

ANNEX
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**EMBASSY OF MONGOLIA
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The Embassy of Mongolia in Brussels presents its compliments to the Registry of the International Criminal Court and has the honour to convey a Note Verbal № A/24-1582 dated 01 November 2024 from the Ministry of Foreign Affairs of Mongolia on requesting the Registry to deliver Mongolia's "Urgent Request for Suspensive Effect" to the Appeals Chamber of the International Criminal Court.

The Embassy of Mongolia in Brussels avails itself of this opportunity to renew to the Registry of the International Criminal Court the assurances of its highest consideration.

Enclosed: 5 pages



THE REGISTRY OF THE INTERNATIONAL CRIMINAL COURT
The Hague

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MONGOLIA
MINISTRY OF FOREIGN AFFAIRS

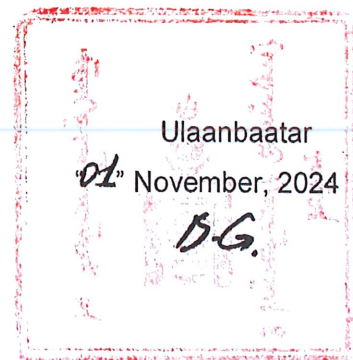
A/24-1582

The Ministry of Foreign Affairs of Mongolia presents its compliments to the Registry of the International Criminal Court and has the honor to request that the Registry urgently deliver Mongolia's "Urgent Request for Suspensive Effect" to the Appeals Chamber of the International Criminal Court. This request seeks the immediate suspensive effect of the decision by Pre-Trial Chamber II dated 24 October 2024, titled "Finding under Article 87(7) of the Rome Statute on the Non-Compliance by Mongolia with the Request of the Court to Cooperate in the Arrest and Surrender of Vladimir Vladimirovich Putin and Referral to the Assembly of States Parties."

Considering the upcoming Assembly of States Parties session scheduled from December 2 to December 7, 2024, the Government of Mongolia deems the request for suspensive effect to be of exceptional urgency. The initiation of referral discussions at the Assembly poses a significant risk of rendering Mongolia's appeal moot prior to its comprehensive evaluation. Accordingly, the request is hereby submitted for the immediate consideration of the Appeals Chamber.

Furthermore, the Ministry respectfully requests that the Registry publishes this urgent request on the official website of the International Criminal Court at the earliest possible convenience.

The Ministry of Foreign Affairs of Mongolia avails itself of this opportunity to renew to the Registry and the Appeals Chamber of the International Criminal Court the assurances of its highest consideration.



THE REGISTRY OF
INTERNATIONAL CRIMINAL COURT

The Hague

URGENT REQUEST FOR SUSPENSIVE EFFECT

I. Introduction

1. Mongolia respectfully submits this urgent request to the Appeals Chamber of the International Criminal Court ("Appeals Chamber") to grant immediate suspensive effect on the decision rendered by Pre-Trial Chamber II on 24 October 2024, titled "Finding under Article 87(7) of the Rome Statute on the Non-Compliance by Mongolia with the Request of the Court to Cooperate in the Arrest and Surrender of Vladimir Vladimirovich Putin and Referral to the Assembly of States Parties" ("Impugned Decision").
2. The Impugned Decision found Mongolia in non-compliance and referred the matter to the Assembly of States Parties for consideration and potential action.
3. Mongolia filed a "Request for Leave to Appeal" with Pre-Trial Chamber II on 29 October 2024. However, with the Assembly of States Parties scheduled to convene from 2 to 7 December 2024 at the World Forum in The Hague, Netherlands, the imminent risk of referral proceedings makes this request exceptionally urgent.
4. Granting immediate suspensive effect is necessary to preserve the fairness and effectiveness of the anticipated appeal. Allowing the referral to proceed could create an irreversible situation that could not be remedied, even if the Appeals Chamber ultimately finds in favor of Mongolia. Such a referral would lead to consequences that are exceedingly difficult to correct, fundamentally irreversible, and would potentially defeat the very purpose of the appeal.

II. Procedural history

5. On 24 October 2024, Pre-Trial Chamber II rendered its decision titled "Finding under Article 87(7) of the Rome Statute on the Non-Compliance by Mongolia with the Request of the Court to Cooperate in the Arrest and Surrender of Vladimir Vladimirovich Putin and Referral to the Assembly of States Parties" (ICC-01/22).
6. On 29 October 2024, Mongolia submitted a "Request for Leave to Appeal," indicating its intent to challenge the aforementioned decision. Concurrently, Mongolia filed a "Request for Temporary Stay of Proceedings," seeking to suspend the actions of Pre-Trial Chamber II concerning the appeal. The purpose of this temporary stay is to provide sufficient time for the Plenary of Judges to deliberate and render a decision on Mongolia's simultaneous "Request for Disqualification of Judges," which was also submitted to the Presidency of the International Criminal Court (the "Court") on the same date.

III. Legal Basis for Granting Suspensive Effect

7. Article 82(3) of the Rome Statute provides:

An appeal shall not of itself have suspensive effect *unless the Appeals Chamber so orders*, upon request, in accordance with the Rules of Procedure and Evidence.

8. Rule 156(5) of the Rules of Procedure and Evidence provides:

When filing the appeal, the party appealing may request that the appeal have suspensive effect in accordance with article 82, paragraph 3.

9. Past ICC jurisprudence has established that suspensive effect may be granted if:

[T]he Appeals Chamber, when deciding on requests for suspensive effect, has considered whether the implementation of the decision under appeal (i) 'would create an irreversible situation that could not be corrected, even if the Appeals Chamber eventually were to find in favour of the appellant', (ii) would lead to consequences that 'would be very difficult to correct and may be irreversible', or (iii) 'could potentially defeat the purpose of the appeal'.¹

IV. Reasons for requesting urgent suspensive effect

10. In addition to determining that Mongolia failed to comply with its obligations under the Statute, Pre-Trial Chamber II decided to "[r]efer the matter of Mongolia's non-compliance with the request for the arrest and surrender of Mr. Putin to the Assembly of States Parties through the President of the Court, in accordance with regulation 109(4) of the Regulations."²
11. Mongolia, as a steadfast supporter of the Court, formally objects to this decision, which it deems discriminatory, unjust, and marked by partiality. Mongolia contends that the decision does not conform to principles of public international law, as articulated in its "Request for Leave to Appeal" and "Request for Disqualification of Judges," both submitted on 29 October 2024. These requests details allegations of judicial partiality, procedural errors, and unfairness, including the denial of an oral hearing, discriminatory, restrictive deadlines, procedural mishandling and substantive errors in the non-compliance determination, all of which infringe upon Mongolia's right to be heard and result in procedural unfairness.
12. The Impugned Decision was issued on 24 October 2024, and Mongolia promptly filed its request for leave to appeal on 29 October 2024. However, due to legitimate concerns regarding the appearance of impartiality, Mongolia

¹ Situation on registered vessels of the Union of the Comoros, The Hellenic Republic and the Kingdom of Cambodia, 'Decision on suspensive effect', 6 August 2015, ICC-01/13-43 (OA), para. 7, referring to Prosecutor v. Jean-Pierre Bemba Gombo, Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido, 'Decision on the Prosecutor's urgent request for suspensive effect of the "Decision ordering the release of Aimé Kilolo Musamba, Jean-Jacques Mangenda Kabongo, Fidèle Babala Wandu and Narcisse Arido" of 21 October 2014', 22 October 2014, ICC01/05-01/13-718 (OA9), para. 5.

² ICC, Pre-Trial Chamber II, Finding under Article 87(7) of the Rome Statute on the Non-Compliance by Mongolia 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, ICC-01/22, 24 October 2024.

was compelled to submit a request to disqualify two judges who presided over and adjudicated the 24 October 2024 decision. To safeguard the integrity and fairness of the proceedings, Mongolia also sought a stay from Pre-Trial Chamber II pending a decision by the Plenary of Judges on the disqualification request.

13. Mongolia, however, submits that the timing of these proceedings has adversely impacts its right to fair and impartial proceedings, as safeguarded under the Rome Statute.
14. While these actions are essential to protect Mongolia's rights under the Rome Statute, the additional proceedings may cause unavoidable delays. During this period, however, the Impugned Decision remains in effect. Notably, from 2 to 7 December 2024, the Assembly of States Parties will convene in The Hague for its 23rd session. With the Impugned Decision still operative, there is a substantial risk it will be considered by the Assembly of States Parties, which would defeat the purpose of Mongolia's appeal and effectively render the process moot.
15. Mongolia respectfully submits that this sequence of events fundamentally compromises its right to fair, impartial, and expeditious proceedings, as enshrined in the Rome Statute, by not allowing sufficient time and opportunity to address and resolve these crucial procedural safeguards before the referral is acted upon. Consequently, Mongolia's right to appeal risks being rendered meaningless before it can be fully and fairly considered, thereby undermining the fairness and integrity of the proceedings.
16. Mongolia submits that it is self-evident that a referral of non-compliance to the Assembly of States Parties prior to resolution of the "Request for Leave to Appeal"—and before Mongolia can file the Appeal brief with the Appeals Chamber, once leave is granted—would result in consequences that are difficult to correct and irreversible, thereby defeating the purpose of both the Request for Leave to Appeal and the subsequent Appeal brief to be submitted to the Appeals Chamber. The purpose of the appeal is precisely to prevent such a referral and its associated consequences. Should the Appeals Chamber ultimately reverse the Impugned Decision of 24 October 2024, the basis for the referral would no longer exist.
17. In addition, the referral of Mongolia to the Assembly of States Parties would trigger "Assembly procedures relating to non-cooperation," leading to irreversible situations and defeating the purpose of the appeal. These procedures include, *inter alia*, Bureau meetings; public meetings involving States Parties to the Rome Statute, observers, and civil society; preparation of a report based on those discussions; its consideration by the Assembly; and the engagement of the President of the Assembly in good offices. Mongolia

submits that such procedures should not proceed while its request for leave to appeal, and the subsequent appeal brief itself, remain pending.³

18. Mongolia notes that, had time allowed, it would have included this request for suspensive effect within its Appeal brief filing to the Appeals Chamber. However, due to the imminent risk of Assembly of States Parties considering the referral and potential actions based on such a referral, Mongolia was compelled to file this urgent request at this stage to ensure that its appeal rights are meaningfully preserved in a fair, impartial, and expeditious manner.
19. Consequently, Mongolia submits that the timing of these proceedings necessitates immediate suspensive effect and cannot await Pre-Trial Chamber II's decisions on the "Request for Temporary Stay of Proceedings" and the "Request for Leave to Appeal," nor, if granted, the Appeals Chamber's eventual determination on the merits of Mongolia's appeal.

V. Relief Sought

20. For these reasons, Mongolia respectfully and urgently requests the Appeals Chamber to:
 - (i) Grant immediate suspensive effect on the Pre-Trial Chamber II's decision of 24 October 2024, ICC-01/22, titled "Finding under Article 87(7) of the Rome Statute on the Non-Compliance by Mongolia with the Request of the Court to Cooperate in the Arrest and Surrender of Vladimir Vladimirovich Putin and Referral to the Assembly of States Parties," thereby fully suspending its effect until the resolution of Pre-Trial Chamber II's decisions on Mongolia's "Request for Temporary Stay of Proceedings" and "Request for Leave to Appeal," as well as the Appeals Chamber's final determination on the anticipated appeal, should leave be granted.
 - (ii) Expedite consideration of this request given the urgency of the impending Assembly of States Parties meeting scheduled to take place 2-7 December 2024.
21. Mongolia further undertakes to provide any additional information the Appeals Chamber may require in support of this request.

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³ Assembly procedures relating to non-cooperation, ICC-ASP/17/2, ICC-ASP/10/Res.5 as amended by ICC-ASP/11/Res.8, annex I, and ICC-ASP/17/Res.5, annex II.