

Annex II

Confidential



САФОРАТИ
ҶУМҲУРИИ ТОҶИКИСТОН
ДАР ПОДШОҲИИ БЕЛГИЯ

A M B A S S A D E
DE LA RÉPUBLIQUE DU TADJIKISTAN
AU ROYAUME DE BELGIQUE

N°C-581

The Embassy of the Republic of Tajikistan to the Kingdom of the Netherlands (with residence in Brussels) presents its compliments to the Presidency of the Assembly of States Parties to the Rome Statute of the International Criminal Court and has the honor to transmit the information regarding the implementation by the Republic of Tajikistan of Decision by Pre-Trial Chamber's II of 24 April 2023 "Response to submissions of a State Party under article 97 of the Rome Statute in relation to the Requests for provisional arrest of 26 April 2023 pursuant to the Order on the Requests for provisional arrest of 24 April 2023" (ICC-01/220 dated 26 April 2023).

The Embassy avails itself of this opportunity to renew to the Presidency the assurances of its highest consideration.

Brussels, October 09, 2025

**Presidency of the Assembly of States Parties
to the Rome Statute of the International Criminal Court**
The Hague

**Regarding the implementation of Pre-Trial
Chamber's II of 24 April 2023
(ICC-01/220 dated 26 April 2023)**

With reference to №2023/IOR/00088 dated of 1st of May of 2023, it has honor to inform the following.

The Republic of Tajikistan supports the development of international judicial institutions, which must remain impartial, fair, and aligned with international standards and principles of legal neutrality. In this regard, Tajikistan became a State Party to the International Criminal Court (ICC) from the day of its establishment. By signing and ratifying the Rome Statute of the ICC, Tajikistan expressed its intention, to work alongside other State Parties to effectively combat the most serious crimes of concern to the international community as a whole.

All crimes indicated in the Rome Statute of the ICC are implemented in national legislation, particularly in the Criminal Code of the Republic of Tajikistan (Chapter 34 of the Criminal Code of the Republic of Tajikistan), which testifies the commitment of the Republic of Tajikistan to the goals and principles of the Rome Statute, and the conscientious fulfillment of obligations

However, in recent years the current situation surrounding the ICC demonstrates the complexity and diversity of approaches to the administration of international justice. We note that the development of international criminal justice in recent years has been associated with various interpretations of its role, which requires a particularly careful approach to issues of jurisdiction and immunity.

With reference to the Registry's request to provide cooperation in implementing the decision of Pre-Trial Chamber II dated April 24, 2023 (ICC-01/220, dated April 26, 2023), it is hereby informed that Tajikistan, due to legal obligations and political considerations related to its strategic partnership with the Russian Federation, will not be able to implement the above-mentioned request.

The Republic of Tajikistan upholds the principle of sovereignty and the immunity from jurisdiction for Heads of State and Heads of Government. It is well established in international law that, similar to diplomatic and consular agents, certain high-ranking officials of a state such as the Head of State, Head of Government, and Minister for Foreign Affairs enjoy immunity from jurisdiction in other states, whether civil or criminal.

Tajikistan acknowledges that State Parties to the Rome Statute, according to Article 27(2), have agreed that immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international

law, shall not bar the Court from exercising its jurisdiction over such a person. However, with reference to Article 98(1):

“The Court may not proceed with a request for surrender or assistance which would require the requested State to act inconsistently with its obligations under international law with respect to the State or diplomatic immunity of a person or property of a third State, unless the Court can first obtain the cooperation of that third State for the waiver of the immunity.”

Based on the provision above article, the Rome Statute expressly requires the Court to refrain from sending requests to a State Party requiring actions that are contrary to the obligations of that State under international law with respect to the immunity of the person or property of a third State, without obtaining the consent of such State to waive immunity.

The Russian Federation is not a party to the Rome Statute and, as far as is known, has not waived the immunity of its current Head of State. Consequently, in relations between the Republic of Tajikistan and the Russian Federation, the rules of customary international law regarding the immunities of state officials apply, including personal immunity and immunity from criminal jurisdiction by foreign courts.

This position is based on the precedent of the International Court of Justice in the case of "Arrest Warrant of April 11, 2000 (Democratic Republic of the Congo v. Kingdom of Belgium)", Judgment of February 14, 2002, where the Court confirmed that serving senior officials - to whom the status is equivalent to Heads of State, Heads of Government and ministers of foreign affairs - enjoy complete personal inviolability and immunity from criminal jurisdiction in a foreign State, regardless of the nature of the incriminated acts.

According with the indicate judgment, in particular with paragraphs 47-55, the Court established that incumbent Heads of State, Heads of Government and Ministers of Foreign Affairs enjoy complete personal inviolability and immunity from the criminal jurisdiction of foreign states, and exceptions to this principle are possible only in cases expressly provided for by international law: during criminal prosecution in the state which the person in question represents; when that state waives its immunity; after the termination of office - with respect to private acts, as well as before the international criminal court, the jurisdiction of which is based on the consent of the state or on a decision of the UN Security Council adopted on the basis of Chapter VII of the UN Charter.

Taking into account the above, the Republic of Tajikistan may not take actions that are contrary to its international legal obligations with respect to Russia or the

diplomatic immunity of a person from Russia until it receives Russia's consent to waive the immunity.

Also, Tajikistan and Russia have an Agreement on Cooperation in the field of Justice, which also constitutes an international legal obligation for the state. According to this agreement, high-ranking officials enjoy immunity from the jurisdiction of third parties (states, international organizations, international courts and tribunals) and cannot be arrested or extradited to third parties.

At the same time, Tajikistan notes that this position does not constitute a refusal to cooperate within the meaning of Article 87(7) of the Rome Statute. It is aimed at the Republic of Tajikistan's faithful fulfillment of its international legal obligations and the search for a legally correct solution that ensures the effectiveness of international criminal justice while strictly adhering to the customary immunity of officials of third countries.

Tajikistan counts on the understanding of the ICC Secretariat and is convinced that no legal consequences will result from the denial of the implementation of the request.