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Cour
Pénale
Internationale
International
Criminal
Court

Le Greffe
The Registry

Mr Herman von Hebel
Registrar of the International Criminal Court

Remarks at the Plenary on Cooperation
Voluntary cooperation, the way forward

Hague, 20 November 2015

[I. Introduction]

Your Excellency, President of the Assembly of States Parties,
Honourable Minister of Justice Aminata Mallé Sanogo,
Your Excellency, Ambassador Diop Sy,
Your Excellency, Ambassador Van Hoorn,
Madam President,
Madam Prosecutor,
Mr Dive,
Excellencies, distinguished delegates, ladies and gentlemen,

It is an honour for me to address the Assembly of States Parties for the third time since I took up office as the Registrar of the International Criminal Court.

We can all recognise that the past year has brought, among changes, also challenges for the Court. We must admit that the year we are now leaving behind, has put to the test the Court, its custodians- the States Parties- and their relationship. In spite of these challenging times, the Court and its States Parties have managed to find common ground and a way to always move forward.

Today, in my remarks, I would like to particularly talk about the way forward with respect to voluntary agreements, an essential part of the broader cooperation framework.

[II. Challenges- different from last years]

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The Court is facing unprecedented challenging times. The judicial activities before the Court are rapidly increasing and never in the existence of the Court have we been confronted with busier times. Such developments bring along new challenges which require innovative solutions.

However, a strong political will is needed in order to arrive at finding these solutions and subsequently implementing them.

[III. Way forward]

[1. Political will]

It has been said time and again that the cooperation lent to the Court is as strong as the political will driving it. As regards the voluntary agreements, the manifestation of this political will is the necessary pre-requisite in order to conclude such agreements.

The Court can assist in this process by making itself available to undertake consultations with States whether bilaterally, here in The Hague or in the capitals with a view to addressing any issues the States may want to bring forward in relation to these agreements, be it of a legal, operational or financial nature.

Once there is interest and engagement from the States side and the required expertise on the Court's part, solutions can be always found in order to conclude such agreements. The Court has always been and will remain open for dialogue with States on their needs in terms of strengthening cooperation.

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With a view to stimulating a holistic comprehension of the importance of cooperation at regional level and also contributing to creating an enabling environment conducive to greater cooperation with the Court, high-level and technical seminars have been organised in Latin America, Southern part of Africa, and West Africa during 2015. These series of important Seminars benefited from the financial support of the European Union and States Parties, and I would herewith like to convey my deep appreciation for the support.

In some instances, these fruitful exchanges have led to the subsequent conclusion of voluntary agreements, in particular in the area of witness protection. In other instances, it was an excellent opportunity for thorough exchanges on all technical aspects and arguments surrounding these agreements with the participating States. Upon return to their capitals, these experts are those who continued engaging their national authorities and paving the way towards conclusion.

I am happy in this context to announce that, the European Union has agreed to continue to support financially these initiatives for the coming year and thus the Court will be in a position to build on the outcome of the Seminars and forge new regional engagements leading hopefully to a greater cooperation response for the Court.

These Seminars are one of the many examples of the on-going efforts that the Court is making to share its expertise, as well as to express its needs. But what happens next? Cooperation is a two-way street. It is up to States to follow-up on these exchanges. We are currently witnessing a gap between discussions either bilaterally or regionally – where the willingness of the States is expressed - on one side, and the actual steps, namely starting negotiations, concluding agreements, on the other. Let us work on concrete ways to address this gap.

Let me outline few options on how we can just do that.

[2. Nature and scope of voluntary agreements]

As the President of the Court said during her speech, cooperation agreements are flexible and respectful of States' sovereignty. They are tools either foreseen in the Rome Statute or created on ad-hoc basis, to avoid blockages that will impede the credibility of the Court, the independence of the judiciary and in certain cases also the rights of the defence.

It is thus of key importance to underline that the proposed format of the agreements can be modified in order to accommodate the needs and requests by States as well as the imperatives of the national legislation of that State.

Let me share how we overcome the concerns of some States related to witness relocation agreements. Concluding a framework agreement was not always the obvious way forward as they were qualified as "cumbersome".

Thus, ad-hoc solutions, operational solutions including arrangements directly with national protection programmes, proved sometimes to be a more effective way forward.

As a result, several States accepted or are in the process of accepting the relocation of persons at risk on an ad-hoc basis without concluding a relocation agreement. 10 persons at risks and their family members were the beneficiaries of this creative solution.

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I would like to express my gratitude to the States that have shown their support in such a way.

I would also like to take the opportunity and make an appeal to States to engage with the Court in concluding such agreements. With 16 existing agreements the current needs of the Court cannot be met and witnesses will continue to be at risk.

[3. Capacity building]

Another way forward, in the area of witness protection, is to make use of the Special Fund for Relocations. By identifying a State willing to accept the witnesses on its territory but lacking technical or financial means to do so, using the finances of the Trust Fund, witness protection capacity can be built nationally. I have already met in the margins of the Assembly, States who have approached me to discuss this modality of cooperation.

Additionally, the Court has concluded a Memorandum of Understanding with the United Nations Organised Crime and Drug Agency whereby the Agency can assist in building capacity nationally and the Court can provide the technical expertise alongside.

It is thus of essence to make sure that the Fund does not go depleted. I therefore would like to launch an appeal to States to pledge for the fund and continue to contribute to these successes of the Court in relocating witnesses.

I was saying earlier that, to date, 16 Witness Relocation Agreements have been concluded. To this 8 Enforcement of Sentences Agreements can be added.

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However, the lack of acquittal¹ and interim release² agreements reminds of the important challenges with serious consequences on the ability of the Court to function effectively. It is of deep concern to notice, that while the prosecutorial activities before the Court are rapidly increasing, since April 2014 only one State³ has signed these two agreements.

The lack of these agreements has consequences on the ability of judges to take decisions. What if an acquitted person must stay in detention because the Court cannot secure any satisfactory option for his release? And as we all know, staying in Court's detention require financing from the Court's already limited budget. What if no conditional release is granted because the receiving State indicates that it cannot support this decision internally? These are just a few questions which I would like us to address today in this plenary.

[4. Consequences]

[a. Budgetary]

Excellencies, distinguished delegates, ladies and gentlemen,

The number of witnesses under the care of the Registry will in 2016 increase by 80. Effectively relocating those witnesses will bring them and their families in a safe and secure environment for their brave act at testifying before the Court. It will also have positive budgetary consequences for the Court.

¹ Model Framework Agreement between The International Criminal Court and the Government of [...] On The Release Of Persons.

² Exchange of Letters on the Interim Release.

³ Belgium.

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Let me draw your attention to the costs of maintaining a single witness and his or her family in the Court's protection programme. The annual price tag is €25,000. We have currently in our care 75 witnesses whom we have been unable to relocate. Finding a solution for these individuals would reduce the Registry's budget by approximately €2 million.

[b. No decision by Judges]

The lack of interim release and acquittal agreements means that the Court is not able to secure from States a satisfactory option for release. This in turn leads to the inability of Judges to take a decision on the release, and the person would have to remain in detention; additionally, the denial of interim release would have negative budgetary consequences for the Court because it would then need to cover the costs for the interim release period itself.

[IV. Conclusion]

Mr President of the Assembly, Excellencies,

As stated earlier, the Court's effectiveness relies heavily on the timely and efficient cooperation of the States. Despite the challenges, as outlined above, solutions can be found.

Let us make a commitment to work consistently on these solutions or find new creative ways as needed. I thank you for your attention.