



COOPERATION TEAM
COALITION FOR THE INTERNATIONAL CRIMINAL COURT (CICC)
COMMENTS AND RECOMMENDATIONS¹
TO THE EIGHTH SESSION OF THE ASSEMBLY OF STATES PARTIES
18 - 26 NOVEMBER 2009, THE HAGUE

Following the submission of its previous paper to the seventh session of the Assembly of States Parties ('Assembly'), the CICC Cooperation Team ('Team') wishes to reiterate the importance of cooperation and support by States Parties to the Rome Statute, the level of which will determine the success of the Court. The Team recalls that the Court lacks its own enforcement mechanism and as such relies extensively on States in order to fulfill its mandate. In this regard and in light of the imminence of the 2010 Review Conference the team once again urges States Parties to reaffirm their commitment to the Court and international justice during the general debate at the eighth session of the Assembly. In particular the Team encourages States Parties to commit to fully cooperating with the Court, including the arrest and surrender of all persons charged. States Parties should also use this Assembly session to make specific commitments to enhance cooperation between States Parties and the Court. We make the following recommendations in this regard:

A. Improving Institutional Support for Cooperation

The Team looks forward to a dedicated forum at this Assembly session for discussion of cooperation. The forum provides an ideal opportunity to review the reports of the Focal Point on Cooperation as well as the cooperation report prepared by the Court to assess future goals. We urge States Parties to make full use of this forum to continue to build on the Bureau Report on Cooperation and the work of the Focal Point on Cooperation over the past two years and recommend the following steps.

(1) Renewal of the mandate of the Focal Point on Cooperation

The Team welcomes the work of the Focal Point, Ambassador Yves Haesendonck and recognizes the valuable contribution he has made to what remains an essential issue for the court's effective functioning. It is imperative that the Assembly capitalise on the achievements made to date by renewing the mandate of the Focal Point or vesting such responsibility in an alternative mechanism such as a Facilitator, to ensure continued oversight of the implementation of the Bureau Report on Cooperation. By the Focal Point's own admission and that of the Court's, as reflected in their respective reports on cooperation, considerable work needs to be done, not least the need for progress by States Parties in

¹While the work of the Cooperation Team reflects the positions of those Coalition members most active on particular issues, this paper cannot be construed to represent the views of all organizational members of the CICC. Since the Rome Diplomatic Conference, Coalition members have organized themselves into teams, one to follow each working group or theme of the intergovernmental process. Coalition teams now follow issues addressed by the Assembly of States Parties or its subsidiary mechanisms and by the International Criminal Court. Teams provide a forum within which interested members discuss issues, follow developments, elaborate relevant research and positions in response to developments, and elaborate and implement advocacy strategies in relation to those positions. All Coalition members are welcome to join any teams and all Coalition members are regularly apprised of the work of the teams.

enacting implementing legislation that would facilitate cooperation with the Court as well as the conclusion of witness protection and sentencing enforcement agreements. The Team wishes to stress that the absence of such agreements has the effect of turning a decision of the Court into a paper tiger and impeding the execution of rights enshrined in the Rome Statute and reiterates the need for progress in this regard.

The Team previously set out in its paper to the Seventh Session of the Assembly some of the responsibilities that the Assembly could vest in the mandate of the focal point:

- To prepare the issue of cooperation for the Review Conference and necessarily along the lines indicated in paragraph (C) below.
- To ensure that the ASP is equipped with the appropriate mechanism and procedures before receiving its first referrals of non-compliance by the Court, pursuant to Articles 87(5)(b),(7) and 112(2)(f) and report on progress made in this regard to the ninth Session of the Assembly. While the Assembly has as of yet not been seized with such a matter, The Team believes that it is imperative that a transparent mechanism be established in time for such an eventuality so as not to perpetuate a delay and avoid unnecessary politicization of the actual formation of a mechanism and procedure.
- To work with ICC officials in assessing the cost implications of non-cooperation as indicated by the Court in its report

(2) Creation of a Working Group on Cooperation

While the Team advocates for the renewal of the Focal Point mandate, it also recommends that the Assembly establish a standing Working Group on Cooperation headed by the Focal Point or Facilitator. The existence of both a Focal Point/Facilitator and Working Group that could meet intersessionally, would not be a duplication of efforts, but would increase the Assembly's capacity to address all cooperation issues beyond what can be accomplished by any individual acting alone, regardless of the level of his or her commitment, ensuring that this critical issue receives adequate attention and resources. While the ASP would have to consider the details in establishing the mechanism including the crucial question of its composition, its formation would provide the Focal Point/Facilitator with renewed and added vigour and the ability to better assess the implementation of the full range of the 66 recommendations contained in the Bureau's report on cooperation. Although the Focal Point has made progress in this regard as already duly noted, the full realisation for the vast majority of recommendations will require sustained and increased efforts.

As a starting point, the prospective intersessional working group could be tasked to prepare and undertake the research on the issue of cooperation for the Review Conference (see paragraph C below) as well as to assist the Focal Point/Facilitator in carrying out the mandated activities suggested above. The Working Group would also be best placed to respond to pronouncements or declarations of non-cooperation that are political in nature by States or organisations.

(3) Regular reporting from the Court to the Assembly

The Team welcomes the report from the Court on cooperation and the fruitful dialogue that has been generated as a result between the Court and States Parties through the Focal Point. The Team recommends, therefore, that this system of reporting be institutionalised, with the Court reporting to the Assembly on an annual basis updating the Assembly on the

successes and challenges it has had with respect to cooperation. The Team further recommends that the reports be submitted to the prospective Working Group or Focal Point/Facilitator on cooperation for initial consideration.

B. Cooperation with International and Regional Organisations

The Team welcomes the strong working relationship established with the United Nations based on its relationship agreement and subsidiary agreements with UN Agencies and organs. Undoubtedly the UN Liaison Office in New York has greatly contributed the fostering of strong links. In this regard the Team strongly urges the Assembly to approve the establishment of the African Union Liaison Office, which would come at a critical time in the work of the Court, with all four situations presently before the Court on continental Africa. Given the crucial role that the African Union plays with regard to galvanizing the cooperation of its Members with the Court, it is imperative that the Court has a presence at the seat of the organization with a view to fostering a cordial and fruitful working relationship. In light of the importance of that working relationship, consideration should be given to ensuring that the African Union Liaison Office is headed by a person with the appropriate level of responsibility and experience.

C. Review Conference and Stocktaking

With the Review Conference fast approaching the Team firmly believes that the issue of cooperation must be addressed and in this regard the Review Conference presents an invaluable opportunity to take stock of the progress made to date since the inception of the Court. The Team, aligning itself with a separate submission to the Assembly from the Coalition's Team on the Review Conference and the recommendations contained therein, urges the Assembly to fully reiterate its commitment to the issue of cooperation by including it on the Review Conference agenda as a key issue to be discussed in the context of stocktaking. The team specifically urges the Assembly to address the following non-exhaustive list of issues:

- the extent to which States Parties have complied/followed the 66 recommendations of the Bureau
- Challenges preventing implementation of those recommendations
- Steps needed to facilitate success in implementing recommendations
- Participation of the Court in describing the challenges it has faced and likely to face and what it requires in terms of support.
- Lessons learned with respect the ICTY; ICTR and other ad hoc Tribunals, not least with respect securing the apprehension of wanted persons and other forms of request for international legal assistance.