



# Assembly of States Parties

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### Report of the Bureau on non-cooperation

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## I. Introduction

1. Article 112, paragraph (2) (f), of the Rome Statute provides that “the Assembly shall consider pursuant to article 87, paragraphs 5 and 7, any question relating to non-cooperation.”

2. At its tenth session, the Assembly of States Parties (“the Assembly”) adopted the Assembly Procedures relating to non-cooperation (“the Procedures”).<sup>1</sup> At its subsequent sessions the Assembly approved mandates with regard to non-cooperation and requested the Bureau to submit reports on the implementation of the Procedures. The present report is submitted pursuant to the mandate approved at the sixteenth session of the Assembly including the review of the Procedures.<sup>2</sup>

3. In operative paragraph 25 of resolution ICC-ASP/16/Res.6, entitled “Strengthening the International Criminal Court and the Assembly of States Parties”, adopted at its sixteenth session, the Assembly “[r]ecall[ed] the non-cooperation procedures adopted by the Assembly in ICC-ASP/10/Res.5, recognize[d] 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, [took] note of the decisions of the Court on non-cooperation findings in relation to South Africa, and of the report of the Bureau on non-cooperation, welcome[d] the efforts of the President of the Assembly in implementing the procedures on non-cooperation during his tenure and recall[ed] that the President serves ex officio as focal point for his or her region, call[ed] upon all stakeholders, at all levels, to continue assisting the President of the Assembly, including when accomplishing his or her task with the support of the regional focal points for non-cooperation, and encourage[d] all States Parties to cooperate towards a successful outcome of the review of the non-cooperation procedures.”

4. In operative paragraphs 26 and 27 of resolution ICC-ASP/16/Res.6, the Assembly also “[r]ecall[ed] the role of the Assembly [of States Parties] and the Security Council with respect to non-cooperation as provided for by articles 87, paragraph 5, and 87, paragraph 7, of the Rome Statute, welcome[d] the efforts of States Parties to strengthen the relationship between the Court and the Council” and “call[ed] upon States Parties to continue their efforts to ensure that the Security Council addresses the communications received from the Court on non-cooperation pursuant to the Rome Statute, encourage[d] the President of the Assembly and the Bureau to continue consulting with the Security Council and also encourage[d] both the Assembly and the Security Council to strengthen their mutual engagement on this matter.”

5. In operative paragraphs 28 and 29 of resolution ICC-ASP/16/Res.6, the Assembly further “note[d] the orders of the Pre-Trial Chamber to the Registrar concerning action to be taken in case of information relating to travel of suspects, urge[d] States to share with the focal points on non-cooperation any information concerning potential or confirmed travel of persons against whom an arrest warrant is issued,” and “recalle[d] the Toolkit for the implementation of the informal dimension of the Assembly procedures on non-cooperation,” additionally “encourage[ing] 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.”

6. At its sixteenth session, the Assembly “request[ed] the President of the Assembly to continue to engage actively and constructively with all relevant stakeholders, in accordance with the Assembly procedures relating to non-cooperation, both to prevent instances of non-cooperation and to follow up on a matter of non-cooperation referred by the Court to the Assembly.”<sup>3</sup> The Assembly further requested 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.”<sup>4</sup> The Assembly also requested the Bureau, through the focal points on non-cooperation, to “continue engaging with all relevant stakeholders to conduct a review of the Assembly

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

<sup>2</sup> ICC-ASP/16/Res.6, annex I, paras.3(i)-(l).

<sup>3</sup> ICC-ASP/16/Res.6, annex I, para. 3(i).

<sup>4</sup> *Ibid.*, para. 3(k).

procedures relating to non-cooperation, with a view to recommending any necessary additions or amendments”.<sup>5</sup>

7. Paragraph 16 of the Procedures on non-cooperation calls for the appointment of four or, if so requested by the President of the Assembly, five focal points from among all States Parties, on the basis of equitable geographical representation;<sup>6</sup> the President serves *ex officio* as focal point for his own region.

8. On 4 March 2018, the Bureau appointed Czech Republic, Peru, Republic of Korea and Senegal as ad country focal points on non-cooperation (“focal points”) for their respective regional groups. The Bureau appointed Liechtenstein on 21 March 2018. The focal points are appointed on an ad country mandate, which implies that the respective countries are engaged at high diplomatic and political levels in New York, The Hague, capitals and in other embassies, where appropriate.

9. The present report covers activities during the inter-sessional period between the sixteenth and seventeenth sessions of the Assembly of States Parties.

## II. Court proceedings and findings: States Parties

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

11. In relation to the situation in Darfur, during the period covered by the previous report President Omar Al-Bashir of Sudan visited the Hashemite Kingdom of Jordan, a State Party to the Statute since 2002, on 29 March 2017.<sup>7</sup>

12. Pre-Trial Chamber II was seized, under article 87(7) of the Rome Statute, with the question of whether Jordan failed to comply with the Court’s request for arrest and surrender of Omar Al-Bashir, contrary to the provisions of the Statute.

13. On 11 December 2017, Pre-Trial Chamber II found that Jordan failed to comply with its obligations under the Statute by not executing the Court’s request for the arrest of Omar Al-Bashir and his surrender to the Court while he was on Jordanian territory attending the League of Arab States’ Summit on 29 March 2017. The Chamber decided to refer the matter of Jordan’s non-compliance to the Assembly of States Parties of the Rome Statute and the United Nations Security Council.<sup>8</sup>

14. On 21 February 2018, Pre-Trial Chamber II granted Jordan’s request for leave to appeal.<sup>9</sup> Jordan filed its appeals brief before the Appeals Chamber on 12 March 2018.<sup>10</sup>

15. Subsequently, on 29 March 2018, the Appeals Chamber issued an Order pursuant to rule 103 of the Rules of Procedure and Evidence, inviting “observations on the merits of the legal questions presented in the Jordan Referral re Al-Bashir Appeal”,<sup>11</sup> reasoning that “the Jordan Referral re Al-Bashir Appeal raises legal issues that may have implications beyond the present case”.<sup>12</sup>

<sup>5</sup> *Ibid.*, para. 3(l).

<sup>6</sup> ICC-ASP/11/Res.8, annex I.

<sup>7</sup> ICC-ASP/16/36, Report of the Bureau on Non-cooperation.

<sup>8</sup> *Situation in Darfur, Sudan, Prosecutor v. Omar Hassan Ahmad Al Bashir*, “Decision under article 87(7) of the Rome Statute on the non-compliance by Jordan with the request by the Court for the arrest and surrender [of] Omar Al-Bashir”, ICC-02/05-01/09-309 (11 Dec. 2017).

<sup>9</sup> See *Situation in Darfur, Sudan, Prosecutor v. Omar Hassan Ahmad Al Bashir*, “Decision on Jordan’s request for leave to appeal”, ICC-02/05-01/09-319 (21 Feb. 2018).

<sup>10</sup> See *Situation in Darfur, Sudan, The Prosecutor v. Omar Hassan Ahmad Al Bashir*, “The Hashemite Kingdom of Jordan’s appeal against the ‘Decision under article 87(7) of the Rome Statute on the non-compliance by Jordan with the request by the Court for the arrest and surrender [of] Omar Al-Bashir’”, ICC-02/05-01/09-326 (12 Mar. 2018).

<sup>11</sup> See *Situation in Darfur, Sudan, The Prosecutor v. Omar Hassan Ahmad Al Bashir*, “Order inviting expressions of interest as *amici curiae* in judicial proceedings (pursuant to rule 103 of the Rules of Procedure and Evidence”, ICC-02/05-01/09-330 (29 Mar. 2018).

<sup>12</sup> *Id.*

16. The Appeals Chamber held hearings on the Appeal over five days (10 to 14 September 2018, inclusive) at the International Criminal Court.<sup>13</sup>

17. On 20 September 2018, the Appeals Chamber ordered that “As a State and Person concerned in the issues raised in the appeal... the competent authorities of the Republic of the Sudan and Mr Omar Hassan Ahmad Al-Bashir may each file submissions... on issues raised in the Jordan Referral re Al-Bashir Appeal and during the hearings on the appeal... by 5 October 2018”.<sup>14</sup>

18. On 28 September 2018, the Appeals Chamber received various post-hearing submissions.<sup>15</sup>

19. In addition to the proceedings relating to the Jordan Referral, the inter-sessional period also saw the issuance of two decisions by Pre-Trial Chamber II in relation to Uganda and Chad inviting States Parties to provide submissions concerning the failure to arrest Omar Al-Bashir and surrender him to the Court.<sup>16</sup>

20. In one case, the Registry received a note verbale from a State Party in reply.<sup>17</sup>

21. On 10 July 2018, the Registry issued a report on information received regarding President Omar Al-Bashir’s further travels to two States Parties, Uganda and Djibouti, with which the Registry had communicated to remind their respective authorities of their obligations under the Rome Statute.<sup>18</sup>

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

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

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

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

### **IV. Court proceedings and findings: States not Parties**

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

<sup>13</sup> See *Situation in Darfur, Sudan, The Prosecutor v. Omar Hassan Ahmad Al Bashir*, “Revised order on the conduct of the hearing before the Appeals Chamber in the Jordan Referral re Al-Bashir Appeal”, ICC-02/05-01/09-382 (30 Aug. 2018).

<sup>14</sup> See *Situation in Darfur, Sudan, The Prosecutor v. Omar Hassan Ahmad Al Bashir*, “Order inviting submissions in the Jordan Referral re Al-Bashir Appeal”, ICC-02/05-01/09-386 (20 Sep. 2018).

<sup>15</sup> See, e.g., *Situation in Darfur, Sudan, The Prosecutor v. Omar Hassan Ahmad Al Bashir*, “Final Submissions of the Prosecution following the Appeal Hearing,” ICC-02/05-01/09-392 (28 Sep. 2018), “The League of Arab States’ post-hearing submissions”, ICC-02/05-01/9-388 (28 Sep. 2018), “The Hashemite Kingdom of Jordan’s submissions following the hearing of 10, 11, 12, 13 and 14 September 2018”, ICC-02/05-01/09-390, and “Supplementary African Union Submission”, ICC-02/05-01/09-389 (28 Sep. 2018).

<sup>16</sup> Mr Omar Al-Bashir visited Uganda, a State Party to the Statute, on 14 to 15 November 2017 and Chad, a State Party to the Statute, on 1 to 2 December 2017. See *Pre-Trial Chamber II*, “Decision inviting the Republic of Uganda to provide submissions concerning its failure to arrest Omar Al-Bashir and surrender him to the Court,” ICC-02/05-01/09/301 (13 Dec. 2017) and *Pre-Trial Chamber II*, “Decision inviting the Republic of Chad to provide submissions concerning the failure to arrest Omar Al-Bashir and surrender him to the Court,” ICC-02/05-01/09-311 (13 Dec. 2017).

<sup>17</sup> *Situation in Darfur, Sudan, The Prosecutor v. Omar Hassan Ahmad Al Bashir*, “Transmission of a Letter dated 12 February 2018 from the Attorney General of Uganda”, ICC-02/05-01/09 (23 Feb. 2018).

<sup>18</sup> *Situation in Darfur, Sudan in the case of The Prosecutor v. Omar Hassan Ahmad Al Bashir*, “Report of the Registry on Information Received regarding Omar Al Bashir’s travels to the Republic of Djibouti on 5 July 2018 and to the Republic of Uganda on 7 July 2018”, ICC-02/05-01/09 (5 Jul. 2018).

26. With respect to Sudan, on 7 March 2018, the Registry submitted the “Report of the Registrar on Action taken in Respect of Information Received Relating to Travels by Mr Omar Al-Bashir to States not Party to the Rome Statute between 7 April 2017 and 6 March 2018”.<sup>19</sup>

27. During the reporting period, the Court, via the Registry, invited the competent authorities of ten non-States Parties to the Statute to arrest President Omar Al-Bashir, in the event he entered their territories, and to surrender him to the Court, reminding them of Security Council resolution 1593 (2005), and invited the said States to cooperate in President Al-Bashir’s arrest and surrender to the Court. These States included: the Federal Democratic Republic of Ethiopia (five visits), the Kingdom of Saudi Arabia (three visits), the State of Kuwait (two visits), the State of Qatar (two visits), the Kingdom of Bahrain (one visit), the United Arab Emirates (one visit), the Kingdom of Morocco (one visit), the Republic of Rwanda (one visit), the Russian Federation (one visit) and the Republic of Turkey (one visit).<sup>20</sup>

28. One of the concerned authorities responded to the requests within the reporting period.<sup>21</sup>

29. No Court proceedings took place regarding the non-States Parties.

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

30. Throughout the year, the President of the Assembly recalled the importance for States to spare no effort in executing the arrest warrants issued by the Court. The President transmitted to States Parties decisions of the Court related to non-cooperation.

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

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

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

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

## VI. The United Nations Security Council

35. During the reporting period, the Prosecutor presented her twenty-sixth and twenty-seventh reports to the Security Council pursuant to resolution 1593 (2005), on 11 December 2017 and 19 June 2018, respectively. The Prosecutor recalled that Sudan, as the territorial State, has the primary responsibility to implement the arrest warrants and has consistently and expressly refused to do so. The Prosecutor stated that the effective power to arrest and surrender ICC suspects in the Darfur situation solely rests with States, and that the Security Council plays a vital role in ensuring these obligations are honored. She renewed her appeal

<sup>19</sup> *Situation in Darfur, Sudan in the case of The Prosecutor v. Omar Hassan Ahmad Al Bashir*, ICC-02/05-01/09 (7 Mar. 2018).

<sup>20</sup> *Id.* Note that the official reporting dates of the Registry are from April to March of the following year, resulting in some overlap when attempting to harmonize the information for inclusion in the Report of the Bureau to the Assembly of States Parties. During the inter-sessional period encompassed in this Report of the Bureau, Mr Al-Bashir reportedly traveled to the Russian Federation (23 Nov. 2017); Ethiopia, to take part in the 12<sup>th</sup> Nations, Nationalities and Peoples’ Day (8 Dec. 2017); Turkey, to attend a summit meeting of the Organization of Islamic Cooperation (12 Dec. 2017); and Ethiopia to attend the 30<sup>th</sup> African Union Summit (28 Jan. 2018).

<sup>21</sup> *Id.* The Registry received a note verbale from the Embassy of the Russian Federation in the Kingdom of the Netherlands dated 22 December 2017.

to the Council to take concrete action concerning States referred to it by the Court for failing to arrest and surrender ICC suspects in the Darfur situation. She called on the Council to provide the necessary support to enable the Court to carry out its mandate under the Rome Statute following the referral in resolution 1593, including by asserting the need for all States to cooperate with the Office's investigation in Darfur and facilitating financial assistance from the UN.

36. The Prosecutor briefed the Security Council on the travel of President Al-Bashir and once again requested the Security Council to use its powers to ensure the immediate arrest and surrender of all Sudanese persons against whom arrest warrants are in force.

37. The Prosecutor presented her fifteenth and sixteenth reports to the Security Council pursuant to resolution 1970 (2011), with reference to several aspects relevant to cooperation and non-cooperation, on 8 May 2018 and 2 November 2018, respectively, calling for greater support from, inter alia, the Council, including for the arrest and surrender of suspects against whom warrants have been issued by the Court in the situation.

38. On 6 July 2018, an Arria-formula meeting on UNSC-ICC relations, the first of its nature, was held, with participation of the Prosecutor, the President of the Assembly, the UN Assistant Secretary-General for Legal Affairs, the Permanent Representative of Mali to the UN, and the Special Prosecutor of the Special Criminal Court of the CAR. The meeting, convened by the ICC States Parties on the Council and with participation of the UNSC members and the wider UN membership and civil society, had as goal to take stock of the work of the ICC, its achievements and challenges, and to explore synergies with the work of the UNSC. The initiative was welcomed as an important step towards enhancing dialogue and coordination between the two institutions. Discussions demonstrated the importance of the Court's work and the broad support it enjoys. The meeting also raised concrete issues and proposals in the context of UNSC-ICC relations, such as in relation to responses to findings of non-cooperation.

## **VII. Consultations on non-cooperation**

39. Pursuant to the mandate of the Bureau, the focal points on non-cooperation engaged in consultations with relevant stakeholders in order to review the Procedures and to recommend any necessary additions and amendments.

40. On 20 March 2018, the focal points convened a consultation with representatives of civil society organizations to solicit their views on how to improve the effectiveness of the Procedures relating to non-cooperation.

41. On 2 May 2018, the focal points met with the President of the Assembly of States Parties and the Director of the Secretariat of the Assembly of States Parties to update them on the progress on the review of the Procedures as well as solicit their views on how to improve the effectiveness of the Procedures.

42. On 6 June 2018, the focal points circulated a document to States Parties containing proposed updates to the Procedures where they suggested a significant number of both technical updates as well as improvements to the Procedures reflecting established practice with the aim to enhance their effectiveness, and invited States Parties to submit written views and/or textual suggestions to the Procedures.

43. On 14 June 2018, the focal points convened a public consultation, where they asked for additional suggestions regarding the extent of the review of the Assembly Procedures Relating to Non-Cooperation, with a view to recommend any necessary additions or amendments, as mandated in resolution ICC-ASP/16/Res.6. States Parties expressed their support for the improvement of the implementation of the Procedures and provided oral views on the textual suggestions to the Procedures.

44. On 18 July 2018, the focal points circulated documents containing proposed updates to the Toolkit for the implementation of the informal dimension of the Assembly procedures relating to non-cooperation, as well as additional updates to the Procedures based on the comments they received during the abovementioned consultation on 14 June 2018. The focal points invited States Parties to submit written view and/or textual suggestions to both the Toolkit and the Procedures.

45. Further, the focal points engaged in consultations with States Parties that submitted views and/or textual suggestions to the Procedures including convening an informal consultations on 23 October 18 in order to finalize the review of the Procedures before the upcoming Assembly.

46. On 5 November 2018, the focal points convened a public consultation to inform of the finalization of the review of the Procedures and to discuss the way ahead with regard to the adoption of the updated Procedures at the upcoming Assembly.

## VIII. Recommendations

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

48. The focal points further recommend that the Assembly adopt the updated “Assembly Procedures on Non-Cooperation”, the updated “Toolkit for the implementation of the information dimension of the Assembly procedures relating to non-cooperation” contained in annexes II and III of this report, respectively.

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

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

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

52. Additionally, during the inter-sessional period, the focal points will continue consultations on means to strengthen the application of the Procedures.

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

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

55. The focal points further recommend that States Parties continue to inform them on measures undertaken to prevent or to address instances of non-cooperation.

## Annex I

### Language for the omnibus resolution

1. Recalls the Procedures relating to non-cooperation 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, welcomes the engagement by States Parties toward the successful finalization of the review of the Assembly procedures relating to non-cooperation and decides to adopt the revised Assembly procedures relating to non-cooperation annexed to this resolution;
2. Recalls the Toolkit for the implementation of the informal dimension of the Assembly procedures relating to non-cooperation,<sup>1</sup> welcomes the revised Toolkit<sup>2</sup> and encourages States Parties to make use of it as they see fit in order to improve the implementation of the Assembly procedures relating to non-cooperation;
3. Takes note of the report of the Bureau on non-cooperation,<sup>3</sup> welcomes the efforts of the President of the Assembly in implementing the Assembly procedures relating to non-cooperation and recalls that the President serves *ex officio* as focal point for his or her region,<sup>4</sup> calls upon all stakeholders, at all levels, to continue assisting the President of the Assembly, including when accomplishing his or her task with the support of the regional focal points for non-cooperation;
4. Recalls the role of the Assembly of States Parties and the Security Council with respect to non-cooperation as provided for by articles 87, paragraph 5, and 87, paragraph 7, of the Rome Statute, and welcomes the efforts of States Parties to strengthen the relationship between the Court and the Council;
5. 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;
6. 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>5</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;

### Language for omnibus resolution mandates annex

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

*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;

*Requests* the Bureau to continue to actively engage throughout the intersessional period with all relevant stakeholders to continue to ensure effective implementation of the Assembly procedures relating to non-cooperation and to submit a report on its activities to the Assembly at its eighteenth session;

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

<sup>2</sup> ICC-ASP/17/.. (Report of the Bureau on non-cooperation – Annex III updated Toolkit).

<sup>3</sup> ICC-ASP/17/31.

<sup>4</sup> ICC-ASP/11/29, para. 12.

<sup>5</sup> See Corrigendum of “Orders to the Registrar concerning action to be taken in case of information relating to the travel of suspects”, ICC-02/05-01/09-235-Corr (15 Apr. 2015).



*Recognizes* the negative impact that the non-execution of Court requests can have on the ability of the Court to execute its mandate, *welcomes* the finalization by the focal points of the review of the Assembly procedures relating to non-cooperation, *encourages* States Parties to make use of the updated Toolkit for the implementation of the informal dimension of the Assembly procedures annexed to the present resolution and *decides* to adopt the updated Assembly procedures relating to non-cooperation also annexed to the present resolution.

## Annex II

### Assembly procedures relating to non-cooperation<sup>1</sup>

#### A. Background

1. Article 112, paragraph 2, of the Rome Statute provides that:

“2. The Assembly shall:

[...]

(f) Consider pursuant to article 87, paragraphs 5 and 7, any question relating to non-cooperation;

(g) Perform any other function consistent with this Statute or the Rules of Procedure and Evidence.”

2. Article 87, paragraphs 5 and 7, provide that:

“5. (a) The Court may invite any State not party to this Statute to provide assistance under this Part on the basis of an ad hoc arrangement, an agreement with such State or any other appropriate basis.

(b) Where a State not party to this Statute, which has entered into an ad hoc arrangement or an agreement with the Court, fails to cooperate with requests pursuant to any such arrangement or agreement, the Court may so inform the Assembly of States Parties, or, where the Security Council referred the matter to the Court, the Security Council.”

“7. Where a State Party fails to comply with a request to cooperate by the Court contrary to the provisions of this Statute, thereby preventing the Court from exercising its functions and powers under this Statute, the Court may make a finding to that effect and refer the matter to the Assembly of States Parties or, where the Security Council referred the matter to the Court, to the Security Council.”

3. Paragraph 1 of the Assembly’s cooperation resolution<sup>2</sup> adopted on 14 December 2017 provides as follows:

Emphasizes the importance of timely and effective cooperation and assistance from States Parties and other States under an obligation or encouraged to cooperate fully with the Court pursuant to Part 9 of the Rome Statute or a United Nations Security Council resolution, as the failure to provide such cooperation in the context of judicial proceedings affects the efficiency of the Court and stresses that the non-execution of cooperation requests has a negative impact on the ability of the Court to execute its mandate, in particular when it concerns the arrest and surrender of individuals subject to arrest warrants.

<sup>1</sup> The procedures as originally adopted are contained in *Official Records ... Tenth session ... 2011* (ICC-ASP/10/20), vol. I, part III, ICC-ASP/10/Res.5, annex.

<sup>2</sup> *Official Records ... Sixteenth session ... 2017* (ICC-ASP/16/20), vol. I, part III, ICC-ASP/16/Res.2, para 1.

## B. General scope and nature of non-cooperation procedures

4. For the purpose of these Procedures, non-cooperation is understood as the failure by any State Party or a State which has entered into an ad hoc arrangement or an agreement with the Court (hereafter: “requested State”) to comply with a specific Court request for cooperation (articles 89 and 93 of the Statute), as defined in article 87, paragraphs 5(b) and 7 of the Statute.

5. This needs to be distinguished from a situation where there is no specific Court request and a State Party has yet to implement the Rome Statute domestically in such a manner as to be able to comply with Court requests, which may lead to non-cooperation in the medium or longer-term future. This scenario is not under consideration here, as it is dealt with by the Assembly in the context of the ongoing work on cooperation, in particular the discussions held in The Hague Working Group of the Bureau.

6. Given the respective roles of the Court and the Assembly, any response by the Assembly would be non-judicial in nature and shall be based on the Assembly’s competencies under article 112 of the Statute. The Procedures reflect the Assembly’s efforts to support the effectiveness of the Rome Statute by deploying political and diplomatic efforts to promote cooperation and to respond to non-cooperation. These efforts, however, do not replace the judicial determinations of the Court.

7. Regarding concrete instances of non-cooperation, the following two scenarios may require action by the Assembly:

(a) A scenario where the Court has referred a matter of non-cooperation to the Assembly under article 87 of the Rome Statute.<sup>3</sup> Depending on the circumstances, urgent action by the Assembly may bring about cooperation; and

(b) Exceptionally, a scenario where the Court has yet to refer a matter of non-cooperation to the Assembly, but there are reasons to believe that a specific and serious incident of non-cooperation, including in respect of a request for arrest and surrender of a person (article 89 of the Rome Statute), is about to occur or is currently ongoing and urgent action by the Assembly may help bring about cooperation;<sup>4</sup>

8. The procedures outlined herein only refer to requested States as defined above. These procedures are without any prejudice whatsoever to any steps the Assembly (and its sub-organs) might decide to take in regard of cooperation (and lack thereof) in respect of other States.

## C. General approach for non-cooperation procedures

9. The non-cooperation scenarios 7(a) and 7(b) require different procedures to be adopted, which may however partially overlap.

10. Scenario 7(a) requires a formal response, including some public elements, given that it has been triggered by a formal decision of the Court referring the matter to the Assembly. Depending on the specifics of the case, there may be merit in pursuing an informal and urgent response, as a precursor to a formal response, in particular where it is still possible to achieve cooperation.

11. Scenario 7(b) requires an urgent, but entirely informal response at the diplomatic and political levels, taking into account the Toolkit for the Implementation of the Informal Dimension of the Assembly Procedures relating to Non-Cooperation.<sup>5</sup> Past experience has shown that the Bureau may not be able to respond quickly enough to an immediate situation of non-cooperation, as outlined below.

<sup>3</sup> The Court’s decisions relating to non-cooperation can be found on the non-cooperation page of the Assembly of States Parties’ website: [https://asp.icc-cpi.int/en\\_menus/asp/non-cooperation/Pages/default.aspx](https://asp.icc-cpi.int/en_menus/asp/non-cooperation/Pages/default.aspx).

<sup>4</sup> Where the matter has not yet been referred to the Assembly by the Court but is also not urgent in nature, it appears that no specific procedures need to be adopted. Instead, it would be up to the Court to decide whether to trigger the Assembly’s action by referring the matter to the Assembly or not.

<sup>5</sup> *Ref. to Toolkit (annex to the Report on non-cooperation)*, ICC-ASP/15/31/Add.1

## D. Specific non-cooperation procedures

12. The procedures outlined below would have to be carried out by the Bureau and the Assembly in full respect for the authority and independence of the Court and its proceedings, as enshrined in the Rome Statute and the Rules of Procedure and Evidence.<sup>6</sup> These procedures are aimed at enhancing the implementation of the Court's decisions. All actors involved must ensure that their participation in these procedures does not lead to discussions on the merits of the Court request or otherwise undermine the findings of the Court. These procedures address the role of the Assembly and its subsidiary organs, and are without prejudice to actions taken by States at the bilateral or regional levels to promote cooperation.

### 1. Formal response procedure: successive steps to be taken by the Bureau and the Assembly

#### (a) Trigger

13. A formal procedure for the Assembly to address instances of non-cooperation should only be triggered by a decision of the Court regarding non-cooperation addressed to the Assembly.<sup>7</sup> Any such decision should be forwarded to all States Parties without delay by the Secretariat of the Assembly of States Parties. The general public should be informed of the decision by way of a press release of the President of the Assembly of States Parties.

#### (b) Procedure

14. Subsequent to the Court decision, it is recommended that the following actions be undertaken to address the issue, with additional optional steps to be considered on a case-by-case basis, bearing in mind that the good offices by the President of the Assembly may also continue as described in paragraph 16 below:

(a) Emergency Bureau meeting: where the matter is such that urgent action by the Assembly may still bring about cooperation, a meeting of the Bureau could be convened at short notice. The meeting would be an opportunity to receive a report from the President of the Assembly on any action taken, and to decide on what further action would be required. The fact of the convening of the Bureau meeting and any decisions taken should be announced to all State Parties.

(b) Open letter from the President of the Assembly could be sent to the requested State, reminding that State of the obligation to cooperate and requesting its views on the matter as part of a formal response procedure within a specified time. The President of the Assembly should send a copy of the letter to all States Parties, encouraging them to raise the matter with the requested State, as appropriate.

(c) At the next meeting of the Bureau a representative of the requested State should be invited to discuss the implications of the Court's decision regarding its non-cooperation and present its views on how it would cooperate with the Court in the future.

(d) Subsequently, and provided the next session of the Assembly is scheduled to take place more than three months after the Bureau meeting referred to under (c), the Bureau could request the New York Working Group to hold a public meeting on the matter to allow for an open dialogue with the requested State. This would include the participation of States Parties, observers and civil society representatives as currently provided under the Rules of Procedure of the Assembly of States Parties.<sup>8</sup>

(e) The Court's decision should be noted in the omnibus resolution adopted by the Assembly at its next (or ongoing) session.

(f) At the next (or ongoing) session of the Assembly, the report referred to in paragraph 15 could be discussed in plenary session of the Assembly with a view to enhance

<sup>6</sup> *Official Records ... First session ... 2002* (ICC-ASP/1/3 and Corr.1), part II.A.

<sup>7</sup> See [https://asp.icc-cpi.int/en\\_menus/asp/non-cooperation/Pages/default.aspx](https://asp.icc-cpi.int/en_menus/asp/non-cooperation/Pages/default.aspx).

<sup>8</sup> *Official Records ... First session ... 2002* (ICC-ASP/1/3 and Corr.1), part II. c; part XX.

future cooperation with the Court. Where appropriate, the Bureau could appoint a dedicated facilitator to consult on a draft resolution containing concrete recommendations on the matter; and

(g) In cases of a finding of non-cooperation referred by the Court to the Security Council under article 87, the President of the Assembly could write to the President of the Security Council asking the Security Council to follow up on its own referrals to encourage cooperation with the Court and outline what the Assembly has done in response to the Court's referral.

15. Subsequent to the Court decision, a Bureau report on action taken in accordance with paragraph 14 above shall be submitted to the next (or ongoing) session of the Assembly, including any concrete recommendations on the matter.

## 2. Informal response procedure: good offices by the President of the Assembly

16. In order for the Assembly to be able to respond to an impending or ongoing situation of non-cooperation, which may still lead to cooperation in that specific case, a flexible mechanism is required for urgent action. The procedures set out below provide guidance on the use of the good offices of the President of the Assembly and the regional non-cooperation focal points and are aimed at highlighting the importance placed on cooperation by the Assembly.

### (a) *Regional focal points for non-cooperation*<sup>9</sup>

17. In order to assist the President in his or her good offices, the Bureau should appoint four, or, if so requested by the President, five focal points on the basis of the principle of equitable geographical representation.

### (b) *Trigger*

18. The President of the Assembly could become active on his or her own initiative where it is assessed that the conditions of scenario 7(b) described above are met and in consultation with the Court. Furthermore, the President should also become active on his or her own initiative where it is assessed that the conditions of scenario 7(a) are met, and, in consultation with the Court, it is assessed that the opportunity to fulfill a request for arrest and surrender may no longer exist by the time the Bureau would be able to convene an emergency meeting to discuss the matter. In any event, the President should immediately notify Bureau members of the initiative. Whenever the President becomes active the President shall indicate that he or she is acting from the good offices of the Presidency.

19. Otherwise, the President shall become or remain active as decided by the Bureau.

### (c) *Mandate and procedures*

20. Where the President's good offices have been triggered as outlined above, the matter should be raised after consulting the Court, where appropriate, informally and directly with officials from the requested State and other relevant stakeholders, with a view to promoting full cooperation. The purpose of this interaction with the requested State would be to raise awareness of the issue and to promote full cooperation while that would still be possible, but not to make findings of judicial nature, which is the sole prerogative of the Court. The President may also remind the requested State of the possibility under article 97 of the Statute of consulting with the Court.<sup>10</sup> The President may request any of the regional non-cooperation focal points, or any other Bureau member, as appropriate, to provide assistance in this interaction. In the case of scenario 7(b) above, the President should use the interaction with officials from the requested State to verify the information on the basis of which he or she became active.

<sup>9</sup> As amended by resolution ICC-ASP/11/Res.8, annex I.

<sup>10</sup> With regard to consultations pursuant to Article 97(c) of the Rome Statute, see ICC-ASP/16/Res.3 and annex.

21. The President should provide a report to the Bureau on his or her engagement, including notifying the Bureau about information received from the UN Secretariat as set out in the Guidance on contacts with persons who are the subject of arrest warrants or summonses issued by the International Criminal Court.<sup>11</sup>

22. The regional focal points for non-cooperation should assist in the exercise of the President's good offices as outlined above by engaging, as appropriate, with officials from the requested State, representatives of the Court and other relevant stakeholders with a view to promoting full cooperation. Where appropriate, the regional focal points should share information with States Parties to encourage them to engage in outreach, in respect of which States Parties may wish to draw on the Toolkit for the Implementation of the Informal Dimension of the Assembly Procedures relating to Non-Cooperation. The regional focal points should maintain contact with the Court to seek advice and share information.

23. The Secretariat of the Assembly of States Parties should fully assist in the President's formal response procedure and the exercise of good offices as outlined above. Where appropriate, the Secretariat should assist and share information, such as official contact point, with the regional focal points.

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<sup>11</sup> See: [https://digitallibrary.un.org/record/747189/files/A\\_67\\_828\\_S\\_2013\\_210-EN.pdf](https://digitallibrary.un.org/record/747189/files/A_67_828_S_2013_210-EN.pdf)

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## I. Introduction

1. This Toolkit has been developed by the non-cooperation focal points as a resource for States Parties to improve the implementation of the informal measures of the procedures on non-cooperation. States Parties may wish to draw on the resources included in this Toolkit in encouraging States to meet their obligations to cooperate with the International Criminal Court (ICC) in relation to the arrest and surrender of persons subject to a warrant of arrest.

2. Article 112 (2) of the Rome Statute provides that:

“The Assembly shall:

[...]

(f) Consider pursuant to article 87, paragraphs 5 and 7, any question relating to non-cooperation;

(g) Perform any other function consistent with this Statute or the Rules of Procedure and Evidence.”

3. Successive resolutions on cooperation adopted by the Assembly of States Parties have stressed that: ‘the non-execution of cooperation requests has a negative impact on the ability of the Court to execute its mandate, in particular when it concerns the arrest and surrender of individuals subject to arrest warrants’.

4. The Assembly Procedures relating to non-cooperation (adopted under ICC-ASP/10/Res.5) identified a scenario (in paragraph 7(b)) where:

“[...] the Court might not yet have referred a matter of non-cooperation to the Assembly, but where there are reasons to believe that a specific and serious incident of non-cooperation in respect of a request for arrest and surrender of a person (article 89 of the Rome Statute) is about to occur or is currently ongoing and urgent action by the Assembly may help bring about cooperation.”

5. Under the Assembly Procedures, the informal response procedure may be invoked in such scenarios, as outlined in paragraph 15:

“In order for the Assembly to be able to respond to an impending or ongoing situation of non-cooperation, which may still lead to actual cooperation in that specific case, a flexible mechanism would be required for urgent action. One possibility would be to build on and institutionalize the good offices that the President of the Assembly has undertaken in the past, on an ad-hoc basis, in relation to requested States. The mandate for the President builds on this past work, but is intended to make it more effective through the activities and personal connections of Bureau members from other regions, and to signal the importance placed on cooperation by the Assembly.”

6. The Assembly Procedures provide for the appointment of four focal points to assist the President. Under paragraph 19, where the President’s good offices have been triggered of his or her own initiative, he or she is mandated to:

“[...] raise the issue informally and directly with officials from the requested State and other relevant stakeholders, with a view to promoting full cooperation. The purpose of this interaction with the requested State would be to raise awareness of the issue and to promote full cooperation while that would still be possible, but not to make findings of a judicial nature, which is the sole prerogative of the Court. The President may also remind the requested State of the possibility under article 97 of the Statute to consult with the Court. The President may request any of the regional focal points, or any other Bureau member, as appropriate, to provide assistance in this interaction. In the case of scenario 7(b) above, the President should use the interaction with officials from the requested State to verify the information on the basis of which he or she became active.”

7. Under resolution ICC-ASP/14/Res.4, the Assembly 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 to the Assembly’ (annex I, paragraph 2(a)).

8. To this end, the Bureau recommended at paragraph 51 of its report on non-cooperation (ICC-ASP/14/38 (2015)) that:

“[...] throughout the inter-sessional period and before the fifteenth session of the Assembly, the focal points, in collaboration with any interested States, and in consultation with the Court, civil society and relevant international and regional organizations finalize the toolkit to improve the implementation of the informal measures of the procedures on non-cooperation.”

9. The current document is the result of those efforts.

10. This Toolkit is the result of a desire to encourage more standardized responses to potential instances of non-cooperation, and to depoliticize action taken to encourage States to meet their cooperation obligations. This said, it is stressed that the non-cooperation focal points will continue to tailor our approach on a case-by-case basis to ensure that our efforts are as effective as possible. While this Toolkit provides resources in the form of templates and guidance for States Parties to draw upon in order to facilitate their outreach in time sensitive situations, our expectation is that States Parties will similarly tailor their approach on a case-by-case basis.

## **II. Monitoring the travel of persons subject to warrants of arrest**

### **A. Monitoring through the diplomatic network**

11. Obtaining early information about the future travel plans of persons subject to a warrant of arrest can enable the Court, the President of the Assembly, the non-cooperation focal points, States Parties and civil society to take action to encourage States to meet their cooperation obligations.

12. As such, States Parties are encouraged to alert their diplomatic networks to seek out and report on the travel of persons subject to a warrant of arrest.

### **B. Monitoring through other means (Google alerts and Twitter)**

13. Representatives of States Parties can set up Google alerts to stay apprised of the travel of persons subject to an ICC warrant of arrest in four easy steps:

(a) Go to <https://www.google.com/alerts>;

(b) Enter key search terms (e.g. “[name of individual subject to warrant of arrest]”, “Travel”, “International Criminal Court” etc.);

(c) Enter your email address and click CREATE ALERT; and

(d) Google sends you a confirmation email. Verify your request by clicking the link in this email.

14. After completing these steps, you will receive links to relevant articles, news items etc.

15. Representatives of States Parties can stay apprised of the travel of persons subject to an ICC warrant of arrest through Twitter (or other social media channels) by specifically using hashtags (#) in combination with key search terms (e.g. “[name of individual subject to warrant of arrest]”, “travel”, “International Criminal Court”, “[host State]” etc.)



### **C. Sharing information with the Court and the non-cooperation focal points**

16. The exchange of information in relation to the travel of persons subject to a warrant of arrest can facilitate action by the Court, the non-cooperation focal points, States Parties and civil society aimed at encouraging States to meet their cooperation obligations.

17. All States, international and regional organizations, non-governmental organizations and members of civil society, are encouraged to share information of which they become aware about the potential travel of persons subject to a warrant of arrest.

18. The non-cooperation focal points have established a joint email address to which such information can be sent: [iccnnoncooperation@gmail.com](mailto:iccnnoncooperation@gmail.com).

19. The non-cooperation focal points will share relevant information (without disclosing its source unless authorized to do so) with the Court.

20. To ensure that information can be shared with all organs of the Court in a timely and effective manner, the Court has established a joint email address to which information regarding the travel of persons subject to a warrant of arrest can also be sent direct (the email address is not to be made public and is only to be shared with competent national authorities): [ICCArrest@icc-cpi.int](mailto:ICCArrest@icc-cpi.int).

21. Information sent to this address will be provided to a limited number of ICC staff members.

### **D. Sharing information with States Parties**

22. On receipt of advice about the possible travel of persons subject to a warrant of arrest, each non-cooperation focal point will share relevant information (without disclosing the source of information unless authorized to do so) with members of their respective regional group to enable States Parties to take any action that they may deem appropriate.

23. For this purpose, each non-cooperation focal point maintains a list of the email addresses of the representatives of States Parties responsible for ICC matters. States Parties should ensure that the contact details of a representative in New York are provided to their regional focal point and keep this information updated in the case of a change in personnel. At the discretion of States Parties, representatives based in The Hague and/or in capitals may be added to the contact list.

24. The Court has requested that each State Party also provide the contact details for use outside of normal business hours in relation to urgent cooperation matters relating to the travel of persons subject to a warrant of arrest. States Parties may choose to share a generic email address or telephone number that is monitored 24/7, or may choose to send contact details of multiple representatives in order to maximize the prospects of at least one point of contact being able to be reached. States Parties are requested to provide this information to their regional non-cooperation focal point, so it can be collated and shared with the Court.

25. On occasion, information concerning the travel of persons subject to a warrant of arrest may be shared with States Parties by the Secretariat of the Assembly of States Parties at the request of the President of the Assembly or the non-cooperation focal points.

### **E. Sharing information with civil society**

26. The non-cooperation focal points have established contact with representatives of civil society, in particular the Coalition for the International Criminal Court (CICC) and Human Rights Watch.

27. Information about the travel of persons subject to a warrant of arrest is shared by the non-cooperation focal points with these umbrella bodies, to enable them to disseminate appropriate information through their regional and local networks.

### III. Preventing instances of non-cooperation

28. The following templates have been prepared by the non-cooperation focal points as a resource for States Parties to draw on in order to assist them in encouraging States to meet their cooperation obligations in relation to the arrest and surrender of persons subject to a warrant of arrest.

#### A. Draft statements

29. Before and during travel:

We understand that [name], who is subject to a warrant of arrest issued by the ICC will travel to [country name], a State Party to the Rome Statute of the ICC.

It is recalled that under the Rome Statute, States Parties have an obligation to cooperate fully with the ICC in its investigation and prosecution of crimes within jurisdiction of the Court. In particular, States Parties have an obligation to arrest and surrender to the Court persons subject to a warrant of arrest who enter their territory.

[It is [further] recalled that under resolution [1593 (2005)] [1970 (2011)], the Security Council urged all States to cooperate fully with the Court].

We call upon [country name] to act in accordance with its obligations under the Rome Statute [and] [Security Council resolution [1593 (2005)] [1970 (2011)]].

30. After travel:

We understand that [name], who is subject to a warrant of arrest issued by the ICC traveled to [country name], a State Party to the Rome Statute of the ICC.

We regret that [country name] did not fulfill its obligation to cooperate fully with the ICC in its investigation and prosecution of crimes within jurisdiction of the Court.

We call on all States Parties to act in accordance with their obligations under the Rome Statute [and] [Security Council resolution [1593 (2005)] [1970 (2011)]].

#### B. Draft notes verbale

31. Before and during travel to State Party:

[...] and has the honor to advise that it has been brought to the attention of the Government of [...] that [name] [is intending to enter] [has entered] your territory [in order to attend .../for the purpose of...].

The Permanent Mission of [...] notes that [name] is subject to [a] [insert number in the case of multiple warrants] warrant[s] of arrest for [war crimes] [crimes against humanity] [genocide] issued by the International Criminal Court (ICC). Consistent with the orders of the Court, the Registry has sent all States Parties to the Rome Statute a request to arrest and surrender [name] should [he/she] enter their territory.

The Permanent Mission of [...] further notes that under article 86 of the Rome Statute, States Parties are obliged to cooperate fully with the Court in its investigation and prosecution of crimes within its jurisdiction. Under article 89 (1), States Parties have a specific obligation to comply with requests from the Court for arrest and surrender.

The Court's ability to fulfil its mandate is dependent on States meeting their cooperation obligations, in particular when it concerns the arrest and surrender of individuals subject to arrest warrants.

As recognized in the preamble to the Rome Statute, the crimes under the Court's jurisdiction deeply shock the conscience of humanity and threaten the peace, security and well-being of the world. Under the Rome Statute, States Parties pledged to end impunity for the perpetrators of these crimes. In [sending State's] view, it is

essential that all States Parties meet this duty – this is the least they owe to the victims of the crimes allegedly committed by [name].

The Permanent Mission of [...] trusts that [...Ministry of Foreign Affairs/Embassy] shares [sending State's] commitment to ending impunity and will not allow [name] to enter its territory without meeting its obligation to arrest and surrender [name].

32. After travel to State Party:

[...] and has the honor to note with concern that it has been brought to the attention of the Government of [...] that [name] entered your territory [in order to attend.../for the purpose of...].

In this regard, the Permanent Mission of [...] reminds the Permanent Mission of [...] that [name] is subject to [a] [insert number in the case of multiple warrants] warrant[s] of arrest for [war crimes] [crimes against humanity] [genocide] issued by the International Criminal Court (ICC).

The Permanent Mission of [...] further notes that under article 86 of the Rome Statute, States Parties are obliged to cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court. Under article 89 (1) States Parties have a specific obligation to comply with requests from the Court for arrest and surrender. Indeed, in the present case, [host State] was obliged by its treaty obligations to immediately arrest [name] upon his/her arrival.

The Court's ability to fulfil its mandate is dependent on States meeting their cooperation obligations, in particular when it concerns the arrest and surrender of individual subject to arrest warrants.

As recognized in the preamble to the Rome Statute, the crimes under the Court's jurisdiction deeply shock the conscience of humanity and threaten the peace, security and well-being of the world. Under the Rome Statute, States Parties pledged to end impunity for the perpetrators of these crimes. In [sending State's] view, it is essential that we all meet this duty – this is the least we owe to the victims of the crimes allegedly committed by [name].

The Permanent Mission of [...] trusts that [...Ministry of Foreign Affairs/Embassy] shares [sending State's] commitment to ending impunity and will not allow [name] to enter its jurisdiction again without meeting its obligation to arrest and surrender [name].

33. Transit State Party:

[...] and has the honor to advise that it has been brought to the attention of the Government of [...] that [name] is intending to visit [name of destination State] [in order to attend.../for the purpose of...] and will travel through [name of transit State] as part of [his/her] journey.

The Permanent Mission of [...] notes that [name] is subject to [a] [insert number in the case of multiple warrants] warrant[s] of arrest for [war crimes] [crimes against humanity] [genocide] issued by the International Criminal Court (ICC). Consistent with the orders of the Court, the Registry has sent all States Parties to the Rome Statute a request to arrest and surrender [name] should [he/she] enter their territory.

The Permanent Mission of further notes that under article 86 of the Rome Statute, States Parties are obliged to cooperate fully with the Court in its investigation and prosecution of crimes within its jurisdiction. Under article 89 (1) States Parties have a specific obligation to comply with requests from the Court for arrest and surrender.

The Court's ability to fulfil its mandate is dependent on States meeting their cooperation obligations, in particular when it concerns the arrest and surrender of individual subject to arrest warrants.

As recognized in the preamble to the Rome Statute, the crimes under the Court's jurisdiction deeply shock the conscience of humanity and threaten the peace, security and well-being of the world. Under the Rome Statute, States Parties pledged to end impunity for the perpetrators of these crimes. In [sending State's] view, it is essential that all States Parties meet this duty – this is the least they owe to the victims of the crimes allegedly committed by [name].

The Permanent Mission of [...] trusts that [...] Ministry of Foreign Affairs/Embassy] shares [sending State's] commitment to ending impunity and will not allow [name] to transit its jurisdiction without meeting its obligation to arrest and surrender [name].

34. Non-State Party:

[...] and has the honor to advise that it has been brought to the attention of the Government of [...] that [name] is intending to enter your territory [in order to attend.../for the purpose of...].

The Permanent Mission of [...] notes that [name] is subject to [a] [insert number in the case of multiple warrants] warrant[s] of arrest for [war crimes] [crimes against humanity] [genocide] issued by the International Criminal Court (ICC).

In resolution 70/264, the United Nations General Assembly acknowledged the role of the ICC in a multilateral system that aims to end impunity, promote the rule of law, promote and encourage respect for human rights, achieve sustainable peace, and further the development of nations, in accordance with international law and the purposes and principles of the Charter of the United Nations. The General Assembly also emphasised the importance of cooperation with States that are not parties to the Rome Statute.

[Furthermore, the Security Council, in resolution [1593 (2005)/1970 (2011)] urged all States and concerned regional and other international organisations to cooperate fully with the ICC.]

The Court's ability to fulfil its mandate to end impunity is dependent on States' cooperation, in particular when it concerns the arrest and surrender of individual subject to arrest warrants.

It is universally recognized that the crimes under the Court's jurisdiction deeply shock the conscience of humanity and threaten the peace, security and well-being of the world. Ending impunity for these crimes therefore concerns all States. In [sending State's] view, it is crucial that all States cooperate with the ICC – this is the least we owe the victims of the crimes allegedly committed by [name].

The Permanent Mission of [...] trusts that [...Ministry of Foreign Affairs/Embassy] shares [sending State's] commitment to ending impunity and encourages [...Ministry of Foreign Affairs/Embassy] to cooperate with the ICC with regards to the arrest warrant issued against [name].

## C. Talking points

35. State Party:

(a) We understand that [name] is intending to visit [host State] in order to attend [...];

(b) The International Criminal Court (ICC) has issued a warrant of arrest against [name] for [war crimes/crimes against humanity/genocide];

(c) The establishment of the ICC was a milestone in the fight against impunity and effective criminal justice is the least we owe to victims of crimes of concern to the international community as a whole;

(d) The ICC relies on cooperation by each and every State Party in order to fulfil its mandate;

(e) For this reason, cooperation lies at the heart of the Rome Statute. Under article 86, States Parties shall, in accordance with the provisions of the Statute, cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court;

(f) Failure to comply with a request to cooperate by the ICC contrary to the provisions of the Rome Statute prevents the Court from exercising its functions;

(g) Specifically, it is obligatory for State Parties, in accordance with the relevant provisions of the Rome Statute and the procedure under their national law, comply with requests for arrest and surrender to the Court;

(h) [Where Security Council resolution 1593 (2005) applies: The UNSC has determined that the situation in Sudan constitutes a threat to international peace and security:

(i) Acting under Chapter VII of the Charter of the United Nations the Security Council has decided that the Government of Sudan and all other parties to the conflict in Darfur, shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor pursuant to the resolution;

(ii) While recognizing that States not party to the Rome Statute have no obligation under the Statute, the Council also urged all States and concerned regional and other international organizations to cooperate fully with the Court.]

(i) [Where Security Council resolution 1970 (2011) applies: The UNSC acting under Chapter VII of the Charter of the United Nations has decided that the Libyan authorities shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor pursuant to the resolution:

(i) While recognizing that States not party to the Rome Statute have no obligation under the Statute, the Council also urged all States and concerned regional and other international organizations to cooperate fully with the Court and the Prosecutor.]

(j) The Government of [...] trusts that [host State] shares [sending State's] commitment to ending impunity and will not allow [name] to enter its territory without meeting its obligation to arrest and surrender [name].

#### 36. Non-State Party:

(a) We understand that [name] is intending to visit [host State] in order to attend [...];

(b) The International Criminal Court (ICC) has issued a warrant of arrest against [name] for [war crimes][crimes against humanity][genocide];

(c) In resolution 70/264, the United Nations General Assembly acknowledged the role of the ICC in a multilateral system that aims to end impunity, promote the rule of law, promote and encourage respect for human rights, achieve sustainable peace and further the development of nations, in accordance with international law and the purposes and principles of the Charter of the United Nations:

(i) The General Assembly also emphasized the importance of cooperation with States that are not parties to the Rome Statute.

(d) [The Security Council, in resolution [1593/1970] also urged all States and concerned regional and other international organizations to cooperate fully with the ICC];

(e) The ICC's ability to fulfill its mandate to end impunity is dependent on States' cooperation, in particular when it concerns the arrest and surrender of individual subject to arrest warrants;

(f) It is internationally recognized that the crimes under the Court's jurisdiction deeply shock the conscience of humanity and threaten the peace, security and well-being of the world;

(g) Ending impunity for these crimes therefore concerns all States. It is crucial that all States cooperate with the ICC – this the least we owe the victims of the crimes allegedly committed by [name].

#### **D. Draft media release**

37. [Name of State Party] is deeply concerned by advice that [name] [will travel/has travelled] to [host State] for [description of the purpose of travel].

38. The International Criminal Court (ICC) has issued [a] [insert number in the case of multiple warrants] warrant[s] of arrest for [war crimes] [crimes against humanity] [and] [genocide] against [name] in relation to allegations of deeply shocking crimes committed in [place of the commission of alleged crimes].

39. [This/These] warrant[s] [has/have] now been outstanding for [x] years.

40. [All States Parties to the Rome Statute have a binding legal obligation to arrest and surrender persons subject to a warrant of arrest issued by the ICC who are found on their territory.] [Name of country] has a specific obligation to cooperate with the Court under UN Security Council resolution [1593 (2005)/1970 (2011)]. [In addition,] UN Security Council resolution [1593 (2005)/1970 (2011)] urges all States and concerned regional and other international organizations to cooperate fully with the Court and the Prosecutor.]

41. In the name of the victims of Rome Statute crimes committed in [place of the commission of alleged crimes], [sending State] [calls on [host State] to ensure that it meets its obligations in full and helps to advance the international community's efforts to deliver justice to the victims of these appalling crimes] [expresses our strong disappointment that [host State] failed to support the international community's efforts to deliver justice to the victims of these appalling crimes.]

#### **E. Draft tweets**

42. Before and during travel:

(a) [Name of State Party] is deeply concerned by advice that [name] [will travel/has travelled] to [host State] for [description of the purpose of travel]. #ICC #[name] #[host State] [reference to press release]

(b) The ICC has issued [a] [insert number in the case of multiple warrants] warrant[s] of arrest for [war crimes] [crimes against humanity] [and] [genocide] against [name] in relation to allegations of deeply shocking crimes committed in [place of the commission of alleged crimes]. This/These] warrant[s] [has/have] now been outstanding for [x] years. #ICC #[name] #ICC#[name] #arrestwarrant [reference to press release]

(c) Remind that [All States Parties to the Rome Statute have a binding legal obligation to arrest and surrender persons subject to a warrant of arrest issued by the ICC who are found on their territory. #ICC #[name] [reference to press release]

(d) [Name of country] has a specific obligation to cooperate with the Court under UN Security Council resolution [1593 (2005)/1970 (2011)]. [In addition,] UN Security Council resolution [1593 (2005)/1970 (2011)] urges all States and concerned regional and other international organizations to cooperate fully with the Court and the Prosecutor.] #ICC #[name] [reference to press release]

(e) [Name of State Party] regrets that [name] was not surrendered to the ICC while attending [purpose of travel] in [host State]. Cooperation is necessary for strengthening the international criminal justice system and bringing justice to the victims. #accountability #ICC #justicematters

## IV. Sensitizing interlocutors to non-cooperation issues

43. States Parties are encouraged to express their support for the ICC in all relevant bilateral and multilateral meetings, especially if these meetings are with States Parties and concern the topics of the rule of law, international law or accountability for serious international crimes.

44. In general, it is advisable that the topic of non-cooperation is raised by underlining States' obligation to cooperate with the ICC, the importance of ensuring accountability for serious international crimes and the need to deliver justice to the victims of such crimes. If feasible, it can be inquired what obstacles a particular State might encounter regarding cooperation with the ICC.

45. In order to ensure that support for the ICC, and the importance of cooperation with the Court, is raised in all meetings, as appropriate, States Parties are encouraged to mainstream messaging by reaching out to all persons handling issues related to international cooperation and justice within the Ministry of Foreign Affairs and Ministry of Justice of their respective countries.

46. States Parties are also encouraged to develop contacts with members of civil society active in encouraging States to meet their non-cooperation obligations. This could include debriefings after instances of non-cooperation take place.

47. Seminars and workshops including representatives of civil society, the Court and States Parties may help maintain public attention on situations where non-cooperation is preventing the Court from fulfilling its mandate.

## V. Security Council referrals

48. To date, the United Nations Security Council (UNSC) has referred two situations to the Court under article 13(b) of the Rome Statute: the situation in Darfur, Sudan (UNSC resolution 1593 (2005)) and the situation in Libya (UNSC resolution 1970 (2011)).

### A. UNSC referral resolutions

49. Under operative paragraph 2 of resolution 1593 (2005), the Council:

*“Decides that the Government of Sudan and all other parties to the conflict in Darfur, shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor pursuant to this resolution and, while recognizing that States not party to the Rome Statute have no obligation under the Statute, urges all States and concerned regional and other international organizations to cooperate fully.”*

50. The Council used the same language in operative paragraph 5 of resolution 1970 (2011), with the clarification that cooperation should be extended to the Court and the Prosecutor:

*“Decides that the Libyan authorities shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor pursuant to this resolution and, while recognizing that States not party to the Rome Statute have no obligation under the Statute, urges all States and concerned regional and other international organizations to cooperate fully with the Court and the Prosecutor.”*

### B. The obligation to cooperate

51. In a series of decisions, the Court has held that the Rome Statute, the Elements of Crimes and the Rules of Procedure and Evidence govern investigations and prosecutions arising from situations referred to the Court by the UNSC.

52. For example, in Decision on Libya's Submissions Regarding the Arrest and Surrender of Saif Al-Islam Gaddafi (ICC-01/11-01/11), Prosecutor v Saif Al-Islam Gaddafi and Abdullah Al-Senussi, Pre-Trial Chamber I, 7 March 2012 (at 12), the Pre-Trial Chamber held that:

“[...] although Libya is not a State Party to the Statute, it is under an obligation to cooperate with the Court. This obligation stems directly from the Charter of the United Nations, more precisely article 25 and Chapter VII of that Charter, and UNSC resolution 1970. UNSC resolution 1970 orders Libya to "cooperate fully" with the Court, which means that the Statute, and especially its Part IX, is the legal framework within which Libya must comply with the Surrender Request [...].”

### **C. Future referral resolutions**

53. Notwithstanding the aforementioned Pre-Trial Chamber decisions, arguments about the Rome Statute's inapplicability to non-States Parties continue to be ventilated.

54. In order to avoid such debates, which may be perceived as detracting from the decisions of both the UNSC and the ICC, the following language could be supported by States Parties for inclusion in future UNSC referral resolutions, on the basis that it more closely reflects the cooperation language found in resolutions 827 (1993) and 955 (1994), which respectively established the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda:

“*Decides* that [X State] [Y authorities], shall cooperate fully with and provide any necessary assistance to the Court and the Prosecutor pursuant to this resolution and the Rome Statute of the International Criminal Court, the Elements of Crimes and the Rules of Evidence and Procedure of the International Criminal Court and, while recognizing that other States not party to the Rome Statute have no obligation under the Statute, *urges* all States and concerned regional and other international organizations to cooperate fully with the Court and the Prosecutor.”

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