reform of the working methods of the Assembly and its subsidiary bodies. These efforts were aimed at streamlining the Bureau's work. It is my hope that the future Bureau will continue these discussions aimed at streamlining the work of the Assembly.

13. The past three years have seen an increase in the number of meetings of the Bureau in both New York and The Hague, and I was pleased to hold these meetings in both cities, given the different but equally key role of the work of delegations based in these cities to the work of the Court. The period under review also saw an increased participation of delegations in the intersessional work, which I welcome as a sign of increased interest by States.

14. In addition, during 2017, the Bureau discussed the issue of the participation of Observer States in the work of the Assembly and, on 18 October 2017, adopted a decision thereon, together with an Understanding on the participation of Observer States in meetings of the Assembly of States Parties.<sup>2</sup>

#### **E. Non-cooperation/UNSC**

15. In addition to the operational items, the Bureau has an important political role. As in the past, the Bureau has monitored developments related to the Court and the United Nations Security Council. At its meetings and at those of the New York Working Group, Italy, who served this year as the designated focal point on the International Criminal Court on behalf of the States Parties sitting on the Council, provided systematic briefings about decisions and other actions by the Council in relation to the Court. It must be recognized that the effective mainstreaming of the Court at the Council is the result of coordinated efforts of the eight States Parties sitting on the Council in 2017.

16. It is also the Assembly's responsibility under article 112, paragraph 2, of the Rome Statute to consider, pursuant to article 87 of the Statute, any question relating to non-cooperation. Operative paragraph 10 of resolution ICC-ASP/12/Res.8 requested "the President of the Assembly to continue to engage actively and constructively with all relevant stakeholders, in accordance with the Bureau procedures on non-cooperation, both to prevent instances of non-cooperation and to follow up on a matter of non-cooperation referred by the Court of the Assembly". During 2017, the focal points circulated proposed updates to the Assembly procedures relating to non-cooperation and sought the initial views of States Parties. The focal points intend to continue their work on the modifications to the Assembly procedures in 2018.

17. Throughout the past year, I have, together with the focal points on non-cooperation, closely monitored and reacted to instances of travels of persons sought by the Court to States Parties and non-States Parties. The Bureau ought to continue to engage in the application of these procedures, especially their formal aspects, which are triggered once there is a judicial finding on non-cooperation.

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<sup>2</sup> [https://asp.icc-cpi.int/iccdocs/asp\\_docs/Bureau/ASP2017-Bureau06-decision-ENG-ObsvrStates.pdf](https://asp.icc-cpi.int/iccdocs/asp_docs/Bureau/ASP2017-Bureau06-decision-ENG-ObsvrStates.pdf).

## **F. Arrears**

18. Throughout 2017, the Bureau and the New York Working Group monitored with concern, the issue of arrears. The Bureau encouraged all States Parties to regularize their financial obligations with the Court as soon as possible and decided to remain seized of the issue. Through its facilitator on this topic, bilateral consultations with various States Parties with outstanding contributions, informing them about the exact amounts and the status of their arrears were held. Some States Parties in arrears informed the facilitator that they were taking important steps to pay their outstanding contributions, and that appropriate measures would be taken in order to address the matter urgently.

19. I appeal to all States Parties to settle their accounts as soon as possible in 2018, so that the Court would have the requisite resources to carry out its work.

20. The Court is currently seized of 25 cases and 11 situations. Like previous years, 2018 will be a very busy year for the Court, with three trials taking place simultaneously. The Appeals Division is now dealing with interlocutory appeals relating to reparations, as well as appeals against conviction and sentence in two cases.

21. The demands of justice need to be matched with sufficient resources. It is equally important that States Parties fulfill their responsibility of paying in full and on time the assessed contributions approved by the Assembly. The Bureau has recommended to the Assembly to broaden and intensify its work on the issue of outstanding contributions and arrears. I encourage the future Bureau to undertake efforts to enhance dialogue with States on this matter to draw attention to the importance of timely and integral payments to the Court.

## **G. Permanent Premises**

22. The Court moved to its permanent premises in December 2015. The inauguration of the premises on 19 April 2016 heralded the dawn of a new era where the Court could operate in a modern and functional complex. This landmark construction was made possible by the considerable investment of over €213 million with €94,568,000 financed by 62 States Parties. Furthermore, we also express our deep appreciation for the most important contributions made by the host State, for example, via providing the land for the new premises as well as a loan to cover the part of the construction costs that could not be financed by States Parties directly.

23. We would also like to express our appreciation to the countries which have made artwork donations to the Court, namely Belgium, Denmark, Japan, Liechtenstein, the Netherlands, Portugal, the Republic of Korea, Senegal, Slovenia and Tunisia.

24. As the mandate of the Assembly's Oversight Committee on permanent premises terminated in 2016 after nine years ensuring that the interest of States Parties in the project were duly taken into account, the Bureau was entrusted with the mandate concerning the governance structure and total cost of ownership, via its Hague Working Group which has a facilitation on the budget or, if necessary, a subcommittee thereof.<sup>3</sup> In 2017, delegations and the Court discussed, *inter alia*, long-term maintenance and capital replacements as well as the five-year plan on capital replacements presented by the Court.

## **H. Complementarity and cooperation**

25. Complementarity and cooperation were among the issues to which I accorded high priority during my term as President. As part of the promotion of complementarity and cooperation, I held a series of meetings throughout the year where I encouraged States to become parties to the Rome Statute and the Agreement on Privileges and Immunities of the International Criminal Court, as well stressed the importance for States to have implementing legislation at the national level.

<sup>3</sup> ICC-ASP/15/Res.2, annex 2, section B, para. 6-7.

26. As regards complementarity and strengthening the relationship between Africa and the Court, in 2017 I attended regional consultations on the Malabo Protocol, which had been organized jointly with Amnesty International in Dakar. Further, in May, I organized a high-level meeting on the subject of “Strengthening African national legal systems through complementarity and effective and dynamic cooperation with the International Criminal Court”, held in Dakar. The meeting provided an opportunity to recall both the key role played by national judicial systems under the Rome Statute and the important role of the Court in the fight against impunity.

27. I visited New York from 19 September to 22 September 2017 in the margins of the 72nd session of the United Nations General Assembly, which included bilateral meetings at the ministerial level with States Parties and non-States Parties to promote the universality of the Rome Statute, the adoption of national implementing legislation that would reinforce the principle of complementarity and cooperation with the Court, and enhancing dialogue between Africa and the Court.

## **I. 17 July and civil society**

28. The efforts on the promotion of universality, complementarity, cooperation and ratification of the Kampala Amendments would not be as fructuous without the participation of civil society. Throughout 2017, I devoted considerable time to enhancing the engagement of civil society in the fight against impunity, especially in Africa.

29. On 17 July, the Day of International Criminal Justice was celebrated in Dakar on the theme “Challenges and Opportunities for the ICC on the eve of the 20th anniversary of the Rome Statute”. I also welcomed the initiatives of other supporters of international criminal justice who organized similar events.

30. On 12 July 2017, an event commemorating the Day of International Criminal Justice was held at the seat of the International Criminal Court, The Hague, organized with the support of the Governments of Bolivia, Chile and Colombia. The panel discussion considered the nature of the Court’s legal system and how the fairness of trials before the Court is ensured within the hybrid system. On 17 July, Vice-President Ambassador Sebastiano Cardi (Italy), together with the Permanent Missions of Denmark, Gambia and Liechtenstein, organized a panel discussion at United Nations Headquarters, New York, with the theme “Striving for universality of the Rome Statute: The criminalization of aggressive war-making and ensuring greater protection for the victims of the most serious crimes”.

31. I have listened to concerns from civil society. In this respect, I wish to reiterate my appreciation for the work of the Coalition for the International Criminal Court and its members, and recall the importance of financial support from States Parties to local and international organizations working on the promotion of ratification and implementing legislation of the Rome Statute.

## **J. Universality**

32. I continued my work on promoting the universality of the Rome Statute and encouraged States to become Parties to the Statute. During the term of the present Bureau, two new States Parties joined the Rome Statute: the State of Palestine in 2015, and El Salvador in 2016. I welcome these latest States to the Rome Statute family, and I also urge States that are not yet Parties to accord the highest priority to ratifying or acceding to the Statute. With the increased support of the international community as a whole, the Court cannot but continue to grow in stature and credibility.

33. I am also pleased that two additional States Parties, Argentina and Portugal, ratified the Kampala amendments on the crime of aggression during 2017, bringing the total number of Parties to 34. I recall that, with the State of Palestine becoming the 30th State to ratify these amendments in June 2016, the threshold of 30 ratifications needed to activate the Court’s jurisdiction over the crime of aggression was reached. The Assembly must now take a decision in this regard. I welcome these ratifications as an encouraging development and invite additional States to ratify or accede to these amendments as soon as possible.

34. As regards the amendment to article 8 of the Rome Statute, I welcome the ratification by Argentina and Portugal during 2017, which brought the total number of States Parties to 34. I also welcome the ratification in 2017 of the amendment to article 124 by three additional States Parties, Austria, Netherlands and Portugal, which brought the number of Parties to six. I encourage States Parties that have not ratified these amendments to do so at the earliest opportunity.

35. While 2016 saw three notifications of withdrawal from the Rome Statute, it was possible for two of these States to withdraw these notifications. On 17 February 2017 I welcomed the decision by the newly elected Government of Gambia not to withdraw from the Rome Statute and underlined the importance of all States Parties remaining united to fight against impunity for mass crimes. Also, on 13 March 2017, I welcomed the revocation of South Africa's withdrawal from the Rome Statute.

36. Despite these positive developments, I regret that we begin this sixteenth session without one former State Party of the Assembly, Burundi, whose 2016 withdrawal from the Rome Statute took effect on 27 October 2017. On 14 October 2016, I issued a statement on the process of withdrawal from the Rome Statute by this State, inviting its authorities to engage in a dialogue and to express their concern to the Assembly. I also issued a press release on 22 October 2016 in which I regretted the withdrawal of any State Party from the Rome Statute.

37. I wish to recall that, at the fifteenth session, I held an open meeting of the Bureau where I, together with States Parties, reiterated that the Assembly of States Parties is the appropriate forum for States to raise any concerns and issues that they might have, so that they could be addressed in this forum. I would like to once more encourage States Parties that wish to highlight any concerns and difficulties that they may experience as a Party to bring these issues to the family of States Parties, where they can be addressed in an open, respectful and frank manner.

## **K. Secretariat**

38. Throughout the year, the Secretariat of the Assembly of States Parties has continued to carry out its mandate in assisting the Assembly and its subsidiary bodies, in accordance with resolution ICC-ASP/2/Res.3. The Secretariat continued to service The Hague Working Group, the Study Group on Governance, and the Committee on Budget and Finance, the Oversight Committee and the Advisory Committee on Nominations of Judges, as well as the Bureau Working Group on article 97, in the discharge of their responsibilities. The Secretariat assisted in coordinating the work of the Bureau, of the New York Working Group and of the Working Group on Amendments, and facilitated the visits and meetings of the President of the Assembly and the dissemination of information and communications. I wish to express my gratitude to the staff of the Secretariat, and in particular to the Director, Mr. Renan Villacis, whose support has been instrumental for the workings of the Bureau and its working groups.

39. Throughout its term, the Bureau has enjoyed the support of the Assembly. The Assembly, through its Bureau, has engaged in dialogue with the Court on an increasing number of issues, some of them very complex, which has led to a greater appreciation of the respective responsibilities. I wish, on behalf of the Bureau, to express my appreciation to all States Parties, the Court, and civil society, for their valuable input, support and spirit of cooperation, which have contributed to making the work of the Assembly a success.

## **L. Overview of the President's activities during the three-year mandate**

40. As we near the end of the work of the present Bureau, I wish to present an overview of my tenure. On 8 December 2014, I was elected President of the Assembly of States Parties for a three-year mandate. During my term, I focused my activities on four major areas: the relationship between Africa and the Court, cooperation, complementarity, and universality.

41. I visited Nairobi and Addis Ababa from 11 to 14 August 2015, and Conakry on 3 to 4 September 2015, where I met the President of the Republic of Kenya, the Chairperson of the African Union Commission, and the President of the Republic of Guinea, respectively, as well as other high-level authorities.

42. I had a message delivered on my behalf at a seminar on the future of international criminal justice in Africa, organized in Addis Ababa on 17 March 2016 by the Institute for Peace Studies.

43. Further, I view the open meeting of the Assembly's Bureau at the fifteenth session to discuss the "Relationship between African and the International Criminal Court" as a positive step towards recognizing the Assembly as the forum for States to have their concerns addressed.

44. In pursuing my work on universality, in addition to the activities in 2017 which I referred to earlier, on 1 April 2015, I welcomed the accession of the State of Palestine to the Rome Statute during a ceremony held in The Hague, and on 2 June 2016, I also attended a ceremony held at the new premises of the Court to welcome El Salvador as the 124th State Party. In 2016, I also visited Togo to promote the universality of the Rome Statute. Further, I expressed my appreciation for the work done by the Coalition for the International Criminal Court and other civil society organizations with regards to universality. I took advantage of my visit to The Hague to meet with various Ambassadors of States Parties as well as with senior officials of the Court.

45. In the framework of my activities to promote the cooperation of States with the International Criminal Court, I travelled to Bamako, on 21 May 2015, to meet with H.E. Mr. Ibrahim Boubacar Keita, President of the Republic of Mali.

46. On 24 March 2017, I held a bilateral meeting in Paris with the French Foreign Affairs Minister, H.E. Mr. Jean-Marc Ayrault, on the subject of promoting cooperation with the Court.

47. My activities regarding complementarity include the organization, on 23 May 2017, of a high-level meeting in Dakar on the subject of "Strengthening African national legal systems through complementarity and effective and dynamic cooperation with the International Criminal Court." The meeting was attended by high-level government officials of African States Parties and other high-level participants from the region, as well as a Vice-President of the Court and a representative from the Office of the Prosecutor. This meeting provided an opportunity to recall both the key role played by national judicial systems under the Rome Statute and the important role of the Court in the fight against impunity.

48. Further, from 30 May to 1 June 2016, I participated in the Conference held in Dakar on "Complementarity, the Habré Trial and the Evolution of Universal Jurisdiction", organized by Africa Legal Aid (AFLA). The opening of the conference coincided with the verdict in the Habré trial. I highlighted the importance of this verdict for international criminal justice, and emphasized that the victims had finally been rendered justice, thanks to the joint commitment of the African Union and Senegal to fight impunity for atrocity crimes.

49. The Day of International Criminal Justice is an important date for the Assembly. During my tenure, I undertook activities on an annual basis to commemorate the Day of International Criminal Justice. In 2015, I convened a regional conference in Dakar on "Sovereignty of States and International Criminal Justice" on 20 and 21 July. This high-level event was attended by African States Parties and non-States Parties, representatives of international civil society organizations, as well as journalists from 16 countries from West, East and North Africa.

50. To mark this day in 2016, I held a seminar on the topic of "International Criminal Justice against sexual and gender-based crimes" on 16 July in Dakar, with approximately 150 participants, including representatives of States Parties, experts, academics, judges, lawyers, and members of civil society from various countries and institutions. As I mentioned earlier, on 17 July 2017, the theme of the commemoration of the Day of International Criminal Justice in Dakar was "Challenges and Opportunities for the ICC on the eve of the 20th anniversary of the Rome Statute". I have referred above to the activities carried out in Dakar in 2017 to commemorate this important day.

51. The annual session of the United Nations General Assembly afforded me the opportunity to meet on an annual basis with high-level State representatives to discuss issues of concern to the Assembly. In addition to my visit during the 72nd session of the

General Assembly, I also visited the United Nations during the 71st and 70th sessions, in 2016 and 2015, respectively. I held bilateral meetings at the ministerial level with States Parties and non-States Parties to promote the universality of the Rome Statute, the adoption of national implementing legislation that would reinforce the principle of complementarity and cooperation with the Court, and enhancing dialogue between Africa and the Court.

52. On 2 March 2017, I met with the United Nations Secretary-General, Mr. Antonio Guterres, where I addressed matters concerning the Court in general and the relationship between Africa and the Court in particular. I urged the Secretary-General to offer diplomatic and political support to the Court.

53. Furthermore, I participated in the 30 September 2015 high-level event organized by France and Mexico on the restraint of the use of the veto in the United Nations Security Council, as well as in a meeting of the Inter-Ministerial Network of the International Criminal Court.

54. On 12 July 2016, I participated in the United Nations High-level thematic debate entitled “UN@70 – Human rights at the center of the global agenda,” where I posed an ICC-related question to the candidates for the post of United Nations Secretary-General.

55. I also participated in meetings in fora other than the United Nations. I held bilateral meetings during the high-level conference on the Syrian crisis on 4 February 2016 in London.

56. From 9 to 10 December 2016, I participated in the 9th Consultative Assembly of Parliamentarians on the International Criminal Court and the Rule of Law (CAP-ICC) held on the occasion of the 38th Annual Parliamentary Forum of Parliamentarians for Global Action (PGA) in Dakar, Senegal, and hosted by the National Assembly of the Republic of Senegal.

57. Furthermore, I attended the 33rd session of the ACP-EU Joint Parliamentary Assembly on 20 June 2017 in Malta, and spoke on the topic of impunity for crimes against humanity.

58. The Court is now installed in its permanent premises in The Hague. On 19 April 2016, I attended the inauguration of the Court’s permanent premises in The Hague, and on 16 February 2017, I participated in the unveiling of a painting titled “Peace through Justice”, which was donated to the Court by Senegal during a ceremony held in The Hague.

59. In 2018, we will mark the twentieth anniversary of the adoption of the Rome Statute. It will be an opportune moment for the Assembly to assess where the Court stands today, as it continues to face serious challenges, including universality, cooperation, the question of arrears and adequate resources to effectively carry out its mandate. I encourage all States Parties and all stakeholders to do their utmost to ensure that the Court is in a position to carry out this important work, because the cause of the Court is the cause of all humanity.

60. As I review the work of the Assembly and the Bureau at the end of this triennium, I am pleased with what we have accomplished. We have together made progress on the myriad issues and challenges that have arisen during the course of the mandate of the present Bureau.

61. I am pleased that I have been able to act as a bridge between Africa and the Court and it has been my honour, as the President selected by the African group, to undertake this important task. Although I will no longer hold office as your President, I intend to do my utmost in my role as Foreign Minister to continue to promote, where appropriate, the four elements of the focus of my presidency: cooperation, complementarity, universality and the relationship between Africa and the Court.

62. It has been my honour to serve as your President and I wish to thank all States Parties, Observer States, Invited States, international and regional organizations, civil society and, indeed, all stakeholders in the Rome Statute system.

63. I trust that you would continue to give the future President, Vice-Presidents and Bureau the same support and cooperation that I have enjoyed, which have been of great assistance in the discharge of my mandate as your President.

## Annex III

### **Statement of the Chair of the Committee on Budget and Finance to the Assembly at its seventh plenary meeting, on 8 December 2017**

1. I would like to take this opportunity to welcome the new members of the Committee: Ms. Ingrid Eiken Holmgren (Sweden) and Ms. Margaret Wambui Ngugi Shava (Kenya). I would like to take this opportunity to congratulate my colleagues Mr. Fawzi Garaibeh (Jordan), Ms. Monica Sanchez Izquierdo (Ecuador) and Ms. Elena Sopkova (Slovakia) on their re-election.

2. On behalf of the Committee, please allow me to express my sincere gratitude to the outgoing members of the Committee, Mr. Hugh Adsett (Canada) and Mr. Rivomanantsoa Orlando Robimanana (Madagascar) for their work, professionalism and commitment.

3. In addition, I would like to thank my fellow colleagues from the Committee for their devotion and hard work in the course of the last two sessions, as well as to the Executive Secretary, Mr. Fakhri Dajani and his team for their outstanding support.

4. It is an honour to present the main outcomes of the twenty-eighth and twenty-ninth sessions of the Committee on Budget and Finance.

#### **A. Status of contributions**

5. The Committee noted with concern the large amount of total outstanding contributions of €33.6 million as at 15 September 2017.

6. The Committee recalled States Parties' obligations to pay their contributions promptly and in full, as failure to do so may seriously jeopardize the day-to-day operations of the Court.

#### **B. States in arrears**

7. The Committee observed that, as at 15 September 2017, 13 States Parties were in arrears and recommended that all States Parties in arrears settle their accounts with the Court as soon as possible.

#### **C. Consideration of the 2018 proposed programme budget**

8. During its twenty-ninth session, the Committee considered the proposed programme budget of the Court for 2018 of a total amount of €147.89 million, excluding the interest and the principal repayment (instalments) for the host State loan of €3.58 million. This would have represented an increase of €6.3 million (4.4 per cent) over the 2017 approved budget of €141.6 million, without taking into account the instalments for the host State loan. The total amount requested when adding the interest payment would amount to €151.48 million.

9. After carefully scrutinizing the 2018 proposed programme budget and the justifications provided, the Committee recommended reductions to the proposed increases for 2018 in the amount of €3.46 million, subject to the decision by the Assembly on the requested increase of compensation for judges.

10. Thus, the adjusted 2018 proposed budget, as recommended by the Committee, amounts to €144.43 million. This represents an increase of €2.83 million (or two per cent) compared to the 2017 approved budget, including the request for the increase in judges' salaries and excluding the instalments for the host State loan.

#### **D. The Committee's recommendations for the various major programmes**

##### **1. Major Programme I: Judiciary**

11. The 2018 proposed budget for Major Programme I amounted to €13.3 million, representing an increase of €785.6 thousand, or 6.3 per cent, against the 2017 approved budget.



12. The Committee noted that in the 2018 proposed budget for the Judiciary there was an increase of €732 thousand related to the arrival of six newly elected judges and a recurrent request in the amount of €580 thousand in relation to the requested revision of the costs of salary entitlements for the 18 judges.

13. The Committee observed in this regard that the Assembly at its fifteenth session requested the Bureau to consider a revision of the judges' remuneration and to report to the Assembly at its sixteenth session. The Committee noted that no outcome on this matter was available at the time of the twenty-ninth session of the Committee, and reiterated its previous conclusion that this issue would have to be considered by the Assembly as a policy matter.

14. After close scrutiny of the resource requirements, the Committee recommended total reductions in the amount of €28.7 thousand for Major Programme I. The Committee thus recommended that the Assembly approve a total of €13.3 million for Major Programme I.

## **2. Major Programme II: Office of the Prosecutor**

15. The 2018 proposed budget for Major Programme II amounted to €47.2 million, representing an increase of €2.2 million (or 4.9 per cent) against the 2017 approved budget.

16. After thorough consideration, the Committee recommended total reductions in the amount of €1.2 million in Major Programme II, mostly in relation to staff costs and travel. The Committee thus recommended that the Assembly approve a total of €45.9 million for Major Programme II.

## **3. Major Programme III: Registry**

17. The Committee noted that the Registry had requested a budget of €79.2 million for its activities in 2018. This represents an increase of €2.5 million (3.3 per cent) against the 2017 approved budget.

18. After careful scrutiny of the requested resources and the justifications provided, the Committee recommended reductions in the amount of roughly €2 million for Major Programme III, mostly related to staff and other staff costs (€291 thousand); legal aid for the defence (€340 thousand); protection of witnesses (€1 million) in light of past expenditure pattern; as well as IT costs (€405 thousand for Major Programme III). Thus, the Committee recommended that the Assembly approve a total of €77.1 million for Major Programme III.

## **4. Other Major Programmes**

19. Total reductions for the other major programmes amounted to €220 thousand.

## **E. Precautionary reserves**

20. The Committee carefully scrutinized the level of the precautionary reserves based on the respective levels approved by the Assembly and wishes to reiterate their importance for assuring and maintaining the financial stability of the Court.

## **F. Conclusion**

21. I will conclude my statement by underlining that the Committee as an advisory body to the Assembly will continue providing expert recommendations to the Assembly in close coordination with the other oversight bodies and based on the guidance by the Assembly. In line with its mandate, the Committee will continue analysing budgetary, financial and administrative matters on their technical merits, while being fully aware that the final decision-making pertains to the Assembly.

## Annex IV

### **Statements concerning the adoption of the budget resolution to the Assembly at its 12th plenary meeting, on 14 December 2017**

#### **A. Statement by France before adoption**

1. I would like to first begin by thanking the President, as well as the members of the Committee for the rigorous work that they have undertaken in the examination and evaluation of the 2018 proposed programme budget of the Court.
2. Let me also express my appreciation for the work of the facilitator, the Ambassador of Sweden, and for the efforts made by the States Parties, as you just now recalled, in order for the budget to be adopted by consensus.
3. I would, however, like to make a few comments and, mindful of your request to us all, I shall be very brief. I do not need to recall here, in detail, the support provided by France to the Court for almost 20 years now. This support is political, and is furnished wherever we have an opportunity to express our views in all international organizations; in particular, this support is operational, as shown by the fact that France is one of the main partner States, if not the main one, in terms of the extent of its cooperation with situation-related countries; finally and quite significantly of course, this support is financial, as France is the third largest contributor to the budget of the Court.
4. I should also stress that, for the purposes of the Court, France has departed from the zero nominal growth policy that it applies, as indeed do other States, to all international organizations, with the exception of the Court, and has now been applying for a number of years in a row.
5. In return, we expect the greatest level of transparency and efficiency in the preparation and execution of the budget. And I must say, in this regard, that although a certain amount of progress has been made these last few years, there is still some way to go before we have achieved the right balance.
6. We also expect, in return, that certain key principles of good management are respected, principles on which we cannot compromise:
  - (a) First, all unexpected expenses must, except with reference to the fund set up to that effect, be financed by means of redeployment of authorized appropriations;
  - (b) Secondly, the budget of the Court must aim for zero nominal growth – a principle of good management that we hope will be implemented as of the next budget, i.e. for 2019, and for all subsequent budgets;
  - (c) Thirdly, this is a management imperative which simply equates to a strict application to the budget of the Court of the principle of control of public finance which is applied by contributing States, including my own country, to their own respective budgets;
7. Mr. Vice-President, let me, in conclusion, emphasize a point that should be self-evident, and one which I trust is indeed so in the current context: namely, that the credibility and legitimacy of the Court also depend on its capacity to manage its budget in a manner that ensures efficiency, transparency and accountability.
8. Finally, allow me to reiterate, as I had an opportunity to state last year in The Hague, that, for my delegation, for France, the funding of the Office of the Prosecutor continues to be the expenditure item that takes priority.

#### **B. Statement by Brazil after adoption**

1. My delegation expresses gratitude for the work of the facilitator, in such a sensitive and important issue.

2. Brazil wishes to highlight the substantial efforts and sacrifices being made by a number of States Parties, including our own, in order to fulfil their financial obligations to the Court. We would like to reiterate the importance that the budgetary process takes into account the financial constraints and economic realities of States Parties. In our perspective, the tendency of steady increases in the amount of requested resources is neither acceptable nor sustainable. An ever-increasing budget is incompatible with the reality of a number of States Parties and other international organizations.

3. Therefore, Brazil would have strongly preferred if the negotiations had amounted to further deep reductions. In the absence of such a result, we call for a serious revision of the process that leads to constant increases in the ICC budget, in order to bring it more in line with the economic reality of States Parties. In this regard, cost-saving measures could play a crucial role in the budgetary sustainability of the ICC, without compromising the Court's ability to fulfil its mandates.

### **C. Statement by Japan after adoption**

1. Japan would like to extend our appreciation to the budget facilitator, Ambassador Per Holmström (Sweden), in order to achieve a successful outcome through difficult negotiations. On this occasion, please allow us to make three remarks briefly.

2. Firstly, the budget process and its outcome for this Assembly have confirmed the credibility of the Committee on Budget and Finance (CBF) as a technical advisory body entrusted by the Assembly of the States Parties, and its confidence in the Committee's expertise. Looking to further budget processes, Japan would like to ask the Court for its utmost effort to provide the CBF with all information needed at an appropriate timing, when so requested.

3. Secondly, as indicated in this resolution, Japan envisages review or consideration of several important policies that would have impact on future budgets of the Court. They include annual remuneration of judges, Court-wide review of the current policy on reclassifications, Court-wide annual efficiency target as well as a review of the functioning of the legal aid system. Japan hopes to engage in substantive discussion with the Court on these matters and would expect sufficient information to be provided to the States Parties and the CBF by the Court as the basis of such discussion.

4. Thirdly and finally, as regards the additional resources that may be required for recent judicial developments in the situations of Burundi and Afghanistan, Japan would reiterate our request to the Court, as included in the resolution, that all possible efforts be exhausted to absorb these resources within its approved budget for 2018 before resorting to the Contingency Fund.

### **D. Statement by Spain after adoption**

1. I would like to endorse the statement made by Japan, as well as the statements of other countries to the same effect.

2. Our delegation has, in the course of the negotiations, held first in The Hague and subsequently in New York, expressed its interest in maintaining zero nominal growth in the budget or, alternatively and in any event, growth that requires as limited as possible a budgetary increase.

3. In addition, we have placed emphasis on the need to continue to make efforts, begun in essence with last year's budget, to agree on mandates that encourage processes which increase efficiency in the management of expenditure and in achieving savings so as to allow the Court to perform all of its activities within the framework of the approved budget.

4. In the interests of reaching a consensus, we have worked hard to contribute towards making all those changes that proved necessary in order to reach, adjust and modify the draft resolution and achieve an agreement, the final text of which is in our view balanced and appropriate.

5. In the future and in the next negotiations, we will, however, keep on pressing for the requisite changes so as to continue with our efforts in terms of achieving cost efficiency and savings.

#### **E. Statement by Switzerland after adoption**

1. My delegation would like to thank the facilitator, as well as his team, for their commitment and outstanding work. The budget has probably been, with the addition this year of the crime of aggression, one of the most difficult and thankless facilitations.

2. Switzerland has actively participated in the budget negotiations and is one of the delegations that would have preferred to see adopted a budget that was more in line with the real needs of the Court. As we noted during the general discussion, the judicial activities of the Court continue to increase. Our main concern has been, and still is, that year after year, the budgetary process results in an insufficient level of funding for the Court to be able to effectively combat impunity.

3. We believe that it is vital to find the right balance between the quest for efficiency in the use of resources and an adequate budget that enables the Court to carry out its mandate. Twenty years ago we shared a common vision of what international criminal justice should be and we must, today, in a context which is admittedly difficult, make sure that the Court has the necessary resources to meet the growing demand for justice so that the victims are given access to the justice they deserve. Switzerland will continue to participate in an active and constructive manner in the deliberations on the budget in the coming years.

#### **F. Statement by Venezuela (Bolivarian Republic of) after adoption**

1. The Bolivarian Republic of Venezuela would like to explain its position on the resolution which has just been adopted by this August Assembly.

2. Venezuela has joined the consensus with regard to this resolution, however, it wishes to reiterate its position, namely that it attaches great importance to the need for the Court's budget to follow a policy of zero nominal growth. We observe with concern that the Court's budget has continued to increase, which has an impact on the financial commitments of States Parties towards the Court. Similarly, we would raise a warning as to the Court's debt capacity being relayed to States Parties, a situation which threatens the former's financial sustainability in the medium and long term.

3. Venezuela urges the Court to take appropriate measures to ensure savings and resource efficiency, by means of which it can achieve zero nominal growth, as requested by the States Parties.

4. Finally, this delegation makes a plea that both the budget itself and the budget negotiation, adoption and implementation process be handled in a more inclusive and transparent manner.

## Annex V

### **Statement by Canada concerning the adoption of the resolution on consultations pursuant to article 97 (c) of the Rome Statute to the Assembly at its 12th plenary meeting, on 14 December 2017**

Canada was proud to have chaired the informal drafting group that developed the Understanding on the implementation of article 97 which we have now adopted by consensus. We are very grateful to Ambassador Infante of Chile for her leadership in chairing this working group, and to all States Parties whose constructive cooperation over the course of several months helped achieve this important result. Canada is convinced that this understanding will help States Parties and the Court conduct more effective consultations. The newly defined process should result in enhanced cooperation with the ICC while preserving the very important judicial independence of the Court.

## Annex VI

### **Statements concerning the adoption of the resolution on amendments to article 8 of the Rome Statute to the Assembly at its 12th plenary meeting, on 14 December 2017**

#### **A. Statement by France before adoption**

1. France, like Belgium and the other States Parties, is committed to the fight against impunity. In particular, in terms of the use of weapons which, under the amendments presented, will be added to the list of acts that may constitute a war crime, France, which has ratified the relevant conventions prohibiting the use of such weapons, cannot but share the aims set out by Belgium.
2. We commend Belgium's efforts to improve and supplement the Rome Statute.
3. However, we do raise questions as to the usefulness of such amendments in so far as the act of injuring or killing a civilian, howsoever that may occur, in the context of armed conflict, can be characterized as a war crime. We also have concerns about an *a contrario* argument with regard to crimes that may not be explicitly covered by the Statute. Moreover, what message do we send when we decide to retain only three out of the four categories of weapons initially listed?
4. And France considers that regular amendments to the definition of the crimes covered by the Statute could weaken it, *a fortiori* when such proposals are not legally necessary, in a context where the above-mentioned amendment relating to war crimes, adopted in 2010, has, to date, only been ratified by 35 States. For us, the priority must be, on the one hand, that the Court strengthen its position and reinforce its legitimacy by rendering new judgments and by consolidating its applicable law, and on the other hand, that new States accede to the Statute.
5. France believes that all and any amendments must be envisioned with great prudence and only if such an amendment seems legally essential in order to qualify a crime and to achieve the objectives established by the Rome Statute.
6. In light of the support given by a large number of delegations to the introduction of these amendments, France has decided not to oppose this consensus. It will however remain extremely vigilant vis-à-vis any new proposal to amend elements of crimes and calls upon States Parties to only envisage legally indispensable reforms.

## **B. Statement by Nigeria before adoption**

1. I want to state that Nigeria takes specific note of the number of States Parties that are in support of these amendments.
2. Nigeria equally knows Germany's concern about the amendments, but we wish to state that, to do anything otherwise than to adopt this expansion of article 8 would be a direct authorization to the use, to the indiscriminate, unregulated use of these types of weapons, and we also want to state that law is not static, it is dynamic, so no matter the number of amendments that are done to the Rome Statute, as far as inventions are still happening on a daily basis around the world, there will continue to be the need for the amendments.
3. Furthermore, we want to say that the happenings around the world, actually justify the need to adopt this resolution.
4. So, Nigeria urges forward-looking, dynamic States Parties to support these amendments.

## **C. Statement by Australia after adoption**

1. Australia is party to the three weapons prohibition conventions which relate to the amendments we have just adopted. We are also party to the Ottawa Convention. We are and remain committed to upholding our obligations under each of those conventions. We do not use any of those weapons, and with respect to all four, we have domestically implemented our international obligations, including the introduction of criminal offences. We are also very pleased to have played a leading role in the adoption of the Arms Trade Treaty.
2. However, with respect to individual criminal responsibility at the international level, we register as a general point our query as to whether it is appropriate, or useful, to incorporate our disarmament obligations into the Rome Statute. As we said in our statement in the General Debate, we consider that now is the time for us to support the Court as it consolidates around its core mandate, and we urge caution in seeking to bring new crimes within that mandate.
3. We also note that a possible consequence of identifying the use of certain types of weapons as war crimes is to create an inference that the use of weapons not so identified is condoned. This is surely not our collective intention and risks taking us away from the foundations of the Rome Statute.
4. We recognize that the war crimes provisions of the Rome Statute are an important aspect of our collective effort to encourage compliance with international humanitarian law. In this regard, we consider it important to focus on the effect of these weapons – effects that are indiscriminate, disproportionate, or cause unnecessary suffering.
5. These considerations provide the lens through which Australia would view any similar proposed amendments in the future.

## **D. Statement by Belgium after adoption**

1. I indeed wanted to thank all of you who, over the last few years, as part of the Working Group on Amendments, and over the last two weeks, during this session of the Assembly of States Parties, have contributed to the adoption by consensus of these amendments.
2. I am of course referring to the Chairperson of the working group, Ambassador May-Elin Stener (Norway), for the efficient way in which she moderated the discussions, and to the States that agreed to co-sponsor these amendments – namely, Andorra, Argentina, Austria, Benin, Botswana, Chile, Costa Rica, Croatia, Cyprus, the Czech Republic, Ecuador, El Salvador, Estonia, Guatemala, Hungary, Latvia, Liechtenstein, Luxembourg, Mauritius, Mexico, Poland, Peru, Portugal, the Netherlands, Niger, Romania, Samoa, Slovakia, Slovenia, Spain, Sweden, Switzerland and Vanuatu. In this connection, I would like to point out that these States have expressed their regret that, in order to achieve a

consensual outcome, we have had to withdraw the amendment relating to anti-personnel landmines. I wish to say to them that this amendment is still on the table and can be taken up again by the working group at a more opportune time.

3. My thanks also go to the other delegations that have extended their support to us or have shown flexibility as we sought to find a consensus.

4. To those who have voiced doubts, let me say that we have taken careful note of their comments and will not fail to include these elements in our consideration of the matter. Finally, let me express my thanks to the Secretariat of the Assembly for its logistical support and its valuable input on questions of procedure.

#### **E. Statement by the Netherlands after adoption**

1. As co-sponsor, the Netherlands strongly supports the Belgian proposal to amend article 8 of the Rome Statute in order to prohibit the use of certain kinds of weapons that cause excessive and irreparable damage, very often to civilians. The Netherlands considers these amendments not only as a timely, but also as a necessary step in strengthening the system of international criminal justice.

2. We regret the fact that the inclusion of the criminalization of anti-personnel mines has not proved feasible. To that end, we would like to underscore the need to further discuss this issue and keep it on the agenda. For now, our Government can support the amended proposal.

#### **F. Statement by Sweden after adoption**

1. I would first like to commend Norway for the hard work they have put into this process. Thank you also to Belgium for the proposal on the amendments to article 8, which we think are both timely and important.

2. Sweden is pleased to see this adoption by consensus, and we have been a strong supporter of this proposal during the lengthy negotiations.

## Annex VII

### **Statements concerning the adoption of the resolution on activation of the jurisdiction of the Court over the crime of aggression to the Assembly at its 13th plenary meeting, on 14 December 2017**

#### **A. Statement by Argentina after adoption**

1. I would like first of all to thank both Vice-Presidents and congratulate you for your able stewardship in this difficult exercise. I would also like to congratulate and especially appreciate the tireless efforts of the facilitator, Ms. Nadia Kalb (Austria), throughout this process.

2. Just briefly, to highlight the historic dimension of the decision that we have just taken, and that we are completing the legal framework envisaged in the Rome Conference. Argentina is proud to be among the 35 ratifiers of the Kampala amendments and we certainly hope that today's decision will bring a new momentum to the ratification process across the world. I would like to state for the record that our joining in the consensus today is without prejudice to my country's interpretation of the jurisdictional reach of the Kampala amendment, as reflected in the facilitator's report.

#### **B. Statement by Australia after adoption**

1. Thank you, Vice Presidents. Thank you to Austria as well for the efforts to get us to this point.

2. We are very pleased to have achieved this milestone collectively.

3. We wish to put on record Australia's position that, in the case of State referral or *proprio motu* investigations and, consistent with article 121 (5), the Court shall not exercise its jurisdiction regarding a crime of aggression when committed by a national or on the territory of a State Party that has not ratified or accepted these amendments.

#### **C. Statement by Austria after adoption**

1. I would like to thank all delegations for their support and cooperation throughout this facilitation process, and I would especially like to thank you all for your kind words of support tonight. I also would like to thank the two Vice-Presidents who have ably and determinedly led us through the final stages.

2. It has been an honor for me and for my delegation to have contributed to the achievement of this historic decision today.

#### **D. Statement by Bangladesh after adoption**

1. We also wish to join others in thanking the Vice-Presidency, the facilitator and other delegations in helping us achieve this overriding objective of activating the ICC's jurisdiction over the crime of aggression.

2. The adoption of this resolution would indeed further help accelerate our domestic efforts towards ratification or acceptance of the amendments to the Rome Statute on the crime of aggression.

3. We, however, would wish to put on record that Bangladesh does not accept the Court's jurisdiction regarding the crime of aggression when committed by a national or on the territory of Bangladesh unless Bangladesh ratifies or accepts the concerned amendments.



## **E. Statement by Belgium after adoption**

1. Belgium has always been in favour of a simple activation of the jurisdiction of the Court over the crime of aggression. We thought – and we still think – that a simple activation was the only way to plainly uphold the compromise of Kampala. This position is based on sound legal ground, reflected in the report of the facilitation. However, in a spirit of compromise and with reluctance, we chose to go along with the consensus on this resolution.

2. We would like to see our position reflected in the official records, and we would like also to take this opportunity to thank Austria, to thank you Nadia, for your tremendous effort. We would like also to thank you Mr. Vice-Presidents, for your work in these last hours. We wish also to thank Liechtenstein for having brought this important endeavour from Rome to New York through Kampala with such consistency and determination.

## **F. Statement by Brazil after adoption**

1. The Constitution of Brazil establishes, in its article 49 (I), that the National Congress has exclusive competence “to decide conclusively in international treaties, agreements or acts which result in new legal obligations.” According to article 84 (I) of the Constitution of Brazil, the President of the Republic has the exclusive power to “conclude international treaties, conventions and acts, ad referendum of the National Congress”.

2. Brazil does not accept the Court's jurisdiction in relation to the crime of aggression when committed by its nationals or in its territory until ratification or acceptance of the Kampala amendments on the crime of aggression.

## **G. Statement by Canada after adoption**

1. On behalf of the Canadian delegation, I would like to thank all of us who have been so involved in making this happen. Thanking you and your team, thanking Nadia and her team and so many delegations who have been part of the DNA of this organization for so long.

2. Canada wishes to reiterate the legal position it has expressed continuously on the Court's jurisdiction. This statement is provided notwithstanding and without prejudice to Canada's view that the Court does not have jurisdiction over acts committed by its nationals or on its territory in the absence of ratification. As a matter of treaty law, the Court cannot exercise jurisdiction over nationals of a State or on the territory of a State unless the State accepts or ratifies the aggression amendments based on article 121 (5) of the Rome Statute. Under article 34 of the Vienna Convention on the Law of Treaties, a treaty does not create either obligations or rights for a third State without its consent. This is a fundamental principle of international law.

3. Therefore, until such time as Canada has ratified, the Court does not have jurisdiction over the crime of aggression with respect to alleged acts committed by Canadian nationals or on Canadian territory unless the matter has been referred to the Court by the Security Council. Our detailed legal interpretation was fully incorporated in the report on the facilitation on the activation of the jurisdiction of the International Criminal Court over the crime of aggression. Canada supports the activation of the ICC's jurisdiction over the crime of aggression. Canada has not yet made a decision on ratification of the amendments on the crime of aggression.

## **H. Statement by Chile after adoption**

1. At this very late or early moment in the morning on the 15th of December, my delegation would like to express its appreciation for the work you have been doing during this day and the process that you have steered aiming at the adoption of a resolution which will have historical consequences. The resolution we have adopted tonight entails the recognition of the importance, not only of the activation of the jurisdiction of the Court, but also of the strengthening by consensus of the way we have to work under the Statute. This

is important to reaffirm tonight after a long discussion where for some delegations it was important to highlight the differences of views among parties, and for some other delegations it was important to overcome the differences that were existing among different positions.

2. We would like to highlight that the understanding contained in the resolution adopted tonight is an understanding that enshrines elements that are very important and essential to my delegation. Among those elements, I would like to highlight the question of the applicability of the convention and the force and importance of ratification and non-ratification, also the consensual process through which we have been working that has led us to a decision which is accepted by everybody, and also a recognition of the independence of the Court when adjudicating according to the Rome Statute.

3. We would like to extend our appreciation to Madam facilitator for the facilitation process that allowed us to understand better the positions of States and also the possibilities for reaching consensus. Thank you very much for this effort and we join the other delegations in expressing not only our appreciation but our thanks.

## **I. Statement by Colombia after adoption**

1. Colombia recognizes the excellent work of the facilitation led by Ms. Nadia Kalb from the delegation of Austria and appreciates the efforts made by the Vice-Presidents to present a text that has reached consensus today. We also thank the flexibility of all the participants in the negotiations.

2. We are immensely satisfied that the activation of the jurisdiction of the International Criminal Court over the crime of aggression has been achieved through consensus.

3. For Colombia, it is important to clarify that the decision over the activation of the crime of aggression contemplates a fundamental aspect of international law contained (i) in the Vienna Convention on the Law of Treaties, (ii) in article 121 of the Rome Statute, and (iii) duly incorporated in resolution RC/Res.6 of the Kampala Review Conference, that is, the principle that consent is a necessary condition to oblige a State in international law.

4. To this end, in operative paragraph 1 of resolution RC/Res.6 adopted in Kampala in 2010, it was decided that the amendments would only enter into force for those States that have given their consent through ratification or acceptance. Therefore, there must be consent from the concerned State in order for the Court to have jurisdiction and thus it shall not exercise its jurisdiction regarding a crime of aggression when committed by a national or on the territory of a State Party that has not ratified or accepted these amendments.

## **J. Statement by Costa Rica after adoption**

1. Thanks Mr. Vice-President for all your efforts. Costa Rica wishes to reiterate its absolute support for the International Criminal Court, its integrity, its independence, under principles upheld in the Statute.

2. The Court, as a judicial body, is called to interpret both the text of the Statute and its amendments. And it is not for the States to exercise this function. That is why our delegation has advocated during the course of these negotiations for simple activation, without legal interpretation and respect for the Kampala agreements. We would have liked to see different language in the resolution on which action was taken. Our position has always been consistent with the Rome Statute and the Kampala amendments.

3. However, and in the constructive spirit that has characterized our participation in these negotiations, we have joined the adoption of this resolution. For Costa Rica, the activation of the crime of aggression makes the Rome Statute more robust and strengthens the credibility of the Court while achieving a greater balance in the application of international justice. Beyond the legal effects of the crime of aggression, today, countries like Costa Rica, that decided to rely on international law for the defence of our sovereignty, feel more secure.

## **K. Statement by the Czech Republic after adoption**

1. Our delegation has been among those who were in favour of a simple activation which, in our view, would have included the necessary legal clarity. Since unfortunately no agreement was possible to be found, we have supported the consensual outcome. In this regard our delegation welcomes very much the adoption of the draft resolution and the activation of the ICC's jurisdiction over the crime of aggression.
2. I also would like to thank you, Mr. Vice-President, and Ms. Nadia Kalb, for your tireless efforts to lead us toward a consensual outcome.

## **L. Statement by Finland after adoption**

1. We would also like to join the others in celebrating this historic moment and in thanking the facilitator, Ms. Nadia Kalb, for her tireless efforts to advance our common endeavour during the past year. We have explained our position during the course of the facilitation process.
2. We were originally among those who favoured a simple activation of the Court's jurisdiction over the crime of aggression. Agreement could not be found on that option, and, to our disappointment, agreement could not be found on the facilitator's text either. However, we very much welcome the activation decision that we were able to take at this session by consensus and we will, of course, encourage any further ratifications of the provisions on the crime of aggression.

## **M. Statement by France after adoption**

1. The French delegation highlights the importance of the adoption, by consensus, of the resolution on the activation of the Court's jurisdiction over the crime of aggression.
2. France, which has not ratified the amendments on the crime of aggression, was able to join the consensus on the activation of the jurisdiction of the Court over the crime of aggression because of the clarification provided in paragraph 2 of this resolution.
3. Indeed, a difference of view between States had appeared as to the interpretation of article 121, paragraph 5, of the Statute, in particular whether the second sentence applied to a situation involving nationals or the territory of States that have not ratified the amendments.
4. This disagreement has been settled by virtue of paragraph 2 of the resolution that we have just adopted and which reflects the terms contained in article 121, paragraph 5.
5. The Assembly has thus fulfilled the mission with which it was entrusted under article 119, paragraph 2, of the Statute and the Assembly has also exercised the power conferred upon it by paragraph 3 of articles 15 *bis* and 15 *ter* which provides that the Court exercise its jurisdiction over the crime of aggression subject to a decision by the Assembly. The scope of this authority vested in the Assembly under articles 15 *bis* and 15 *ter* has been recalled during our discussions, in particular, by the delegation of Liechtenstein.
6. Under article 121, paragraph 5, of the Statute, the interpretation of which has been confirmed by article 2 of the resolution that has just been adopted, the Court cannot exercise its jurisdiction over acts committed by French nationals or over acts occurring on French territory. The same goes for all States Parties that have not ratified the amendments.

## **N. Statement by Guatemala after adoption**

1. Thank you to both Vice-Presidents and particularly to the States Parties for having this momentous decision today.
2. Allow me to explain, Mr. Vice-President, that the Republic of Guatemala, with due consideration to the Statute of Rome, is of the opinion of:

(a) Articles 5, 12 and 125.5, of the Rome Statute present ambiguities, and that these do not provide legal certainty with regard to the Kampala amendments, a circumstance that the Assembly of States Parties has not been able to solve either;

(b) In fact, contrary to the provisions of the Vienna Convention on the Law of Treaties, which sets forth the manner in which a State is bound by a treaty, article 15 *bis* (4) of the Rome Statute stipulates that “The Court may, in accordance with article 12, exercise jurisdiction over a crime of aggression, arising from an act of aggression committed by a State Party, unless that State Party has previously declared that it does not accept such jurisdiction by lodging a declaration with the Registrar.”

(c) The Vienna Convention of the Law of Treaties provides that a State may be bound by a treaty when signing, exchanging instruments that constitute a treaty, by ratifying, accepting or approving or acceding to it. Hence, a State cannot be bound though tacit recognition or through a *sui generis* procedure, as envisaged in paragraph 4 of article 15 *bis* of the Rome Statute, pursuant to which the interested party must previously declare that it does not accept such competence by lodging a declaration with the Registrar. Likewise, article 121, paragraph 5, provides that the amendments to articles 5, 6, 7 and 8 of the Statute shall only come into effect with respect to States Parties that have accepted them, and that the Court shall not exercise its jurisdiction over a crime covered by the amendment when it has been committed by nationals or in the territory of a State Party that has not accepted said amendment.

3. Therefore, Guatemala wishes to establish its position clearly and as such should be recorded in the minutes of the present session of the Assembly of States Parties.

4. Hence, while we do not oppose the competence of the jurisdiction of the International Criminal Court over the crime of aggression, Guatemala does not submit to its jurisdiction until it has duly exhausted its internal ratification process and has decreed its acceptance.

5. Furthermore, pursuant to article 15 *bis*, paragraph 4, of the Rome Statute of the International Criminal Court, the Republic of Guatemala will reiterate, at the appropriate time, its declaration of non-acceptance of the International Criminal Court’s jurisdiction regarding the crime of aggression until the State expressly ratifies its submission to such jurisdiction.

## **O. Statement by Japan after adoption**

1. At the outset, please allow me to convey through you, Mr. Vice-President, how much we appreciate the tireless efforts and dedication of our facilitator, Ms. Nadia Kalb (Austria) and our colleagues of States Parties who engaged actively in the facilitation throughout the year on the activation of the jurisdiction of the International Criminal Court over the crime of aggression.

2. Japan’s position on the activation issue has been consistent ever since Kampala. The Head of the Japanese delegation at that time, Ambassador Ichiro Komatsu, who unfortunately passed away several years ago, would be extremely pleased in the heavens. The aim has always been to assure legal clarity on the scope of the Court’s jurisdiction over the crime of aggression and to make a consensual decision on the activation. On legal clarity, Japan’s basic position on the scope of the activation of the Court’s jurisdiction over the crime of aggression is contained in the second sentence of article 121 (5) of the Rome Statute, which reads “In respect of a State Party which has not accepted the amendment, the Court shall not exercise its jurisdiction regarding a crime covered by the amendment when committed by that State Party's nationals or on its territory.” We firmly believe that it is the understanding that is in line with a fundamental principle of international law as embodied in the Vienna Convention on the Law of the Treaties.

3. Japan welcomes that today’s historic decision to activate the Court’s jurisdiction over the crime of aggression was adopted by consensus based on this understanding.

## **P. Statement by Liechtenstein after adoption**

1. Mr. Vice-Presidents, I have the honour to also speak on behalf of Cyprus.
2. The historic significance of the decision we have just taken cannot be overstated. Never has humanity had a permanent international court with the authority to hold individuals accountable for their decisions to commit aggression – the worst form of the illegal use of force. Now we do.
3. Our States were among the strongest proponents of the activation of the Court's jurisdiction over the crime of aggression, a prospect we awaited for 20 years and have worked hard to secure. This is why we have decided to join a consensus decision on the activation of the crime of aggression, after very careful reflection and with considerable difficulty. We are disappointed that a few States conditioned such activation on a decision that reflects a legal interpretation on the applicable jurisdictional regime over the crime of aggression that departs from the letter and spirit of the Kampala compromise, and which aims to severely restrict the jurisdiction of the Court and curtail judicial protection for States Parties. Our reasons for joining the decision are simple and they are twofold: First, we are of the firm view that the Court, in exercising its jurisdiction over the crime of aggression, must and will apply the law contained in the Kampala amendments. Second, we believe that the importance of activating jurisdiction today had to be our overriding goal.
4. The Court's jurisdiction is determined by the Rome Statute and we, as States Parties, are committed to the independence of the Court and it is telling that the last discussion we had on this decision had to do with the independence of the judges. We have an obligation not to infringe upon its mandate. We have expressed repeatedly our view that the Court's jurisdiction relating to the crime of aggression is founded in articles 15 *bis* and 15 *ter*, which were adopted by consensus in Kampala. Article 15 *bis*, paragraph 4, in particular is itself based on article 12 of the Rome Statute in which is enshrined the cardinal principle of the Court's territorial jurisdiction.
5. Mr. President, we call upon all States to ratify the Kampala amendments and work with us towards the goal to ensure that no one will be immune from prosecution for the commission of this supreme international crime one day.
6. The process leading to the adoption of this decision of historic effect must make us question the way in which we are conducting business in this Assembly.
7. Finally, I wish to express gratitude, first to our many partners in this project who have been incredibly supportive throughout very difficult times and that have shown enormous flexibility in negotiating this agreement, because otherwise we would not have adopted this decision just now. Second, I wish to extend our very warm thanks to our colleagues from Austria for their terrific leadership in leading a facilitation process that was extremely difficult to conduct. And finally I wish to thank the two of you for stepping in, in a way that was very difficult for you to do. I hope that you feel rewarded a little bit by having presided over what we truly believe is a historic decision. So special thanks to you and congratulations to all of us.

## **Q. Statement by Madagascar after adoption**

1. I will be very brief. First of all, I would like to make this statement for the sake of clarification after the adoption of the resolution. Madagascar would like to congratulate you and is very happy for this historic adoption of the activation of the jurisdiction of the Court over the crime of aggression.
2. We also like to commend the facilitator, Ms. Nadia Kalb (Austria), for the job well done, and yourself Mr. Vice-President. We would like, for the records, to clarify the situation of Madagascar. Madagascar is in the process of national consultations and has not yet ratified the Kampala amendments. We give a great importance to the consensus and we are therefore very pleased to have the consensus, and would like also to reconfirm the attachment of Madagascar to the paragraph 5, article 121 of the Rome Statute, and we remain, as pursuant to paragraph 5 of article 121, very attached to the paragraph.

3. This is for the records. Madagascar is very happy to have this adoption by consensus.

#### **R. Statement by Mexico after adoption**

1. Unfortunately, because of the late hour still being a formal session, we can't say this in Spanish but still we would just want to make brief remarks.

2. First, congratulations for this historic adoption and this is certainly the goal and the expectation that we had in terms of the activation of the Court's jurisdiction on the crime of aggression for the Court. For the sake of clarity and for expressing our views on record, we want to make four brief points.

3. The first one is that we understand that we operate under the rules of consensus because we are a group that shares a common goal, and a common view, and that shares values. However, we also recognize that the resolution we have adopted departs from the agreement that we reached in Kampala. As we mentioned at the beginning of this process, my delegation would have preferred a simple activation in keeping with the decision reached in Kampala. We also want to place on record that we express our gratitude to the facilitator of the process, Ms. Nadia Kalb (Austria), and for her efforts in trying to bridge the gaps in this very difficult endeavour. And finally and not least important, we want to reiterate and place on record as well that the main driver for Mexico's position tonight has been and will continue to be that now, more than ever, the Court needs a unified Assembly of States Parties and not a divided one.

#### **S. Statement by the Netherlands after adoption**

1. It's good to see this completely revived again. It was a little bit of a gloomy atmosphere 50 minutes ago, that's what success does. Mr. President, I think the Netherlands has made very clear from the start that we came to New York to activate the crime of aggression. And we came to activate it by consensus. The Netherlands in these negotiations has been very flexible on the exact way how we would achieve activation. And that is why we have refrained from detailed comments on the various proposals but have, in all discussions, encouraged delegations to be flexible and to seek compromise. We are therefore very happy that we have just achieved that result.

2. And we thank you both, Mr. Vice-Presidents, and of course the facilitator, and all those that have helped us to reach this great success on this outcome. This decision of this early morning, this important decision of historic significance as we've heard, is of immense support to the system and to the cause we all try to uphold and defend.

#### **T. Statement by New Zealand after adoption**

1. New Zealand welcomes the activation of the Kampala amendments on the crime of aggression, and we thank all those who have contributed to this historic outcome.

2. New Zealand's treaty processes require Cabinet approval, Parliamentary treaty examination and the enactment of any necessary implementing legislation before New Zealand can be bound by a multilateral treaty or amendment.

3. Accordingly, until such time as New Zealand ratifies the amendments, New Zealand places on record that the Court shall not exercise jurisdiction over the crime of aggression with respect to New Zealand nationals or on New Zealand territory, as confirmed in the resolution just adopted.

#### **U. Statement by Nigeria after adoption**

1. I wish to commend the Vice-Presidents, the contributors and all the States Parties for their efforts and contributions that have led us to this moment, I mean the activation of the crime of aggression by consensus.

2. However, Nigeria wishes that cognizance be taken of article 101, paragraph 5, of the Rome Statute.

#### **V. Statement by the Republic of Korea after adoption**

1. My delegation welcomes the adoption of the resolution on the activation of the jurisdiction over the crime of aggression on the eve of the 20th anniversary.
2. My delegation also underlines that the Court shall not exercise its jurisdiction regarding a crime of aggression when committed by a national or on the territory of a State Party that has not ratified or accepted these amendments.

#### **W. Statement by Samoa after adoption**

1. Briefly, if the hearts bleeds, it bleeds because it feels the truth. To the Assembly of States Parties, thank you for gifting humankind with the best Christmas gift ever, especially with the festivities around the corner.
2. Last, but not least, with this decision, thank you for restoring Samoa's faith in the Rome Statute and International Criminal Court, so you can always count on our support and use us in terms of your outreach.

#### **X. Statement by Serbia after adoption**

1. We join all our colleagues in thanking you and Austria and everyone in this room for achieving consensus.
2. For the sake of clarity and consistency with our position, we would just like to reaffirm our legal position: that the jurisdiction of the Court cannot be exercised towards a State Party without its ratification.

#### **Y. Statement by Slovenia after adoption**

1. Slovenia welcomes today's long awaited, historic decision taken by this Assembly session on the activation of the jurisdiction of the Court over the crime of aggression.
2. Slovenia has been a strong supporter of the establishment of the Court and continues to be its committed member. In 1998, the States Parties agreed to include in article 5 a stipulation that the Court has jurisdiction in accordance with the Statute with respect to, among others, the crime of aggression. However, as we know the Rome Statute remained silent on the definition of the crime and the exercise of its jurisdiction. It therefore took us many years, since the Nuremberg and Tokyo trials, and several years of negotiations since Rome that led us to Kampala, Uganda, and finally an agreement adopted by consensus on the definition of the crime of aggression and its jurisdictional regime.
3. It is most fitting in our view that today's activation decision should be made within the premises of the United Nations. It is precisely this organization's Charter that prohibits the threat or the use of force, a prohibition which is of clear relevance to the crime of aggression.
4. With today's decision, the International Criminal Court will be able to exercise its jurisdiction over the crime of aggression as of 17 July 2018, and we believe this is a remarkable achievement, perhaps one that we do not quite fully grasp.
5. My delegation has joined the consensus realizing the historic opportunity with which we are presented at this Assembly session. It will come as no surprise that we see much room for improvement to the text of the resolution. But our views have been explained in a detailed manner within the facilitation and are reflected in the report of the facilitation referred to in the adopted resolution. This remains our position also after the adoption of today's resolution.
6. But having agreed to working towards a consensual solution, we also accepted in advance that we would not be truly satisfied with the final text, so we can live with it. I also wish to take this opportunity to sincerely thank the facilitator, Ms. Nadia Kalb, for all her

efforts and time devoted to bringing us closer together and to the successful outcome. Our sincere appreciation goes also to you Vice-Presidents for your important contribution at a critical moment in time.

7. And let me finally conclude just by taking this opportunity to call on all States Parties that have not yet done so to ratify the Kampala amendments.

## **Z. Statement by Spain after adoption**

1. Spain would like to welcome the activation of the jurisdiction of the Court on the crime of aggression as a success by this Assembly of States Parties, taking into account the fact that consensus was, and is, the basis for strengthening the Court.

2. In addition to this, we would like to thank our colleague Ms. Nadia Kalb from the delegation of Austria for a very important effort in bringing a balanced and inclusive report, including all legal views on the extent of the jurisdiction of the Court.

3. We also would like to thank you and the Vice President for your efforts in bringing us to this consensual decision that is in the interests of all the Assembly of States Parties.

4. Finally, Spain wishes as well to underscore the fact that our view on the jurisdiction of the Court stands as it has been expressed on the number of occasions that we have been dealing with this process.

5. In addition to this, my delegation would like also to underline the importance of the energy devoted in this process and the pursuance of the strengthening of the Court in all the different phases we have been through.

## **AA. Statement by the State of Palestine after adoption**

1. This is a truly historic day and the State of Palestine had had the honour to be the thirtieth State to ratify the Kampala amendments, allowing for the fulfilment of one of the two criteria for the activation of the Court's jurisdiction. The crime of aggression and the Kampala amendments are not any amendments. This is about the worst form of illegal use of force and this is a crime that was enshrined in the Rome Statute since inception and was waiting for 20 years to be activated. And this is the historical step we just undertook.

2. Palestine agreed to a facilitation while it was a proponent of simple activation because it was hoping for a consensual decision and it welcomes the fact that we have managed to do so. It wants to thank Austria, and in particular Ms. Nadia Kalb, for her leadership and important role. I hope they know that, without them, this result would not have been possible. We want to also thank all those who played a mediating role, especially Brazil, Portugal and New Zealand and all delegations which have displayed flexibility during this process. We attempted to the best of our ability to address concerns of some States and were hoping that our concerns would be better addressed in this text, but we have finally decided to join this consensus on activation of the crime of aggression because we are such strong proponents of this activation.

3. This resolution does not affect, and is without prejudice to, our legal interpretation, as presented in the report of the facilitation, and throughout this process, on the applicable jurisdictional regime, but in accordance with article 15 *bis*, paragraph 4, and articles 5 and 12, of the Rome Statute. But we adhere to the principle that the Court has its own competence and we are respectful of that reality. We did all we could to reach a compromise and we are happy that our extensive flexibility also helped this result.

4. At the end, allow me just to thank a country which has drawn from the lesson of its own history the inspiration to bring this crime into the Rome Statute. And here I mean Germany which, by doing so, has helped the advancement of all humanity. I want to thank all those who have made the choice to ratify these amendments, starting from Liechtenstein to the last country that has done so, and all like-minded States which have contributed to advancing the prospect of activation. But at the end of this day, there is no camp protection and camp narrow interpretation- there can be only one camp, that of the Assembly of States Parties, all together, and trying to advance an end to impunity and the end of such horrific crimes so we can all live in a more secure, more peaceful and more just world.



## **BB. Statement by Switzerland after adoption**

1. Switzerland was very invested in reaching the compromise of the 2010 Kampala Review Conference. With great relief and pride, we now welcome the Assembly's historic decision to activate the crime of aggression.
2. You all know that this decision has not come lightly to us, given the parameters accompanying activation. To be clear: Switzerland does not share the legal view expressed in this resolution regarding the Court's jurisdiction over the crime of aggression. In our view, the Court does have jurisdiction over a crime of aggression committed by nationals or on the territory of non-ratifying States Parties. We highlight in this context the judicial independence of the judges and the Court as enshrined in the Rome Statute, and as confirmed by the resolution.
3. That said, more than 70 years after the Nuremberg and Tokyo trials, States Parties have seized the historic opportunity to strengthen the prohibition of the use of force as enshrined in the UN Charter and completed the Rome Statute as originally drafted. The activation of the crime of aggression is a contribution to the preservation of peace and the prevention of the most serious crimes of concern to the international community as a whole.
4. With today's decision, we may not be saving the current generation from the scourge of war, as the UN Charter puts it. Yet, with the crime of aggression activated, we have a path to save future generations. More than ever, all States Parties which have not yet done so need to ratify the amendments. Switzerland calls upon each and every one of them to do so.
5. Let me conclude by expressing my gratitude to you Vice-President and most of all to Austria for facilitating our discussion.

## **CC. Statement by Tunisia after adoption**

1. At the outset allow me to praise your tremendous efforts tonight toward the activation of the Court's jurisdiction over the crime of aggression.
2. We also would like to praise and express our appreciation for the endeavours of Ms. Nadia Kalb. We really appreciated her efforts during this whole year.
3. My delegation recalls that the Court exercises its jurisdiction regarding the crime of aggression when committed by a national or on the territory of a State Party that has not ratified in accordance with article 121 (5) and in accordance with paragraph 2 of the resolution adopted tonight.

## **DD. Statement by Uganda after adoption**

1. I would like to congratulate all for having reached this consensus. It is a historic moment and of course we are proud that these origins have indeed been in Kampala. I would also like to thank the giants who have been working on this for, I would say, decades and especially Professor Ben Ferencz whose son is here to witness what he has always fought for his whole life, the crime of aggression being the supreme international crime. I would like to thank also Ms. Nadia Kalb (Austria) – very much appreciated the way she has conducted the proceedings.
2. I think we all, most of us at least, are lawyers and we would all like to live in a better world. I think we keep on probably making our dreams come true and never give up. I think this major step of activating the crime of aggression would lead eventually to a more peaceful world and we do expect more ratifications to come after this. I would like to end by saying that I believe that this is the best Christmas present that we can give ourselves and to the world at large.

## **EE. Statement by United Kingdom of Great Britain and Northern Ireland after adoption**

1. We note for the official record of the Assembly of States Parties that, in this Assembly, all States Parties have agreed and confirmed in a consensus-based decision, in operative paragraph 2 of the decision, that in the case of a State referral or *proprio motu* investigation, the Court shall not exercise its jurisdiction regarding a crime of aggression when committed by a national or on the territory of a State Party that has not ratified or accepted these amendments.
2. This in our view is an authoritative, unqualified and clear interpretation of the amendment to the Rome Statute on the crime of aggression, in accordance with article 121, paragraph 5, of the Rome Statute.

## **FF. Statement by Venezuela (Bolivarian Republic of) after adoption**

1. The Bolivarian Republic of Venezuela congratulates the Vice-Presidents of this Assembly as well as the coordinator of the activation of the Court's jurisdiction over the crime of aggression for the hard work that led to the adoption, by consensus, of the resolution on the activation of the International Criminal Court's jurisdiction over the crime of aggression; this delegation hereby takes the opportunity to explain its Government's position on that resolution.
2. The activation of the International Criminal Court's jurisdiction over the crime of aggression, contained in the amendments adopted at the Kampala Review Conference, will extend the Court's remit to cover this violation, with a view to contributing to the prevention of the illegal use of force between States and to the prevention of wars. Furthermore, in accordance with the terms of the above-mentioned resolution, the Court will only have jurisdiction over cases that have arisen between States Parties to the Rome Statute that have ratified the amendment on the crime of aggression which gives the Court the power to intervene in the investigation of that crime.
3. The Kampala amendments, adopted in June 2010, envisage the possibility – as long as a State Party accepts and ratifies the amendment on the crime of aggression – of the Court having full jurisdiction over that crime, provided that, within the meaning of article 121, paragraph 5, of the Rome Statute, the amendment shall only be binding once accepted by the State in question.
4. Moreover, any State Party to the Rome Statute can avoid the application of this amendment if it has previously stated that it does not accept the Court's jurisdiction over said crime, having lodged a declaration with the Registrar of the International Criminal Court, in accordance with the opt-out provision contained in article 15, paragraph 4, of the above-mentioned amendment.
5. This compact is in keeping with the general rules set out in article 34, and article 40, paragraph 4, of the Vienna Convention on the Law of Treaties, regarding the obligations of third States; these provisions stipulate that the amending agreement does not bind any State already a party to the treaty in question which does not become a party to the amending agreement, in order not to create either obligations or rights for a third State without its consent.
6. In this sense, Venezuela, having not yet ratified the Kampala amendments, does not accept the jurisdiction of the Court over the crime of aggression when committed by its nationals or on its territory; Venezuela thus joined the consensus on this draft resolution which serves to activate the International Criminal Court's jurisdiction over the crime of aggression, in conformity with the terms of this document, in particular, operative paragraph 2, in which this Assembly of States Parties confirms that, in accordance with the Rome Statute, the amendments to the Statute regarding the crime of aggression which were adopted at the Kampala Review Conference shall enter into force for those States Parties which have accepted the amendments one year after the deposit of their instruments of ratification or acceptance, and on the assumption that in the case of a State referral or a *proprio motu* investigation, the Court shall not exercise its jurisdiction over the crime of aggression when committed by nationals of or on the territory of States Parties that have not ratified the amendments.

## Annex VIII

### **Statements concerning the adoption of the omnibus resolution to the Assembly at its 13th plenary meeting, on 14 December 2017**

#### **A. Statement by Colombia before adoption**

1. Colombia has joined consensus. However, as Colombia has done in previous meetings, first of all we would like to stress our appreciation for the way in which the omnibus resolution facilitation has been conducted. Colombia notes the efforts of Ms. Damaris Carnal (Switzerland) to accommodate the different views expressed in the room and reiterates that this delegation has always been ready to engage with interested States Parties.
2. Mr. Vice-President, as it is well-known, Colombia has tabled proposals grounded on the Statute and applicable law to strengthen and refine the text of the omnibus resolution. However, Colombia is a consensus-driven country and is mindful that, during this period, a few delegations have raised concerns related to the reference of the discretion of the Court and that of the Office of the Prosecutor, as suggested by Colombia in order to reflect a fundamental and essential feature of the judicial and prosecutorial activities.
3. Colombia regrets that despite the reasoned and legally-based dialogue we have fostered, it has not been possible to reach consensus. Despite the non-consensus on this matter, the statutory discretion granted to both the judges and the Prosecutor remains intact.
4. Having said this, and as an expression of good-faith and engagement, this delegation withdrew its proposal in paragraph 45*bis*.

#### **B. Statement by the State of Palestine before adoption**

1. The State of Palestine simply would like to join the chorus of gratitude, especially to the facilitator, for the tireless efforts in liaising with delegations to ensure consensus.
2. The State of Palestine would also like to extend its appreciation to delegations that have actively engaged in reaching a compromise and have shown flexibility and support, especially given the unprecedented challenges that the State of Palestine has faced since its accession to the Rome Statute. Through this resolution, the Assembly of States Parties has demonstrated solidarity, in the joint endeavour to see the mandate of the Court fulfilled, in particular by ensuring that States Parties are able to uphold their obligations unhindered.

#### **C. Statement by Canada after adoption**

1. Our thanks to the facilitator for her hard work in coordinating this resolution.
2. We also appreciate the flexibility that has been shown by delegations whose contributions to the discussions helped achieve this consensus.
3. That being said, as highlighted by some other delegations, Canada does have some concerns with the process that was followed. In our view, the efficiency and effectiveness of the Assembly are best served when text that is agreed in New York or The Hague is used as the basis for opening discussions at the Assembly.
4. While States Parties are always free to raise their concerns from the floor, we should avoid re-negotiating issues that have already been decided.

#### **D. Statement by France after adoption**

1. I agree with my colleague from Japan and would like to highlight two or three points. First, let me thank our colleagues from Switzerland for their assistance in helping to find a compromise solution, a consensus, *à wit*, the adoption of the omnibus resolution.

2. We are all aware that the final decision rests with the Assembly of States Parties in the course of its plenary sessions.
3. We are equally aware that the number and complexity of the subjects covered have required the Assembly to put in place work processes to improve its efficiency, in particular, through a clear delineation of the functions of the working group in The Hague, on the one hand, and those of the working group in New York, on the other.
4. Although there are two working groups, there is only one Assembly, and although no clear rule on the matter exists, it has always been recognized that what has been agreed in good faith in The Hague is to be taken on board by all Member States.
5. It is thus with much concern that my delegation has this year seen this practice being called into question in the framework of the negotiations on the omnibus resolution and, especially, with regard to legal aid.
6. While it is true that there are two working groups, we can only, in principle, commit ourselves on the instructions of our own respective country, in our capacity as diplomats and professionals. This observation remains valid whether we have a mission or an embassy in The Hague and in New York, or equally, whether we have a mission or an embassy either in New York or in The Hague.
7. Finally, I would like to take this opportunity to extend our thanks to the Vice-President for the outstanding work that he has accomplished in discharging his mandate in The Hague with great success, this evening included.
8. Certain topics have been fiercely debated and have not been easy to agree upon. Thus my delegation is of the opinion that we must continue our practice of engaging in these negotiations in the spirit of good faith.

#### **E. Statement by Germany after adoption**

Germany associates itself with the statements made by Japan, France, Canada and the United Kingdom. We also share the same procedural concerns.

#### **F. Statement by Japan after adoption**

1. Let me first express our delegation's sincere appreciation to our distinguished Swiss delegate for leading a very complicated negotiation concerning this omnibus resolution.
2. Let me just point out one thing. While paying my full respect for the contribution made by States Parties in finalizing the omnibus resolution just adopted, we would like to draw the attention of this Assembly to the procedural issue concerning the negotiations of its draft in New York. As mentioned by my colleagues over the last few days, the draft had been discussed at length in The Hague which led to a consensus based upon compromise on some important issues, and was approved via a silence procedure in The Hague before being sent to New York.
3. The agreed text, however, was somehow re-opened in the New York process and modified to the current language. While we fully recognize that a final decision on the text rests with the Assembly, we would hope that all the negotiations and consensus made in The Hague, as well as the proper division of work between The Hague and New York, should be duly respected.

#### **G. Statement by United Kingdom of Great Britain and Northern Ireland after adoption**

1. I would also like to add our congratulations to the omnibus facilitator on reaching agreement on this resolution and for all her hard work.
2. We were pleased to work constructively, however, I do have to support, and agree with interventions of previous speakers, actually, from France and Canada.
3. We share these procedural concerns regarding the re-opening of text previously agreed in The Hague Working Group.

## Annex IX

### List of documents

<i>Document symbol</i>	<i>Title</i>
ICC-ASP/16/1	Provisional agenda
ICC-ASP/16/1/Add.1	Annotated list of items included in the provisional agenda
ICC-ASP/16/1/Add.1/Rev.1	Annotated list of items included in the provisional agenda
ICC-ASP/16/2	Report on activities and programme performance of the International Criminal Court for the year 2016
ICC-ASP/16/3	Sixth election of judges of the International Criminal Court
ICC-ASP/16/3/Add.1	Sixth election of judges of the International Criminal Court - Addendum
ICC-ASP/16/4	Election of the judges of the International Criminal Court: guide for the sixth election
ICC-ASP/16/5	Report of the Committee on Budget and Finance on the work of its twenty-eighth session
ICC-ASP/16/6	Election of members of the Committee on Budget and Finance
ICC-ASP/16/6/Add.1	Election of members of the Committee on Budget and Finance – Addendum
ICC-ASP/16/6/Add.2	Election of members of the Committee on Budget and Finance – Addendum
ICC-ASP/16/7	Report of the Advisory Committee on Nominations of Judges on the work of its sixth meeting
ICC-ASP/16/8	Annual report of the Head of the Independent Oversight Mechanism
ICC-ASP/16/9	Report on the activities of the International Criminal Court
ICC-ASP/16/10	Proposed Programme Budget for 2018 of the International Criminal Court
ICC-ASP/16/10/Corr.1	Proposed Programme Budget for 2018 of the International Criminal Court - Corrigendum
ICC-ASP/16/10/Corr.2	Proposed Programme Budget for 2018 of the International Criminal Court - Corrigendum
ICC-ASP/16/11	Report on Budget Performance of the International Criminal Court as at 30 June 2017
ICC-ASP/16/12	Financial statements of the International Criminal Court for the year ended 31 December 2016
ICC-ASP/16/13	Financial statements of the Trust Fund for Victims for the year ended 31 December 2016
ICC-ASP/16/14	Report to the Assembly of States Parties on the projects and the activities of the Board of Directors of the Trust Fund for Victims for the period 1 July 2016 to 30 June 2017
ICC-ASP/16/15	Report of the Committee on Budget and Finance on the work of its twenty-ninth session
ICC-ASP/16/16	Report of the Court on cooperation
ICC-ASP/16/17	Report of the Bureau on cooperation
ICC-ASP/16/17/Corr.1	Report of the Bureau on cooperation - Corrigendum
ICC-ASP/16/18	Report of the Bureau on the Plan of action for achieving universality and full implementation of the Rome Statute of the International Criminal Court
ICC-ASP/16/19	Report of the Bureau on the Study Group on Governance
ICC-ASP/16/21	Report to the Bureau on the Budget sub-topics of Budget Management Oversight and Premises
ICC-ASP/16/22	Report of the Working Group on Amendments
ICC-ASP/16/22/Add.1	Report of the Working Group on Amendments – Addendum
ICC-ASP/16/22/Add.1/Rev.1	Report of the Working Group on Amendments – Addendum
ICC-ASP/16/22/Add.2	Report of the Working Group on Amendments – Addendum
ICC-ASP/16/23	Report of the Registry on the approximate costs allocated so far within the Court in relation to referrals by the Security Council
ICC-ASP/16/24	Report on the activation of the jurisdiction of the International Criminal Court over the crime of aggression
ICC-ASP/16/25	Report of the Court on its mechanisms to monitor and control the maintenance costs of its premises

<i>Document symbol</i>	<i>Title</i>
ICC-ASP/16/26	Capital replacements at the International Criminal Court's permanent premises
ICC-ASP/16/27	Final audit report on the implementation of a division of external operations
ICC-ASP/16/28	Election of the Registrar of the International Criminal Court
ICC-ASP/16/28/Rev.1	Election of the Registrar of the International Criminal Court
ICC-ASP/16/28/Rev.1/Add.1	Report of The Hague Working Group on the election of the Registrar of the International Criminal Court
ICC-ASP/16/29	Report of the Chair of the working group of the Bureau on the implementation of article 97 of the Rome Statute of the International Criminal Court
ICC-ASP/16/30	Report on the constitution and activities of the International Criminal Court Bar Association ("ICCBA")
ICC-ASP/16/31	Report of the Court on the progress of the development of proposals for adjustments to the legal aid remuneration system as of 2019
ICC-ASP/16/32	Updated report of the Court on the progress of the development of proposals for adjustments to the legal aid remuneration system as of 2019
ICC-ASP/16/33	Report of the Bureau on complementarity
ICC-ASP/16/34	Report of the Bureau on the arrears of States Parties
ICC-ASP/16/35	Report of the Bureau on equitable geographical representation and gender balance in the recruitment of staff of the International Criminal Court
ICC-ASP/16/36	Report of the Bureau on non-cooperation
ICC-ASP/16/INF.2	Informal guide and commentary to the procedure for the nomination and election of judges of the International Criminal Court
ICC-ASP/16/INF.3	<i>ReVision</i> Report: Secretariat of the Assembly of States Parties
ICC-ASP/16/L.1	[Draft] Report of the Assembly of States Parties to the Rome Statute of the International Criminal Court
ICC-ASP/16/L.2	[Draft] Report of the Credentials Committee
ICC-ASP/16/L.3	[Draft resolution] Strengthening the International Criminal Court and the Assembly of States Parties
ICC-ASP/16/L.3/Corr.1	[Draft resolution] Strengthening the International Criminal Court and the Assembly of States Parties - Corrigendum
ICC-ASP/16/L.4	[Draft] Resolution of the Assembly of States Parties on the proposed programme budget for 2018, the Working Capital Fund for 2018, the scale of assessment for the apportionment of expenses of the International Criminal Court, financing appropriations for 2018 and the Contingency Fund
ICC-ASP/16/L.5	[Draft] Resolution on cooperation
ICC-ASP/16/L.6	[Draft] Resolution on consultations pursuant to article 97(c) of the Rome Statute of the International Criminal Court
ICC-ASP/16/L.7	[Draft] Resolution on amendments to article 8 of the Rome Statute of the International Criminal Court
ICC-ASP/16/L.8	[Draft] Recommendation concerning the election of the Registrar of the International Criminal Court
ICC-ASP/16/L.9	[Draft resolution] Activation of the jurisdiction of the International Criminal Court over the crime of aggression
ICC-ASP/16/L.9/Rev.1	[Draft resolution] Activation of the jurisdiction of the International Criminal Court over the crime of aggression
ICC-ASP/16/L.10	[Draft resolution proposed by the Vice-Presidents of the Assembly] Activation of the jurisdiction of the International Criminal Court over the crime of aggression
ICC-ASP/16/L.10*	Draft resolution proposed by the Vice-Presidents of the Assembly: Activation of the jurisdiction of the International Criminal Court over the crime of aggression
ICC-ASP/16/WGPB/CRP.1	[Draft] Report of the Working Group on the 2018 proposed programme budget of the International Criminal Court