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Report of the Bureau on cooperation**Note by the Secretariat**

Since the ninth session of the Assembly of States Parties the facilitator for cooperation has carried forward her mandate as set out in resolution ICC-SP/8/Res. 2 and the relevant provisions of ICC-SP/9/Res.3.

A series of informal consultations were held involving the Court, States Parties, other States, non-governmental organizations and relevant organizations to consider the issues identified in ICC-SP/8/2 para. 16 (a).

Pursuant to paragraph 11 of resolution ICC-ASP/9/Res.3, of 10 December 2010, the Bureau of the Assembly of States Parties hereby submits for consideration by the Assembly the report on cooperation.

I. Introduction

1. Operative paragraph 11 of resolution ICC-ASP/9/Res.3¹ entitled “Strengthening the International Criminal Court and the Assembly of States Parties”, adopted by the Assembly on 10 December 2010, requested the facilitator to continue her work on cooperation as provided for in resolution ICC-ASP/8/Res.2, and to explore proposals to facilitate the sharing of experience and other initiatives to enhance cooperation, such as a standing item on cooperation within the Assembly’s agenda.
2. Following the adoption of resolution ICC-ASP/8/Res.2 by the Assembly of States Parties, the Bureau appointed Ambassador Mary Whelan (Ireland) as facilitator for cooperation at its first meeting on 19 January 2010.
3. The Court issued an update on its report on cooperation.²

II. Organization of work

4. In 2011, The Hague Working Group held a total of 17 informal consultations on the issue of cooperation with representatives of States Parties and the different organs of the Court, respectively on 25 February, 9 and 23 March, 8 April, 20 May, 20 July, 30 September, 6 and 26 October, 4, 7 and 11 November 2011.

¹ *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Eighth session, The Hague, 18-26 November 2009* (ICC-ASP/8/20), vol. I, part II.

² Report of the Court on cooperation (ICC-ASP/10/40).

5. At its first meeting on 25 February 2011, the Working Group discussed the issue of the lack of implementing legislation in some States Parties as an obstacle to the effective implementation of cooperation requests from the Court. Several meetings of the Working Group were dedicated to the issue of interim release, where the Court presented a model agreement, entitled “Exchange of letters on interim release”. The issues of sentence enforcement, witness relocation agreements and witness relocation in emergency situations were further discussed in the informal consultations. A briefing was also given on the legal tools project.

6. Six meetings of the Working Group were dedicated to the preparations for the tenth session of the Assembly of States Parties, where the Court presented its updated report on cooperation, in accordance with operative paragraph 13 of resolution ICC-ASP/9/Res.3. Further to the comments and remarks on the initial draft report, the Court circulated a revised version of its report on cooperation, dated 18 October 2011.

7. The Working Group had a preliminary discussion of the Court’s report. Some States Parties expressed their concerns about some aspects of the report. There may be merit in a more thorough discussion of the report in 2012.

8. The Working Group agreed to present a draft stand-alone resolution on cooperation for adoption at the tenth session of the Assembly (annex I). In addition, the Working Group also prepared a draft provision for inclusion in the omnibus resolution (annex II).

III. Recommendation

Pursuant to operative paragraph 11 of resolution ICC-ASP/9/20, the Working Group recommended that a specific item on cooperation be included in the agenda of the eleventh session of the Assembly of States Parties, and that the Assembly continues to monitor cooperation with a view to facilitating States Parties in sharing their experiences and considering other initiatives to enhance cooperation with the Court³.

³ See operative paragraph 14 of the annexed draft resolution on cooperation.

Annex I

Draft resolution on cooperation

Recalling the provisions of the Rome Statute, the Declaration on Cooperation (RC/Dec.2) agreed by States Parties at the Review Conference in Kampala and previous resolutions and declarations of the Assembly of States Parties with regard to cooperation including ICC-ASP/8/Res.2, ICC-ASP/9/Res.3, and the sixty-six recommendations annexed to ICC-ASP/6/Res.2;

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 fully fulfil its mandate;

Taking note of the report prepared by the Court¹ on the issue of cooperation and *looking forward* to a continuing dialogue with the Court on the issues raised in the report²;

1. *Welcomes* the acknowledgement in paragraph 2 of the report of the Court that “cooperation with the Court has generally been forthcoming”³;
2. *Emphasizes* the importance of timely and effective cooperation and assistance from States Parties and other States under an obligation to cooperate 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 *notes* the impact that non-execution of Court requests can have 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,;
3. *Notes* that focused requests for cooperation and assistance from the Court to States Parties and other States will enhance the capacity of States to respond expeditiously to requests from the Court;
4. *Recalls* that the ratification of the Rome Statute must be matched by national implementation of the obligations emanating therefrom, notably through implementing legislation and adopting appropriate measures at the national level 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;
5. *Emphasizes* the need for States Parties to cooperate with the Court in such areas as preserving and providing evidence, securing the arrest and surrender to the Court of persons for whom arrest warrants have been issued, sharing information⁴ and protecting victims;
6. *Calls* upon all States Parties and other States, where possible, 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 witnesses who are at risk and sentence enforcement;
7. *Commends* the work of the Court on framework agreements or arrangements or any other means in areas such as interim release, final release, witness relocation and sentence enforcement, *encourages* the Court to continue its work in this regard, and *encourages* all States Parties to consider, where possible, strengthening voluntary cooperation in these areas;
8. *Underlines* the need for a proactive approach by the Court in developing, in consultation with States Parties, effective strategies to facilitate cooperation by States Parties and other States to identify, track, freeze or seize proceeds, property and assets, and the corresponding obligation of States Parties to comply with such requests by the Court, as

¹ ICC-ASP/10/40.

² See para. 7 of the report of the Bureau on cooperation (ICC/ASP/10/28): “The Working Group had a preliminary discussion of the Court’s report. Some States Parties expressed their concerns about some aspects of the report. There may be merit in a more thorough discussion of the report in 2012.”

³ Report of the Court on cooperation (ICC/ASP/10/28), para. 2.

⁴ In accordance with articles 72 and 93 paragraph 1 (l), of the Rome Statute.

envisaged in article 93, paragraph 1 (k), of the Rome Statute, for the purposes set out in the Statute.⁵

9. *Welcomes* the establishment of the Special Fund for Relocations and *encourages* all States Parties to consider, where possible, entering into relocation agreements or arrangements with the Court, including on a cost neutral basis and to consider making voluntary contributions to the Special Fund for Relocations;

10. *Stresses* the importance of States Parties responding, to the extent possible, to requests for assistance on behalf of defence teams and *notes* that the Court may facilitate the communication of such requests, when appropriate;

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

12. *Emphasizes* the importance of States Parties enhancing support for the court at the international level;

13. *Requests* the Bureau to establish a facilitation of the Assembly of States Parties for cooperation to consult with States Parties, the Court and non-governmental organizations, as well as other interested States and relevant organizations in order to further strengthen cooperation with the Court;

14. *Decides* that the Assembly of States Parties shall continue to monitor cooperation with a view to facilitating States Parties in sharing their experiences and considering other initiatives to enhance cooperation; to this end, *decides* that the Assembly will include a specific item on cooperation on the agenda of its eleventh session;

15. *Requests* the Bureau to report on significant developments to the Assembly of States Parties at its eleventh session and *further requests* the Court to submit an updated report on cooperation to the Assembly at its twelfth session.

Annex II

Draft paragraph for inclusion in the omnibus resolution

The Assembly of States Parties,

[...]

Recognizes the importance of cooperation in 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;

[...]

⁵ Articles 77 (2); 79 (2); 93 (1) (k); and 109 (2), of the Rome Statute.