

Intervention on Non-Cooperation

7th PLENARY SESSION – COOPERATION

5 December 2024, 15:00-17:00 CET

5-minutes

*Madame President of the Assembly,
Her Excellency Madame BA FAYE, Ambassador of Senegal,
His Excellency Monsieur ALABRUNE, Ambassador of France,
Excellencies in the audience,
Esteemed Colleagues,
Distinguished Guests,*

1) Introduction

It is an honour to address you today. As the Acting Chief of the Judicial Cooperation Support Section, or JCSS, within the Registry, I would like to provide insights into how the Registry fosters cooperation with States and external stakeholders, a cornerstone of ensuring fair and effective judicial proceedings.

The mandate of JCSS is to support judicial proceedings by adopting a coordinated, strategic approach to judicial cooperation. This responsibility is carried out through our Judicial Cooperation Unit, which handles a wide range of cooperation requests, and our Suspects-at-Large Unit, which acts as the primary point of contact between the Chambers and States for executing arrest warrants.

When an order is issued by the Chambers, JCSS is responsible for drafting and transmitting requests for cooperation and is engaging with States on their implementation. These requests aim to secure cooperation on various issues, such as the tracing and freezing of assets, interim and final release of suspects, and arrest and surrender. Should States Parties block, delay or not respond to Requests for Cooperation, we report to the Chambers and seek additional guidance. In some cases, we work with States to discuss their challenges related to the execution of such requests.

2) Encouraging Article 97 Consultations

The Court is aware about the significant challenges some States Parties face when requested by the Court to cooperate on the arrest and surrender of suspects at large. These challenges arise when States Parties are forced to balance their legal obligations under the Rome Statute with their geopolitical obligations. As the Registrar has noted, a coherent and harmonious approach from States Parties that upholds the rule of law is vital.

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To support States, the Court strongly encourages States Parties to initiate **Article 97 consultations** should they identify problems which may impede or prevent the execution of the request. This mechanism aims to facilitate dialogue and problem-solving between the Court and States Parties to ensure cooperation while addressing any legal or practical challenges.

Article 97 consultations have been successfully employed in the past, particularly in the context of arrest related requests for cooperation. However, for these consultations to be considered meaningful by the Court, they are expected to be initiated in good faith and in a timely manner. Ultimately, the goal of Article 97 consultations is to prevent non-compliance by addressing issues that could obstruct cooperation, thereby ensuring that the Court's requests are carried out effectively. In such cases, the Chamber may ask for observations by States. The Registry is facilitating these exchanges between States Parties and the Chamber, ensuring that the State in question is fully informed of the tools at its disposal and procedure to follow.

3) Requests for Cooperation related to suspects at large

I would like to highlight that in line with the described range of cooperation requests, the Registry and my team in particular is always available for States Parties to respond to questions and clarify concerns about the Requests for Cooperation it transmits.

Particularly on requests for cooperation related to suspects at large, the Registry is also counting on proactive action from States Parties. In this regard, I would like to once again draw your attention to the Toolkit on non-cooperation, which, for example for the monitoring of suspects, foresees that the States should proactively inform the Court of travels of fugitives using their diplomatic networks and other means, such as information from civil society or intelligence agencies. This is very useful for the Court as it takes significant resources to monitor the travels of 30+ suspects at large and this information and the compilation by the Non-cooperation focal points could be useful. The Registry can be informed through the email address ICCArrest@icc-cpi.int.

On the basis of this information, the Registry would reach out to the State to ask for official confirmation of travel and invite the State to engage with the Court. I encourage all States Parties to refer to the Court's jurisprudence on non-compliance, particularly regarding the question of immunity for Heads of State, available on the ICC's website.

Should the Chamber issue a decision on non-compliance – the State has the right to request authorization to appeal, based on the caselaw developed in the situation of Darfur. The Chamber may also decide to refer the matter to this Assembly or the United Nations Security Council. At that point, the Court's role ceases, and the responsibility for further political action lies with this Assembly.

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4) Conclusion

It is crucial to remind ourselves that the non-cooperation of States Parties significantly weakens the Court's ability to carry out its mandate effectively. Whether it concerns the execution of arrest warrants or asset freezes, each instance of non-compliance disrupts the judicial process. Before concluding, I would like to emphasize once more that the Court fully acknowledges and understands that cooperation with the Court can at times be complicated and challenging, and that we in the Registry stand ready to provide briefings and support whenever needed.

I thank you for your attention and encourage continued dialogue between this Assembly, the Registry, and States Parties. By working together, we can address the significant challenges faced today and advance our shared mission of delivering justice globally.

Thank you.