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### Citation

Stahn, C., & Nerlich, V. (2008). The International Criminal Court and Cooperation. *Leiden Journal Of International Law*, 429-430. Retrieved from <https://hdl.handle.net/1887/13541>

Version: Not Applicable (or Unknown)  
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**Note:** To cite this publication please use the final published version (if applicable).

# The International Criminal Court and Co-operation: Introductory Note

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Co-operation has proved to be one of the greatest challenges in the first practice of the International Criminal Court (ICC). The Court cannot fulfil its mandate effectively without co-operation from states, international organizations, and other actors. The Prosecutor requires co-operation and assistance at various stages of proceedings (preliminary examination, investigation, judicial proceedings) in order to conduct investigations and prosecutions. The Court depends on the co-operation of states to execute the warrants of arrest and proceed to trial. In the context of its first practice, the Court has operated in situations of ongoing conflict and/or environments where the security situation is volatile. The level and modalities of co-operation were influenced by the factual and political conditions on the ground and the institutional support of other entities (e.g. the United Nations).

Co-operation has thus been at the top of the ICC's agenda. The Prosecutor addressed the importance of co-operation and the corresponding obligations of states in his Nuremberg address. He argued that states that 'do not actively support the Court' in carrying out arrests 'are actively undermining it'.<sup>1</sup> Similarly, the president of the ICC highlighted in his 2007 report to the UN General Assembly that if states fail to co-operate with the Court, trials will not be possible and 'victims will again be denied justice and potential perpetrators will be encouraged to commit new crimes with impunity'.<sup>2</sup>

The Bureau produced a report on co-operation<sup>3</sup> with draft recommendations to states in areas such as diplomatic and public support, support of analysis, investigations, prosecutions, judicial proceedings, arrest and surrender, and witness protection. These recommendations were adopted by the Assembly of States Parties at its sixth session in December 2007.<sup>4</sup>

The following contributions take a closer look at the legal and policy aspects of co-operation. Rod Rastan provides an account of the legal parameters of the co-operation regime and its application in the first jurisprudence and practice of the Court. He argues that support for justice and co-operation must be theorized under the umbrella of a notional *responsibility to enforce*.

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1. See Luis Moreno Ocampo, 'Building a Future on Peace and Justice', speech, Nuremberg, 24–5 June 2007, available at [http://www.icc-cpi.int/library/organs/otp/speeches/LMO\\_nuremberg\\_20070625\\_English.pdf](http://www.icc-cpi.int/library/organs/otp/speeches/LMO_nuremberg_20070625_English.pdf).
2. See Philippe Kirsch, 'Address to the United Nations General Assembly, 1 November 2007', available at [http://www.icc-cpi.int/library/organs/presidency/PK\\_20071101\\_ENG.pdf](http://www.icc-cpi.int/library/organs/presidency/PK_20071101_ENG.pdf), at p. 5.
3. See ICC, Assembly of States Parties, Report of the Bureau on Co-operation, 19 October 2007, ICC-ASP/6/21.
4. See ICC, Assembly of States Parties, Omnibus Resolution, ICC-ASP/6/Res.2 of 14 December 2007.

Steven Roper and Lillian Barria undertake an impact-based assessment of co-operation in the context of the first situations under investigation. They analyse the broader socio-political factors which may influence the bargaining power of the ICC. This analysis culminates in the development of a matrix of factors which may shape the capacity of the ICC to secure arrest and surrender.

Bill Burke-White challenges some of the elements of this matrix in his response to Roper and Barria's article. Building on game theory, he develops a tripartite model ('three-level game'), which involves three interrelated dimensions of bargaining: negotiation with the territorial state, negotiation with third states and international organizations, and direct negotiation with domestic actors.

The three contributions provide a vivid account of the practical and theoretical challenges of co-operation in the emerging practice of the Court. It is our hope that they will generate further research in this (widely unexplored) area.