



Original: English

**No. ICC-01/22
Date: 9 June 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

Public redacted version of ‘Response to submissions of a State Party under article 97
of the Rome Statute’

Decision to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

☒ The Office of the Prosecutor

☐ Counsel for the Defence

☐ Legal Representatives of the Victims

☐ Legal Representatives of the Applicants

☐ Unrepresented Victims

☐ Unrepresented Applicants
(Participation/Reparation)

☐ The Office of Public Counsel for Victims

☐ The Office of Public Counsel for the
Defence

☒ States' Representatives

☐ Amicus Curiae

[REDACTED]

REGISTRY

Registrar

Mr Osvaldo Zavala Giler

☐ Counsel Support Section

☐ Victims and Witnesses Unit

☐ Detention Section

☐ Victims Participation and Reparations
Section

☐ Other

PRE-TRIAL CHAMBER II of the International Criminal Court (the ‘Chamber’) issues this Response to submissions pursuant to article 97 of the Rome Statute (the ‘Statute’), initiated by [REDACTED]. This response provides guidance on the [REDACTED].

I. PROCEDURAL BACKGROUND

1. On 17 March 2023, the Chamber issued a secret warrant of arrest for Vladimir Vladimirovich Putin (‘Mr Putin’).¹ On the same day, mindful that the conduct addressed in the warrant was allegedly ongoing, and that public awareness of the warrants may contribute to the prevention of the further commission of crimes, the Chamber authorised the Registry to publicly disclose the existence of the warrant against Mr Putin. In the warrant, the Chamber found reasonable grounds to believe that Mr Putin is allegedly responsible for the war crime of unlawful deportation of population and for the war crime of unlawful transfer of population from occupied areas of Ukraine to the Russian Federation (under articles 8(2)(a)(vii), 8(2)(b)(viii) and articles 25(3)(a) and 28(b) of the Statute).

2. [REDACTED].²

3. [REDACTED].³

4. [REDACTED] submitted a communication [REDACTED]⁴ requesting to engage in consultations pursuant to article 97 of the Statute [REDACTED] (the ‘Consultations Request’).⁵ In its Consultations Request, [REDACTED] requested consultations in relation to [REDACTED] the avenues available to States Parties to allow the organisation of peace talks on their territory involving a person subject to a warrant of arrest issued by the Court (the ‘Second Matter’).⁶

5. [REDACTED].⁷

¹ [REDACTED].

² [REDACTED].

³ [REDACTED].

⁴ [REDACTED].

⁵ [REDACTED].

⁶ [REDACTED].

⁷ [REDACTED].

6. [REDACTED].⁸
7. [REDACTED].⁹ [REDACTED].¹⁰ [REDACTED]¹¹ [REDACTED].¹²
8. [REDACTED].¹³
9. [REDACTED].¹⁴ [REDACTED].¹⁵
10. [REDACTED].¹⁶
11. [REDACTED].¹⁷
12. [REDACTED].¹⁸ [REDACTED].¹⁹

II. [REDACTED]

13. [REDACTED].
14. [REDACTED].²⁰
15. [REDACTED].²¹ [REDACTED].²² [REDACTED].²³ [REDACTED].
16. [REDACTED].
17. [REDACTED].²⁴ [REDACTED].²⁵ [REDACTED].
18. [REDACTED].

⁸ [REDACTED].

⁹ [REDACTED].

¹⁰ [REDACTED].

¹¹ [REDACTED].

¹² [REDACTED].

¹³ [REDACTED].

¹⁴ [REDACTED].

¹⁵ [REDACTED].

¹⁶ [REDACTED].

¹⁷ [REDACTED].

¹⁸ [REDACTED].

¹⁹ [REDACTED].

²⁰ [REDACTED].

²¹ [REDACTED].

²² [REDACTED].

²³ [REDACTED].

²⁴ [REDACTED].

²⁵ [REDACTED].

III. RESPONSE OF THE CHAMBER

19. The Chamber recalls that article 97 of the Statute provides that a State Party shall consult with the Court where the concerned State ‘receives a request [for cooperation] in relation to which it identifies problems which may impede or prevent the execution of the request’. Therefore, before addressing the merit of the Consultations Request, the Chamber shall satisfy itself that said request identifies a problem within the meaning of article 97 of the Statute. The use of the present tense in this provision, namely the requirement that the State *identifies* a problem, excludes any consultations based on hypothetical, abstract, or preventive considerations. Consequently, the procedure of consultations cannot be validly initiated in the absence of real, current and objectively identifiable difficulties. This is consistent with the absence of an advisory role of the Court. The wording ‘*may impede*’ refers to the possibility that a problem may prevent the execution of the request for cooperation, rather than to a certainty that it will do so in the foreseeable future. As explained in detail below, this is the case of a request stemming from a State Party pointing to a concrete possibility that it may host peace talks that would involve a participant against whom a warrant of arrest has been issued and for whom the Court has requested the concerned State Party cooperation in his arrest and surrender.

20. [REDACTED].²⁶ The problem identified is therefore not based on hypothetical, abstract, or preventive considerations, but rather based on real, current and objectively identifiable difficulties.

21. Accordingly, the Chamber finds that the Consultations Request identifies a problem within the meaning of article 97 of the Statute.²⁷ The Chamber will now turn to the Matters raised in the Consultations Request.

22. [REDACTED].²⁸ [REDACTED].

23. The Second Matter raises the question of whether the statutory framework provides any legal basis for the Court to defer or suspend a request for cooperation

²⁶ [REDACTED].

²⁷ [REDACTED].

²⁸ [REDACTED].

concerning the arrest and surrender of a suspect participating in peace negotiations particularly where the suspect is a sitting Head of State or Government.

24. At the outset, the Chamber recalls, as noted by the concerned State, that States Parties and States that have accepted the jurisdiction of the Court under article 12(3) of the Statute alike, have an obligation to execute an arrest warrant issued by the Court against the Head of State or Government of a non-State Party in compliance with article 27 of the Statute.²⁹ Of particular relevance to address the Second Matter, the Chamber recalls that it found in previous decisions that (i) article 27 of the Statute creates a binding obligation for States Parties to arrest and surrender any person for whom the Court has issued a warrant of arrest, irrespective of their official capacity and regardless of whether these persons are nationals of States Parties or non-States Parties; and (ii) such obligation to arrest and surrender suspects to the Court cannot be displaced by any interstate immunity principle or obligation.³⁰ Furthermore, the Chamber has found that (i) personal immunity of officials, including Heads of State or Government of third States, is not opposable in proceedings before the Court, nor a waiver of immunity is required under article 98 of the Statute; and (ii) should a State Party grant personal immunity to the Head of State or Government of a third State for whom an arrest warrant has been issued, it would be acting inconsistently with its international obligations under the Statute, which may, under specific conditions, amount to a violation of international law.³¹

25. Importantly, and as previously held by the Chamber, since the moment the Statute was signed and came into force, the Court acts in the interest of the international community for the benefit of humanity.³² In this respect, it is to be noted that the Statute confers the Court with jurisdiction over international crimes listed under article 5 of the

²⁹ [REDACTED].

³⁰ Mongolia Finding under Article 87(7), paras 26-27, 33; Finding under article 87(7) of the Rome Statute on the non-compliance by Tajikistan with the request by the Court to cooperate in the arrest and surrender of Vladimir Vladimirovich Putin and referral to the Assembly of States Parties, 19 March 2026, ICC-01/22-143 ('Tajikistan Finding under Article 87(7)'), para. 22.

³¹ Mongolia Finding under Article 87(7), para. 36; Tajikistan Finding under Article 87(7), para. 23.

³² See Response to submissions of a State Party under article 97 of the Rome Statute in relation to the Requests for provisional arrest of 24 April 2023, ICC-01/22-42-Conf, ('Response to a State Party'), para. 28; Mongolia Finding under Article 87(7), para. 31.

Statute, which criminalisation is widely regarded as a *ius cogens* norm.³³ *Ius cogens* norms are characterised in article 53 of the Vienna Convention on the Law of Treaties (the ‘Vienna Convention’) as norms ‘accepted and recognized by the international community of States as a whole as a norm’, and as such, are binding on all States irrespective of whether they are States Parties to the Court. The role of the Court exercising its jurisdiction in the interest of the international community is also implied by the powers of the United Nations Security Council (the ‘UNSC’), acting under Chapter VII, to refer situations to the Prosecutor and to request the deferral of investigation or prosecution. The Chamber also recalls that the Office of the Prosecutor reports regularly to the UNSC on the situations in Darfur and Libya, with none of the Members objecting to the role of the Court, its mandate, or its international character.³⁴

26. In these circumstances, when the Court, as part of its mandate to investigate, prosecute, and adjudicate ‘the most serious crimes of concern to the international community as a whole’ – including, as in the present situation, alleged violations of the Geneva Conventions of 1949 – requests the cooperation for arrest of an individual who is suspected of having committed such crimes, the concerned State Party has the legal obligation, both towards the Court and other States Parties, to act in good faith and comply with the cooperation request pursuant to the Statute. As such, any State Party’s international obligation toward the Court under the Statute (also called vertical obligation) supersedes its horizontal relation with the State of the nationality of the suspect, regardless of whether that latter State is a State Party. This system creates variable legal obligations for States: while at the interstate horizontal level personal immunity operates pursuant to the *par in parem non habet jurisdictionem* principle, according to which a sovereign state cannot exercise jurisdiction over another sovereign state, such principle is not applicable in the vertical relation between the Court and States Parties. The vertical obligation of a State Party also displaces traditional interstate immunity principles, meaning that States Parties must act in accordance with their

³³ See e.g. ICTY, Trial Chamber II, *Prosecutor v. Zoran Kupreskic et al.*, Case No. IT-95-16, Judgement, 14 January 2000, para. 520 (‘most norms of international humanitarian law, in particular those prohibiting war crimes, crimes against humanity and genocide, are also peremptory norms of international law or *jus cogens*, i.e. of a non-derogable and overriding character’).

³⁴ Response to a State Party, para. 28.

obligations under the Statute, even if it conflicts with horizontal relations with non-States Parties.³⁵

27. Against this backdrop, as the Second Matter raises questions as to the possibility to suspend such obligations toward the Court, the Chamber notes that article 16 of the Statute is of particular relevance to this situation since it postulates that ‘[n]o investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under Chapter VII of the Charter of the United Nations, has requested the Court to that effect’. Chapter VII of the Charter of the United Nations (the ‘UN Charter’) is entitled ‘Action with respect to threats to the peace, breaches of the peace, and acts of aggression’ and informs on the limited purpose for which the deferral may be requested, which specifically includes actions regarding threats to peace and breaches of peace. In addition, in the view of the Chamber, the reference to ‘prosecution’ makes it clear that a deferral under article 16 of the Statute would extend to the execution of any pending request for arrest and surrender. This provision constitutes the only avenue in the statutory framework available for the Court to suspend its proceedings.

28. The Chamber recalls that, according to the Preamble of the Statute, the Court is established ‘in relationship with the United Nations system’ and that the States Parties are resolved to guarantee lasting respect for, and enforcement of, international justice, mindful that the ‘most serious crimes of concern to the international community as a whole’ threaten the ‘peace, security and well-being of the world’. The Chamber further notes that the Preamble reaffirms observance of ‘the Purposes and Principles of the Charter of the United Nations’, thereby evidencing the drafters’ intention that the Statute operate in harmony with the wider international legal order. In accordance with the principle of systemic integration provided by article 31(3)(c) of the Vienna Convention, the Statute should therefore not be interpreted in isolation, but in light of the international legal framework.

29. In this regard, the UN Charter establishes the purposes, principles and institutional framework through which Member States of the United Nations pursue, *inter alia*, the maintenance of international peace and security. Accordingly, obligations

³⁵ Response to a State Party, para. 29; Mongolia Finding under Article 87(7), para. 33.

arising under the UN Charter may constitute relevant considerations when assessing the conduct of a State Party in the execution of its cooperation obligations under Chapter IX of the Statute.

30. Therefore, the Chamber finds that, where a suspect sought by the Court is to attend, in his or her official capacity as Head of State or Government, a peace conference formally convened by the United Nations under the UN Charter in the territory of a State Party to the Court, consideration may be given by the Court to possible conflicting obligations arising under the UN Charter when assessing pursuant to article 87(7) of the Statute whether the State has failed to comply with a request to cooperate emanating from the Court. The Chamber emphasises that this is a judicial determination to be made within the context of consultations under article 97 of the Statute and in the light of the specific circumstances of each case. As a consequence, an ICC State Party is under an obligation to provide in a timely manner any information on relevant developments and shall under no circumstances unilaterally waive the execution of a request for cooperation without breaching its obligation to cooperate with the Court.

31. Conversely, if and when the entity convening potential peace negotiations is *not* the United Nations, in principle there exist no opposable obligation on the State Party that may constitute ‘problems which may impede or prevent the execution of a request for cooperation’ within the meaning of article 97 of the Statute and the obligation of States Parties to cooperate in the arrest and surrender of a suspect cannot be superseded considering that, as per the terms of the UN Charter,³⁶ the United Nations has the primary responsibility for the maintenance of international peace and security.

32. The Chamber emphasises that the above findings are without prejudice to any decision the Chamber may take in light of the specific circumstances of the case should a situation covered in the present response (or similar) arise.

IV. CONFIDENTIALITY

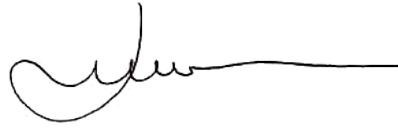
33. Pursuant to regulation 23bis(2) of the Regulations of the Court (the ‘Regulations’), the present Response is issued secret as it refers to filings of the

³⁶ Charter of the United Nations, article 1.

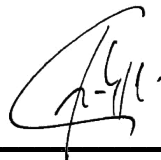
same confidentiality level. Noting the principle of publicity of the proceeding before the Court and considering the significance of this Response to States Parties and other relevant stakeholders, the Chamber deems it appropriate to file a public redacted version of the present Response, pursuant to regulation 23*bis*(3) of the Regulations.

34. [REDACTED].

Done in English. A French translation will follow. The English version remains authoritative.



**Judge Rosario Salvatore Aitala,
Presiding Judge**



**Judge Sergio Gerardo Ugalde
Godínez**



Judge Haykel Ben Mahfoudh

Dated 9 June 2026

At The Hague, The Netherlands