Strengthening International Criminal Court Cooperation – The Role of Civil Society

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1 Introduction

Cooperation with the ICC is primarily an obligation for State Parties to the ICC Statute. In this regard, it seems counterintuitive to address the role of civil society in the ICC’s cooperation regime. Despite this, an examination of the work being undertaken by civil society in strengthening the ICC’s cooperation regime is merited. Nowadays civil society actors and organisations working on ICC-related issues encompass a huge range of interests, expertise, organisations and groupings undertaking a broad range of activities and functions in order to strengthen cooperation with the ICC. From galvanising political will, to mobilising different actors, to capacity and institution building, civil society has found itself very well-suited to strengthen cooperation with the ICC. Although clearly not able to remedy all of the inherent weaknesses in the ICC’s cooperation regime, the actions and influence of civil society have played a crucial role in strengthening the ICC’s decentralised and less-than-coercive cooperation regime.

This chapter will examine a number of functions being undertaken by civil society in strengthening the ICC Statute cooperation regime. The first sections detail the inherent weaknesses in the regime and why and how civil society has found itself well-placed to strengthen cooperation with the ICC. The crucial role of civil society, in particular in affecting political will to cooperate with the ICC, will be discussed. Following this, the different activities and actions of many different civil society actors, undertaking actions on three different ‘levels’ – namely at the international (ASP level), regional and national levels – will be examined. It is apparent that the strengthening of the ICC’s decentralised cooperation regime is a task very well-suited to an incredibly diverse and similarly ‘decentralised’ civil society.

2 Cooperation with the International Criminal Court – A weaker State Party Obligation

The ICC Statute provides that it is only ‘States Parties’ who are generally obligated to ‘cooperate fully’ with the Court. 1 Whilst Part IX ICC Statute also

1 Art. 87 ICC Statute.
provides for the possibility of cooperation between the Court and non-State Parties\(^2\) or international organisations,\(^3\) it overwhelmingly references ‘States Parties’ as those to whom requests for cooperation are made and who must cooperate with the Court. Indeed, it is only through the cooperation of State Parties that the Court is able to fulfil its mandate practically and effectively. The oft-used adage that the Court does not have its own police force, security apparatus or enforcement capability remains a factual reality and the Court is therefore fully dependent on State Parties to ensure that its decisions are implemented and enforced.

Despite the unequivocal obligation of State Parties to cooperate with the Court, there remains a feeling of weakness surrounding the cooperation regime provided for in the ICC Statute. On the most basic level, this could be due to the inherent ‘weak language’ of the ICC Statute.\(^4\) However, it is also a result of the comparison that must be made with the UN Charter-based ad hoc Tribunals with their inherently more ‘vertical’ cooperation obligations stemming from their establishment through Chapter 7 UN Charter.\(^5\) In contrast, the ICC was established with only a limited relationship to the UN, as a multilateral treaty-based institution, which has a distinctly more ‘horizontal’ feel to its cooperation obligations.\(^6\) Furthermore, in contrast to the ad hoc Tribunals’ Statutes, which provide for notification to the UNSC in the event of ‘non-cooperation’ with the Tribunals – and consequently the possibility of recourse to more coercive measures by the UNSC following a breach of the UN Charter – the ICC Statute only provides for a referral to the ASP (or the UNSC upon a referral of a situation to the Prosecutor by the UNSC) under Art. 87(7) ICC Statute, following a judicial finding of non-cooperation. Added to the inherent weaknesses of the ICC Statute cooperation regime is the obvious weakness of a decentralised cooperation regime lacking a centralised international enforcement body.

The weakness of the ICC’s cooperation regime is also evidenced by the Court’s overt reliance on ‘voluntary’\(^7\) cooperation agreements. These diverse

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2 Art. 87(5)(a) ICC Statute.
3 Art. 87(6) ICC Statute.
7 See e.g. ASP, Report of the Court on cooperation, 9 October 2013, ICC-ASP/12/35 at para 27.