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Remarks on the occasion of the plenary meeting on cooperation

17th session of the Assembly of States Parties to the Rome Statute

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Mr President of the Assembly,
Excellencies,
Distinguished Representatives,
Ladies and Gentlemen,

It is an honour to be able to address today's plenary session on the subject of cooperation. I am particularly grateful to the co-facilitators on cooperation, Ambassador Philippe Lalliot of France and Ambassador Momar Guèye of Senegal, for the opportunity to say a few words to open this session.

After having been elected in March, the new Presidency deliberated on its priorities and we agreed that the improvement of cooperation should be among them. Cooperation lies at the heart of the Rome Statute system and is vitally important for its efficient functioning.

The Court is grateful that all States Parties understand that the success of the Court cannot be guaranteed without an ongoing commitment to close cooperation. I believe the Court and State parties are partners in the fight against impunity; we all share a common responsibility to advance and strengthen the cause of justice.

Financial cooperation

The morning segment of this plenary session on cooperation will focus on the follow up to the Paris Declaration on Co-operation on Asset Recovery. This is a field in which States Parties have considerable expertise to share with the Court. Financial investigations may have crucial impact on the proceedings - as sources of evidence, in determinations of eligibility for legal aid or to inform decisions to impose a fine. Accurate financial investigations and the means for State cooperation to freeze and seize assets when necessary can also be vital at the reparations stage of proceeding.

Arrests

The second segment of today's plenary session will provide an overview of the conclusions from the recent seminar on arrests. Its aim was to discuss ways of strengthening cooperation for the arrest of persons suspected of committing crimes within the mandate of the Court. All forms of compulsory cooperation are important to the Court.

The execution of the Court's arrest warrants are one of the most obvious and pivotal forms of cooperation. As a trial judge of the Court, the issue of the execution of warrants of arrest is particularly close to my heart. In the past as a judge of the Supreme Court of the Czech Republic or judge of the International Criminal Tribunal for Rwanda I had never faced such a high number of unexecuted arrest warrants. The arrest and transfer of suspects remains one of the main challenges before the Court. Today, in total, requests for arrest and transfer issued by the Court are outstanding against 15 persons, in six situations. The oldest outstanding arrest warrant dates from July 2005.

Warrants of arrests which are not being executed may undermine the credibility of the ICC, harm its reputation and detract from any deterrent effect of its work. Outsiders to the Rome Statute system will surely find it surprising that Chambers of this Court have issued findings of non-compliance, which have included a communication of such non-compliance to the Assembly of States Parties and/or the Security Council, on fourteen occasions. I am sure, both the Court and State Parties are well aware that such situations are highly complex and cannot be oversimplified.

States Parties have shown considerable commitment to addressing this issue, for example through the 'Toolkit for the implementation of the informal dimension of the Assembly procedures relating to non-cooperation' finalised by the ASP at its fifteenth session in 2016, which contains a wealth of practical information to facilitate the difficult task of States in this regard. When arrest warrants are unable to be executed in a timely manner, the pursuit of the end of impunity is halted at the stage of a preliminary investigation.

States alone have the powers to execute arrest warrants. Yet, I would take the opportunity to emphasise, however, that the Court remains entirely willing to assist in all ways possible to facilitate the work of States Parties in this regard. It is vital the Court and States continue to work constructively, aware of the unique challenges and contexts of every single arrest warrant. The surrender of two individuals to the Court in 2018 is a positive step.

Voluntary Agreements

The last segment of the plenary session on cooperation will focus on voluntary agreements. These forms of cooperation are sometimes rather overlooked, yet they remain vital to ensure the operational needs of the Court. These include agreements on the enforcement of sentences, as well as other agreements which enable the Court to fulfil essential functions and meet human rights standards, such as those concerning witness protection, interim release and release in the event of acquittal.

Enforcement of sentences

I will first touch on agreements on the enforcement of sentences, which are negotiated by the Presidency of the Court. It is particularly fitting to focus on Enforcement Agreements as later in today's plenary session, we will have the pleasure of witnessing the signing of an Agreement, with Slovenia. Such signature reaffirms Slovenia's commitment on matters of cooperation and is highly appreciated by the Court

The Court's enforcement regime is one in which convicted defendants serve their sentences of imprisonment in prison facilities of an enforcement State. Such States of enforcement are bound by the sentence imposed by the Court. The Court encourages all States Parties to consider indicating their general willingness to accept sentenced persons by entering into an agreement on the enforcement of sentences with the Court.

I have to highlight that a State that has signed this agreement is not obliged to accept any convicted person. The State must first declare its willingness to accept sentenced persons in general, and then again, in a specific case. This ensures that States are free to undertake enforcement responsibilities in a manner consistent with their domestic legal systems and circumstance. Nonetheless, the Court is extremely appreciative of those enforcement States who are closely committed to responding positively to such requests in particular cases.

Witness protection, interim release and release in case of acquittal

Another area in which States may seek to show their support for the Court by way of voluntary cooperation is Agreements on witness protection which not only protect victims and witnesses but importantly assist the Court by providing it with a full range of evidence. Other forms of voluntary cooperation focus on upholding the rights of persons accused

before the Court – these concern the release of persons, including interim release, and release in case of acquittal.

Conclusion

I hope that this morning's plenary session continues in the spirit of close cooperation we have seen throughout the year in the Working Group on Cooperation. As I mentioned at the beginning, without State cooperation, the Court is unable to fulfil its mandate or ensure full respect for due process and fair trial rights. The ICC has been established on the basis of several ambitious ideas. The principle of cooperation was one of them. Practise showed that this principle was vitally important but very fragile at the same time. I hope that following discussion and negotiations will result in further progress in that area beneficial to the International Criminal Court and principles it represents.

Thank you for your attention.