



Amady BA

*Head of the International Cooperation Section
Jurisdiction, Complementarity and Cooperation Division (JCCD)
Office of the Prosecutor, International Criminal Court*

20th Session of the Assembly of States Parties

Plenary Session on Cooperation

Segment II

Cooperation in the field of financial investigations and the identification and freezing of assets: Establishing a network of national operational points of contact.

Location: World Forum – The Hague / Date: 08 December 2021

Madam President of the Assembly,
Excellencies and distinguished Delegates,
Ladies and Gentlemen,

I would like to thank the co-facilitators of the Assembly's working group on Cooperation for organising this discussion with its pragmatic approach: working towards establishing a network of national operational points of contact.

I would like to begin by reporting on the status of cooperation within the Office of the Prosecutor, including financial investigations (I), before setting out the challenges in the field and also highlighting aspects where together we can make progress (II).

I. Update by the Office of the Prosecutor on financial investigations

During the period 1 January 2019 to 1 December 2021, the Office sent the following to States and international organisations:

- 26 cooperation requests to access and/or have sent to it financial information, including 1 request involving a request for information; 1 other on asset freezing and 24 on the identification and tracing of assets;
- Of the 26 requests sent, the Office received 10 replies, 9 of which were positive (i.e. the request was carried out) and only 1 negative (refusal to carry out the request);
- These requests were directed at 9 partners and one was issued to the United Nations;
- The execution rate for the period therefore stands at 38.46%.

For comparison purposes, during the same period, i.e. between 1 January 2019 and 1 December 2021, for all the other types of request we recorded:

- 1,255 requests for assistance (including notifications), which involved requests for cooperation generally, sent to States and international organisations.
- 799 of these requests were carried out;
- The execution rate in this case therefore stands at 63.66%.

In effect these figures reveal a degree of cooperation which is acceptable on the whole, although challenges remain as far as financial cooperation is concerned.

However, we must congratulate ourselves on the colossal amount of work carried out by the Assembly and the co-facilitators of the working group on Cooperation (France and Senegal) in the specific field of financial investigations.

There have been a number of areas of progress but I will just reiterate a few of them, namely:

- a- The technical seminars organised by the Court since 2015 on the issue of financial investigations and the recovery of assets associated with these crimes in October 2015; the last informal technical meeting on cooperation in this field took place on 30 November 2021.
- b- The various sessions held by the Assembly of States Parties on this issue,
- c- The plenary conference organised in Paris on 20 October 2017 by the co-facilitators of the Assembly Working Group on Cooperation, including France and Senegal, with the support of the International Organization of La Francophonie (OIF) and the French National School for the Judiciary (ENM), which focused on the topic: *“The International Criminal Court (ICC) and International Cooperation: The Challenges of Asset Recovery”*. The Paris Declaration was the product of this Conference, which was attended by 97 participants representing 38 States Parties, 2 Non-States Parties, and 15 international organisations. The Declaration, backed up by its 13 recommendations, is a road map for effectively implementing cooperation in the field of financial investigations.

d- Finally, we must congratulate ourselves on the initiative of the co-facilitators who finalised and established a *digital platform* with a database which could assist with finding the contact details of national experts in the field of financial investigations. This pragmatic initiative leads the way in this regard and we hope that States can adopt it and in particular add the necessary information to it.

Beyond the significant advances which are worthy of mention, major challenges persist.

II. Challenges faced by the ICC

The challenges the ICC faces generally involve the complex nature of financial investigations and their different ramifications in an increasingly sophisticated world due to information and communication technology, which no doubt complicates the issue even more.

Other limiting factors are the result of differences in national legislations, some of which are stricter than others; new forms of cross-border criminality; sophisticated and cutting edge technology which makes it possible for criminals rapidly to transfer funds which are difficult to trace; the existence of parallel systems to those of conventional banks; and cryptocurrencies.

These challenges are also due to considerations which have more to do with cooperation with the Court as far as financial investigations are concerned; such cooperation could be improved from the point of view of the response of States to requests for assistance emanating from the Court but also in terms of the timescale for processing requests issued by the Court.

Experience has shown that some of the difficulties raised by the Court as far as executing its cooperation requests is concerned remain unresolved. The lack of an appropriate legal mechanism to facilitate the execution of the Court's requests, the fact that there are no national experts dedicated to facilitating financial investigations associated with the Court's activities, the Court's lack of adequate resources for this type of investigation, and the difficulties involved in gaining access to government structures and institutions to monitor and trace the assets belonging to suspects are all challenges linked to cooperation.

The Independent Expert Report highlights the added value of financial investigations and the need for the OTP to strengthen its capability in this regard, in particular by creating a strategic advisor's post. The Experts also recommended enhanced coordination between the OTP and the Registry's financial investigator, and, in order to facilitate such coordination, one of the initial measures suggested involved creating an inter-organ working group responsible for locating assets and for financial investigations.

Measures have already been taken in light of these challenges and recommendations, but other solutions could also be considered. For example, the initiatives taken involve incorporating the financial aspect of investigations from the outset, ensuring that this issue is embedded more systematically in the planning and assessment of objectives, in defining priorities and the scope of investigations, and also in the use of open source material.

Other initiatives which aim to strengthen cooperation in terms of information-sharing with third parties (such as the Camden Asset Recovery Inter-agency Network (CARIN), the EGMONT Group, EUROPOL and INTERPOL), to facilitate the creation of local support networks to better understand how financial transactions work, for example with legal practices, private companies and NGOs, and to increase in-house skills in terms of understanding the financial sector are in progress.

Switzerland's cooperation efforts to boost the technical capability of the OTP, by agreeing to second one of its investigators from the State Prosecutor's Office to strengthen the OTP's financial investigations, deserve a special mention. The expert in financial investigations has been working with the OTP since June. Similar initiatives are to be encouraged. In addition to being important for mutually enhancing technical capabilities, they also help to foster a better understanding of the OTP's requirements in this field and to strengthen coordination which guarantees an optimum outcome.

The trend of working relationships and in-house coordination is in line with this. The Registry and the OTP have implemented a protocol to share information on financial investigations as part of a framework which fully adheres to their respective mandates. Regular meetings are held between the two organs on cross-cutting legal issues involving asset tracking and financial investigations. More needs to be done with the formalisation of an inter-organ working group based on the *Suspects at Large Working Group* (SALWG), which could make the process even easier. Discussions are taking place to implement this coordination framework.

Establishing a network of national operational points of contact is relevant in various respects, not only to coordinate actions between those involved, but also to boost effectiveness and achieve results.

These are all measures to be consolidated and also implemented to strengthen judicial cooperation by the Court with States and international organisations.

Thank you for your attention.