

ANNEX

Public



**EMBASSY OF MONGOLIA
BRUSSELS**

No A/24-111

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 No A/24-1751 dated 28 November 2024 from the Ministry of Foreign Affairs of Mongolia on requesting the Registry to transmit the former's "Third Urgent Request for Immediate Suspensive Effect" to the Appeals Chamber of the International Criminal Court for immediate consideration.

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: 9 pages

Brussels, 28 November 2024



THE REGISTRY OF THE INTERNATIONAL CRIMINAL COURT
The Hague

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MONGOLIA
MINISTRY OF FOREIGN AFFAIRS

A/24 - 1751

The Ministry of Foreign Affairs of Mongolia presents its compliments to the Registry of International Criminal Court and has the honor to request the Registry to forward the former's "Third Urgent Request for Immediate Suspensive Effect" to the Appeals Chamber of the International Criminal Court for immediate consideration.

Additionally, Mongolia requests the Registry to notify the Appeals Chamber that no response has been received by Mongolian side regarding its first and second urgent requests, submitted to the Appeals Chamber on 1 November 2024 and 12 November 2024, respectively.

Furthermore, Mongolia seeks confirmation from the Registry that the Appeals Chamber has duly received all three submissions, including the third request submitted herein, and reiterates its expectation of a prompt response to the said requests.

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



THE REGISTRY OF
INTERNATIONAL CRIMINAL COURT
The Hague

THIRD URGENT REQUEST FOR IMMEDIATE SUSPENSIVE EFFECT

I. Introduction

1. Mongolia respectfully submits this "Third Urgent Request for Immediate Suspensive Effect" ("Third Urgent Request") to the Appeals Chamber ("Appeals Chamber") of the International Criminal Court ("ICC" or the "Court") in connection with its prior urgent requests dated 1 November 2024 and 11 November 2024. These requests relate to the decision issued 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 by the Court to Cooperate in the Arrest and Surrender of Vladimir Vladimirovich Putin and Referral to the Assembly of States Parties" ("Impugned Decision").
2. Mongolia expresses its deep concern that, despite the submission of the First and Second Urgent Requests, dated 1 November 2024 and 11 November 2024 respectively, the Appeals Chamber has yet to issue a response.
3. Mongolia respectfully asserts that any determination by the Appeals Chamber suggesting it cannot act on this matter due to the lack of formal seizure would constitute a grave error. Such a position has permitted, and continues to permit, the following consequences (collectively referred to as "harm"):
 - (i) The creation of an irreversible situation that cannot be remedied, even if the Appeals Chamber ultimately rules in favor of the appellant;
 - (ii) Consequences that are very difficult to correct and may be irreversible; and
 - (iii) Harm that could potentially defeat the purpose of the appeal, thereby undermining the fairness of the proceedings.
4. Mongolia reiterates that its First Urgent Request was submitted to avert potential irreparable harm. The Second Urgent Request was filed subsequently to inform the Appeals Chamber that actions arising from the Impugned Decision had already commenced prior to the session of the Assembly of States Parties ("ASP" or "Assembly").
5. Given the Appeals Chamber's continued inaction regarding these requests, Mongolia now submits this Third Urgent Request. Mongolia emphasizes that, since submitting its Second Urgent Request, numerous formal and informal discussions have occurred within the Bureau and Secretariat of the ASP, and draft documents—including resolutions and reports—have been circulated among member states of the Rome Statute concerning the Impugned Decision. These developments highlight that harm is actively occurring, necessitating immediate action to prevent further irreversible consequences and to preserve the purpose of Mongolia's pending appeal.

6. In the absence of a granted suspensive effect, Mongolia affirms that it has undertaken and continues to take all reasonable measures within its capacity to mitigate the harm arising from the Impugned Decision. These efforts are intended to safeguard its "Request for Leave to Appeal" currently before Pre-Trial Chamber II and to ensure that a subsequent appeal to the Appeals Chamber remains meaningful and effective.
7. Mongolia finds itself, however, in the untenable position of addressing and attempting to mitigate harms that the Appeals Chamber is uniquely positioned and empowered to prevent. It is both unjust and inequitable for Mongolia to bear the responsibility of preventing or mitigating these consequences, particularly when the Appeals Chamber is procedurally and legally obligated to intervene and address such matters. Mongolia emphasizes that this persistent imbalance not only exacerbates the ongoing harm but also fundamentally undermines the principles of fairness and justice that the Appeals Chamber is entrusted to safeguard under the Rome Statute.
8. Thus, Mongolia respectfully submits that the Appeals Chamber should exercise its jurisdiction to consider this matter, even in the absence of formal "seizure." Given the Pre-Trial Chamber II's pending decision on the request for leave to appeal, the principles of fairness, justice, and the integrity of the Court's proceedings compel the Appeals Chamber to act where immediate and irreversible harm is at stake.
9. The Appeals Chamber's continued inaction, potentially relying solely on procedural technicalities concerning the formal seizure of the matter, constitutes an inherently unfair and unjust approach. Mongolia emphasizes that granting suspensive effect would not prejudice the Pre-Trial Chamber II's pending decision on the request for leave to appeal, any related proceedings before that Chamber, or the Appeals Chamber's eventual substantive consideration of Mongolia's appeal. Rather, it would ensure the integrity of the appellate process and uphold the principles of fairness and justice.
10. Mongolia further emphasizes that, under the ICC's legal framework, the Pre-Trial Chamber II lacks the authority to suspend its own decisions. The ICC Plenary of Judges has explicitly stated that it does not possess the authority to grant suspensive effect in this context.¹
11. Consequently, only the Appeals Chamber possesses the jurisdiction and authority, under Article 82(3) of the Rome Statute, to grant suspensive effect to the Impugned Decision. The continued inaction of the Appeals Chamber in response to Mongolia's repeated urgent requests is inconsistent with its duties and has allowed further irreparable harm to occur.

¹ ICC, Plenary of Judges, Reasons for the Decision on the 'Application for the Disqualification of Judges' filed on 31 October 2024, ICC-01/22-107, 22 November 2024.

12. The Appeals Chamber's failure to act has exacerbated the harm caused by the referral of the matter to the ASP and the subsequent actions taken by the ASP Bureau and Secretariat.
13. Mongolia underscores the urgency of this situation, given the imminent convening of the ASP session from 2 to 7 December 2024. Mongolia respectfully reiterates its request for the Appeals Chamber to exercise its inherent powers to grant suspensive effect. Immediate action is imperative to prevent irreparable harm and ensure that Mongolia's pending appeal is not rendered moot.
14. Mongolia respectfully underscores that the continued inaction by the Appeals Chamber also has profound long-term implications. Such inaction risks setting a precedent that procedural technicalities may override the fundamental principles of justice and fairness enshrined in the Rome Statute. This undermines the credibility of the Court's judicial processes, erodes trust in its ability to act decisively in urgent matters, and compromises the integrity of its mandate to ensure equitable outcomes. The failure to address this pressing issue may therefore have enduring consequences for the Court's legitimacy and the broader international legal order.
15. Mongolia, therefore, respectfully requests that the Appeals Chamber, in the exercise of its authority under the Rome Statute, grant the immediate suspensive effect sought. Such action is essential to preserve the integrity of the proceedings and to prevent further irreversible harm.
16. Mongolia notes that this request is made to safeguard its rights under the Rome Statute and to ensure that the appellate process remains meaningful and effective.

II. Procedural history

17. On 24 October 2024, Pre-Trial Chamber II issued its decision, titled "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."
18. On 29 October 2024, Mongolia filed its "Request for Leave to Appeal" with the Pre-Trial Chamber II.
19. On 1 November 2024, Mongolia submitted its "First Urgent Request for Suspensive Effect" to the Appeals Chamber, seeking to prevent irreversible harm arising from actions related to the ASP that could preclude meaningful appellate review.
20. On 11 November 2024, Mongolia submitted its "Second Urgent Request for Suspensive Effect" to inform the Appeals Chamber that, on 6 November 2024, the Bureau of the ASP convened to discuss the Impugned Decision.

21. Since 6 November 2024, numerous formal and informal discussions have taken place within the Bureau and Secretariat of the ASP concerning the Impugned Decision. Draft resolutions and reports have also been circulated among member states. Mongolia submits that these ongoing developments are actively causing harm, which continues to escalate both in the preparatory phase leading up to the ASP session and during the session itself.
22. As of 28 November 2024, proceedings before Pre-Trial Chamber II concerning Mongolia's Request for Leave to Appeal remain ongoing. Meanwhile, the ASP session is imminently scheduled to take place from 2 to 7 December 2024, during which Mongolia anticipates further measures may be taken against it, rendering Mongolia's pending appeal moot.

III. Legal Basis for Granting Suspensive Effect

23. Article 82(3) of the Rome Statute provides that an appeal shall not have suspensive effect unless the Appeals Chamber so orders. The provision does not expressly condition the Appeals Chamber's authority on the granting of leave to appeal by the Pre-Trial Chamber.
24. Rule 156(5) of the Rules of Procedure and Evidence allows the party appealing to request suspensive effect when filing the appeal. While the formal appeal cannot be lodged without leave, the Appeals Chamber retains inherent jurisdiction to ensure the fairness and integrity of proceedings.
25. The Appeals Chamber has previously recognized its authority to intervene in exceptional circumstances to prevent actions that could defeat the purpose of an eventual appeal and to uphold the rights of the parties under the Statute.
26. Given that no other body within the Court has the authority to grant suspensive effect, and considering the urgency due to ongoing harm and the impending ASP session, Mongolia submits that the Appeals Chamber should exercise its inherent powers to grant suspensive effect now, even before leave to appeal has been formally granted.

IV. Imminent Irreparable Harm and Defeat of the Appeal's Purpose

A. Actions Taken prior the ASP Session

27. Prior to the ASP session, a series of formal and informal measures are initiated to address issues of non-cooperation. Upon referral of a matter of non-cooperation by the ICC, the ASP Secretariat promptly informs all States Parties and may issue a public press release. In response, the Bureau of the ASP convenes emergency meetings to formulate strategies, while the President of the Assembly engages in diplomatic efforts, employing "good offices" and leveraging regional focal points to encourage compliance from the non-cooperative State.

28. Affected States Parties, the Court, and civil society often collaborate to share intelligence on ongoing developments. This exchange enables diplomatic networks and focal points to take proactive measures, such as drafting notes verbales, issuing public statements, and facilitating outreach on bilateral or regional levels to address non-cooperation effectively.
29. Reports documenting these efforts, as required under the Assembly's procedural framework, are prepared by the Bureau for discussion during the ASP session. These reports often form the basis for recommendations and decisions on further actions to be undertaken.
30. Mongolia submits that it is evident harm is actively occurring during this preparatory phase. Actions—such as formal and informal engagements, the dissemination of information, and the preparation of reports—have already begun to shape the procedural and substantive dynamics of the matter at hand, making it critical for the Appeals Chamber to intervene without delay.
31. The Appeals Chamber cannot remain a passive observer during this critical juncture. Immediate action is imperative to mitigate ongoing and irreparable harm that arises both in the pre-ASP session stage.
32. Continued inaction risks exacerbating the harm, further undermining the purpose of Mongolia's appeal and violating the principles of fairness and justice enshrined in the Rome Statute. The Appeals Chamber must act decisively to prevent such irreversible consequences, which would otherwise render the appellate process ineffective.

B. Actions Taken during the ASP Session

33. During the ASP session, the issue of non-compliance is formally debated in plenary sessions and working group meetings. These discussions are informed by reports submitted by the Bureau, which include the outcomes of prior diplomatic engagements, intelligence-sharing efforts, and recommendations for concrete action.
34. The Assembly facilitates direct dialogue between States Parties and the non-compliant State. This open exchange aims to foster constructive discussions on resolving the issue, emphasizing the principles of cooperation and adherence to the Rome Statute. Such dialogues often highlight challenges, propose pathways to compliance, and emphasize the shared commitment to upholding the integrity of the Court.
35. Based on deliberations, the ASP may adopt resolutions or declarations that underscore the importance of compliance with the Rome Statute. These documents frequently articulate steps for ensuring future cooperation.
36. The formal nature of the ASP's decisions during these sessions underscores the urgency of immediate judicial intervention by the Appeals Chamber.

Without action to grant suspensive effect, the ASP's resolutions may irreversibly shape the procedural and substantive outcomes of the matter, undermining or rendering the purpose of the appeal moot and the fairness of the proceedings. The Appeals Chamber must act to preserve the integrity of the judicial process and prevent harm that could compromise the ICC's mandate and Mongolia's appeal.

V. Exceptional Circumstances Warranting Immediate Intervention

37. Mongolia submits that the situation at hand constitutes an exceptional set of circumstances that necessitate immediate intervention by the Appeals Chamber. The combination of ongoing harm, the imminent ASP session, and the risk of irreversible consequences underscores the urgency of granting suspensive effect without delay.
38. The harm arising from the Impugned Decision is not speculative or hypothetical; it is actively occurring and escalating as the Bureau, Secretariat, and States Parties continue preparatory actions and discussions in advance of the ASP session. These actions are shaping perceptions, generating reports, and solidifying positions in ways that are difficult, if not impossible, to reverse.
39. With the ASP session scheduled to convene from 2 to 7 December 2024, Mongolia faces the imminent prospect of additional measures, including resolutions and declarations, being adopted. These measures could irreversibly impact Mongolia's legal standing, prejudice the outcome of its pending appeal, and undermine the integrity of the ICC's judicial process.
40. Mongolia underscores that there are *no alternative mechanisms* within the ICC framework capable of addressing the harm at this juncture. The Pre-Trial Chamber II lacks the authority to grant suspensive effect, and no other entity within the Court possesses the jurisdiction to intervene in this matter. As such, only the Appeals Chamber can prevent further harm and ensure the fairness of the proceedings.
41. The principles of justice and fairness enshrined in the Rome Statute demand that the Appeals Chamber act decisively to preserve the integrity of the proceedings. Allowing procedural technicalities to preclude timely intervention would set a dangerous precedent, signaling that adherence to procedural formality outweighs the substantive rights of the parties and the credibility of the Court.
42. Without the immediate granting of suspensive effect, the purpose of Mongolia's pending appeal may be rendered moot. Irreversible actions taken during or following the ASP session could significantly prejudice the appeal's outcome, leaving Mongolia without a meaningful remedy. This would undermine the integrity of the Court's judicial process and the rights guaranteed under the Rome Statute.

43. Mongolia recalls that the Appeals Chamber has previously exercised its inherent powers to intervene in exceptional circumstances to preserve the integrity of the proceedings and prevent irreparable harm. In this case, the combination of ongoing harm, procedural urgency, and the lack of alternative remedies constitutes a compelling basis for similar intervention.
44. Mongolia reaffirms its unwavering commitment to the principles of peace, security, stability, justice, accountability, and cooperation that underpin the Rome Statute. This appeal is not an attempt to shirk responsibility but rather a legitimate effort to ensure that Mongolia's rights under the Statute are upheld and that the ICC's procedures maintain their integrity by remaining fair, impartial, and aligned with the principles of justice.
45. Mongolia underscores that granting suspensive effect will not hinder the Court's ability to address the merits of the appeal. On the contrary, it will preserve the status quo, enabling the Appeals Chamber to render a meaningful and impartial ruling without the influence of irreversible external pressures or harm.

VI. Relief Sought

46. For the foregoing reasons, Mongolia respectfully submits that granting suspensive effect is not only a procedural necessity but also a substantive imperative to uphold the rule of law, due process, and the integrity of the Court's mandate. Accordingly, Mongolia urgently requests the Appeals Chamber to:
 - (i) Direct an expedited review and consideration of this request in light of the imminent ASP session scheduled to commence on 2 December 2024;
 - (ii) Promptly respond to Mongolia's First, Second and Third Urgent Requests for Immediate Suspensive Effect, submitted on 1 November 2024, 11 November 2024, and 28 November 2024, respectively, prior to the ASP session dated 2–7 December 2024;
 - (iii) Recognize the exceptional circumstances of this case, including the ongoing harm and procedural urgency, and exercise its inherent authority under Article 82(3) of the Rome Statute to address the immediate and escalating harm arising from the Impugned Decision.
 - (iv) Urgently issue an order granting immediate suspensive effect to the Pre-Trial Chamber II's decision dated 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." Such suspensive effect is sought pending the Pre-Trial Chamber II's decision on Mongolia's "Request for Leave to Appeal" and, if leave is granted, until the Appeals Chamber renders a final decision on the merits of the appeal;
 - (v) Order any further relief or procedural measures deemed necessary to preserve Mongolia's rights under the Rome Statute.

47. The Appeals Chamber's continued inaction has permitted harmful consequences to materialize, jeopardizing the fairness, impartiality, and effectiveness of the ICC's appellate process. Mongolia respectfully and urgently urges the Chamber to intervene without further delay to prevent additional harm, safeguard the integrity of the proceedings, and uphold the principles of justice and fairness fundamental to the Rome Statute.

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