



Cour
Pénale
Internationale

International
Criminal
Court

Arresting ICC suspects at large

WHY IT MATTERS | WHAT THE COURT DOES | WHAT STATES CAN DO



Foreword

Foreword by the Co-Facilitators on Cooperation of the Assembly of States Parties to the Rome Statute, Senegal and France.

The Court has the power to issue warrants of arrest and the ability to track suspects through the work of the Office of the Prosecutor and the Registry. The Court's public warrants of arrest have doubled in the space of five years, to nearly thirty outstanding in 2024, a trend that reflects the work done by the Court to investigate, build and deal with cases that may result in the issuance of warrants of arrest by the Chambers.

The Court cannot, however, make arrests without State support, in particular that of its 125 States Parties. Arrests are essential, as without them, the trials which are the culmination of a long judicial process aimed at determining the truth and delivering justice to the victims cannot be held.

The Court celebrated its twenty-fifth anniversary last year, but some warrants of arrest have been outstanding for almost 20 years. The longer those warrants go unexecuted, the greater the risk that suspects may go missing, pass away or be unable to stand trial, denying countless victims the justice and reparations to which they are entitled.

For those reasons, France and Senegal, which the Assembly of States Parties to the Rome Statute have tasked with co-chairing the facilitation on cooperation, urge the States Parties to cooperate with the Court, particularly in relation to arrests, in accordance with chapter IX of the Rome Statute. Let us stand by the Court in its endeavour to render justice in a timely manner.

When the Rome Statute was signed in 1998, the States Parties undertook to ensure that the most serious crimes of concern to the international community as a whole would not go unpunished. In today's increasingly conflict-ridden world, the fight against impunity has taken on even greater urgency.

Together, let us continue to support the Court in the discharge of its mandate by affording it our full cooperation.

Ramatoulaye Bâ Faye

Ambassador of Senegal to the Netherlands

François Alabrune

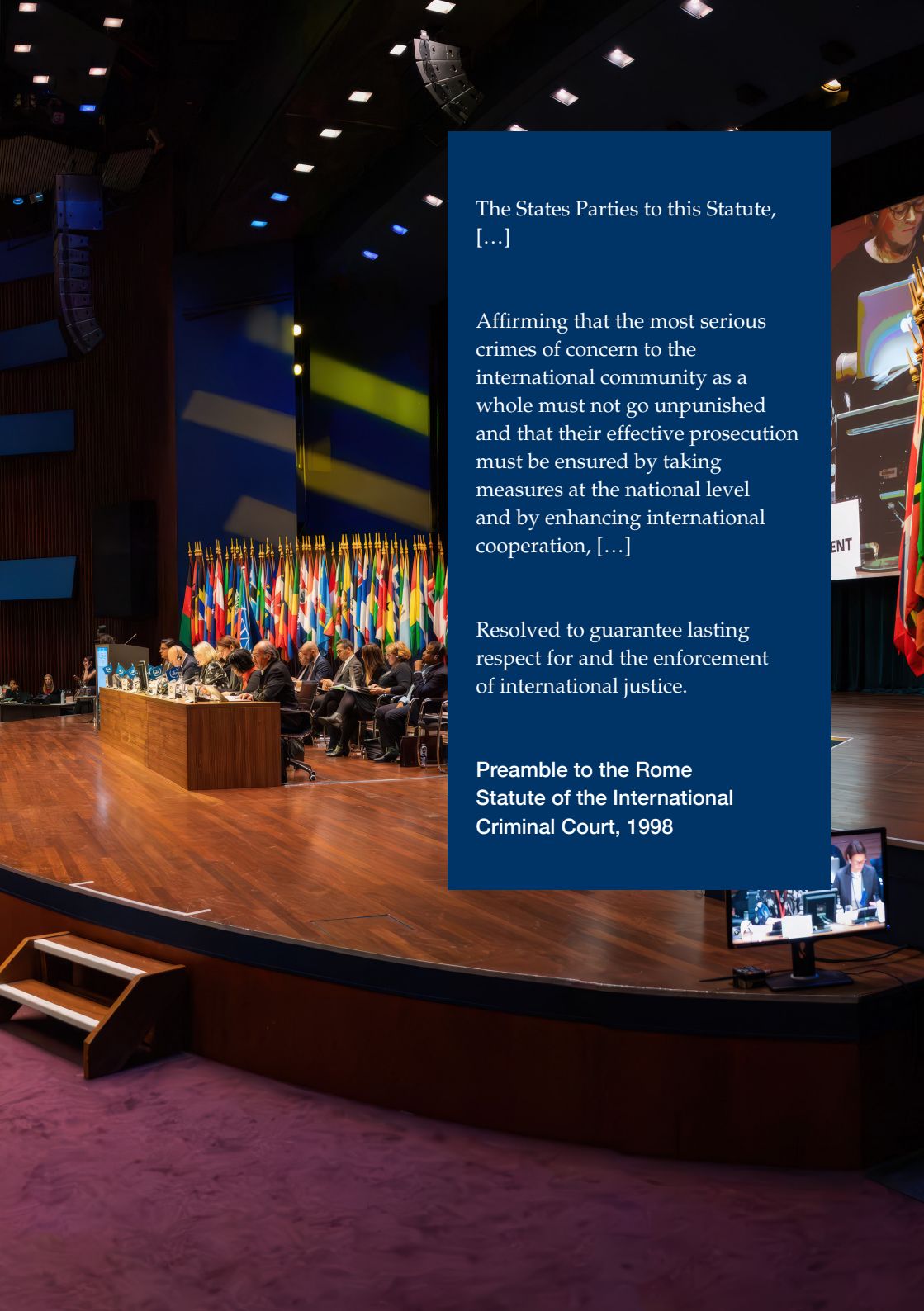
Ambassador of France to the Netherlands

**Cooperation co-facilitators of the Assembly of States Parties
to the Rome Statute**



This publication was produced with the financial support of the European Union. Its contents are the sole responsibility of the International Criminal Court (ICC) and do not necessarily reflect the views of the European Union. The ICC expresses its appreciation to the European Commission for the financial support in producing this booklet.





The States Parties to this Statute,
[...]

Affirming that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international cooperation, [...]

Resolved to guarantee lasting respect for and the enforcement of international justice.

**Preamble to the Rome
Statute of the International
Criminal Court, 1998**

Introduction

The International Criminal Court (“ICC” or “the Court”) seeks to end impunity by holding accountable those responsible for the most serious international crimes, thereby helping to prevent their recurrence. The Court cannot achieve these objectives alone. As the Court does not have its own enforcement mechanisms, it needs and relies on the cooperation of States Parties to properly carry out its activities, including the arrest and surrender of suspects at large. The cooperation of States Parties is explicitly foreseen in Part 9 of the Rome Statute (“Statute”).

As stated in the Rome Statute, at any time after the initiation of an investigation, the Pre-Trial Chamber may, on the application of the Prosecutor, issue an arrest warrant or a summons to appear, if it is satisfied that there are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court. The Pre-Trial Chamber may decide to classify the arrest warrant as either public, confidential, under seal or secret.

The execution of arrest warrants is essential for the effective functioning of the International Criminal Court. The non-execution of arrest warrants fosters a climate of impunity, undermines the deterrent effect of justice, and jeopardizes the safety of witnesses and victims. Moreover, it hampers the collection and preservation of evidence, potentially allowing suspects to continue committing crimes, denies victims the opportunity to be heard, and justice to be served.

States are the main actors in the arrest and surrender of suspects at large. This booklet provides practical information on the ICC’s arrest process, why it is important for its pursuit to deliver justice, the obligation of States to cooperate, and specific actions that States can take to consistently remain involved in all ICC matters related to suspects at large.

For further information, see the profiles of the suspects at large with public arrest warrants on the ICC web site: <https://www.icc-cpi.int/defendants>

What the Court does:

Issues arrest
warrants, fosters their
implementation,
and provides expertise



Photo: Adam Mørk

Roles of ICC organs on arrest and surrender



1

The Prosecutor may request the Pre-Trial Chamber to issue an arrest warrant or, alternatively, a summons to appear.



2

The Pre-Trial Chamber may, on the application of the Prosecutor, issue a warrant of arrest or a summons to appear. The Pre-Trial Chamber may decide to classify the warrant of arrest as either public, confidential, under seal or secret, depending on the circumstances of the warrant and the prospects for a successful arrest.



3

The Registry is responsible for transmitting requests for arrest and surrender and summons to appear, to relevant States and Organizations. The Registry regularly engages with States on the execution of the requests for arrest and surrender and reports on progress to the Chamber.



4

Prior to the arrest, the Registry and the Office of the Prosecutor work closely together on tracking suspects at large.

Warrant of arrest

The ICC has jurisdiction over individuals who bear criminal responsibility for the most serious crimes of concern to the international community: war crimes, crimes against humanity, genocide, and the crime of aggression. ICC judges may decide to issue warrants of arrest based on a request from the Office of the Prosecutor, determining the following pre-conditions:

1. There are reasonable grounds to believe that the person has committed a crime within the jurisdiction of the Court.
2. The arrest of the person appears necessary:

To ensure the person's appearance at trial;

To ensure that the person does not obstruct or endanger the investigation or the court proceedings; or

Where applicable, to prevent the person from continuing with the commission of that crime or a related crime which is within the jurisdiction of the Court, and which arises out of the same circumstances.



Elements of a warrant to arrest

- Name of person and relevant contact details.
- A specific reference to the crimes for which arrest is sought.
- A concise statement of the alleged facts in relation to the crime(s).

The warrant of arrest shall remain in effect until otherwise ordered by the Court.

The Court may request the provisional arrest or the arrest and surrender of the person under Part 9 of the Statute.

Summons to appear



ICC judges may issue summons to appear based on a request from the Office of the Prosecutor, on the basis of the following pre-conditions:

1. There are reasonable grounds to believe that the person committed the crime and,
2. That a summons is sufficient to ensure the person's appearance.

The summons may be issued with or without conditions (other than detention) restricting the liberty of the person to appear, if provided for by national law.

Elements of a summons to appear



- ✓ Name of person and relevant contact details
- ✓ The designated date on which the person is summoned to appear
- ✓ A specific reference to the crimes the person allegedly committed
- ✓ A concise statement of the alleged facts in relation to the crime(s)

The rights of the arrested person



The defendant is presumed innocent until proven guilty.
The burden of proof lies with the Prosecutor.

The right to a public, fair, and impartial hearing, to legal assistance for the purpose of mounting a defense and, if indigence is established, to legal assistance paid for by the Court for the duration of the proceedings
(Articles 66 and 67 of the Rome

The right of a suspect, at the time of arrest, to be served with a copy of the warrant by the competent national judicial authorities, to be represented by counsel, to be informed of the charges in a language he or she understands, not to incriminate himself or herself, and to apply for interim release pending surrender (Article 59(3) of the Rome Statute).

The right to periodic review of detention by the Pre-Trial Chamber (Article 60(3) of the Rome Statute).

**The rights referred to above
shall be guaranteed at all
stages of the procedure.**

Steps after issuing an arrest warrant



STEP 1

The Registry, in consultation and coordination with the OTP, drafts and transmits requests for arrest and surrender to identified relevant States and Organizations.



STEP 2

A State Party which has received a request for provisional arrest or for arrest and surrender shall immediately take steps to arrest the person concerned in accordance with its laws and with the provisions of Part 9 of the Rome Statute.



STEP 3

States need to ensure procedures and mechanisms are in place to process the Court's cooperation requests & initiate steps to conduct the arrest of the person subject to the request, when the opportunity arises.



STEP 4

A suspect is arrested by the competent national authorities in execution of an ICC arrest warrant.



STEP 5

Upon the arrest of a suspect, State authorities are required to carry out Article 59 proceedings and notify the Registry once they are prepared to initiate the surrender process.

Request for arrest and surrender

- ✓ The request for arrest and surrender shall be accompanied by information describing the person sought, sufficient to identify the person, and information as to that person's probable location. Contrary to ad hoc international tribunals, the ICC does not require an indictment procedure before issuing arrest warrants.
- ✓ An arrested person shall be brought promptly before the competent judicial authority of the custodial State, which shall determine, in accordance with the law of that State and Article 59 of the Statute, that:
 - The warrant applies to that person.
 - The person's rights have been respected.
 - The person has been arrested in accordance with the proper process.
- ✓ If a State fails to comply with a request for cooperation, the relevant Pre-Trial Chamber, after a detailed analysis of the facts, may make a finding on non-cooperation and may also refer the State's failure to comply to the Assembly of States Parties or, if the UN Security Council has referred the matter to the Court, to the UN Security Council (Article 87(7) of the Statute).
- ✓ Voluntary Surrender may also take place in the country of arrest or in the Netherlands, the host State, where the Court's detention centre is located.



Using terms according to The Rome Statute



Article 102 Rome Statute



“Means the delivering up of a person by a State to the Court, pursuant to this Statute”



“Means the delivering up of a person by one State to another as provided by treaty, convention or national legislation”



What can States do?

Strengthen judicial
cooperation, and increase
prospects for arrest



Role of States in arresting and surrendering ICC suspects at large

The responsibility to execute ICC's arrest warrants is vested in States



Provides support and requests States Parties to adhere to their obligation to cooperate



The ICC

>

States

States Parties to the Rome Statute

According to the Rome Statute, States Parties are obliged to cooperate fully with the ICC. (Article 86 of the Rome Statute).

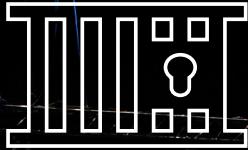
UN member states

All United Nations Member States may be obliged to cooperate with the ICC by virtue of United Nations Security Council resolutions referring situations to the ICC.

Non-States parties to the Rome Statute

Non-States Parties may be invited to cooperate on the arrest and surrender of persons sought.

Execution of ICC warrants of arrest



1

The support of States, whether diplomatic or operational, is crucial. In all cases, the responsibility for executing arrest warrants remains with the States.

2

Arrest warrants are valid for life and therefore the ICC will relentlessly continue efforts to bring suspects at large before the Court, unless the Chamber revokes the arrest warrant.

3

Requests for arrest and surrender shall be executed in accordance with the applicable provisions of the Rome Statute, namely Articles 59 and 89, and the procedures available under national law.

4

As all arrest warrants are based on the same standard of proof, they are all equally important and the Court seeks to ensure that they are all executed. Execution of arrest warrants is essential to bring justice to the victims.

What can States do?



Tracking of suspects at large (their whereabouts, movements and activities)



Identification of possible leverage and partners



Operational support



Executing arrest warrants

✓
Based on information held by national authorities and/or specialized services, confirming or refuting information held by the Court on the location of suspects at large

✓
Dedicated support to the operationalization of the ICC "Recommendations for increased engagement with States Parties on the implementation of outstanding ICC arrest warrants"

✓
Empower State Focal Points to proactively engage in consultations with the Court

✓
Ensure that procedures exist under national law to respond to requests for cooperation. (Article 88 Rome Statute)

✓
Issuing rewards, provision of technology, ad hoc financial support and expertise

✓
To process exemptions of UN travels ban for the purpose of appearing before the ICC on an urgent basis

✓
Provide confidential, secure, and dedicated air transport with the ability to reach sensitive areas in a short time; respond positively to requests for overflight of national territory

✓
Support in multilateral fora and bilateral meetings and efforts to keep the issue on the agenda

✓
The inclusion of the execution of arrest warrants in talking points and external relations strategies

✓
Focus on compliance with ICC decisions

✓
Linking the arrests to the importance of the Court's mandate; publishing and recalling the alleged crimes and indictments

✓
Respond to information related to the movement of suspects at large



Assembly of States Parties measures to encourage cooperation between States on arrests



The Assembly of States Parties has adopted a few resolutions on cooperation in relation to arrest and surrender.



In 2011, the Assembly of States Parties adopted procedures on non-cooperation (ICC-ASP/10/RES.5, annex) as part of its efforts to prevent non-compliance.



The Assembly of States Parties has developed a toolkit on non-cooperation as a resource for States Parties. The toolkit is available on the website of the Assembly of States P in English, French, Spanish and Arabic.

List of useful references

<https://asp.icc-cpi.int/>

- ✓ Toolkit on non-cooperation.
- ✓ ASP Reports.
- ✓ 66 Recommendations on States' Cooperation with the International Criminal Court (ICC): Experiences and Priorities.

Challenges faced by the Court in securing the arrest and surrender of suspects at large



Examples of challenges:

- inability to locate the person
- lack of political will
- lack of resources enabling the State to conduct the operation
- person is hiding in location difficult to access to conduct an operation or regularly moves across borders

Operational:

Lack of intelligence on the location of the suspect

Legal:

Absence of national implementing legislation or technical delays

Political/Judicial Cooperation:

Sensitive nature of arresting suspects at large;

States to consult with the Court on concerns about political consequences



Opportunities for intensified engagement between States and ICC

Greater consistency and comprehensive approach in the support provided by States Parties for the execution of arrest warrants.

Greater exchange of information between States Parties and ICC on the tracking of suspects at large.

Consequences when a suspect at large is not surrendered and remains at large

What if a person sought is not surrendered and remains at large?



Without arrests, a case cannot proceed to trial as the Rome Statute does not foresee trials in the absence of the accused beyond the confirmation of charges hearing at the pre-trial stage



Failure of States to arrest suspects at large has financial implications for the Court and the States Parties



ICC Judges cannot determine guilt or innocence



Failure to execute arrest warrants creates a climate of impunity. Justice is a powerful deterrent to prevent the gravest crimes of concern to the international community and contribution to sustainable peace



Allowing alleged offenders to remain at large jeopardises the safety and well-being of potential witnesses and victims. It also means they may be free to continue committing crimes within the jurisdiction of the Court

Victims cannot be heard and justice cannot be served

ICC suspects at large

Information on the most up-to-date list of ICC suspects at large can be found on the ICC website.

For any questions or information, please contact:
ICCArrest@icc-cpi.int



icc-cpi.int



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September 2025
International Criminal Court