Part III
Resolutions adopted by the Assembly of States Parties

Resolution ICC-ASP/10/Res.1

Adopted at the 7th plenary meeting, on 20 December 2011, by consensus

ICC-ASP/10/Res.1
Amendments to rule 4 of the Rules of Procedure and Evidence

The Assembly of States Parties,

Recalling the need to conduct a 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,

Recognizing that enhancing the efficiency and effectiveness of the Court is of a common interest both for the Assembly of States Parties and the Court,

Recalling operative paragraphs 1 and 2 of resolution ICC-ASP/9/Res.2 [1] and article 51 of the Rome Statute,

1. *Decides* that rule 4, paragraph 1, of the Rules of Procedure and Evidence[2] is replaced as follows:

> "Rule 4
> Plenary sessions
>
> 1. The judges shall meet in plenary session after having made their solemn undertaking, in conformity with rule 5. At that session the judges shall elect the President and Vice-Presidents."

2. *Further decides* that the following rule 4 *bis* is inserted after rule 4:

> "Rule 4 *bis*
> The Presidency
>
> 1. Pursuant to article 38, paragraph 3, the Presidency is established upon election by the plenary session of the judges.
>
> 2. As soon as possible following its establishment, the Presidency shall, after consultation with the judges, decide on the assignment of judges to divisions in accordance with article 39, paragraph 1."

[1] *Official Records … Ninth session … 2010* (ICC-ASP/9/20), vol. I.
[2] *Official Records … First session … 2002* (ICC-ASP/1/3 and Corr.1), part II.A.

Resolution ICC-ASP/10/Res.2

Adopted at the 7th plenary meeting, on 20 December 2011, by consensus

ICC-ASP/10/Res.2
Cooperation

The Assembly of States Parties,

Recalling the provisions of the Rome Statute, the Declaration on Cooperation (RC/Dec.2) agreed by States Parties at the Review Conference in Kampala and previous resolutions and declarations of the Assembly of States Parties with regard to cooperation including ICC-ASP/8/Res.2, ICC-ASP/9/Res.3, 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 Court[1] on the issue of cooperation and *looking forward* to a continuing dialogue with the Court on the issues raised in the report,[2]

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 information[4] 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;

[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.

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 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.

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

Resolution ICC-ASP/10/Res.3

Adopted at the 7th plenary meeting, on 20 December 2011, by consensus

ICC-ASP/10/Res.3
Reparations

The Assembly of States Parties,

Recalling article 75, paragraph 1, and article 112, paragraph 2 (g), of the Rome Statute,

Mindful that reparations to the victims of the most serious international crimes are critical components of the Rome Statute and that it is therefore essential that the relevant provisions of the Rome Statute are efficiently and effectively implemented,

Noting with concern that the Court has not yet established principles relating to reparations, on which any determination of the extent and scope of any damage, loss and injury to, or in respect of, victims is to be based, in accordance with article 75, paragraph 1, and that in the absence of such principles pre-established by the Court practical inconsistency and unequal treatment of victims may occur,

Recognizing that, under article 75, paragraph 2, a reparations order may be made directly against a convicted person while the award for reparations may be made through the Trust Fund for Victims,

Acknowledging that the full panel of the Trial Chamber is expected to handle reparations pursuant to article 39, paragraph 2 (b),

Concluding that guidance and clarification from States Parties are essential in order to ensure the effective and efficient implementation of the reparations provisions,

1. *Requests* the Court to ensure that Court-wide coherent principles relating to reparations shall be established in accordance with article 75, paragraph 1, based on which the Court may issue individual orders for reparations, and further *requests* the Court to report back to the Assembly at its eleventh session;

2. *Stresses* that as liability for reparations is exclusively based on the individual criminal responsibility of a convicted person, under no circumstances shall States be ordered to utilize their properties and assets, including the assessed contributions of States Parties, for funding reparations awards, including in situations where an individual holds, or has held, any official position;

3. *Underlines* that as the freezing and identification of any assets of the convicted person, which are indispensable for reparations, is of paramount importance the Court should seek to take all measures to that end, including effective communication with relevant States so that they are in a position to provide timely and effective assistance pursuant to article 93, paragraph 1 (k), where possible, in all cases and at as early a stage of the proceedings as possible, irrespective of the declaration of indigence for the purpose of legal aid which bears no relevance to the ability of the accused to provide reparations;

4. *Recognizes* that as adjudication on the individual criminal responsibility shall remain the focus of the judicial mandate of the Court, evidence concerning reparations may be taken during trial hearings so as to ensure that the judicial phase of reparations is streamlined and does not result in any delay thereof;

5. *Invites* the Bureau to report to the Assembly at the next session on reparations and any appropriate measures.

Resolution ICC-ASP/10/Res.4

Adopted at the 9th plenary meeting, on 21 December 2011, by consensus

ICC-ASP/10/Res.4
Programme budget for 2012, the Working Capital Fund for 2012, scale of assessments for the apportionment of expenses of the International Criminal Court, financing appropriations for 2012 and the Contingency Fund

The Assembly of States Parties,

Having considered the 2012 proposed programme budget and the 2012 proposed supplementary budget of the International Criminal Court ('the Court') and the related conclusions and recommendations on the 2012 proposed programme budget for the Court contained in the report of the Committee on Budget and Finance on the work of its sixteenth and seventeenth sessions and the statement made by the Chair of the Committee on Budget and Finance ("the Committee") at the plenary meeting on 15 December 2011.

A. Programme budget for 2012

The Assembly of States Parties,

1. *Approves* appropriations totalling €111,000,000 with €108,800,000 for the budget and €2,200,000 to replenish the Contingency Fund. The €108,800,000 is for the following appropriation sections:

Appropriation section		*Thousands of euros*
Major Programme I	- Judiciary	10,284.0
Major Programme II	- Office of the Prosecutor	27,723.7
Major Programme III	- Registry	65,041.7
Major Programme IV	- Secretariat of the Assembly of States Parties	2,777.3
Major Programme VI	- Secretariat of the Trust Fund for Victims	1,450.6
Major Programme VII-1	- Project Director's Office (permanent premises)	1,337.2
Major Programme VII-5	- Independent Oversight Mechanism	185.5
Total		**€108,800.0**

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

	Judiciary	*Office of the Prosecutor*	*Registry*	*Secretariat Assembly of States Parties*	*Secretariat Trust Fund for Victims*	*Project Director's Office*	*Independent Oversight Mechanism*	*Total*
USG		1						1
ASG		2	1					3
D-2								0
D-1		2	4	1	1	1		9
P-5	3	12	17	1	1			34
P-4	3	29	39	1		1	1	74
P-3	21	44	66	1	3			135
P-2	5	47	61	1			1	115
P-1		17	7					24
Subtotal	*32*	*154*	*195*	*5*	*5*	*2*	*2*	*395*

	Judiciary	*Office of the Prosecutor*	*Registry*	*Secretariat Assembly of States Parties*	*Secretariat Trust Fund for Victims*	*Project Director's Office*	*Independent Oversight Mechanism*	*Total*
GS-PL	1	1	17	2				21
GS-OL	15	63	267	2	2	1		350
Subtotal	*16*	*64*	*284*	*4*	*2*	*1*		*371*
Total	**48**	**218**	**479**	**9**	**7**	**3**	**2**	**766**

B. Working Capital Fund for 2012

The Assembly of States Parties,

Resolves that the Working Capital Fund for 2012 shall be established in the amount of €7,405,983, 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.

C. Scale of assessment for the apportionment of expenses of the Court

The Assembly of States Parties,

1. *Decides* that, for 2012, 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 2012 and adjusted in accordance with the principles on which that scale is based,[1]

2. *Notes* that, in addition, any maximum assessment rate for the largest contributors applicable for the United Nations regular budget will apply to the Court's scale of assessments.

D. Financing appropriations for 2012

The Assembly of States Parties,

Resolves that, for 2012, budget appropriations amounting to €108,800,000 and the amount for the Working Capital Fund of €7,405,983, approved by the Assembly under part I, paragraph 1, and part II, respectively, of the present resolution, be financed in accordance with regulations 5.1, 5.2 and 6.6 of the Financial Regulations and Rules of the Court.

E. 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 and thirteenth sessions,

Taking note that the Fund should be replenished up to an amount the Assembly deems appropriate, but no less than €7 million,

Taking note that the Fund will reach a level below €7 million by the end of 2011,

1. *Decides* to maintain the Contingency Fund at the level of €7 million for 2012;

2. *Decides* to replenish the Fund in the amount of €2.2 million in 2012;[2]

3. *Requests* the Bureau to keep the €7 million threshold under review in light of further experience on the functioning of the Contingency Fund.

[1] Rome Statute of the International Criminal Court, article 117.
[2] The suggested exact amount of replenishment will be communicated by the Court after the closure of the accounts of the financial period.

F. Transfer of funds between major programmes under the 2011 approved programme budget

The Assembly of States Parties,

Noting that in 2011 the Court will make recourse to the Contingency Fund,

Recognizing that under Financial Regulation 4.8, no transfer between appropriation sections may be made without authorization by the Assembly,

Decides that, in line with established practice, the Court may transfer funds between major programmes at the conclusion of 2011 should costs for activities 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.

G. Referrals by the Security Council

The Assembly of States Parties,

Noting the financial implications of the situations referred to the Court by Security Council resolutions 1593 and 1970,

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,

Invites the Court to include this matter in its institutional dialogue with the United Nations and to report thereon to the eleventh session of the Assembly.

H. A strategic approach to an improved budgetary process

The Assembly of States Parties,

Stressing that the Court's budgetary process and its interface with the Committee would benefit from more strategic and consolidated approach so as to identify further efficiencies,

1. *Requests* the Study Group on Governance, in consultation with The Hague Working Group, to engage with the Court and the Committee, with a view to enhancing the transparency and predictability of the budgetary process and to present its preliminary recommendations to the Bureau before August 2012,

2. *Requests* in this regard the Court to prepare, if it proposes any increase of the budget for 2013, a paper which details the Court's options where reductions would be made in order to bring the level of the approved budget for 2013 in line with the level of the approved budget for 2012, as well as how those reductions would impact on the Court's activities.

I. Review of Personnel Conditions

The Assembly of States Parties,

Recalling the recommendations of the fourth,[3] twelfth[4] and fourteenth[5] sessions of the Committee concerning the appraisal system of staff within the Court,

[3] *Official Records … Fourth* session … *2005* (ICC-ASP/4/32) part II.6(a), section E, para. 46.

Recalling the discussions between States Parties and the International Civil Service Commission at the tenth session of the Assembly,

Calls upon the Court to review the appraisal system, including through a consideration of different options by which satisfactory performance is assessed, and the discretionary elements of terms and conditions of service within the United Nations common system, and to report back to the Committee at its eighteenth session.

J. Legal aid

The Assembly of States Parties,

Noting the fundamental importance of the legal aid system to ensure the fairness of proceedings, including in particular the rights of the defendants and victims,

Taking into account the analysis and proposals of the Committee at its seventeenth session for the mitigation of the increasing costs of legal aid,

Noting the Registrar's discussion paper on legal aid[6] and the options contained therein,

1. *Requests* the Registrar to finalize the ongoing consultations, as appropriate, with the stakeholders on the discussion paper, in accordance with rule 20.3 of the Rules of Procedure and Evidence, and to present a proposal for a review of the legal aid system to the Bureau before 15 February 2012;

2. *Mandates* the Bureau to decide on the implementation of the revised legal aid system and requests it to do so before 1 March 2012 with a view to allowing for its application as of 1 April 2012 to cases currently before the Court and future cases;

3. *Requests* the Court and the Bureau to continue reviewing the legal aid system, including its application pursuant to paragraph 2 above and to report their findings to the Assembly at its eleventh session;

4. *Invites* further the Court to continue to monitor and assess the performance of the legal aid system in consultation with States Parties and, as appropriate, other relevant stakeholders and, as appropriate, to propose measures to further enhance the efficiency of the system.

K. Interim premises of the Court

The Assembly of States Parties,

1. *Takes note* of the Court's report to the Assembly as transmitted by the Bureau to the Assembly[7] and *adopts* the recommendations therein,

2. *Authorizes* the Court, through the Registrar, to conclude a rental agreement for its current interim premises on the basis of the terms outlined in the report.

[4] *Official Records ... Eighth session ... 2009* (ICC-ASP/8/20), part B.2, section G: para. 57.
[5] *Official Records ... Ninth session ... 2010* (ICC-ASP/9/20), part B.2, section G: para. 63.
[6] ASP10/01P13 and Add.1.
[7] ICC-ASP/10/41.

Resolution ICC-ASP/10/Res.5

Adopted at the 9th plenary meeting, on 21 December 2011, by consensus

ICC-ASP/10/Res.5
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 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 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 there can be no lasting peace without justice and that peace and justice are thus complementary requirements,

Convinced further that justice and the fight against impunity 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,

Underscoring the importance of the tenth anniversary of the entry into force of the Rome Statute and the establishment of the International Criminal Court in 2012 and the contribution of the International Criminal Court to guarantee lasting respect for and the enforcement of the 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,

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

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

Recalling the success of the first Review Conference of the Rome Statute, held in Kampala, Uganda, from 31 May to 11 June 2010, as well as the renewed spirit of cooperation and solidarity and the firm commitment to fighting impunity for the most serious crimes of international concern to guarantee lasting respect for the enforcement of international criminal justice, reaffirmed by the States Parties in the Kampala Declaration,

Recalling 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,[1]

Noting that it is the decision of the African Union Summit[2] to reject for now the opening of a liaison office of the Court to the African Union Headquarters in Addis Ababa, and *reiterating* that the presence of such a liaison office at the Headquarters of the African

[1] *Official Records ... Eighth session ... 2009* (ICC-ASP/8/20), vol. I, part II, ICC-ASP/8/Res.3, para. 28.
[2] 15th African Union Summit decision: Kampala, Uganda, from 19 to 27 July 2010.

Union in Addis Ababa 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,

Conscious of the importance of equitable geographical representation in the organs of the Court, and in the work of the Assembly and its subsidiary bodies,

Conscious also of the importance of gender balance in the organs of the Court, and to the extent possible, 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, and *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,

Conscious of the vital role of field operations in the Court's work in situation countries,

Conscious 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,

Rome Statute of the International Criminal Court

1. *Welcomes* the States that have become a Party to the Rome Statute of the International Criminal Court since the ninth session of the Assembly and *invites* States that are not yet parties to the Rome Statute to become so as soon as possible;

2. *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;

3. *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 judicial cooperation 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 appropriate;

4. *Welcomes* the report of the Bureau regarding the implementation of the Plan of action for achieving universality and full implementation of the Rome Statute,[3] *notes with appreciation* the efforts of the Court's President, the Office of the Prosecutor, the President of the Assembly of States Parties, the Assembly of States Parties, States Parties, and of the civil society to enhance the effectiveness of universality related efforts and to encourage States to become parties to the Rome Statute, *endorses* the recommendations of the report, and requests the Bureau to continue to monitor its implementation and to report thereon to the Assembly during its eleventh session;

5. *Invites* all parties to commemorate the contribution of the International Criminal Court to guarantee lasting respect for and the enforcement of international justice at the tenth anniversary of the entry into force of the Rome Statute in 2012;

[3] 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/10/25).

Cooperation

6. *Calls upon* States Parties to comply with their obligations under the Rome Statute, in particular the obligation to cooperate in accordance with Part 9, *encourages* cooperation between States Parties to the Rome Statute particularly in situations where it is being challenged, *further calls upon* States Parties to continue and strengthen their efforts to ensure full and effective cooperation with the Court in accordance with the Statute, in particular in the areas of implementing legislation, enforcement of Court decisions and execution of arrest warrants;

7. *Encourages* States Parties to express their political and diplomatic support to the Court;

8. *Calls upon* States Parties to give concrete expression in actions to the commitments made in the statements, declarations and pledges made at Kampala;

9. *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 report of the Bureau on potential Assembly procedures relating to non-cooperation[4] and *decides* to adopt the procedures annexed to the present resolution;

Agreement on Privileges and Immunities

10. *Welcomes* the States Parties that have become a Party to the Agreement on the Privileges and Immunities of the International Criminal Court and *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 incorporate it in their national legislation, as appropriate;

11. *Recalls* that the Agreement on the Privileges and Immunities of the International Criminal Court and international practice exempt salaries, emoluments and allowances paid by the Court to its officials and staff from national taxation and *calls upon* States that have not yet become parties to this Agreement 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;

12. *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 the Privileges and Immunities of the International Criminal Court 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;

Host State

13. *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;

Strengthening of the International Criminal Court

14. *Takes note* of the statements presented to the Assembly by the heads of the organs of the Court, including the President, the Prosecutor and the Registrar, as well as by the Chair of the Board of Directors of the Trust Fund for Victims, the Chair of the Committee on Budget and Finance, and the Chair of the Oversight Committee on permanent premises;

15. *Takes note* of the latest report on the activities of the Court to the Assembly;[5]

[4] ICC-ASP/10/37.
[5] ICC-ASP/10/39.

16. *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[6] referred to the Court or which the Prosecutor initiated proprio motu;

17. *Takes note* of the experience already gained by other relevant international organizations in solving operational challenges similar to those encountered by the Court and, while reiterating its respect for the independence of the Court, *invites* the Court to continue to take note of best practices of other relevant international organizations and tribunals;

18. *Encourages* the Court to continue the dialogue with other international courts and tribunals to assist with their planning on residual issues and *invites* the Court to conduct, in consultation with the Oversight Committee on the permanent premises, a preliminary assessment of the possible modalities of hosting one or more residual mechanisms at the permanent premises of the Court on a cost-neutral basis for the Court, and without prejudice to the flexibility of the project and the area for the mandate of the Court;

19. *Welcomes* the report, adopted by the Bureau pursuant to paragraph 25 of resolution ICC-ASP/9/Res.3,[7] *decides* to adopt the recommendations contained therein, and *requests* the Bureau to start the process of preparing the election, by the Assembly of States Parties, of the members of the Advisory Committee on nominations of judges of the International Criminal Court in accordance with the terms of reference annexed to the report;

20. *Emphasizes* the importance of nominating and electing the most highly qualified judges in accordance with article 36 of the Rome Statute; for this purpose *encourages* States Parties to conduct thorough and transparent processes to identify the best candidates, and *decides* to review the procedure for the election of judges as set forth in section B of the resolution ICC-ASP/3/Res.6 on the occasion of future elections with a view to making any improvements as may be necessary, and requests the Bureau to report thereon to the Assembly at its eleventh session;

21. *Welcomes* the election of the Prosecutor of the International Criminal Court by consensus;

22. *Notes* the process established by the Bureau of the Assembly of States Parties for the election of the second Prosecutor of the International Criminal Court and *requests* the Bureau, through open-ended consultations with States Parties, to examine ways of strengthening future elections of the Prosecutor, including an evaluation of such a process;

23. *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;

24. *Notes with appreciation* the 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 flexibility 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;

25. *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;

26. *Commends* the important work of the New York Liaison Office of the Court, which enables regular and efficient cooperation and exchange of information between the Court and the United Nations and the effective conduct of the Bureau as well as of the New York Working Group and *expresses* its full support for the work of the New York Liaison Office;

27. *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

[6] United Nations Security Council resolution 1593 (2005) and 1970 (2011).
[7] Report of the Bureau on the establishment of an Advisory Committee on the appointment of judges of the International Criminal Court (ICC-ASP/10/36).

and commits to the Court's further regular engagement in Addis Ababa with the African Union and diplomatic missions in anticipation of establishing its liaison office;

28. *Welcomes* the presentation of the eighth report of the Court to the General Assembly of the United Nations;[8]

29. *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;

30. *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 in line of the report of the Court, 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 and sound management;

31. *Requests* the Bureau in consultation with the Court and relevant bodies to consider the proper arrangement of salary and all allowances for judges, whose terms have been extended in accordance with article 36(10), and to report thereon to the Assembly at its eleventh session;

32. *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;

Counsel

33. *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;

34. *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(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;

Governance

35. *Stresses* the need to continue a 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 *and invites* the organs of the Court to further engage in a such a dialogue with States Parties;

36. *Takes note of* the Bureau report on the Study Group of Governance[9] and the recommendations contained therein;

37. *Requests* the Bureau to extend, for a period of one year, the mandate of the Study Group on Governance, established in accordance with the resolution ICC-ASP/9/Res.2, within The Hague Working Group, to continue to facilitate the dialogue referred to in previous paragraph with a view to identifying issues where further action is required, in

[8] United Nations document A/66/309.
[9] ICC-ASP/10/30.

consultation with the organs of the Court, and formulating recommendations to the Assembly through the Bureau;

38. *Welcomes* the initiative of the Court to consider streamlining the judicial process in collaboration with the States Parties;

Strategic planning process of the International Criminal Court

39. *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[10] in affected countries, including, where appropriate, by early outreach from the outset of the Court's involvement, including during the preliminary examination stage;

40. *Recalls* the importance of public information and communication about the Court and its activities that constitute a shared responsibility of the Court and States Parties, while acknowledging the significant contribution of other stakeholders;

41. *Notes* with appreciation the initiatives undertaken to celebrate, for the first time, and in the context of its information and communication strategy[11] the 17 July as Day of International Criminal Justice[12] and *recommends* that, on the basis of lessons learned, all relevant stakeholders, together with the Court and other international Courts and Tribunal, engage in preparing the 2012 celebration with a view to reinforcing the international fight against impunity;

42. *Notes* with interest the preparation of the tenth anniversary of the International Criminal Court and *encourages* States Parties to engage in those activities, as well as in other significant activities to implement the Court's Public Information Strategy 2011-2013,[13] including in consultation with the Court and other relevant stakeholders;

43. *Notes* the recent presentation by the Court of its "Draft Guidelines governing the Relations between the Court and Intermediaries" and agrees to come back to this important issue for a more in-depth discussion;

44. *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 and, in this regard, *requests* that the Court, in consultation with States Parties, continues to work towards setting a hierarchy of its priorities in order to facilitate strategic and budgetary choices;

45. *Invites* the Court to present, based on a thorough and transparent assessment of results achieved through Court activities in reaching the priorities set, an appropriate set of performance indicators, including the horizontal parameters of efficiency and effectiveness, for the Court activities and on the retroaction of lessons learned into the strategic planning process;

46. *Reiterates* its willingness to engage in constructive dialogue with the Court also on such issues as the adequate management of priority risks, and the development of a Court strategy on field operations;

47. *Welcomes* the announced review of the Strategic Plan in 2012 and stresses its readiness to contribute early on to the consultations in the context of this review and, where appropriate, in the context of the budgetary process, which is intended to strengthen and operationalize the impact of strategic planning on the development of the Court and its activities;

Victims and affected communities and Trust Fund for Victims

48. *Notes* the ongoing work of the Court in reviewing its Strategy in relation to victims and its report thereon and *requests* the Court to finalize the review in consultation with

[10] ICC Strategic Plan for Outreach (ICC-ASP/5/12).
[11] ICC/ASP/9/29.
[12] *Official Records ... Review Conference ... 2010* (RC/11), part II.B, Kampala Declaration (RC/Decl.1), para. 12.
[13] ICC/ASP/9/29.

States Parties and other relevant stakeholders and report thereon in advance of the Assembly at its eleventh session;

49. *Notes with concern* reports from the Court on the continued backlogs the Court has had in processing applications from victims seeking to participate, a situation which might impact on effective implementation of the rights of victims under the Rome Statute, and *underlines*, in this regard, the need to consider reviewing the victim participation system with a view to ensuring its sustainability, effectiveness and efficiency; *requests* the Court to conduct such a review in close consultation with the Bureau and relevant stakeholders and to report thereon to the Assembly at its eleventh session;

50. *Calls upon* States, international and intergovernmental organizations, individuals, corporations and other entities to contribute voluntarily to the Trust Fund for Victims also in view of possible imminent reparations, in order to substantively increase the volume of the Trust Fund for Victims, broaden the resource base and improve the predictability of funding; and *expresses its appreciation* to those that have done so;

51. *Expresses its appreciation* to the Board of Directors and the Secretariat of the Trust Fund for Victims for their continuing commitment towards victims, and *encourages* the Board and the Secretariat to continue to strengthen its ongoing dialogue with 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;

52. *Recalls* the responsibility, under the Regulations of the Trust Fund for Victims, of the Board of Directors to endeavour to manage its resources originating from voluntary contributions in such a way as to ensure an adequate reserve to complement any Court-ordered reparations awards, without prejudice to its activities under the Trust Fund's assistance mandate including those funded by earmarked contributions;

53. *Requests* the Court and the Trust Fund for Victims to develop a strong collaborative partnership, mindful of each other's roles and responsibilities, to implement Court-ordered reparations;

Recruitment of staff

54. *Welcomes* the Court's continued 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 and violence against women or children and *encourages* further progress in this regard;

55. *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, *welcomes* the report of the Bureau,[14] and *recommends* that the Bureau continue to engage with the Court to identify ways to improve equitable geographical representation and increase the recruitment and retention of women in higher level professional posts, without prejudice to any future discussions on the suitability, or otherwise, of the current model, as well as to remain seized of the issue of geographical representation and gender balance and to report thereon to the eleventh session of the Assembly;

56. *Requests* the Court to submit a comprehensive report on Human Resources to the Assembly at its eleventh 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 April 2012;

57. *Urges* the Court, in recruiting officers in charge of victims and witnesses affairs, to ensure that they have the necessary expertise to take into account the cultural traditions and sensitivities and the physical and social needs of victims and witnesses, particularly when

[14] Report of the Bureau on equitable geographical representation and gender balance in the recruitment of staff of the International Criminal Court (ICC-ASP/10/35).

they are required to be in The Hague or outside their country of origin to take part in Court proceedings;

Complementarity

58. *Resolves* to continue and strengthen effective domestic implementation of the 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;

59. *Encourages* States, particularly in view of the fundamental principle of complementarity, to include 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;

60. *Welcomes* the Bureau report on complementarity [15] and the progress made in implementing the Review Conference resolution on complementarity and *requests* the Bureau to remain seized of this issue and to continue the dialogue with the Court and other stakeholders on complementarity and the further implementation of the Review Conference resolution on complementarity, as set out in the Bureau report on complementarity, "Taking stock of the principle of complementarity: bridging the impunity gap";

61. *Welcomes* the report by the Secretariat of the Assembly of States Parties[16] on the progress in giving effect to its mandate to facilitate, within existing resources, the exchange of information between the Court, States Parties and other stakeholders, including international organizations and civil society, aimed at strengthening domestic jurisdictions, *and requests* the Secretariat to report to the eleventh session of the Assembly on further progress in this regard;

62. *Welcomes* the report of the Court on complementarity, [17] *recalls* its limited role in strengthening national jurisdictions, *notes* that the Court in carrying out its judicial mandate could have a positive impact on the ability and willingness of domestic jurisdictions to investigate and prosecute Rome Statute crimes and can have a positive impact on the functioning of the Rome Statute system, *and requests* the Court to further cooperate with the Secretariat on this issue and report to the next Assembly session;

63. *Welcomes* activities aimed at strengthening complementarity and the international justice system, such as the Court's Internship and Visiting Professionals Programme, as well as the Legal Tools Project, all of which aim at enhancing knowledge of the Rome Statute system, international criminal law and creating tools to facilitate the national prosecution of the Rome Statute crimes equipping users with the legal information, digests and software required to work effectively in the field of international criminal law, contributes significantly to the promotion of international criminal law and justice and thus in fighting impunity, and *encourages* States to contribute actively in support of these activities;

Independent Oversight Mechanism

64. *Recognizes* the importance of a fully operational Independent Oversight Mechanism, in accordance with ICC-ASP/8/Res.1 and ICC-ASP/9/Res.5, to the efficient and effective operation of the Court;

65. *Takes note of* the report of the Bureau on the Independent Oversight Mechanism;[18]

66. *Decides* to continue discussions on the Independent Oversight Mechanism in close consultation with the organs of the Court, fully respecting the provisions in the Rome Statute regarding judicial and prosecutorial independence and the management oversight of the Assembly of States Parties, including articles 40, 42 and 112, with a view for the Bureau to submit, to the eleventh session of the Assembly, a comprehensive proposal that would make possible the full operationalization of the Independent Oversight Mechanism;

[15] ICC-ASP/10/24.
[16] ICC-ASP/10/2.
[17] ICC-ASP/10/23.
[18] ICC-ASP/10/27.

67. *Invites* the Independent Oversight Mechanism, working in close consultation with the organs of the Court, Staff Union Council and States Parties, to develop an anti-retaliation/whistleblower policy, with a view to its adoption by the Court at the earliest time possible;

68. *Decides further* to delegate to the Bureau the following decisions, after taking into consideration possible budgetary implications and operational requirements, and, if necessary, consulting the Committee on Budget and Finance:

(a) The hiring of the Head of the Independent Oversight Mechanism;

(b) If necessary, the extension of the mandate of the Temporary Head of the Independent Oversight Mechanism; and

(c) When to commence recruitment of the P-2 staff member for the Independent Oversight Mechanism.

Committee on Budget and Finance

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

70. *Recalls* that, according to its Rules of Procedure,[19] 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, *emphasizes* the importance of ensuring that the Committee on Budget and Finance is represented at all stages of the deliberations of the Assembly at which such documents are considered, and *requests* the Secretariat, together with the Committee on Budget and Finance, to continue to make the necessary arrangements;

Assembly of States Parties

71. *Expresses its appreciation* to the Secretary-General of the United Nations for facilitating the tenth session of the Assembly, held at United Nations Headquarters, and *looks forward* to continuing such assistance to the Court in accordance with the Relationship Agreement between the United Nations and the Court;

72. *Recalls also* 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;[20] 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,[21] and decided to retain, for the time being, article 124 of the Statute;[22]

73. *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;

74. *Notes with satisfaction* that the Depositary has notified the States Parties of the adoption of these amendments by the Review Conference, *calls upon* all States Parties to consider ratifying or accepting these amendments and *resolves* to activate the Court's jurisdiction over the crime of aggression as early as possible, subject to a decision to be taken after 1 January 2017 by the same majority of States Parties as is required for the adoption of an amendment to the Statute;

75. *Welcomes* the report of the Bureau on the Working Group on Amendments,[23] *invites* the Working Group to continue its consideration of amendment proposals and of its own

[19] *Official Records ... Second session ... 2003* (ICC-ASP/2/10), annex III.
[20] *Official Records ... Review Conference ... 2010* (RC/11), part II, resolution RC/Res.6.
[21] Ibid., resolution RC/Res.5.
[22] Ibid., resolution RC/Res.4.
[23] ICC-ASP/10/32.

procedural rules or guidelines, and *requests* the Bureau to submit a report for the consideration of the Assembly at its eleventh session;

76. *Recalls* with appreciation pledges of increased assistance to the Court made by thirty-five States Parties, one observer State, and one regional organization, calls on these States and the regional organization to ensure the swift implementation of these pledges, and further calls on States and regional organizations to submit additional pledges and to inform, as appropriate, on the implementation thereof at future sessions of the Assembly;

77. *Welcomes* the substantive discussions carried out within the framework of the stocktaking exercise on international criminal justice to identify opportunities and challenges presented to the Court and the Rome Statute system and *commits* to the implementation of the resolutions on "Complementarity," "Impact of the Rome Statute system on victims and affected communities," and "Enforcement of Sentences,"[24] and the declaration on "Cooperation" as critical next steps in meeting these challenges;

78. *Recalls* that the Review Conference also conducted, as part of its stocktaking exercise, a panel discussion on peace and justice, *takes note with appreciation* of the moderator's summary and *commends* this topic for further exploration and development;

79. *Welcomes* the robust participation of civil society in the Review Conference, *welcomes* the opportunity provided by the Review Conference to bring States Parties closer to the work of the Court in situations under investigation, including through visits to the Court's field offices, and *encourages* States Parties to continue to take opportunities to raise awareness, including among State officials, of the Court's activities in situations under preliminary examination and investigation;

80. *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;

81. *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 Statute, rule 105.1 of the Financial Regulations and Rules, and other relevant decisions taken by the Assembly;

82. *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;

83. *Takes note* of the report of the Bureau on the arrears of States Parties[25] and *decides* that the Bureau should continue to monitor the status of payments received throughout the financial year of the Court, consider additional measures to promote payments by States Parties, as appropriate, and continue to engage in dialogue with States Parties in arrears;

84. *Requests* the Secretariat to inform States Parties periodically of States that have recovered their voting rights following payment of their arrears;

85. *Welcomes* the work by the Bureau and its two informal working groups and *invites* the Bureau to create such mechanisms as it considers appropriate and to report back to the Assembly on the result of their work;

86. *Also welcomes* the efforts of the Bureau to ensure communication and cooperation between its subsidiary bodies and *invites* the Bureau to continue such efforts;

87. *Decides* that the Committee on Budget and Finance shall hold its eighteenth session from 23 to 27 April 2012 and its nineteenth session from 24 September to 3 October 2012;

88. *Decides* that the Assembly shall hold its eleventh session in The Hague from 14 to 22 November 2012. The twelfth, thirteenth and fourteenth session shall be held in The Hague and New York, alternately.

[24] Ibid., resolution RC/Res.3.
[25] ICC-ASP/10/34.

Annex

Assembly procedures relating to non-cooperation

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 12 of the Assembly's omnibus resolution[1] adopted on 10 December 2010 provides as follows:

> "12. *Recognizes* the negative impact that the non-execution of Court requests can have on the ability of the Court to execute its mandate, and requests the Bureau to prepare a report on which Assembly procedures could be required to enable it to discharge its mandate to consider any question relating to non-cooperation and to submit that report to the Assembly for consideration at its tenth session."

B. General scope and nature of non-cooperation procedures

4. For the purpose of relevant Assembly procedures, non-cooperation could be understood as the failure by a 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 already 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.

[1] *Official Records … Ninth session … 2010* (ICC-ASP/9/20), vol. I, part III, ICC-ASP/9/Res.3.

6. Given the respective roles of the Court and the Assembly, any response by the Assembly would be non-judicial in nature and would have to be based on the Assembly's competencies under article 112 of the Statute. The Assembly may certainly 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, may not replace judicial determinations to be taken by the Court in ongoing proceedings.

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.[2] Depending on the circumstances, the matter may or may not require urgent action by the Assembly to bring about cooperation; and

(b) Exceptionally, a scenario where the Court might not yet have referred a matter of non-cooperation to the Assembly, but 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.[3]

8. The procedures outlined herein only refer to requested States as defined above, and would not refer to non-States Parties that have not entered into any relevant arrangements or agreements with the Court. These procedures would however be 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 such 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) would require 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) would require an urgent, but entirely informal response at the diplomatic and political levels that is difficult to reconcile with the usual calendar of meetings of the Assembly and its current subsidiary bodies. Past experience has shown that the Bureau, which meets every month at United Nations Headquarters, New York, may need to adapt its working methods to be able to respond quickly enough to an immediate situation of non-cooperation, as outlined below.

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.[4] 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 undermines the findings of the Court. These procedures address the role of the Assembly and its subsidiary organs, and are

[2] See e.g. the decisions of Pre-Trial Chamber I "Decision informing the United Nations Security Council and the Assembly of States Parties to the Rome Statute about Omar Al-Bashir's presence in the territory of the Republic of Kenya", 27 August 2010, ICC-02/05-01/09; "Decision informing the United Nations Security Council and the Assembly of States Parties to the Rome Statute about Omar Al-Bashir's recent visit to the Republic of Chad", 27 August 2010, ICC-02/05-01/09; and "Decision informing the United Nations Security Council and the Assembly of States Parties to the Rome Statute about Omar Al-Bashir's recent visit to Djibouti, 12 May 2011 2011, ICC-02/05-01/09.

[3] 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.

[4] *Official Records … First session … 2002* (icc-asp/1/3 and Corr.1), part II.A.

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, and to some extent public, procedure for the Assembly to address occurrences of non-cooperation should only be triggered by a decision of the Court regarding non-cooperation addressed to the Assembly.[5] Any such decision should be forwarded to all States Parties without delay. The general public should be informed by way of a press release of the Secretariat of the Assembly of States Parties.

(b) Procedure

14. Subsequent to the Court decision, several steps could be undertaken to address the issue, bearing in mind that the good offices by the President of the Assembly may also continue as described 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 the oral report from the President on any action taken, and to decide on what further action would be required;

(b) Open letter from the President of the Assembly, on behalf of the Bureau, to the State concerned, reminding that State of the obligation to cooperate and requesting its views on the matter within a specified time limit of no more than two weeks.[6] The President of the Assembly could send a copy of the letter to all States Parties, encouraging them to raise the matter in bilateral contacts with the requested State, where appropriate;

(c) Upon expiration of the time limit or upon receipt of a written response, a meeting of the Bureau could be held (at the ambassadorial level), at which a representative of the State concerned would be invited to 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;[7]

(e) Subsequently, a Bureau report on the outcome of this dialogue could be submitted to the next (or ongoing) session of the Assembly, including a recommendation as to whether the matter requires action by the Assembly; and

(f) At the next (or ongoing) session of the Assembly, the report could be discussed in plenary session of the Assembly under the agenda item on cooperation. Furthermore, the Bureau could, if necessary, appoint a dedicated facilitator to consult on a draft resolution containing concrete recommendations on the matter.

[5] E.g. International Criminal Court Pre-Trial Chamber I, ICC-02/05-01/09, 27 August 2010 (Kenya), International Criminal Court Pre-Trial Chamber I, ICC-02/05-01/09, 27 August 2010 (Chad) and International Criminal Court Pre-Trial Chamber I, ICC-02/05-01/09, 12 May 2011 (Djibouti).
[6] See the precedent of the President's letters to the Foreign Ministers of Kenya, Chad and Djibouti, respectively, of 28 August 2010, 13 September 2010 and 17 May 2011.
[7] *Official Records … First session … 2002* (ICC-ASP/1/3/and Corr.1), part II.c; part XX.

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

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.

(a) Regional focal points for cooperation

16. In order to assist the President in his or her good offices, the Bureau would appoint among its members four focal points on the basis of the principle of equitable geographic representation.

(b) Trigger

17. The President of the Assembly would become active on his or her own initiative where he or she assesses that the conditions of scenario 7(b) described above are met. Furthermore, the President would also become active on his or her own initiative where the President assesses that the conditions of scenario 7(a) are met, and 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 would immediately notify Bureau members of the initiative.

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

(c) Mandate and procedures

19. Where the President's good offices have been triggered as outlined above, he or she would, as appropriate, 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 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.

20. The President would report orally to the Bureau immediately after such interaction takes place, if necessary in the context of a Bureau meeting to be convened at short notice. Once the President has reported to the Bureau, he or she shall continue engaging in the matter as decided by the Bureau.

Resolution ICC-ASP/10/Res.6

Adopted at the 9th plenary meeting, on 21 December 2011, by consensus

ICC-ASP/10/Res.6
Permanent premises

The Assembly of States Parties,

Recalling its resolutions adopted with regard to the permanent premises, including ICC-ASP/6/Res.1, [1] ICC-ASP/7/Res.1, [2] ICC-ASP/8/Res.5, [3] ICC-ASP/8/Res.8, [4] and ICC-ASP/9/Res.1,[5] and *reiterating* the importance of the permanent premises to the future of the Court,

Noting the report of the Oversight Committee on the permanent premises,[6] the recommendations of the External Auditor[7] as well as the reports of the Committee on Budget and Finance on the work of its sixteenth and seventeenth sessions and the recommendations contained therein,[8]

Reiterating its firm intention that the permanent premises should be delivered within the €190 million budget (at 2014 price levels) as per resolution ICC-ASP/6/Res.1, *emphasizing* the role of the Oversight Committee in implementing under its delegated authority any actions which might be needed to ensure that the project proceeds safely within budget as well as that the ownership costs of the permanent premises be as low as possible,

Recognizing the importance of effective and efficient decision-making, clear lines of authority, stringent risk identification and management, and strict control of design changes for ensuring that the project is delivered to cost, and *welcoming* the steps taken by the Oversight Committee to implement good governance arrangements for the permanent premises project, and the participation of the Court and the host State in this joint effort,

Welcoming the fact that 29 States Parties have committed to making a one-time payment in accordance with the principles contained in resolution ICC-ASP/7/Res.1, annex III, in an amount of €35.8 million, of which €26.5 million have already been received,

Noting that the Court has quantified on 1 March 2011 in the amount of €42.2 million the other costs related to the project but not directly related to the construction,

Noting that such costs concern elements that are user specific and include two components: (a) 3 gv, estimated at €22.1 million, for integrated user equipment, that is fixed elements integrated in the design; (b) 2 gv and other related costs, originally estimated at €20.1 million and later reduced to €19.8 million, for non-integrated user equipment, that is loose elements, and other costs such as moving, additional staff and consultancy fees,

Noting that at the end of the Final Design phase the ownership costs (depreciation, financial and operating costs) are currently estimated at €17 million per year,[9]

Welcoming the cost-review strategy put in place by the Oversight Committee to address 2 gv and 3 gv costs and to reduce their impact on the annual budgeting process, as well as to maintain the construction costs within the overall budget, and *encouraging* the continuation of a downward trend of these costs,

Stressing that the permanent premises shall be delivered at a good quality standard within the approved budget, and thereby that the Oversight Committee is mandated to ensure that the design and functionality requirements are constantly in line with the resources approved, and that the ownership costs are kept at the lowest possible level,

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[1] *Official Records ... Sixth session ... 2007* (ICC-ASP/6/20), vol. I, part III.
[2] *Official Records ... Seventh session ... 2008* (ICC-ASP/7/20), vol. I, part III.
[3] *Official Records ... Eighth session ... 2009* (ICC-ASP/8/20), vol. I, part II.
[4] *Official Records ... Resumed eighth session ... 2010* (ICC-ASP/8/20/Add.1), part II.
[5] *Official Records ... Ninth session ... 2010* (ICC-ASP/9/20), vol. I, part II.
[6] ICC-ASP/10/22.
[7] *Official Records ... Tenth session ... 2011* (ICC-ASP/10/20), vol. II, part C.1.
[8] Ibid., parts B.1 and B.2.
[9] Report on the activities of the Oversight Committee, ICC-ASP/10/22, paras. 91-98.

Recalling that the trust fund for voluntary contributions dedicated to the construction of the permanent premises has been established and that voluntary contributions can also be provided through earmarked funds for special features, or in kind contributions, upon consultation with the Oversight Committee,

I. Project: budget and timeliness

1. *Welcomes* the report of the Oversight Committee and *expresses* its appreciation to the Project Board and the Oversight Committee for the progress made on the permanent premises project since the ninth session of the Assembly;

2. *Welcomes* the completion of the final design stage of the permanent premises project and *approves* the revised cash-flow scheme contained in annex I;

3. *Also welcomes* that the project continues to remain within the approved budget of €190 million;

4. *Approves* the strategy of the Oversight Committee to maintaining costs within budget, focusing on the overall budget rather than on the resources available during each phase and stage of the project;

5. *Approves* that non-integrated elements (2gv) and other related costs shall not exceed €19,8 million, and will be approved upon submission year by year in the Court's budget;

6. *Further approves* that the integrated elements (3gv) are construction costs and, as such, incorporated in the overall budget of €190 million, and *also approves* that such elements and their costs be entirely absorbed within the overall budget, so that the same is not exceeded;

7. *Authorizes* the Oversight Committee to review the design and/or the functionality requirements, as needed, in order to ensure a good quality building but keeping the budget within the approved cost and, to this end, *requests* the Project Director to ensure that changes to the project which might be needed can be implemented with due regard to the minimisation of additional costs related to delays and other factors, wherever possible, so as to ensuring a positive balance between additional costs and savings achieved through changes;

8. *Requests* the Oversight Committee, the Project Director and the Court, when making decisions on the design of the project, to take account of the consequences on the Court's future operating costs, and *stresses* that the project should go forward in such a way as to keep future operating costs of the permanent premises, including maintenance costs, at the minimum level possible given the necessary budgetary constraints;

9. *Takes note* of and *approves* the revised total gross floor area of no more than 52,450 square meters as a result of the Value Engineering conducted in March 2011;

10. *Notes* that the completion date for the permanent premises is September 2015, with readiness for the Court to take occupation thereof in December 2015, and *encourages* the Project Director, in consultation with the Oversight Committee, the Court and the host State to continue to identify ways to mitigate any delay and its consequences;

11. *Stresses* that the project budget will not be used to cover delays which might depend on the demolition schedule;

12. *Welcomes* the decision adopted by the Oversight Committee to procure the construction contract on a Best Value for Money basis, with a target cost mechanism which involves a guaranteed maximum price being agreed with a contractor, with incentives to continue to find additional savings during the construction period;

II. Governance

13. *Stresses* the importance of a shared vision and ownership of the project among all stakeholders, as well as of an effective coordination and communication between the Project Director, the Court and the host State at all levels and stages of the permanent

premises project and, in this regard, *approves* the revised governance arrangements adopted by the Oversight Committee, and *welcomes* the reported improved effectiveness of the decision making process;

14. *Stresses* the importance of a timely and full involvement and participation by the host State at all stages and levels of the project and *further notes* the importance of the commitment of the host State for ongoing cooperation;

15. *Reiterates* the important role of the Project Director in providing strategic leadership and overall management of the project, and his responsibility for meeting the project's goals, timelines and costs, and quality requirements, as provided in resolution ICC-ASP/6/Res.1, and *invites* the Registrar to delegate authority to the Project Director where necessary and at an appropriate level, in accordance with the Financial Regulations and Rules, with respect to engaging funds for the permanent premises project;

16. *Requests* the Project Director, together with the Court, to prepare recommendations, in accordance with resolution ICC-ASP/7/Res.1, annex V, paragraph 5, on ways to improve current guidelines on contracts and expenditures for the purpose of expediting the execution of the project, and to submit them to the Oversight Committee for approval;

III. Financial reporting

17. *Requests* the Project Director, in consultation with the Oversight Committee, in accordance with resolution ICC-ASP/6/Res.1, to continue to submit annually, for consideration by the Assembly at its regular session, a detailed cost estimate for the project on the basis of the most recent information, and incorporating the schedule for the use of funds deriving from one-time payments;

18. *Requests* the Court to keep under review, in consultation with those States that commit to making a one-time payment, the schedule for receiving such one-time payments and to keep the Oversight Committee permanently informed thereof;

19. *Requests* the Project Director to continue to report annually to the Assembly, through the Oversight Committee, on the realization of the previous years' estimates and the level of expenditure;

IV. Management of the project

20. *Requests* the Project Director to keep the project manual, together with a project plan under review and to report thereon to the Oversight Committee;

21. *Requests* the Oversight Committee to continue to develop and implement an audit strategy;

V. Voluntary contributions

22. *Reiterates* the invitation to members of civil society with a proven track record of commitment to the mandate of the Court to raise funds for the permanent premises project;

VI. Renewal of membership of the Oversight Committee

23. *Endorses* the recommendation of the Bureau, in accordance with ICC-ASP/6/Res.1, annex II, that the membership of the Oversight Committee, for the next term, be comprised of those States referred to in annex II to this resolution;

VII. Future reporting by the Oversight Committee

24. *Requests* the Oversight Committee to remain seized of this issue, to continue to provide regular progress reports to the Bureau and to report to the Assembly at its next session.

Annex I

Cash-flow scheme

Budget Permanent Premises project (in million euros)

	Total costs	Overall total	2009	2010	2011	2012	2013	2014	2015	2016	Total
			PD (*)	FD (**)	FD+ and tendering		Construction			Moving	
1. Construction Costs		**136.1**									
1a. Direct costs	**121.8**						36.5	48.7	36.5		**121.8**
1b. Indirect (excluded general site costs)	**8.9**						2.7	3.6	2.7		**8.9**
1c. Fees design team (after tendering)	**5.4**						1.7	2.3	0.8	0.5	**5.4**
2. Risks		**32.9**									
2a. Project risk (all issues incl. design or third parties)	**27.6**		-	-	-		1.0	7.3	10.3	9.0	-	**27.6**
2b. Client risk (outside project e.g. municipality)	**5.3**		-	-	-		0.2	1.5	1.1	2.5	-	**5.3**
3. Permit and dues		**2.6**	-	-	-		2.6	-	-	-	-	**2.6**
Permit and dues	**2.6**						2.6					
4. Fees		**16.9**									
4a. Design related	**7.9**		-	2.7	5.2	-	-	-	-	-	-	**7.9**
4b. Project management	**6.6**		0.9	0.7	1.4	1.0	0.3	1.0	0.8	0.5		**6.6**
4c. Other consultants	**2.4**		0.4	0.2	0.4		0.5	0.4	0.4	0.1	-	**2.4**
5. Other costs	**1.5**	**1.5**	-	1.5	-		-	-	-	-	-	**1.5**
Total	**190.0**	**190.0**	**1.3**	**5.1**	**7.0**	**1.0**	**6.3**	**51.7**	**65.7**	**51.9**	**-**	**190.0**
	-	**-**	1.3	5.1	7.0		7.3	51.7	65.7		51.9	
Cumulative			**1.3**	**6.4**	**13.4**		**20.7**	**72.4**	**138.1**		**190.0**	

Note: The above figures are estimates only and subject to change.
(*) PD: preliminary design stage.
(**) FD: final design stage.

Annex II

Members of the Oversight Committee*

African States

1. Kenya

Asian and Pacific States

2. Japan
3. Republic of Korea

Eastern European States

4. Romania

Group of Latin American and Caribbean States

5. Argentina
6. […]

Western European and Other States

7. Germany
8. Ireland
9. Italy
10. United Kingdom

* As of 21 December 2011.