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

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Excellencies,

Distinguished delegates,

Financial investigations and asset recovery have proved their worth at a national level several times over and must naturally form a key part of efforts to prosecute crimes under the Rome Statute.

The Statute provides that States Parties have a duty to cooperate in terms of identifying, locating, freezing and seizing assets.

The principle is therefore clear but there are still certain challenges involved in implementing this provision which the Court, working with the States Parties, is determined to overcome.

With the support of Liechtenstein and ICAR, the International Centre for Asset Recovery, in 2015 the Court organised a seminar on the challenges of cooperation the implementation of this provision presents and which led to the adoption of recommendations which are still current and on which the States and the Court have worked. For example, States and the Court must endeavour to publicise the Court's mandate, its legal framework and its specific features.

In 2017, the States adopted the Paris Declaration, which highlighted the importance of this subject. In 2019 the Court organised a technical seminar attended by experts with those States that have collaborated closely with the Court in this field to identify the ways in which States successfully assist the Court, any problems encountered, and possible scope for improvement.

Some practices used in the context of legal assistance between States can of course be replicated but others are not suitable because of the special status of the Court and the

Rome Statute system. The Court has no territory or financial establishments, which have a duty to report any suspicious transactions, or land registers enabling it to elaborate on its initial requests.

Certain issues which until recently remained theoretical or academic because of the lack of operating experience involving the ICC are now taking shape in the discussions between the Court and the States and in the case-law of the Court. The Court has completed a full cycle in terms of asset recovery with the first fines being paid. In terms of case-law, for example, the Chambers clarified in 2016 that a link between assets and criminal activities was not required in order for a Chamber to be able to order provisional measures in the context of reparations for victims. They also held that the States alone are responsible for adopting measures to manage property once seized.

These discussions and the case-law being built up forced the Court to specify the details for executing this type of request and the States to assess the strength of their system against the requirements of the Rome Statute.

A few broad themes emerged from these discussions which I would now like to share for discussion in the *chronological* order of the development of the legal process:

- To what extent can States assist the Court in identifying property belonging to persons for whom an arrest warrant has been issued; can they open investigations at a national level to support searches conducted by the Court?

States are reluctant to process requests which are too general and not detailed enough in the context of requests for judicial cooperation. States would be unable to cope with the huge volume of requests from requesting States and therefore ask, justifiably, that the requested State provides a certain amount of preliminary information. It is important to note that the Court focuses on the most senior persons responsible for

the most serious crimes and that in this regard the number of persons covered by these requests is very small and could be afforded favourable treatment.

- Once assets have been located, can States adopt provisional measures regarding this property to offer reparations to victims? Can these measures be applied to all of the person's assets, not just the property and assets that are proceeds of crime?

This brings us to the matter of the serious nature of the crimes prosecuted before the Court and the importance of reparations for victims under the ICC system.

- Once the property has been subject to provisional measures, do States automatically adopt measures to avoid the depreciation of assets? At their own expense?
- Finally, in the event that a fine is imposed and assets are confiscated and an order is made for reparations to be awarded to the victims, can States in practice sell the property to transfer the funds to the Registry of the Court?

Some of these questions are included in the form prepared to facilitate cooperation and are useful for the Court to familiarise itself with the procedures of requested States. I would urge you to complete the form and to post it on the cooperation platform set up for this purpose.

We have observed that those States which have executed the Court's requests easily have strong implementation legislation in this regard. States which have made no specific provisions for implementation may have placed their legal authorities in a difficult position by having no clearly identified legal basis and procedures. It is also important for these procedures to be in place to provide the best possible safeguards for the rights of the defence at a national level. In addition, as any request for

cooperation must be executed in conformity with national procedures, States are free to use the range of new legal measures available to police forces as part of their efforts to confiscate criminal assets for the benefit of the Court.

Best practices have emerged from these exchanges, in particular the option for certain States to open investigations on behalf of the Court or to designate a specific focal point for this matter. For the Registry, the use of legal practices working *pro bono* and holding working meetings with several requested States to pool information about the investigation which has been shared and to build up a complete picture of the assets of the suspect or the accused person.

I cannot conclude my speech without discussing the investigations carried out by the Registry under the legal aid mechanism. This subject comes under voluntary cooperation and has been the focus of numerous discussions with the States. In brief, the purpose of these investigations is to determine the indigence of persons benefiting from legal aid. This is aid which may be provided by States to recover public funds in the event that the person improperly benefited from legal aid.

Creativity is the key! Some States suggested that the Court open investigations on their behalf, others adopted implementation laws going beyond the letter of the Statute.

In light of this experience, the Registry is pleased to note that a network of operational focal points has been launched, which will allow States to share their experience in terms of executing cooperation requests. In order not to duplicate efforts, it would be interesting to consider naming existing network experts as Court focal points.

Thank you for your attention.
