

ANNEX
Public



**EMBASSY OF MONGOLIA
BRUSSELS**

№ A/24-103

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/24-1660 dated 11 November 2024 from the Ministry of Foreign Affairs of Mongolia on requesting the Registry to transmit Mongolia's "Request for Leave to Reply" to Pre-Trial Chamber II, the "Second Urgent Request for Suspensive Effect" to the Appeals Chamber and "Additional Submission in Support of the Application for Disqualification of Judges" to the Judge Reine Alapini-Gansou, Acting President, for due consideration by the Plenary of Judges.

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: 16 pages

Brussels, 12 November 2024



THE REGISTRY OF THE INTERNATIONAL CRIMINAL COURT
The Hague

3 2 4 0 3 2 4 1 7 3



MONGOLIA
MINISTRY OF FOREIGN AFFAIRS

M
124 - 1660

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 deliver Mongolia's "Request for Leave to Reply" to Pre-Trial Chamber II, as well as the "Second Urgent Request for Suspensive Effect" to the Appeals Chamber.

Furthermore, the Ministry request the Registry's assistance in delivering Mongolia's "Additional Submission in Support of the Application for Disqualification of Judges" to the Judge Reine Alapini-Gansou, Acting President, for due consideration by the Plenary of Judges attached herein.

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 and appreciation for its valued cooperation in this matter.



THE REGISTRY OF
INTERNATIONAL CRIMINAL COURT

The Hague

REQUEST LEAVE TO REPLY

I. Introduction

1. Mongolia respectfully requests Pre-Trial Chamber II (“Chamber”) for leave to reply (“Reply”) to the “Prosecution’s response to Mongolia’s request for leave to appeal Pre-Trial Chamber II’s ‘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’” (“Prosecution’s Response”), pursuant to Regulation 24(5) of the Regulations of the Court.
2. Mongolia submits that a Reply is both necessary and justified under the Court’s regulations due to (i) the introduction of new arguments in the Prosecutor’s Response which Mongolia could not reasonably have anticipated, and (ii) a need to clarify significant mischaracterizations and misrepresentations within the Response.
3. Mongolia emphasizes that a Reply is necessary to assist the Chamber in its determination of Mongolia’s Request for Leave to Appeal (“Request”). Granting leave to reply will ensure that the Chamber is fully informed of all relevant legal and factual matters, thereby promoting the fair and just conduct of the proceedings.
4. Thus, Mongolia respectfully requests that the Chamber exercise its discretion to allow the requested Reply for the purposes of achieving clarity, procedural fairness, and a fully informed assessment of the issues relevant to its Request.

II. Procedural Background

5. On 24 October 2024, the Chamber issued its “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”), in which it found that Mongolia had failed to comply with its obligations under the Rome Statute by not arresting and surrendering President Vladimir Vladimirovich Putin during his visit to Mongolia.
6. On 29 October 2024, Mongolia filed its Request for Leave to Appeal the Impugned Decision, identifying sixteen specific issues pursuant to Article 82(1)(d) of the Rome Statute. Mongolia indicated in its request that its intent to provide additional written and oral submissions to elaborate on these issues.
7. On 4 November 2024, the Prosecution filed the Prosecution’s Response, opposing Mongolia’s Request and raised several new arguments and interpretations that Mongolia could not have reasonably anticipated at the time of filing its Request.

III. Legal Basis for the Request

8. Pursuant to Regulation 24(5) of the Regulations, participants may submit a reply to a response with the permission of the Chamber. Any such reply must be strictly confined to addressing new issues raised in the response that the replying participant could not reasonably have anticipated.
9. In addition, a reply is justified where, as affirmed by the Appeals Chamber, the Prosecution's Response presents issues that necessitate a reply for the proper adjudication of the matter at hand.¹

IV. Grounds for Granting Leave to Reply

A. New Issues and Arguments Raised by the Prosecutor's Response

10. The Prosecution's Response introduces several new issues that Mongolia could not have reasonably anticipated, and which necessitate a reply to ensure that the Chamber has a comprehensive understanding of the matters at hand.

1. *Regarding the Threshold for Leave to Appeal*

11. The Prosecution's Response contends that Mongolia's Request does not satisfy the threshold requirements under Article 82(1)(d), alleging a failure to specifically demonstrate how each issue arises directly from the Impugned Decision and would materially impact the proceedings or their outcome.
12. Mongolia did not foresee that the Prosecution would challenge the sufficiency of its procedural presentation, as the structure of Mongolia's Request adhered to established practices before both this Chamber and the Appeals Chamber. Mongolia's intended approach was to address the impact of these issues on fairness and the expeditious conduct of the proceedings in the course of the appeal itself, and thus did not anticipate the necessity of providing such detailed justification at this preliminary stage.
13. Accordingly, a Reply is warranted to substantiate the impact of each issue in response to this unexpected threshold argument. Mongolia respectfully seeks Reply to clarify how each proposed issue bears directly on the conduct of the proceedings, particularly those issues that affect both the fairness and legitimacy of the process.
14. In its Reply, Mongolia intends to clarify, *arguendo*, that even if the Prosecution contends these issues do not affect the fair and expeditious conduct of the

¹ Appeals Chamber, *The Prosecutor v. Bosco Ntaganda*, Decision on Mr Ntaganda's request for leave to reply, 3 March 2017, ICC-01/04-02/06-1813 (OA5), para. 8. See also Appeals Chamber, *The Prosecutor v. Bosco Ntaganda*, Decision on Mr Ntaganda's request for leave to reply, 17 July 2017, ICC01/04-02/06-1994 (OA6), paras 13-14; Appeals Chamber, *Situation in the Islamic Republic of Afghanistan*, Decision on the Prosecutor's request for leave to reply, 23 December 2022, ICC-02/17 OA5.

proceedings or the outcome, Mongolia maintains that the identified issues significantly impact the Court's ability to secure cooperation from States Parties in executing arrest warrants—especially with respect to Heads of State from non-State Parties.²

15. Mongolia seeks to substantiate that these issues carry substantial implications for the Court's operations and the integrity of international law, necessitating an immediate determination by the Appeals Chamber. Such a determination would materially advance the proceedings by offering authoritative guidance on these pivotal legal questions, promoting legal clarity, and ensuring the consistent application of the Rome Statute among States Parties.

2. Regarding the Mischaracterization and Misinterpretation of the Decision

16. The Prosecutor contends that Mongolia's arguments stem from "misunderstandings" or "deliberate rephrasings" of the Impugned Decision's language. Mongolia submits that these allegations represent new characterizations that it could not have anticipated and are inconsistent with Mongolia's representations of its arguments.
17. A Reply is necessary to clarify these matters and to establish that Mongolia's submissions accurately address and reflect issues that directly arising from the Impugned Decision. This would enable Mongolia to demonstrate that its objections are not speculative but are grounded in legitimate interpretations of the Impugned Decision's rationale and language.

3. Regarding Appealable Issues

18. The Prosecution's Response introduced detailed arguments asserting that each specific issue raised by Mongolia is "not genuine," speculative, or settled by prior jurisprudence. A Reply would allow Mongolia to address these new assertions systematically, demonstrating the unique and specific nature of the issues arising from the Impugned Decision.
19. Mongolia respectfully seeks leave to reply to these arguments to demonstrate that each issue constitutes a substantive legal question that directly arises from the Impugned Decision and merits appellate review.

4. Regarding Additional Relief

20. The Prosecutor's claim that Mongolia's request for measures such as *amici curiae* and oral hearings are "unjustified" is a new procedural argument that requires a reply, as these requests are grounded in procedural fairness and merit substantive consideration. Mongolia seeks to clarify why such measures

² 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, paras. 14-15.

are warranted, especially given the complexity and importance of the issues in question.

21. As such, Mongolia requests an opportunity to address these unexpected contentions and to substantiate why these measures are justified based on the complexity, international significance, and potential broader implications of the issues under consideration.

B. Necessity of a Reply for Fair Adjudication and Assistance to the Chamber

22. In addition to introducing new arguments, the Prosecutor's Response contains substantial misinterpretations and mischaracterizations of Mongolia's arguments, warranting clarification to ensure a fair and accurate record. Mongolia respectfully submits that a Reply is necessary to correct these misrepresentations and to provide the Chamber with an accurate understanding of the issues. Such clarification is essential to facilitate a just and fair adjudication grounded in a true representation of Mongolia's submissions.

1. Clarification on the Interpretation of Issues Raised by Mongolia

23. The Prosecutor's Response inaccurately characterizes Mongolia's issues as "mere disagreements" with the Impugned Decision rather than as substantive legal issues that directly arise from it. Mongolia's arguments under Article 82(1)(d) are not simple disagreements; they address essential points of law and fact. Specifically, Mongolia's arguments regarding Articles 27, 98(1), 98(2), and 87(7) engage with intricate legal principles that impact State Parties' obligations, international law, and the ICC's mandate.
24. Granting leave to reply would afford Mongolia the opportunity to clarify its position and prevent these misrepresentations from improperly influencing the Chamber's determination.

2. Impact on Fairness and Expeditious Conduct

25. The Prosecutor asserts that Mongolia's Request lacks "detailed justification" and does not sufficiently demonstrate how each issue impacts fairness or the expeditious conduct of proceedings. However, Mongolia maintains that its issues significantly affect both fairness and efficiency in the proceedings.
26. A Reply is therefore warranted to ensure that the Chamber has a thorough understanding of how these relevant issues influence the fairness and efficiency of the proceedings, particularly in light of their implications for Mongolia's rights and obligations under the Rome Statute.
27. *Arguendo*, Mongolia seeks leave to submit a Reply to clarify that the identified issues significantly impact the Court's ability to secure cooperation from States Parties in executing arrest warrants, particularly concerning Heads of State

from non-State Parties. This clarification is essential to demonstrate how these issues meet the criteria under Article 82(1)(d).³

3. Settled Law

28. The Prosecutor's Response relies on the *Al Bashir Appeals Judgment* to assert that issues relating to Articles 27 and 98 are "settled law."⁴ However, Mongolia respectfully seek Reply to clarify that its arguments presented in the Request raise distinct legal questions that have not been directly addressed by prior Appeals Chamber rulings.
29. Mongolia seeks to substantiate that the *Al-Bashir Appeals Judgment* did not address legal concerns related to procedural unfairness and misconduct during the 87(7) proceedings. In addition, in contrast to the *Al-Bashir Appeals Judgment*, where the Appeals Chamber focused primarily on the implications of a UN Security Council resolution and the customary status of immunity in relation to that resolution.⁵ The present case, however, pertains to unique legal issues involving Rome Statute obligations and their interplay with obligation arising from customary international law and bilateral agreements—issues that the *Al-Bashir Appeals Judgment* did not address.⁶

4. Additional Requests

30. The Prosecutor's Response contends that Mongolia's additional requests for an oral hearing, *amici curiae*, and interim measures are "unnecessary" overlooks the complexity and relevance of the issues at stake.
31. Mongolia seeks Reply to substantiate that these measures are crucial to a fair and accurate adjudication, particularly in light of the issues' broader impact on international cooperation under the Rome Statute and potential implications for State sovereignty and immunity.
32. As such, Mongolia seeks to demonstrate in the Reply that input from independent legal experts and other entities would provide valuable perspectives on complex issues of customary international law, state sovereignty, and the ICC's role in the international legal order and that such measures are justified to promote an informed and balanced judicial process and such things would materially aid the Chamber's understanding and adjudication of the issues.

³ 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, paras. 14-15.

⁴ Appeals Chamber, *The Prosecutor v. Omar Hassan Ahmad Al-Bashir*, Judgment in the Jordan Referral re Al-Bashir Appeal, 6 May 2019, ICC-02/05-01/09 OA2.

⁵ *Ibid.*

⁶ Pre-Trial Chamber II, *Situation in Ukraine, 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*, 24 October 2024, ICC-01/22, para. 19.

V. Relief sought

33. For the foregoing reasons, Mongolia respectfully submits that (i) the Prosecution's Response raises new issues that could not have been reasonably anticipated and (ii) that a reply is necessary to assist the Chamber in its adjudication of the Request by ensuring that all relevant legal and factual matters are fully considered. This will promote the fair and just conduct of the proceedings.

34. Mongolia therefore respectfully requests the Chamber to:

(i) Grant leave to file a reply to the Prosecution's Response; and

(ii) Grant procedural steps to ensure the fair and just conduct of the proceedings, including the possibility conducting an oral hearing or inviting *amicus curiae* submissions under Rule 103 of the Rules of Procedure and Evidence.

---oOo---