

**Cour
Pénale
Internationale**



**International
Criminal
Court**

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No.: ICC-01/22
Date: 5 January 2026

PRE-TRIAL CHAMBER II

Before: Judge Rosario Salvatore Aitala, Presiding Judge
Judge Sergio Gerardo Ugalde Godínez
Judge Haykel Ben Mahfoudh

SITUATION IN UKRAINE

Public with Public Annex

**Prosecution's Response to Tajikistan's 22 December 2025 Further Submissions
(ICC-01/22-137-Anx)**

Source: Office of the Prosecutor

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I. Introduction

1. The Prosecution hereby responds to Tajikistan's Further Submissions¹ filed pursuant to the Pre-Trial Chamber's Decision of 5 November 2025,² in which Tajikistan refers to competing international obligations. The Prosecution appreciates that Tajikistan has stated its commitment to the goals, principles and obligations of the Rome Statute,³ and has been actively engaging in the article 97 consultation process.
2. However, none of the commitments referenced in Tajikistan's Further Submissions undermine its obligation under the Statute as a State Party to arrest and surrender Vladimir Vladimirovich PUTIN during his visit to its territory from 8 to 12 October 2025,⁴ pursuant to the ICC arrest warrant issued on 17 March 2023.⁵

II. Submissions

3. All States Parties, including Tajikistan, are under a duty pursuant to article 86 of the Statute to cooperate fully with the ICC with respect to cases of which the Court is seised. This duty entails the obligation to execute article 89 requests for arrest and surrender against suspects for whom the ICC has issued an arrest warrant.⁶ The extent of States Parties' obligation to cooperate fully must be understood in the context of the Statute as a whole and bearing in mind its object and purpose, namely to exercise jurisdiction over persons for the most serious crimes of international concern and to put an end to impunity for the perpetrators of these crimes.⁷ Nothing in Tajikistan's Further Submissions negates these crucial obligations.

a. Tajikistan's multilateral and bilateral treaties do not prevent the Court from proceeding with its request for surrender under article 98(2)

4. In its Further Submissions, Tajikistan asserts that it has multilateral and bilateral treaty obligations that obliged it to afford Mr PUTIN safe passage during his October 2025 visit

¹ [ICC-01/22-137-Anx](#), 22 December 2025 ("Further Submissions") transmitted by the Registry on 23 December 2025.

² [ICC-01/22-135](#), 5 November 2025.

³ [Further Submissions](#), para. 4; see also [ICC-01/22-133-AnxIII](#), 24 September 2025 ("Initial Submissions"), para. 3. Tajikistan's Initial Submissions were replicated in a *note verbale* to the Presidency of the Assembly of States Parties, dated 9 October 2025; see [ICC-01/22-134-Anx2](#).

⁴ [ICC-01/22-134-Red](#), 17 November 2025, para. 9; [ICC-01/22-135](#), para. 8.

⁵ The warrant of arrest was issued for war crimes committed against Ukrainian children under articles 8(2)(a)(vii) and 8(2)(b)(viii) of the Statute.

⁶ Under article 59(1) of the Statute, "[a] State Party which has received a request for provisional arrest or for arrest and surrender *shall* immediately take steps to arrest the person" (emphasis added).

⁷ [Al Bashir/Jordan Appeal Judgment](#), 6 May 2019, para. 121; [ICC-01/22-90](#), 24 October 2024, paras 14, 21-22, 26, 31-32.

to the country.⁸ It draws the Chamber’s particular attention to the Agreement on Interaction Among the States Parties to the Commonwealth of Independent States (“CIS”) on Ensuring the Security of Persons Subject to State Protection, signed on 10 October 2008 (“CIS Security Agreement”).⁹ It explains that, pursuant to the CIS Security Agreement, it was obliged “to ensure the security and unhindered movement of the heads of state of the CIS member states”, including Mr PUTIN.¹⁰

5. However, the CIS Security Agreement does not meet the requirements of article 98(2) of the Statute, so as to prevent the Court from proceeding with a request for surrender by Tajikistan without first obtaining the consent of the Russian Federation. As the Appeals Chamber confirmed, article 98(2) applies to treaties/agreements “according to which a receiving State undertakes not to surrender a person of the sending State to the Court without prior consent”, such as so-called status of forces agreements.¹¹ By contrast, the CIS Security Agreement does not deal with the question of surrender by a receiving State and contains no requirement or procedure for seeking and providing consent of the sending State to do so.
6. Moreover, even if the CIS Security Agreement met the requirements under article 98(2)—which it does not—Tajikistan could not rely on it to avoid Mr PUTIN’s arrest. It is a settled principle of international law that State Parties cannot negate their obligations under an international treaty by entering into subsequent agreements.¹² It is for this reason that article 97(c) of the Statute refers to the triggering of consultations based on a *pre-existing* treaty obligation. The CIS Security Agreement, however, is dated October 2008, almost ten years after Tajikistan signed the Rome Statute.¹³ It thus does not negate Tajikistan’s obligations to cooperate with the ICC and to arrest and surrender suspects on its territory for whom the ICC has issued an arrest warrant. Indeed, in the CIS Security Agreement itself,

⁸ [Further Submissions](#), paras 3, 6-11, 13.

⁹ The original Russian-language Agreement, as published by the CIS Parliamentary Assembly, has been translated by the OTP internally; see Annex, containing both the original and the OTP translation.

¹⁰ [Further Submissions](#), paras 6-10 (quote at para. 10).

¹¹ [Al Bashir/Jordan Appeal Judgment](#), para. 159. See also Decision under article 87(7) of the Rome Statute on the non-compliance by Jordan with the request by the Court for the arrest and surrender of Omar Al-Bashir, 11 December 2017, [ICC-02/05-01/09-309](#), para. 32 (finding that article 98(2) could not apply to a Convention which did not establish or refer to a procedure for seeking and providing consent to surrender).

¹² See e.g. Vienna Convention on the Law of Treaties, 23 May 1969, art. 26 (*pacta sunt servanda*).

¹³ Tajikistan signed the Rome Statute on 30 November 1998 and deposited its instrument of ratification on 5 May 2000; see [Tajikistan | International Criminal Court](#). Tajikistan ratified the CIS Security Agreement on 3 June 2011; see List of States Parties to the CIS Security Agreement, Annex (original and OTP translation).

the parties confirm that the Agreement “shall not affect the rights and obligations of each Party arising for it from other international treaties to which it is a party”.¹⁴

7. In the Further Submissions, Tajikistan also refers to “multilateral agreements” and “relevant bilateral agreements”, without further elaboration.¹⁵ This is insufficient to establish the application of article 98(2), even if read together with the Initial Submissions to include the “Agreement on Cooperation in the field of Justice” between itself and Russia, according to which “high ranking officials enjoy immunity from the jurisdiction of third parties ([...including] international courts and tribunals) and cannot be arrested or extradited to third parties.”¹⁶ Tajikistan did not provide a copy of the agreement or full details of its provisions. In any event, the provisions mentioned by Tajikistan refer to the invocation of immunities, not undertakings not to surrender a person, and are thus not relevant to article 98(2).¹⁷

b. *The Court is not prevented from proceeding with the request for surrender under article 98(1)*

8. In its Further Submissions, Tajikistan also asserts that it is “guided by the principles of sovereign equality of states [and] respect for the immunity of senior officials”.¹⁸ However, the Pre-Trial Chamber has consistently held that “personal immunity of officials, including Heads of third States, is not opposable in proceedings before the Court, nor a waiver of immunity is required under article 98 of the Statute”,¹⁹ and that article 98(1) is not applicable to Head of State immunities.²⁰ Tajikistan therefore cannot rely on the absence of a waiver from the Russian Federation under article 98(1) to justify not arresting a Head of State of a non-State Party.

¹⁴ CIS Security Agreement, art. 11; *see also* art. 7(5) (“in conducting procedural actions and providing legal assistance, the Parties shall be guided by national laws and by their international obligations” (emphasis added)).

¹⁵ [Further Submissions](#), paras 3, 13.

¹⁶ [Initial Submissions](#), para. 13.

¹⁷ [Al Bashir/Jordan Appeal Judgment](#), para. 159 (“[...] article 98(2) of the Statute does not concern immunities”).

¹⁸ [Further Submissions](#), para. 5; *see also* [Initial Submissions](#), paras 6-13 (submitting, based on articles 27 and 98(1) of the Statute, that arresting and surrendering Mr PUTIN absent a waiver from the Russian Federation would be contrary to its international legal obligations with respect to the immunity of the Russian Head of State under customary international law and/or treaty law.”). Tajikistan does not assert that the CIS Security Agreement grants Head of State immunity to Russian officials. In any event, this agreement postdates Tajikistan signing and ratifying the Rome Statute; *see above*, para. 6.

¹⁹ [ICC-01/22-135](#), para. 5, *citing* ICC-01/22-42-Conf, para. 33; [ICC-01/22-90](#), paras 36-37. The Appeals Chamber and Pre-Trial Chamber have both made clear that article 98(1) of the Statute “does not itself stipulate, recognise or preserve any immunities” nor does it “supplement[], modif[y] or provide[] exceptions to article 27(2)”; rather it is a procedural rule that determines how the Court should proceed where any immunity exists. Accordingly, the existence of any immunity must therefore be first determined based on the Court’s sources of law, including article 27(2). *See* [Al Bashir/Jordan Appeal Judgment](#), paras 130-131; [ICC-01/22-90](#), para. 34.

²⁰ [ICC-01/22-90](#), para. 35; *see also* [ICC-01/22-135](#), para. 5, *citing* ICC-01/22-42-Conf, para. 33. *But see* [Al Bashir/Jordan Appeal Judgment](#), para. 131.

9. Even if article 98(1) were applicable, Tajikistan has failed to discharge its burden to establish the existence of a relevant immunity under either customary or conventional international law.²¹ Under customary international law, there is no personal or functional immunity based on official position, including Head of State, for suspects before international courts. By ratifying the Rome Statute, all States Parties have also agreed to the terms of article 27, which is fully reflective of customary international law.²² Article 27 thus binds States Parties not to recognise any kind of immunity of any persons, including Heads of States of non-State Parties.²³
10. Similarly, to the extent that Tajikistan's reference to "relevant bilateral agreements"²⁴ is meant to incorporate reference to the "Agreement on Cooperation in the field of Justice",²⁵ Tajikistan has not discharged its burden. As noted above,²⁶ the details provided are insufficient to determine the precise terms of Tajikistan's obligations under it, and whether it preceded Tajikistan becoming Party to the Rome Statute.
11. In any event, the Pre-Trial Chamber has previously held that any bilateral obligation to the Russian Federation with respect to the recognition of immunities for Heads of State cannot displace, alter or supersede the obligation that a State Party owes to the Court to arrest and surrender any person for whom the Court has issued a warrant of arrest, irrespective of their official capacity and nationality.²⁷

III. Conclusion

12. For the reasons set out above, the Prosecution considers that Tajikistan's failure to arrest and surrender Mr PUTIN during his October 2025 visit to its territory is inconsistent with its obligations under the Rome Statute.



Nazhat Khan, Deputy Prosecutor, Officer-in-Charge

Dated this 5th day of January 2026
At The Hague, The Netherlands.

²¹ See e.g. [Al Bashir/Jordan Appeal Judgment](#), para. 116 ("[...] the *onus* is on those who claim that there is such immunity in relation to international courts to establish sufficient State practice and *opinio juris*").

²² [Al Bashir/Jordan Appeal Judgment](#), paras 1-4, 100-117, 121; [ICC-01/22-90](#), paras 24-33.

²³ [ICC-01/22-90](#), para. 27; see also [ICC-01/22-135](#), para. 5, citing [ICC-01/22-42-Conf](#), para. 33.

²⁴ [Further Submissions](#), para. 13.

²⁵ [Initial Submissions](#), para. 13.

²⁶ See above, para. 7.

²⁷ [ICC-01/22-90](#), paras 27-28. See further [Al Bashir/Jordan Appeal Judgment](#), para. 158.