

ANNEX
Public



**EMBASSY OF MONGOLIA
BRUSSELS**

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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 request the Registry to forward Mongolia's "Request for partial reconsideration of the decision on the 'application for the disqualification of judges', or alternatively, a submission of a new application for disqualification" to the Plenary of Judges and "Request for reconsideration of "decision on Mongolia's request for leave to appeal, temporary stay of the proceedings, and related matters"" to the Pre-Trial Chamber II of the International Criminal Court.

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

Enclosed: 23 pages

Brussels, 2. December 2024



THE REGISTRY OF THE INTERNATIONAL CRIMINAL COURT
The Hague

REQUEST FOR RECONSIDERATION OF THE “DECISION ON MONGOLIA’S REQUESTS FOR LEAVE TO APPEAL, TEMPORARY STAY OF THE PROCEEDINGS, AND RELATED MATTERS”

I. Introduction

1. Mongolia respectfully submits this Request for Reconsideration of the “Decision on Mongolia’s requests for leave to appeal, temporary stay of the proceedings and related matters” dated 29 November 2024 (“Decision on Leave to Appeal”), pursuant to the inherent powers of Pre-Trial Chamber II (“Chamber”).
2. Mongolia observes that the settled practice of the International Criminal Court (“ICC” or the “Court”) allows for reconsideration only in exceptional circumstances, specifically where there is a clear error of reasoning or where such action is necessary to prevent an injustice.
3. Mongolia submits that both criteria are met in this case, as the Chamber’s Decision on Leave to Appeal (i) contains clear errors of reasoning and (ii) results in significant injustice by denying Mongolia appellate review of critical issues, including substantial procedural errors that directly impact its rights and obligations under international law and the Rome Statute.

II. Procedural Background

4. On 24 October 2024, the Chamber issued the “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”), determining that Mongolia failed to comply with its obligations under the Statute.
5. On 29 October 2024, Mongolia filed a “Request for Leave to Appeal” the Impugned Decision under Article 82(1)(d) of the Statute, identifying sixteen issues for appeal and requesting additional measures, including an oral hearing and the invitation of *amicus curiae* submissions pursuant to Rule 103 of the Rules of Procedure and Evidence (“Rules”).
6. On 4 November 2024, the Prosecution filed its Response opposing Mongolia’s Request for Leave to Appeal, raising new arguments and interpretations that Mongolia could not have reasonably anticipated.
7. On 12 November 2024, Mongolia sought leave to reply to the Prosecution’s Response under Regulation 24(5) of the Regulations of the Court, highlighting the necessity to address new issues and mischaracterizations.
8. On 14 November 2024, the Chamber partially granted Mongolia’s request, permitting a reply on two discrete issues, limited to five pages, to be filed by 20 November 2024.

9. On 18 November 2024, Mongolia requested an extension of time and page limits for its reply, citing the complexity of the issues and the practical challenges it faced in preparing and submitting comprehensive response.
10. On 20 November 2024, the Chamber granted a limited extension, setting the deadline of 25 November 2024 and increasing the page limit to ten pages.
11. On 25 November 2024, Mongolia, acting in good faith and within the prescribed deadlines, submitted a "Request for Oral Hearing in Lieu of Written Reply," seeking, *inter alia*, an oral hearing to (i) elaborate on the issues identified for appeal, clarify misunderstandings, and to (ii) reply to the Prosecution's Response and ensure a fair opportunity to address the Chamber.¹
12. On 29 November 2024, the Chamber issued the Decision on Leave to Appeal, rejecting Mongolia's Request for Leave to Appeal on the basis that an Article 87(7) finding is not an appealable decision under Article 82(1)(d), and that, in any event, Mongolia failed to meet the criteria under that provision.

III. Legal Basis for Reconsideration

13. While the Rome Statute and the Rules do not expressly provide for reconsideration, the Court has recognized its inherent authority to reconsider decisions in exceptional circumstances. The settled practice of the Court provides that reconsideration is warranted where: (i) There is a clear error of reasoning in the original decision; or (ii) Reconsideration is necessary to prevent an injustice.²

¹ In its Request for Oral Hearing in Lieu of Written Reply, dated 25 November 2024, Mongolia respectfully requested the Chamber to: (i) provide procedural opportunities equivalent to those afforded to other States Parties in similar circumstances; (ii) allow Mongolia to reply to the Prosecution's Response through an in-person oral hearing; (iii) permit oral submissions elaborating on the reasoning behind its Request for Leave to Appeal; (iv) suspend the deadline for filing the written reply pending the Chamber's decision on the request; (v) invite amicus curiae submissions under Rule 103 of the Rules; (vi) accommodate portions of the hearing in closed session to safeguard national security information, if convened; and (vii) convene a status conference to address procedural and organizational aspects of the oral hearing.

² Trial Chamber VII, The Prosecutor v. Jean-Pierre Bemba Gombo et al., Decision on Kilolo Defence Request for Reconsideration, 15 July 2015, ICC-01/05-01/13-1085, para. 4; Trial Chamber V(a), The Prosecutor v. William Samoei Ruto and Joshua Arap Sang, Decision on the Sang Defence's Request for Reconsideration of Page and Time Limits, 10 February 2015, ICC-01/09-01/11-1813, para. 19. See also, generally, Appeals Chamber, The Prosecutor v. Bosco Ntaganda, Decision on Mr Ntaganda's request for reconsideration of the decision on time and page extensions, 1 October 2019, ICC-01/04-02/06-2426. Pre-Trial Chamber II, The Prosecutor v. Maxime Jeoffroy Eli Mokom Gawaka, Decision on Mr Mokom's requests for reconsideration and leave to appeal the 'Order on appointment of Mr Kaufman as Counsel for Mr Mokom', 14 April 2022, ICC-01/14-01/22-43, public, para. 19; Pre-Trial Chamber II, The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona, Decision on the Prosecutor's request for reconsideration or, in the alternative, leave to appeal the 'Decision on the confirmation of charges against Alfred Yekatom and Patrice-Edouard Ngaïssona', 11 March 2021, ICC-01/14-01/18-447, para. 16; Pre-Trial Chamber II, The Prosecutor v. Alfred Yekatom and Patrice-Edouard Ngaïssona, Decision on the 'Ngaïssona Defence Request for Leave to Appeal the Second Decision on Disclosure and Related Matters', 24 May 2019, ICC-01/14-01/18-206, para. 20; Trial Chamber X, The Prosecutor v. Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud, Decision on Defence request for reconsideration and, in the alternative, leave to appeal the 'Decision on witness preparation and

14. Mongolia respectfully submits that the Chamber's Decision on Leave to Appeal meets both criteria. The Decision on Leave to Appeal reflects clear errors in its reasoning, as it misinterprets the appealability of Article 87(7) findings and unjustly denied Mongolia adequate procedural opportunities.
15. Furthermore, reconsideration is essential to prevent an injustice, as the Decision on Leave to Appeal deprives Mongolia of the opportunity for appellate review—a critical opportunity to challenge significant procedural errors and key legal conclusions that carry substantial implications for its international obligations.

IV. Grounds for Reconsideration

A. The Decision on Leave to Appeal contains a clear error of reasoning, which warrants the Chamber's reconsideration

1. Appealability of Article 87(7) Findings

16. Mongolia respectfully submits that the Chamber made a clear error of reasoning in concluding that the Impugned Decision is not an appealable decision under Article 82(1)(d) of the Statute.
17. The Chamber reasoned that the Impugned Decision does not amount to an appealable decision because it does not involve a judicial decision in the procedural sense and does not affect the rights of the parties or the outcome of the trial.³ The Chamber further held that the "proceedings" referred to in Article 82(1)(d) are limited to the proceedings against President Putin and that the finding under Article 87(7) has no procedural consequence in relation to those proceedings.⁴
18. This reasoning is inconsistent with established jurisprudence. In the *Prosecutor v. Omar Hassan Ahmad Al Bashir* ("Jordan Decision"), Pre-Trial Chamber II granted Jordan leave to appeal an Article 87(7) finding under Article 82(1)(d). The Chamber recognized that, while the plain meaning of the requirement that the issues affect the fair and expeditious conduct of the proceedings or the outcome of the trial did not appear to encompass the matter at hand, it was appropriate to give that requirement an extensive interpretation based on its object and purpose.⁵
19. The Chamber in the Jordan Decision held that the issues raised significantly affected the Court's ability to obtain custody of a person and commence

familiarisation', 9 April 2020, ICC-01/12-01/18-734, para. 11; Trial Chamber VI, *The Prosecutor v. Bosco Ntaganda*, Decision on Defence request seeking partial reconsideration of the 'Decision on Defence request for admission of evidence from the bar table', 22 February 2018, ICC-01/04-02/06-2241, para. 4; Trial Chamber IX, *The Prosecutor v. Dominic Ongwen*, Decision on Request for Reconsideration of the Order to Disclose Requests for Assistance, 15 June 2016, ICC-02/04-01/15-468, para. 4.

³ Decision on Leave to Appeal, para. 26.

⁴ *Id.*, at paras 27-28.

⁵ Pre-Trial Chamber II, *The Prosecutor v. Omar Hassan Ahmad Al Bashir*, Decision on Jordan's request for leave to appeal, 21 February 2018, ICC-02/05-01/09-319, para. 15.

criminal proceedings *stricto sensu*, and that an immediate resolution by the Appeals Chamber would materially advance the proceedings.⁶

20. By contrast, in the present case, the Chamber departed from this precedent without acknowledging or providing any justification for such departure. The Chamber did not address the Jordan Decision, which is directly relevant and constitutes authoritative precedent on the interpretation of Article 82(1)(d) in the context of Article 87(7) findings.
21. The failure to consider or distinguish the Jordan Decision amounts to a clear error of reasoning, undermining the consistency, coherence and predictability of the Court's jurisprudence.
22. Furthermore, the Chamber's assertion that the Article 87(7) Finding does not affect the rights of the parties or the outcome of the trial overlooks the significant implications of such a finding for Mongolia's legal obligations, international relations, and reputation.⁷ The referral to the Assembly of States Parties carries potential consequences that directly impact Mongolia's interests.
23. The Chamber's narrow interpretation of "proceedings" under Article 82(1)(d), based on the 2006 Appeals Chamber Decision⁸ overlooks the broader context and purpose of the provision, which is to ensure appellate review of decisions that have a substantial impact on the fairness and integrity of the judicial process.⁹
24. Specifically, the Decision on Leave to Appeal erroneously restricted the scope of "the proceedings" under Article 82(1)(d) to only those directly involving President Putin. This narrow interpretation conflicts with established jurisprudence, which recognizes that proceedings under Article 87(7) concerning States' non-compliance are integral to the Court's broader ability to function effectively.
25. Lastly, the Chamber's finding that Mongolia's arguments were "discrete in nature" and "not capable of affecting the proceedings" is inconsistent with the Court's broader mandate to ensure State cooperation.¹⁰ By declining to certify these issues for appeal, the Chamber has obstructed the Court's ability to secure consistent State compliance with its requests under the Rome Statute.

2. Distinction Between Appeals Under Article 82(1)(d): Ordinary Proceedings and Article 87(7) Findings

26. Mongolia respectfully submits that the Chamber committed a clear error in reasoning by failing to distinguish between leave to appeal under Article

⁶ Ibid.

⁷ Decision on Leave to Appeal, para. 26.

⁸ Appeals Chamber, Situation in the Democratic Republic of the Congo, Judgment on the Prosecutor's Application for Extraordinary Review of Pre-Trial Chamber I's 31 March 2006 Decision Denying Leave to Appeal, 13 July 2006, ICC-01/04-168.

⁹ Decision on Leave to Appeal, paras. 23-25, 28.

¹⁰ Id., at para 28.

82(1)(d) in the context of ordinary criminal proceedings and Article 87(7) findings.

27. Mongolia submits that appeals under Article 82(1)(d) encompass two distinct categories that should be considered separately. The first category pertains to ordinary appeals arising from the criminal proceedings before the Court, involving issues that affect the fair and expeditious conduct of the trial or its outcome. The second category involves appeals related to Article 87(7) findings, which concern non-compliance by States Parties and have unique implications for the relationship between the Court and its States Parties.
28. Decisions under Article 87(7) involve determinations about a State Party's compliance with its obligations under the Rome Statute and can significantly impact a State's legal rights and international standing. Therefore, the requirements and considerations applicable to appeals in the context of Article 87(7) decisions should not be conflated with those pertaining to ordinary criminal proceedings.
29. Recognizing this distinction is essential to ensure that States Parties are afforded the opportunity to appeal Article 87(7) findings, thereby safeguarding their rights and promoting a fair and balanced administration of justice within the framework of the Statute.
30. Accordingly, the Chamber must take into account and uphold the relevant jurisprudence related to the second prong of the Jordan leave to appeal test, ensuring a comprehensive and principled approach to appeals under Article 82(1)(d).

3. Failure to Substantively Engage or Certify Legal Issues

31. Mongolia submits that the Chamber, at a minimum, should have made, *prima facie*, effort to consider and certify the issues presented in its Request for Leave to Appeal.
32. The Chamber summarily dismissed the request without substantive engagement with the sixteen issues identified in the leave to appeal request, many of which raise significant legal questions concerning the interpretation and application of the Rome Statute, including Articles 27 and 98, and the interplay with customary international law and bilateral treaty obligations.
33. By failing to certify or consider any of the issues for appeal, the Chamber denied Mongolia the opportunity for appellate review of critical legal matters that have profound implications for its rights and obligations. This approach undermines the fairness of the proceedings and is inconsistent with the Chamber's duty to ensure that significant legal issues are given due consideration.

B. Necessity to Prevent an Injustice

34. Mongolia submits that reconsideration is necessary to prevent an injustice.

1. *Inconsistent Procedural Limitations*

35. Mongolia respectfully submits that the Chamber failed to grant sufficient time and opportunity for Mongolia to fully present its case during the proceedings concerning Leave to Appeal.
36. Mongolia notes with concern the Chamber's assertion that it had "almost three months" to substantiate its appeal.¹¹ This characterization does not reflect the procedural reality.
37. Mongolia filed its Request for Leave to Appeal on 29 October 2024. The Prosecution responded on 4 November 2024. Mongolia sought leave to reply to the Prosecution's Response on 12 November 2024, which the Chamber partially granted on 14 November 2024, setting a deadline of 20 November 2024.
38. Recognizing the complexity of the issues and the practical challenges it faced due to the internal state processes Mongolia requested an extension on 18 November 2024. The Chamber accommodated this request and extended the deadline to 25 November 2024.
39. On 25 November 2024, acting in good faith and within the prescribed deadlines, Mongolia requested an oral hearing in lieu of a written reply. This request aimed, among other things, to (i) adequately substantiate the issues raised in the Request for Leave to Appeal and (ii) address the Prosecution's response within the scope permitted by the Chamber.¹²
40. Accordingly, at no point did Mongolia have a three-month period to substantiate its appeal. The Chamber's assertion disregards the actual timeline and the procedural constraints imposed, effectively denying Mongolia a fair opportunity to fully present its case.
41. Mongolia emphasizes that it has strictly adhered to every deadline set by the Chamber in good faith and has never disregarded any decision. At all times, Mongolia has consistently demonstrated genuine efforts and ensured full compliance with all procedural deadlines.

2. *Denial of Oral hearing and to Substantiate the "issues"*

42. Mongolia is perplexed by the Chamber's reasoning that it failed to substantiate the issues raised in its Request for Leave to Appeal when, in reality, the

¹¹ Decision on Leave to Appeal, para. 21.

¹² In its Request for Oral Hearing in Lieu of Written Reply, dated 25 November 2024, Mongolia respectfully requested the Chamber to: (i) provide procedural opportunities equivalent to those afforded to other States Parties in similar circumstances; (ii) allow Mongolia to reply to the Prosecution's Response through an in-person oral hearing; (iii) permit oral submissions elaborating on the reasoning behind its Request for Leave to Appeal; (iv) suspend the deadline for filing the written reply pending the Chamber's decision on the request; (v) invite amicus curiae submissions under Rule 103 of the Rules; (vi) accommodate portions of the hearing in closed session to safeguard national security information, if convened; and (vii) convene a status conference to address procedural and organizational aspects of the oral hearing.

Chamber denied Mongolia adequate opportunity and the means to fully articulate and substantiate its legal arguments and identified issues.

43. Mongolia did not ignore or intentionally fail to provide a reply to the Prosecution's Response. Rather, it sought an alternative, more efficient and effective means to ensure that its arguments were fully and effectively heard.
44. Specifically, Mongolia's request for an oral hearing was not only to address the Prosecution's Response but, more importantly, to elaborate on the issues identified for appeal and to engage directly with the Chamber. Such a hearing would have facilitated a comprehensive and efficient presentation of the issues, thereby promoting fairness and due process.
45. In this regard, Mongolia is deeply concerned that the Chamber, in its Decision on Leave to Appeal, misrepresented Mongolia's request. The Decision on Leave to Appeal stated that Mongolia sought an oral hearing solely to reply to the Prosecution's Response.¹³ In fact, Mongolia requested an oral hearing to (i) adequately substantiate the issues raised in the request for leave to appeal and (ii) reply to the Prosecution's Response within the scope permitted by the Chamber.
46. By rejecting Mongolia's request for an oral hearing, the Chamber effectively constrained Mongolia's ability to substantiate its request for leave to appeal.
47. It is both inconsistent and unjust for the Chamber to fault Mongolia for an alleged lack of substantiation when it was the Chamber's own procedural decisions that hindered Mongolia's ability to present comprehensive arguments.
48. Furthermore, it is misleading and unfair to characterize Mongolia's request for an oral hearing as solely intended to reply to the Prosecution, when the request clearly aimed to address broader and more substantive issues.
49. Mongolia respectfully reiterates that the Impugned Decision also suffered from procedural unfairness due to the Chamber's reliance on incomplete submissions from Mongolia.
50. Mongolia notes that, prior to the rendering of the Impugned Decision, it had explicitly stated that its initial submission was incomplete and requested an oral hearing to provide additional context and clarifications necessary for the Chamber to reach an informed and fair decision. Mongolia emphasized that the combination of written and oral submissions would form a comprehensive submission, ensuring the Chamber was presented with the full scope of Mongolia's legal and factual arguments.
51. Unfortunately, the Chamber rendered its Impugned Decision ignoring Mongolia's request for an oral hearing, effectively basing its conclusions on partial submissions that did not provide a complete picture of Mongolia's legal position, including its reliance on obligations under international law and

¹³ Decision on Leave to Appeal, paras. 18, 21.

bilateral agreements. This procedural shortfall deprived Mongolia of a meaningful opportunity to fully present its case, thereby undermining the fairness and thoroughness of the proceedings, resulting in an erroneous decision.

52. Mongolia respectfully submits that the Decision on Mongolia's Request for Leave to Appeal also suffered from a similar procedural flaw. Mongolia's request for leave to appeal explicitly identified the Chamber's failure to grant an oral hearing as a substantive procedural error in the Impugned Decision, highlighting the Chamber's reliance on incomplete submissions.
53. Regrettably, in addressing the Request for Leave to Appeal, the Chamber once again declined to grant an oral hearing, despite the relevance of Mongolia's arguments concerning procedural fairness and the necessity of ensuring complete submissions substantiating the issues identified for the purpose of appeal.
54. By rendering the Decision on Leave to Appeal without allowing Mongolia to fully address the issues identified for appeal or respond to the Prosecution's arguments—particularly through an oral hearing—the Chamber perpetuated the same procedural errors highlighted during the Impugned Decision.
55. Consequently, the Decision on Leave to Appeal is based on procedural error, incomplete submissions and does not adequately address Mongolia's procedural and substantive concerns.

3. Denial of Appellate Review

56. The Chamber's Decision on Leave to Appeal deprives Mongolia of the opportunity to have critical procedural and legal issues reviewed by the Appeals Chamber, including, but not limited to:
 - (i) The interpretation and application of Articles 27 and 98 of the Statute, particularly in relation to the immunity of heads of state of non-State Parties;
 - (ii) The interplay between the Statute and customary international law regarding immunities;
 - (iii) Mongolia's obligations under international law and existing bilateral agreements.
57. Denying Mongolia, the right to appeal the Article 87(7) Finding results in an injustice, as it prevents Mongolia from challenging procedural aspects and the legal basis of the Chamber's conclusions, which have significant consequences for Mongolia's international obligations and standing.
58. The Chamber's refusal to grant an oral hearing or to provide Mongolia with sufficient opportunity to substantiate its appeal constitutes a denial of procedural justice and the right to be heard.
59. Additionally, the Chamber's approach results in disparate treatment of Mongolia compared to other States Parties, such as Jordan, which were granted leave to appeal under similar circumstances. This inconsistency

undermines the principles of fairness and equality before the Court and may erode confidence in the impartiality of the judicial process.

60. The inability to seek appellate review of the Article 87(7) Finding not only affects Mongolia's legal rights but also has practical implications. The referral to the Assembly of States Parties may lead to repercussions, further emphasizing the need for judicial scrutiny of the underlying legal determinations.
61. The Chamber failed to consider the broader significance of appellate resolution on the interplay between Article 27(2) and Article 98 of the Rome Statute. In prior Appeals Chamber decisions, such as in the Jordan case, the Appeals Chamber has emphasized the importance of providing clarity and finality on such fundamental legal issues, particularly where they affect States' cooperation obligations. The Chamber's refusal to grant leave to appeal prevents such clarity and exposes Mongolia to further legal uncertainty and reputational harm.¹⁴
62. This oversight constitutes a clear error, particularly given that Mongolia has demonstrated the immediate and significant impact of these issues on its relations with other States, including those that are not parties to the Rome Statute.

4. Procedural Injustice and its Impact on Fairness

63. Mongolia is puzzled by the Chamber's apparent haste in rendering its Decision. The Chamber issued the Decision on 29 November 2024, right before the commencement of the Assembly of States Parties ("ASP") session on 2 December 2024.
64. Mongolia questions the legal basis and legal reasoning for such urgency. The Chamber's emphasis on expeditiousness, seemingly driven by an arbitrary desire to decide the matter before the ASP session, should not override the fundamental principles of procedural fairness and due process.
65. The need to render a decision prior to the ASP session does not constitute a legitimate or a sound legal reason to curtail Mongolia's right to be heard and to have its legal arguments fully considered.
66. This undue haste suggests that factors external to the legal merits of the case may have influenced the Chamber's decision-making process, which is inappropriate, undermines the integrity of the judicial proceedings, and erodes trust in the judicial system.
67. The Chamber's emphasis on efficiency and the timing of its decisions suggest that the motivation was not legal but political—a desire to resolve the matter before the ASP session at the expense of fairness and justice.

¹⁴ Pre-Trial Chamber II, *The Prosecutor v. Omar Hassan Ahmad Al Bashir*, Decision on Jordan's request for leave to appeal, 21 February 2018, ICC-02/05-01/09-319, para. 15.

V. Necessity of an Oral Hearing and Granting Leave to Appeal¹⁵

68. Mongolia contends that its request for leave to appeal should be granted under principles of consistency, pointing out that the Pre-Trial Chamber previously granted Jordan leave to appeal under similar circumstances.
69. Mongolia insist that if Jordan's leave to appeal was justified, its own request merits the same consideration, notwithstanding that the issues raised in the Jordan case have already been addressed by the Appeals Chamber.
70. The Mongolia's request leave to appeal presents distinct legal and procedural issues requiring independent scrutiny, diverging from the Jordan Al-Bashir appeal in substantive and procedural contexts.
71. Unlike the Jordan appeal, which focused on State Parties' obligations under the Rome Statute to arrest and surrender a Head of State of a non-State Party in a UN Security Council referral context, Mongolia raises complex legal questions tied to bilateral immunity agreements under Article 98(2) of the Rome Statute.
72. Mongolia asserts that its treaty with the Russian Federation granting immunity to officials creates legal barriers not previously examined by the Appeals Chamber.
73. Additionally, Mongolia highlights unresolved issues concerning the interplay between Articles 27(2) and 98(1) of the Rome Statute and customary international law, including but not limited to principles of *jus specialis* and *jus cogens*. These complexities, among others, were not exhaustively addressed in the Jordan decision.
74. Procedurally, Mongolia challenges the rejection of its Article 97 consultation request as untimely and claims procedural fairness was compromised, particularly regarding the dismissal of its request for an oral hearing, emphasizing the need for appellate intervention.
75. Furthermore, Mongolia's reliance on customary international law and its bilateral obligations under its treaty with Russia raises legal considerations absent in the Jordan case, where obligations under a Chapter VII Security Council resolution were determinative.
76. Jurisdictionally, the Mongolia's case lacks the binding force of a Security Council mandate, relying instead on Mongolia's status as a Rome Statute State Party, raising unique questions about the Statute's obligations versus general international law.
77. Mongolia underscores that this substantive argument is neither final nor exhaustive and is presented without prejudice to the oral hearing or appeal

¹⁵ This submission is not intended to be a complete or exhaustive argumentation, as Mongolia reserves the right to raise additional arguments and issues in future written and oral submissions. Mongolia further intends to elaborate on these matters during the oral hearing and the appeal process before the Appeals Chamber.

Mongolia seeks before the Appeals Chamber. Mongolia emphasizes that this submission is a preliminary demonstration of why leave to appeal should be granted, and it will further elaborate its position if the oral hearing is approved. Therefore, Mongolia requests that the oral hearing be granted to allow for a full and comprehensive argument, ensuring procedural fairness and clarity in addressing the distinct legal and procedural issues it has raised.

VI. Grounds for Stay of Proceedings

78. Mongolia respectfully informs the Chamber that, on 2 November 2024, it submitted a Request for Reconsideration of the Decision on the "Application for the Disqualification of Judges," or alternatively, a Submission of a New Application for Disqualification, to the Plenary of Judges. This request pertains to the Chamber's decision dated 15 November 2024, which rejected Mongolia's initial application for the disqualification of the judges.
79. This application directly concerns members of this Chamber, as such Mongolia submits that, in accordance with principles of judicial impartiality, it would be inappropriate for the Judges of this Chamber to rule on this Request for Reconsideration or any subsequent submissions of parties to these proceedings until the Plenary of Judges renders its decision on the disqualification application.
80. Article 41(2)(a) of the Rome Statute mandates that judges must refrain from participating in cases where their impartiality might reasonably be doubted. Mongolia asserts that this principle is central to ensuring fairness and legitimacy in judicial proceedings. To uphold this principle, Mongolia contends that the stay of proceedings, including the consideration of Mongolia's Request for Reconsideration, is necessary until the Presidency notifies the Chamber of the decision by the Plenary of Judges on the disqualification application.
81. The continuation of proceedings involving Judges whose impartiality is under review risks not only affecting the perception of fairness but also potentially compromising the integrity of the ICC's judicial process.
82. Mongolia emphasizes that granting a temporary stay of proceedings would not prejudice the case. Instead, it would simply pause the consideration of Mongolia's Request for Reconsideration until the issue of disqualification is resolved.
83. This ensures that subsequent proceedings, if any, proceed under conditions of unequivocal impartiality. A stay in this instance will allow the Plenary of Judges to deliberate and resolve the disqualification matter without external pressure or procedural inconsistencies. Such an approach reinforces the perception of impartiality and prevents any risk of perceived or actual bias affecting the outcomes of these proceedings.
84. Proceeding with decisions on Mongolia's Request for Reconsideration before the disqualification matter is resolved may result in outcomes that could be invalidated if the disqualification is ultimately granted. A stay of proceedings

would therefore serve to prevent prejudicial determinations and uphold the fairness and integrity of the judicial process.

85. Continuing to render decisions while the question of disqualification is pending undermines the procedural fairness, impartiality, and credibility of the ICC—foundational principles that ensure public trust and confidence in its rulings.
86. For these reasons, Mongolia respectfully requests that the Chamber to stay the consideration of this Request for Reconsideration; and to stay all further submissions and proceedings relating to this matter until the Plenary of Judges resolves Mongolia's disqualification application. Mongolia emphasizes that such a temporary suspension is essential to uphold the fairness, impartiality, and legitimacy of the proceedings while preserving the integrity of the Court.

VII. Relief Sought

87. When considered cumulatively, the procedural and substantive errors identified demonstrate that the Decision on Leave to Appeal, if left uncorrected, would result in serious injustice and undermine the Court's credibility in interpreting and applying its Statute.
88. Granting reconsideration would enable the Chamber to rectify its procedural, legal and factual errors and ensure that Mongolia's rights under the Rome Statute and international law are fully respected.
89. As such, reconsideration is necessary to correct the clear errors of reasoning that has resulted in significant procedural and substantive injustice, and uphold the fundamental principles of justice, fairness, due process, and the right to be heard.
90. In light of the foregoing, Mongolia respectfully requests the Chamber to:
 - (i) Stay consideration of this Request for Reconsideration and suspend all further submissions and proceedings related to this matter until the Plenary of Judges resolves Mongolia's disqualification application;
 - (ii) Reconsider its "Decision on Mongolia's requests for leave to appeal, temporary stay of the proceedings, and related matters" dated 29 November 2024;
 - (iii) Provide Mongolia with the same procedural opportunities equivalent to those afforded to other States Parties in similar circumstances, in accordance with the principles of fairness and equality before the Court;
 - (iv) Allow Mongolia to reply to the Prosecution's Response through an in-person oral hearing, addressing new arguments raised and rectifying mischaracterizations;
 - (v) Permit Mongolia to deliver oral submissions substantiate on the reasoning behind its Request for Leave to Appeal, including clarifying and expanding upon the issues listed therein and further demonstrating how these issues meet the criteria under Article 82(1)(d) of the Rome Statute;
 - (vi) Invite *amicus curiae* submissions under Rule 103 of the Rules to provide additional perspectives on the complex legal issues involved;

(vii) Accommodate Mongolia's request to conduct portions of the hearing in closed session, as necessary, to safeguard national security information, in compliance with Article 72 of the Rome Statute;

(viii) After convening an oral hearing and fully considering the matter before rendering a decision on reconsideration—ensuring that the Chamber benefits from the full breadth of Mongolia's submissions—acknowledge the distinction between the two types of appeals under Article 82(1)(d) of the Rome Statute. Furthermore, certify all 16 issues identified for appeal and grant Mongolia leave to appeal the Article 87(7) Finding under Article 82(1)(d) of the Rome Statute.

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