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# IBA International Criminal Court and International Criminal Law Programme



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## Pursuing the Arrest and Surrender of Suspects at Large to the International Criminal Court A Guide for States Parties to the Rome Statute

November 2025

# About the Programme

## About the International Bar Association

The International Bar Association (IBA) – the global voice of the legal profession – is the foremost organisation for international legal practitioners, bar associations and law societies. Established in 1947, shortly after the creation of the United Nations, it was born out of the conviction that an organisation made up of the world’s bar associations could contribute to global stability and peace through the administration of justice. In the ensuing 70 years since its creation, the organisation has evolved, from an association comprised exclusively of bar associations and law societies, to one that incorporates individual international lawyers and entire law firms. The present membership comprises more than 80,000 individual international lawyers from most of the world’s leading law firms and some 190 bar associations and law societies, spanning more than 170 countries.

The IBA has considerable expertise in providing assistance to the global legal community, and through its global membership it influences the development of international law reform and shapes the future of the legal profession throughout the world.

## About the IBA International Criminal Court and International Criminal Law Programme

The IBA International Criminal Court & International Criminal Law (ICC & ICL) Programme, based in The Hague, works to increase cooperation with and support for the ICC and other accountability efforts, with the goal of strengthening the Rome Statute system globally and achieving fair, effective and accessible justice for victims of genocide, crimes against humanity, war crimes and aggression.

- We consult and engage with the Office of the Prosecutor, Presidency and Registry of the ICC, with the Independent Offices of Public Counsel for Defence and Victims and with the ICC Bar Association. We also consult with state representatives, civil society organisations, academics and international lawyers. The IBA ICC & ICL Programme is the IBA’s representative to official bodies of the ICC, including the Assembly of States Parties, and is the IBA’s representative to the NGO Coalition for the ICC.
- We collaborate with key partners on activities to increase engagement by the global legal community with the ICC and on international criminal law.
- We monitor and analyse emerging issues of particular relevance to lawyers. Our substantive work includes thematic legal analysis of proceedings, ad hoc evaluations of legal, administrative and institutional issues, which could potentially affect the development of international justice, and expert legal analysis on issues relevant to our mandate. Programme information is disseminated through reports, expert discussions, workshops and other events.
- We support the development of international criminal lawyers, through the annual IBA ICC Moot Court Competition and through the ICC & ICL Legal Internship Programme.

Since its establishment in 2005, the IBA ICC & ICL Programme has contributed to the development of international criminal justice through monitoring and analysing issues related to fairness and equality of arms at the ICC, and through conducting outreach to deepen the understanding of the place of the ICC within the broader landscape of international justice and in particular contexts. For past programme reports and activities, please see: [www.ibanet.org/ICC-ICL-Programme](http://www.ibanet.org/ICC-ICL-Programme).

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# Acronyms

|       |  |
|-------|--|
| ASP   | Assembly of States Parties                                       |
| CBF   | Committee on Budget and Finance                                  |
| IBA   | International Bar Association                                    |
| ICC   | International Criminal Court (or the ‘Court’)                    |
| ICL   | international criminal law                                       |
| ICTY  | International Criminal Tribunal for the former Yugoslavia        |
| IER   | Independent Expert Review of the ICC and the Rome Statute System |
| OPCD  | Office of Public Counsel for Defence                             |
| OTP   | ICC Office Of the Prosecutor                                     |
| RPE   | Rules of Procedure and Evidence                                  |
| SALTT | The Office of the Prosecutor’s Suspects at Large Tracking Team   |
| SALU  | The Registry’s Suspects at Large Unit                            |
| SALWG | The ICC’s inter-organ Suspects at Large Working Group            |

# Foreword

The arrest and surrender of persons suspected of committing genocide, crimes against humanity, war crimes and aggression to the International Criminal Court (ICC or the ‘Court’) are essential steps towards achieving international justice. Put simply, without arrest and surrender, there can be no ICC trials. And without trials, there can be no justice or reparations for victims.

However, securing the custody of suspects has proved to be one of the ICC’s most difficult challenges. Without its own law enforcement, the ICC relies wholly on the national authorities of states, especially the 125 States Parties to the Rome Statute, to arrest suspects and surrender them to the Court.

Since the ICC was established in 2002, only 24 out of 65 arrest warrants publicly issued by the Court have been executed. As of 1 October 2025, 32 suspects remain at large. Some suspects, like Lord’s Resistance Army leader Joseph Kony, have evaded justice for more than 20 years.

Meanwhile, ICC courtrooms sometimes sit empty, and victims are forced to wait for justice. Long delays between investigations and trials have resulted in the deterioration and loss of vital evidence. These and other impacts of failures to arrest and surrender suspects are taking a toll on the effectiveness and legitimacy of the Court.

Recognising the seriousness of this ongoing situation, in 2024, the International Bar Association’s (IBA) International Criminal Court and International Criminal Law Programme (ICC & ICL Programme) initiated a project to better understand the challenges that the Court faces in securing cooperation with arrest and surrender, and to advocate for effective solutions.

An expert roundtable and a side event at the Assembly of States Parties (ASP) that were co-organised in partnership with states and other civil society organisations highlighted that the Court is prioritising numerous efforts to promote arrest and surrender and strengthen state cooperation. Many civil society organisations are also actively engaged in supporting the arrest of ICC suspects, through advocacy and other initiatives. However, although the President of the ASP and the Bureau’s co-facilitators on cooperation are actively promoting arrests and some states have cooperated with ICC arrest operations, it is clear that overall States Parties, individually or collectively through the ASP, are falling short of providing the ICC with the operational assistance, political support and resources necessary for the Court to arrest suspects.

In July 2025, the ICC & ICL Programme issued *No Arrests, No Trials, No Justice: A Strategic Framework for Strengthening Efforts to Execute International Criminal Court Arrest Warrants* with the aim of strengthening arrest and surrender efforts, including improving coordination between the Court, States Parties (including specialised national authorities), intergovernmental organisations and civil society.<sup>1</sup> The report draws upon past and current initiatives to promote arrests in order to propose a framework of strategic goals, aimed at fully addressing the challenges that the Court is facing.

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1 IBA ICC & ICL Programme, *No Arrests, No Trials, No Justice: A Strategic Framework for Strengthening Efforts to Execute ICC Arrest Warrants* (July 2025) [www.ibanet.org//document?id=IBA-ICC-ICL-NoArrests-NoTrials-NoJustice](http://www.ibanet.org//document?id=IBA-ICC-ICL-NoArrests-NoTrials-NoJustice) last accessed on 1 September 2025.

Building on the proposed strategic framework, as well as the ICC & ICL Programme's 2024 report *Strengthening the International Criminal Court and the Rome Statute system: A Guide for States Parties*,<sup>2</sup> the current report makes 30 concrete recommendations of measures that States Parties can take to fully engage with and support the ICC's arrest and surrender efforts.

When the ICC is under acute political pressure, as it is now, it is critical that States Parties deliver on their legal obligations under the Rome Statute, with clarity and with resolve. The IBA continues to stand by the ICC and urges all States Parties to implement these recommendations nationally and through the ASP to ensure that suspects are no longer allowed to evade international justice. It is the ultimate responsibility of the ICC's States Parties to ensure that the Court is able to fulfil its potential to make a meaningful contribution towards ending impunity for crimes under international law.

**Dr Mark S Ellis**

London

November 2025

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2 IBA ICC & ICL Programme, *Strengthening the International Criminal Court and the Rome Statute system: A Guide for States Parties* (Second Edition, October 2024) [www.ibanet.org/document?id=Strengthening-the-International-Criminal-Court-A-Guide-for-States-Parties-2nd-Edition](http://www.ibanet.org/document?id=Strengthening-the-International-Criminal-Court-A-Guide-for-States-Parties-2nd-Edition) last accessed on 1 September 2025.

# Recommendations

**Recommendation 1:** States Parties should call on the ASP to renew its efforts to develop an action plan for arrest and surrender.

## 1. Strengthen national laws to comply fully with ICC requests for arrest and surrender

**Recommendation 2:** States Parties should establish effective procedures in national law to fulfil their obligations to promptly execute arrest warrants on behalf of the Court when requested, without political interference and in full respect of the rights of the suspect.

**Recommendation 3:** States Parties should incorporate Article 27 of the Rome Statute on irrelevance of official capacity into national law and expressly provide that immunities shall not bar cooperation with executing ICC arrest warrants.

**Recommendation 4:** States Parties should establish national surrender procedures that comply with their obligations as set out in the Rome Statute.

**Recommendation 5:** States Parties should require national authorities to consult with the ICC without delay in the event that problems are identified that may impede or prevent the execution of a request for arrest and surrender, in order to resolve the matter.

## 2. Strengthen conditions to encourage voluntary surrender

**Recommendation 6:** The action plan should identify appropriate incentives to encourage suspects to voluntarily surrender themselves to the Court, including:

- providing safe passage for suspects to voluntary surrender to the ICC;
- offering protection measures for the suspect's family;
- affirming that voluntary surrender will be considered in determining applications for interim release and mitigation of a sentence;
- offering education, vocational training and work opportunities to suspects at the ICC Detention Centre; and
- affirming that a suspect's proximity to their family will be considered when designating a state to enforce a sentence of imprisonment in the event of a conviction or when designating a state to release the suspect to on the completion of their case or sentence.

**Recommendation 7:** The action plan should identify and address disincentives to voluntary surrender, including by:

- significantly increasing the number of State Party signatories to agreements on interim release, enforcement of a sentence and final release;

- ensuring that suspects who allege that their rights have been violated by national authorities during arrest and surrender have access to effective remedies;
- ensuring adequate funding for a reasonable number of family visits each year for indigent detainees; and
- strengthening the equality of arms between the defence and the OTP.

**Recommendation 8:** The action plan should seek to provide suspects at large with sufficient public information and the ability to seek legal advice, so that they can make an informed decision on whether to surrender themselves to the ICC.

### 3. Strengthen the Court's capacity to track suspects and pursue arrests

**Recommendation 9:** States Parties should support the allocation of sufficient resources for the Court to track and pursue arrests effectively.

**Recommendation 10:** States Parties should support the establishment of an ASP working group to develop a proposal for an ICC rewards programme, including options on how it should be funded.

**Recommendation 11:** States Parties should put in place national procedures to impose individual sanctions on ICC suspects at large and support the establishment of ASP mechanisms to coordinate and support their efforts.

**Recommendation 12:** States Parties should intensify their efforts to ensure that relevant United Nations Security Council sanction regimes list persons who are the subject of an ICC arrest warrant.

**Recommendation 13:** States Parties should support the ICC's efforts to increase its engagement with INTERPOL, Europol and other relevant entities on suspects-at-large matters.

### 4. Strengthen State Parties' cooperation with tracking, arrest and surrender operations

**Recommendation 14:** States Parties should establish national procedures to provide prompt, full and effective cooperation with tracking suspects at large, ensuring that their investigative measures comply with internationally recognised human rights.

**Recommendation 15:** States Parties should ensure that it is an offence under national law for a person to assist an ICC suspect at large in evading arrest.

**Recommendation 16:** States Parties should cooperate, when requested, with supporting arrest operations in other states, ensuring confidentiality of the operations.

**Recommendation 17:** States Parties should establish national procedures to cooperate with transferring a suspect through its territory into the custody of the ICC.

**Recommendation 18:** When requested, States Parties should enter into an agreement with the Court in order to cooperate with air transportation.

## 5. Strengthen political support for state cooperation

**Recommendation 19:** States Parties should publicise all public ICC arrest warrants domestically and internationally and request that the Bureau of the ASP develop best practice guidelines for States Parties through its facilitators on cooperation.

**Recommendation 20:** States Parties should publicly affirm that they will fulfil their obligations to arrest and surrender all suspects found on their territory to the ICC.

**Recommendation 21:** States Parties should condemn political attacks against the ICC connected to arrest warrants, support measures to protect the effective operation of the Court and protect ICC officials and staff from targeted attacks.

**Recommendation 22:** States Parties should support further elaboration of the ASP's guidance on non-essential contact between States Parties and suspects at large and establish procedures for States Parties to provide explanations when contact occurs.

**Recommendation 23:** States Parties should request that the ASP appoint a group of experts to advise States Parties on their obligations and powers when a suspect at large travels through their airspace.

**Recommendation 24:** States Parties should intensify and coordinate their efforts to call on states to arrest ICC suspects on their territory, including by participating in situation working groups established by the Court.

**Recommendation 25:** States Parties should consider establishing conditionality policies for states known to provide a safe haven for ICC suspects.

## 6. Strengthen responses to non-cooperation

**Recommendation 26:** States Parties should support the strengthening of the ASP's formal response procedure to ensure consistent and effective responses to all non-cooperation referrals received from the Court.

**Recommendation 27:** In the absence of consensus within the ASP on collective measures to be taken in response to a referral from the Court on non-cooperation, concerned States Parties should coordinate with other States Parties or act individually to pursue diplomatic, political and legal responses to the failure of a State Party to arrest and surrender a suspect.

**Recommendation 28:** States Parties should continue to call on the UN Security Council to respond to the ICC's referrals on matters of non-cooperation with the arrest and surrender of ICC suspects.

## 7. Strengthen efforts to promote national implementing legislation

**Recommendation 29:** States Parties should enact or review existing implementing legislation to ensure that it provides for prompt, full and effective cooperation with arrest and surrender operations.

**Recommendation 30:** States Parties should support efforts by the ASP to intensify its promotion of effective implementing legislation.

# Introduction

Despite the Rome Statute's ambitious mandate to put an end to impunity for the most serious crimes of concern to the international community – genocide, crimes against humanity, war crimes and aggression – the International Criminal Court (ICC or the 'Court') is currently prevented from prosecuting many of its cases because those suspected of committing crimes are able to evade arrest. Since the Rome Statute requires the presence of the accused person during their trial as a guarantee of a fair trial,<sup>3</sup> without the arrest of a suspect, there can be no trial. Without a trial, there can be no justice or reparations for victims.

As of 1 October 2025, the ICC has publicly issued arrest warrants for 65 persons on the basis that there are reasonable grounds to believe they have committed a crime within the jurisdiction of the Court and that their arrest is necessary.<sup>4</sup> A number of additional arrest warrants are reported to have been issued under seal and have yet to be made public.<sup>5</sup> However, despite the high-profile arrest and surrender of the former President of the Philippines, Rodrigo Roa Duterte, to the ICC in March 2025,<sup>6</sup> and ongoing efforts by the Court to promote cooperation, there have been only 24 arrests in total since the Court was established in 2002. A total of 22 of those arrested have been surrendered to the ICC. The surrender of two other arrested suspects is currently pending the outcome of legal proceedings (see the table below). A total of 32 suspects currently remain at large.<sup>7</sup> The ICC has recently emphasised that the growing number of outstanding arrest warrants 'presents a major strategic risk for the effective delivery of its mandate'.<sup>8</sup>

A major challenge for the ICC is that, without its own police force, it relies entirely on the cooperation of national authorities to execute its arrest warrants and surrender suspects to the custody of the Court. Often this cooperation is neither forthcoming nor effective. Of those suspects currently at large, some enjoy a safe haven in states that have not ratified the Rome Statute and are not legally obliged to cooperate with the ICC. A number of suspects are believed to be in Libya and Sudan, neither of which have ratified the Rome Statute, but both states are bound by UN Security Council resolutions to cooperate fully with the Court.<sup>9</sup>

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3 Rome Statute, Article 63(1).

4 Article 58(1)(b) states that arrest may be necessary '(i) to ensure the person's appearance at trial; (ii) to ensure that the person does not obstruct or endanger the investigation or the court proceedings; or (iii) where applicable, to prevent the person from continuing with the commission of that crime or a related crime which is within the jurisdiction of the Court and which arises out of the same circumstances'. As an alternative to arrest, when these criteria are not met, Article 58(7) provides that the Prosecutor may request the Court to issue a summons to appear before the ICC. So far, the ICC has issued summonses to appear for eight persons.

5 *Proposed Programme Budget for 2026 of the International Criminal Court*, ICC-ASP/24/10, 8 August 2025, para. 17 notes the issuance of a 'record number of warrants of arrest, both public and under seal, that are available for execution'.

6 See, for eg, IBA ICC & ICL Programme, 'Arrest and Surrender of former Philippines President Rodrigo Duterte to the ICC is a critical step towards justice' (14 March 2025) [www.ibanet.org/Arrest-and-surrender-former-Philippines-President-Rodrigo-Duterte-to-ICC-critical-step](http://www.ibanet.org/Arrest-and-surrender-former-Philippines-President-Rodrigo-Duterte-to-ICC-critical-step) last accessed on 15 September 2025.

7 Arrest warrants against nine suspects have been terminated without the suspects being arrested. Seven of those suspects died: Mohammed Diab Ibrahim Al-Masri (Palestine), Mahmoud Mustafa Busayf Al-Werfalli (Libya), Muammar Mohammed Abu Minyar Gaddafi (Libya), Al-Tuhamy Mohamed Khaled (Libya), Raska Lukwiya (Uganda), Okot Odhiambo (Uganda) and Vincent Otti (Uganda). The arrest warrant for Simone Gbagbo (Côte d'Ivoire) was vacated and an arrest warrant for Abdullah Al-Senussi (Libya) was withdrawn following a decision by the ICC that the case was inadmissible.

8 *Report of the Court on Cooperation*, ICC-ASP/23/21, 24 October 2024, para. 27.

9 United Nations Security Council Resolution 1593(2005), 31 March 2005, para. 2: 'Decides that the Government of Sudan and all other parties to the conflict in Darfur, shall cooperate fully with and provide any necessary assistance to the Court...'; United Nations Security Council Resolution 1970, 26 February 2011, para. 5 'Decides that the Libyan authorities shall cooperate fully with and provide any necessary assistance to the Court...'.

Disturbingly, other suspects are believed to reside in or to have visited States Parties to the Rome Statute, which have a legal obligation to arrest suspects found on their territory and to surrender them to the ICC.<sup>10</sup>

| Suspects arrested and surrendered<br>Name (time between the issuance of the warrant and their surrender to the ICC)  | Suspects at large<br>Name<br>(date of arrest warrant)   |
|--|---|
| <p><b>Central African Republic (nine)</b></p> <ul style="list-style-type: none"> <li>Narcisse Arido (four months)</li> <li>Fidèle Babala Wandu (seven days)</li> <li>Jean-Pierre Bemba Gombo (six weeks)</li> <li>Aimé Kilolo Musamba (seven days)</li> <li>Jean-Jacques Mangenda Kabongo (two weeks)</li> <li>Maxime Jeoffroy Eli Mokom Gawaka (three years, three months)</li> <li>Patrice-Edouard Ngaïssona (six weeks)</li> <li>Mahamat Said Abdel Kani (two years)</li> <li>Alfred Yekatom (one week)</li> </ul> <p><b>Côte d'Ivoire (two)</b></p> <ul style="list-style-type: none"> <li>Charles Blé Goudé (two years, three months)</li> <li>Laurent Gbagbo (five weeks)</li> </ul> <p><b>Darfur, Sudan (one)</b></p> <ul style="list-style-type: none"> <li>Ali Muhammad Ali Abd-Al-Rahman (13 years, two months) (VS)</li> </ul> <p><b>Democratic Republic of the Congo (five)</b></p> <ul style="list-style-type: none"> <li>Germain Katanga (two months)</li> <li>Thomas Lubanga Dyilo (five weeks)</li> <li>Callixte Mbarushimana (four months)</li> <li>Mathieu Ngudjolo Chui (seven months)</li> <li>Bosco Ntaganda (five years, 11 months)(VS)</li> </ul> <p><b>Kenya (one)</b></p> <ul style="list-style-type: none"> <li>Paul Gicheru (five years, eight months)(VS)</li> </ul> <p><b>Mali (two)</b></p> <ul style="list-style-type: none"> <li>Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud (five days)</li> <li>Ahmad Al Faqi Al Mahdi (nine days)</li> </ul> <p><b>The Philippines (one)</b></p> <ul style="list-style-type: none"> <li>Rodrigo Roa Duterte (five days)</li> </ul> <p><b>Uganda (one)</b></p> <ul style="list-style-type: none"> <li>Dominic Ongwen (nine years, six month)(VS)</li> </ul> <p>VS = voluntary surrender</p> | <p><b>Afghanistan (two)</b></p> <ul style="list-style-type: none"> <li>Haibatullah Akhundzada (8 July 2025)</li> <li>Abdul Hakim Haqqani (8 July 2025)</li> </ul> <p><b>Central African Republic (one)</b></p> <ul style="list-style-type: none"> <li>Mahamat Nouradine Adam (7 January 2019)</li> </ul> <p><b>Darfur, Sudan (four)</b></p> <ul style="list-style-type: none"> <li>Omar Hassan Ahmad Al Bashir (4 March 2009)</li> <li>Abdallah Banda Abakaer Nourain (27 August 2009)</li> <li>Ahmad Muhammad Harun (27 April 2007)</li> <li>Abdel Raheem Muhammad Hussein (1 March 2012)</li> </ul> <p><b>Democratic Republic of the Congo (one)</b></p> <ul style="list-style-type: none"> <li>Sylvestre Mudacumura (13 July 2012)</li> </ul> <p><b>Georgia (three)</b></p> <ul style="list-style-type: none"> <li>David Georgiyevich Sanakoev (24 June 2022)</li> <li>Gamlet Guchmazov (24 June 2022)</li> <li>Mikhail Mayramovich Mindzaev (24 June 2022)</li> </ul> <p><b>Kenya (two)</b></p> <ul style="list-style-type: none"> <li>Walter Osapiri Barasa (2 August 2013)</li> <li>Philip Kipkoech Bett (10 March 2015)</li> </ul> <p><b>Libya (nine)</b></p> <ul style="list-style-type: none"> <li>Abdelbari Ayyad Ramadan Al Shaqaqi (18 July 2023)</li> <li>Fathi Faraj Mohamed Salim Al Zinkal (18 July 2023)</li> <li>Nasser Muhammad Muftah Daou (6 April 2023)</li> <li>Makhlouf Makhlouf Arhoumah Doumah (6 April 2023)</li> <li>Osama Elmasry Njeem (18 January 2025)</li> <li>Abduraheem Khalefa Abduraheem Elshgagi (6 April 2023)</li> <li>Saif Al-Islam Gaddafi (27 June 2011)</li> <li>Mohamed Mohamed Al Salheen Salmi (6 April 2023)</li> <li>Saif Suleiman Sneidel (10 November 2020)</li> </ul> <p><b>Mali (one)</b></p> <ul style="list-style-type: none"> <li>Iyad Ag Ghaly (18 July 2017)</li> </ul> <p><b>Palestine (two)</b></p> <ul style="list-style-type: none"> <li>Yoav Gallant (21 November 2024)</li> <li>Benjamin Netanyahu (21 November 2024)</li> </ul> <p><b>Uganda (one)</b></p> <ul style="list-style-type: none"> <li>Joseph Kony (8 July 2005)</li> </ul> <p><b>Ukraine (six)</b></p> <ul style="list-style-type: none"> <li>Maria Alekseyevna Lvova-Belova (17 March 2023)</li> <li>Sergei Ivanovich Kobylash (5 March 2024)</li> <li>Sergei Kuzhugetovich Shoigu (24 June 2024)</li> <li>Viktor Nikolayevich Sokolov (5 March 2024)</li> <li>Vladimir Vladimirovich Putin (17 March 2023)</li> <li>Valery Vasilyevich Gerasimov (27 June 2024)</li> </ul> |

<sup>10</sup> For recent examples of non-cooperation by States Parties, see IBA ICC & ICL Programme, ‘Mongolia must uphold its obligations as an ICC State Party – arrest Vladimir Putin or cancel his visit’ (2 September 2024) [www.ibanet.org/Mongolia-must-uphold-its-obligations-as-an-ICC-State-Party-arrest-Vladimir-Putin-or-cancel-his-visit](http://www.ibanet.org/Mongolia-must-uphold-its-obligations-as-an-ICC-State-Party-arrest-Vladimir-Putin-or-cancel-his-visit) last accessed on 15 October 2025; Chantal Meloni, ‘Italy, Libya, and the Failure of State Cooperation with the International Criminal Court in the Elmasry Case’ (Just Security, 30 January 2025) [www.justsecurity.org/107175/italy-libya-icc-cooperation-elmasry-arrest](http://www.justsecurity.org/107175/italy-libya-icc-cooperation-elmasry-arrest) last accessed on 15 October 2025; Amnesty International, ‘Hungary: Withdrawal from ICC does not absolve Hungary of its legal obligation to arrest fugitive Benjamin Netanyahu’ (4 April 2025) [www.amnesty.org.au/withdrawal-from-icc-does-not-absolve-hungary-of-its-legal-obligation-to-arrest-fugitive-netanyahu](http://www.amnesty.org.au/withdrawal-from-icc-does-not-absolve-hungary-of-its-legal-obligation-to-arrest-fugitive-netanyahu) last accessed on 15 October 2025.

## Suspects arrested but not yet surrendered to the ICC

### Libya (one)

- Khaled Mohamed Ali El Hishri

An arrest warrant was issued by the ICC on 10 July 2025. Mr El Hishri was arrested in Germany on 16 July 2025. As of 1 October 2025, national surrender proceedings in Germany remain in progress.

### Central African Republic (one)

- Edmond Beina

An arrest warrant was issued by the ICC on 7 December 2018. Mr Beina was arrested in the Central African Republic (CAR) on 16 June 2024. On 28 October 2024, the Government of Central African Republic filed a challenge to the admissibility of the ICC's case on the basis that the same case is being investigated and prosecuted by the Special Criminal Court in CAR. On 12 September 2025, ICC Pre-Trial Chamber II ruled that the ICC's case is inadmissible.<sup>11</sup> Counsel for Mr Beina have appealed the Decision. The appeal is pending.

According to the Court, failures by States Parties and other states to arrest suspects not only prevents trials from proceeding, but it also breeds a climate of impunity, undermines the potential deterrent effect of the Court, wastes resources and jeopardises the collection and preservation of evidence and the safety and wellbeing of witnesses and victims.<sup>12</sup>

In July 2025, the IBA ICC & ICL Programme issued a report entitled *No Arrests, No Trials, No Justice: A Strategic Framework for Strengthening Efforts to Execute International Criminal Court Arrest Warrants*.<sup>13</sup> Drawing on research on past and current efforts to promote arrest and surrender, including the ASP's stalled initiative in 2013 to develop an action plan on arrests,<sup>14</sup> as well as consultations with a range of experts and stakeholders,<sup>15</sup> the report highlights several complex challenges that the Court faces in securing cooperation with arrest and surrender operations. Significantly, it found that, in addition to failures by some States Parties to arrest and surrender suspects found on their territory, States Parties, individually and collectively through the ASP, are falling short of providing the ICC with the resources, operational

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11 *Situation in the Central African Republic II*, Decision on the Central African Republic's challenge to the admissibility of the case against Edmond Beina, Pre-Trial Chamber II, ICC-01/14-217-Red, 12 September 2025.

12 ICC, *Arresting ICC suspects at large: Why it matters, What the Court does, What States can do* (2019), p.7 [www.icc-cpi.int/sites/default/files/bookletArrestsENG.pdf](http://www.icc-cpi.int/sites/default/files/bookletArrestsENG.pdf) last accessed on 1 October 2025.

13 IBA, *No Arrests, No Trials, No Justice: A Strategic Framework for Strengthening Efforts to Execute International Criminal Court Arrest Warrants* (n 1).

14 *Report of the Bureau on Cooperation*, ICC-ASP/13/29/Add.1, 21 November 2014. Annex VII: Report on arrest strategies by the Rapporteur (the '2014 report on arrest strategies').

15 In particular, the IBA ICC & ICL Programme co-organised an expert roundtable on 'Cooperation for Arrest and Surrender: Lessons Learned' in October 2024 with the embassies of France and Senegal at the French Residence in The Hague, and a side event at the 23rd Session of the ASP on 'Strengthening the ICC's Toolkit for Arrest and Surrender' in December 2024 with the Coalition for the ICC, Human Rights Watch, Human Rights First and the Southern Africa Litigation Centre, and with the support of Belgium, Finland, France, Poland, Senegal and South Africa. The expert roundtable provided a platform to discuss the challenges and lessons learned on cooperation for arrest and surrender. The ASP's co-facilitators on cooperation, Ambassador of France HE François Alabrune and Ambassador of Senegal HE Ramatoulaye Bâ Faye; the ICC Registrar, Osvaldo Zavala Giler; and the IBA Executive Director, Mark Ellis, delivered remarks. The ICC Deputy Prosecutor, Mame Mandiaye Niang, delivered a keynote address. Representatives of the ICC OTP; Registry; Office of Public Counsel for the Defence; and the French Central Office for Combating Core International Crimes and Hate Crimes shared their perspective during the roundtable discussion. The side event focused on the tools available for the ICC to implement arrest warrants to identify possible strategies and concrete measures to strengthen state cooperation to execute arrests. The President of the ASP, HE Päivi Kaukoranta, and the Assembly's co-facilitators on cooperation delivered remarks. Representatives of the ICC OTP, Registry, Human Rights First and Southern Africa Litigation Centre, and a former representative of the South African Ministry of Foreign Affairs shared their perspectives during the discussions.

assistance and political support necessary to enable the Court to effectively pursue the arrest and surrender of suspects at large. The report therefore called for the ASP to revitalise efforts to develop an action plan for arrest and surrender, involving all stakeholders. It proposed six strategic goals to focus and coordinate arrest and surrender efforts:

- ⇒ Goal 1: strengthen conditions at the ICC to encourage arrest and surrender;
- ⇒ Goal 2: strengthen the ICC's capacity to track suspects and pursue arrests;
- ⇒ Goal 3: strengthen logistical and technical support for tracking, arrest and surrender;
- ⇒ Goal 4: strengthen political support for state cooperation;
- ⇒ Goal 5: strengthen responses to non-cooperation; and
- ⇒ Goal 6: strengthen national laws to provide effective cooperation with arrest and surrender operations.

This Guide on *Pursuing the Arrest and Surrender of Suspects at Large to the ICC* builds on this proposed strategic framework by recommending concrete measures that States Parties to the Rome Statute can take, individually and collectively through the ASP, to contribute to achieving each of these goals.

- Part 1 focuses on the immediate need for all 125 States Parties to the Rome Statute to enact effective national legislation that guarantees compliance with their obligations to arrest and surrender suspects found on their territory (Goal 6).
- Part 2 identifies measures to encourage more suspects to voluntarily surrender themselves to the ICC (contributing to Goal 1).
- Part 3 proposes initiatives to strengthen the Court's ability to track suspects who attempt to evade international justice and pursue their arrest (Goal 2).
- Part 4 emphasises the need for States Parties to provide operational support and cooperation to the Court and other States Parties in support of tracking, arrest and surrender initiatives (Goal 3).
- Part 5 highlights measures that States Parties can take to intensify political support for arrest and surrender (Goal 4).
- Part 6 considers effective approaches to responding to non-cooperation, when it occurs (Goal 5).
- Finally, Part 7 draws together recommendations made throughout this Guide to develop a checklist that all States Parties are encouraged to use in developing new or reviewing existing implementing legislation to guarantee their prompt, full and effective cooperation with all ICC requests connected to arrest and surrender. This section concludes by reiterating previous recommendations by the IBA's ICC & ICL Programme for the ASP to intensify its efforts to promote the enactment of effective implementing legislation by all States Parties (Goal 6).

## The need for an ASP action plan on arrest and surrender

As identified in the IBA ICC & ICL Programme's report *No Arrests, No Trials, No Justice: A Strategic Framework for Strengthening Efforts to Execute International Criminal Court Arrest Warrants*, challenges in securing the arrest and surrender of ICC suspects have been on the agenda of the ASP since 2013, when it launched an initiative to develop an action plan to 'enhance the prospect that requests of the Court for arrest and surrender are expeditiously executed'.<sup>16</sup> Although efforts to establish an action plan ultimately stalled for reasons that have not been fully documented,<sup>17</sup> the ASP has established some important initiatives to promote arrest and surrender, including regularly calling on States Parties to fulfil their obligations to cooperate with arrest and surrender operations,<sup>18</sup> urging State Parties to avoid contact with persons subject to a warrant,<sup>19</sup> and updating the ASP's procedures to respond to non-cooperation.<sup>20</sup> The President of the ASP, the Bureau's facilitators on cooperation and focal points on non-cooperation also conduct important work to urge States Parties to fulfil their obligations, including by encouraging political and diplomatic efforts in relation to specific opportunities for arrest and surrender.<sup>21</sup> Nonetheless, while each of these initiatives are important, collectively they fall short of fully addressing the challenges that the Court is facing. Also, some of these efforts have been undermined by a lack of political support and resources.

***Recommendation 1: States Parties should call on the ASP to renew its efforts to develop an action plan for arrest and surrender.***

Considering the immediate and serious challenges facing the Court in securing cooperation with arrest and surrender operations, the ASP should revitalise its efforts to develop a comprehensive action plan for arrest and surrender. The action plan should be developed through a transparent process in full consultation with the ICC, States Parties, civil society and other stakeholders. The initiative could be led by the Bureau's facilitators on cooperation or by a new special rapporteur on arrests and should consider a range of measures to strengthen cooperation by all 125 States Parties, develop the capacity of the Court to pursue arrests and increase political support for arrest and surrender. To facilitate this process, each part of this report identifies challenges in securing the arrest and surrender of suspects, proposes specific recommendations to address them and identifies resources to support the development and implementation of the proposed action plan.

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16 *Cooperation*, ICC-ASP/12/Res.3, 27 November 2013, para. 5.

17 A report on the initial consultations on the draft action plan in 2015 highlights that States Parties raised a number of concerns regarding its content, leading to the preparation of a revised version of the action plan (see: *Report of the Bureau of cooperation*, ICC-ASP/14/26/Add.1, Annex IV: Report on the draft action plan on arrest strategies, submitted by the Rapporteur, 16 November 2015). However, although the ASP subsequently adopted resolutions at its 15th and 16th sessions, urging the Bureau to continue its consideration of the recommendations on the draft action plan with a view to its adoption (see *Resolution on cooperation*, ICC-ASP/15/Res. 3, 24 November 2016, para. 4; and *Resolution on cooperation*, ICC-ASP/16/Res.2, 14 December 2017, para. 4), reports on further formal discussions on the plan could not be found. References to the draft plan of action were dropped in the Resolution on cooperation adopted at the ASP's 17th session.

18 See for example, *Resolution on cooperation*, ICC-ASP/23/Res.5, 6 December 2024, para. 2: 'Expresses serious concerns that arrest warrants or surrender requests against 30 individuals remain outstanding and urges States to cooperate fully in accordance with their obligation to arrest and surrender to the Court'.

19 See, for example, *Resolution on cooperation*, ICC-ASP/23/Res.5, para. 8.

20 *Assembly procedures relating to non-cooperation*, ICC-ASP/17/Res.5, Annex II.

21 See, for example, *Report of the Bureau on cooperation*, ICC-ASP/23/23, 28 November 2024; and Report of the Bureau on non-cooperation, ICC-ASP/23/31, 5 December 2024.

## Useful general resources on arrest and surrender strategies

### Official documents:

- Report on arrest strategies by the Rapporteur, ICC-ASP/13/29/Add.1, Annex VII: [https://asp.icc-cpi.int/sites/asp/files/asp\\_docs/ASP13/ICC-ASP-13-29-Add1-ENG.pdf](https://asp.icc-cpi.int/sites/asp/files/asp_docs/ASP13/ICC-ASP-13-29-Add1-ENG.pdf)
- Report on the draft Action Plan on arrest strategies, submitted by the Rapporteur, ICC-ASP/14/26/Add.1, 16 November 2015: [https://asp.icc-cpi.int/sites/asp/files/asp\\_docs/ASP14/ICC-ASP-14-26-Add1-ENG.pdf](https://asp.icc-cpi.int/sites/asp/files/asp_docs/ASP14/ICC-ASP-14-26-Add1-ENG.pdf)

### Guides:

- ICC, *Arresting ICC suspects at large: Why it matters, What the Court does, What States can do* (January 2019): [www.icc-cpi.int/sites/default/files/bookletArrestsENG.pdf](http://www.icc-cpi.int/sites/default/files/bookletArrestsENG.pdf)
- IBA ICC & ICL Programme, *No Arrests, No Trials, No Justice: A Strategic Framework for Strengthening Efforts to Execute International Criminal Court Arrest Warrants* (July 2025): [www.ibanet.org/document?id=IBA-ICC-ICL-NoArrests-NoTrials-NoJustice](http://www.ibanet.org/document?id=IBA-ICC-ICL-NoArrests-NoTrials-NoJustice)
- IBA ICC & ICL Programme, *Strengthening the International Criminal Court and the Rome Statute System: A Guide for States Parties* (October 2024), Recommendations 80–83 and 108–113. [www.ibanet.org/document?id=Strengthening-the-International-Criminal-Court-A-Guide-for-States-Parties-2nd-Edition](http://www.ibanet.org/document?id=Strengthening-the-International-Criminal-Court-A-Guide-for-States-Parties-2nd-Edition)
- Human Rights Watch, *EU Cooperation in International Criminal Court Arrests* (November 2024): [www.hrw.org/news/2024/11/26/eu-cooperation-international-criminal-court-arrests](http://www.hrw.org/news/2024/11/26/eu-cooperation-international-criminal-court-arrests)
- Open Society Justice Initiative, *From Spectators to Champions: How Supportive States Can Promote Cooperation with the International Criminal Court through Multilateral Bodies* (February 2022): [www.justiceinitiative.org/uploads/7cb0ee98-26e6-4ae5-a428-44a30b74bff7/justice-initiative-ICC-state-cooperation-briefing-paper\\_02282022.pdf](http://www.justiceinitiative.org/uploads/7cb0ee98-26e6-4ae5-a428-44a30b74bff7/justice-initiative-ICC-state-cooperation-briefing-paper_02282022.pdf)

# 1. Strengthen national laws to comply fully with ICC requests for arrest and surrender

The starting point of any plan aimed at addressing the large number of outstanding ICC arrest warrants must be for all 125 States Parties to enact effective implementing legislation ensuring that they will comply with ICC requests to arrest and surrender persons found on their territory. Article 89 requires that States Parties shall comply with requests for arrest and surrender in accordance with Part 9 of the Rome Statute and ‘the procedure under their national law’. Article 88 further requires that States Parties must ensure that there are procedures available under their national law for all forms of cooperation. All States Parties therefore have an obligation to enact legislation establishing effective procedures to ensure compliance with the Court’s requests.

Despite regular calls by the ASP for States Parties to enact legislation providing for full and effective cooperation with arrest and surrender,<sup>22</sup> at the end of 2024, only 59 of the 125 States Parties to the Rome Statute had done so.<sup>23</sup> Moreover, much of the legislation that has been adopted contains flaws. Between September 2023 and September 2024, the Court reports that it issued 261 requests for cooperation with arrest and surrender operations, but no ICC arrest warrants were executed during this time.<sup>24</sup> Although many of those requests relate to potential travel by suspects to States Parties that ultimately did not take place, several recent instances of States Parties failing to arrest suspects found on their territory demonstrate that the absence or ineffectiveness of national legislation is a significant barrier to cooperation. In some instances, States Parties have argued that they were unable to execute an arrest warrant because they have not enacted national laws providing for cooperation with the Court.<sup>25</sup> On other occasions, States Parties have cited problems with procedures adopted as part of national law. For example, following the arrest of Osama Elmasry Njeem in Italy in January 2025, the Court of Appeal in Rome ordered his release because the police had responded, on their own initiative, to an urgent request for the arrest of the suspect from the ICC without the involvement of the Minister of Justice.<sup>26</sup> In a number of situations, such as following the visit of Vladimir Putin to Mongolia in September 2024, States Parties have refused to cooperate with ICC requests for an arrest on the basis that the suspect enjoys immunity, even though Article 27 clearly provides that immunities shall not bar the ICC from exercising jurisdiction over

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22 See, for example, *Strengthening the International Criminal Court and the Assembly of States Parties*, ICC-ASP/23/Res.1, para. 18.

23 Albania, Argentina, Australia, Austria, Belgium, Benin, Bosnia and Herzegovina, Botswana, Bulgaria, Burkina Faso, Canada, the Central African Republic, Comoros, Costa Rica, Croatia, the Democratic Republic of the Congo, Denmark, Ecuador, Estonia, Finland, France, Georgia, Germany, Greece, Guinea, Iceland, Ireland, Italy, Japan, Kenya, Latvia, Liechtenstein, Lithuania, Luxembourg, North Macedonia, Malta, Mauritius, Montenegro, the Netherlands, New Zealand, Norway, Paraguay, Peru, Poland, the Republic of Korea, Romania, Samoa, Senegal, Serbia, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Trinidad and Tobago, Uganda, the UK and Uruguay. This information has been gathered from publicly available sources. States Parties are encouraged to contact the IBA ICC & ICL Programme if any information is not accurate.

24 *Report of the Court on cooperation (2024)* (n 8), p.7.

25 See, for example, *Situation in the State of Palestine*, finding under Article 87(7) of the Statute on Hungary’s non-compliance with the Court’s request to cooperate in regard to the provisional arrest of Benjamin Netanyahu and referral to the Assembly of States Parties, Pre-Trial Chamber I, ICC-01/18-462, 24 July 2025, para. 16.

26 Chantal Meloni, ‘Italy, Libya, and the Failure of State Cooperation with the International Criminal Court in the Elmasry Arrest Case’, *Just Security*, 30 January 2025.

a person.<sup>27</sup> The Court has found that none of these reasons justify non-cooperation with requests for an arrest.<sup>28</sup>

These and other common procedural barriers to arrest and surrender illustrate the urgent need for States Parties that have not enacted legislation providing for their cooperation with such activities to do so as soon as possible, and for States Parties with such legislation to review their laws to ensure that their procedures are effective.

## 1.1 Procedures for arrest

A State Party's obligation to arrest and surrender suspects to the ICC is triggered when the Court issues a request in accordance with Article 91 for the arrest of a suspect found on its territory. In urgent cases, where the full contents of a request for arrest cannot be prepared by the Court in time, the Court may issue a request for provisional arrest pursuant to Article 92, with additional information to be submitted to the State Party in due course. National procedures are therefore required to ensure that all requests for arrest are properly delivered, promptly processed and acted upon without delay.

***Recommendation 2: States Parties should establish effective procedures in national law to fulfil their obligations to promptly execute arrest warrants on behalf of the Court when requested, without political interference and in full respect of the rights of the suspect.***

To comply fully with their obligations under Articles 88 and 89 of the Rome Statute, States Parties must establish effective national procedures to execute arrest warrants. Building on the IBA's recommendations for State Parties to effectively implement the Rome Statute contained in *Strengthening the International Criminal Court and the Rome Statute System: A Guide for States Parties*,<sup>29</sup> the ICC & ICL Programme recommends that procedures for responding to requests for an arrest should:

- Recognise ICC arrest warrants and authorise national authorities to execute them on behalf of the ICC.
- Establish a national contact point who is responsible for receiving a request for arrest and surrender, which should be communicated to the Court.

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27 *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, Pre-Trial Chamber II, ICC-01/22-90, 24 October 2024, para. 18.

28 In relation to a lack of implementing legislation see, for example, *Situation in the State of Palestine*, finding under Article 87(7) of the Statute on Hungary's non-compliance with the Court's request to cooperate in the provisional arrest of Benjamin Netanyahu and referral to the Assembly of States Parties, Pre-Trial Chamber I, ICC-01/18-462, 24 July 2025, paras 18-20; in relation to problems with national legislation, see *Situation in Libya*, Decision on Italy's non-compliance with a request for cooperation, Pre-Trial Chamber I, ICC-01/11-209, 17 October 2025, 'Italy is responsible to ensure that such legislation is in place and any obstacles under domestic law are for Italy to manage and do not justify non-compliance'. In relation to immunities, see *Situation in Darfur, Sudan*, judgment in the Jordan referral re the *Al-Bashir appeal*, Appeals Chamber, ICC-02/05-01/09-397-Corr, 6 May 2019.

29 IBA ICC & ICL Programme, *Strengthening the International Criminal Court and the Rome Statute System: A Guide for States Parties* (n 2), recommendations 80 and 81.

- Provide that requests by the ICC can be received by the national contact point by email to avoid delays.<sup>30</sup>
- Establish a procedure for the national contact point to convene promptly a taskforce of relevant national authorities (eg, law enforcement and intelligence services) necessary to develop and implement the arrest operation.
- Set out the necessary national authorisations to approve the execution of the arrest warrant, ensuring that all approvals are purely procedural and are provided promptly. National authorities do not have the authority to review the merits of ICC arrest warrants, including whether it was properly issued by the Court,<sup>31</sup> or to exercise any political discretion as to whether to execute an ICC arrest warrant.<sup>32</sup>
- Provide expedited procedures to implement ICC requests for provisional arrest in urgent cases to avoid a suspect absconding, pursuant to Article 92.<sup>33</sup>
- Recognise the specific contents of a request for the arrest and surrender of a person already convicted by the Court (for example, if a person has escaped) set out in Article 91(3).

To protect the integrity of subsequent ICC proceedings and to comply with their obligations under international law, States Parties must ensure that national procedures for implementing ICC arrest warrants conform with and will be applied in accordance with internationally recognised human rights. The rights of accused persons should be fully respected from the moment of their arrest until their surrender to the Court. In particular, the conditions of any detention must meet international standards, and suspects should be provided with legal representation (free of charge, if necessary) throughout national surrender proceedings. In the event of any alleged violation, the suspect should be able to seek remedies before the relevant national courts.

***Recommendation 3: States Parties should incorporate Article 27 of the Rome Statute on irrelevance of official capacity into national law and expressly provide that immunities shall not bar cooperation with executing ICC arrest warrants.***

Although a number of States Parties have refused to cooperate with ICC arrest requests on the basis of head of state immunity, the ICC Appeals Chamber has confirmed that their position is not supported by the Rome Statute or by customary international law. In particular, Article 27(2) states:

‘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.’

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30 Rome Statute, Article 91(1) requires: ‘In urgent cases, a request may be made by any medium capable of delivering a written record...’.

31 Rome Statute, Article 59(4).

32 See, for example, *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, Pre-Trial Chamber II, ICC-01/22-90, 24 October 2024, para. 14: the Pre-Trial Chamber found that the requirement in Article 59(1) to immediately take steps to arrest the person ‘describes a fundamental obligation of the requested State, not a discretion’.

33 For further information, see IBA ICC & ICL Programme, *Strengthening the International Criminal Court and the Rome Statute System: A Guide for States Parties* (n 2), recommendation 81.

The Appeals Chamber held that this means a suspect cannot claim head of state immunity before the ICC. It also found that there is no rule of customary international law that provides a head of state with immunity from arrest and surrender to the ICC.<sup>34</sup> Accordingly, the Appeals Chamber found that there was nothing to prevent the Court from issuing an arrest warrant against a head of state,<sup>35</sup> and there was no ground for a State Party to refuse to execute a request for arrest and surrender relating to a head of state.<sup>36</sup> Moreover, it rejected arguments that this reading requires States Parties to act inconsistently with their obligations under international law with respect to state or diplomatic immunity owed to the state of the suspect, which is prohibited by Article 98(1). The Appeals Chamber held that arguments by the requested State Party, that they can only arrest the suspect if they first obtain a waiver from the state of the nationality of the suspect, cannot succeed because ‘there is no immunity to be waived’.<sup>37</sup>

To ensure that States Parties comply with their obligations under the Rome Statute and respect the judicial decisions of the Court, the IBA ICC & ICL Programme has recommended that all States Parties should incorporate the provisions of Article 27 on the irrelevance of official capacity into national law. In particular, national legislation should expressly provide that immunities or special procedural rules that may attach to official capacity do not bar the Court from exercising its jurisdiction over such a person or prevent the State Party from arresting and surrendering a suspect to the ICC. Furthermore, national procedures should provide that, in the event that a State Party is still of the opinion that a request received from the Court to arrest a person would require it to act inconsistently with its obligations under international law with respect to state or diplomatic immunity, or an international agreement with a non-state party, it must consult with the ICC and comply with any judicial determination by the ICC on the matter (see section 1.3 below).<sup>38</sup>

## 1.2 Procedures for surrender

Once a suspect has been arrested by national authorities, Article 89 requires that the State Party shall comply with the Court’s request to surrender them to the custody of the ICC. Article 59 requires that States Parties must establish a national surrender procedure, ensuring that the arrested person is brought promptly before a competent judicial authority in the custodial state. The competent judicial authority is responsible for determining that: (1) the warrant applies to that person; (2) the person has been arrested in accordance with the proper process; and (3) the person’s rights have been respected. It can also consider an application by the arrested person for interim release during the national surrender proceedings.<sup>39</sup>

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34 *Situation in Darfur, Sudan*, judgment in the *Jordan* referral re the *Al-Bashir* appeal, Appeals Chamber, ICC-02/05-01/09-397-Corr, 6 May 2019, para. 117.

35 *Ibid*, para. 102.

36 *Ibid*, para. 117.

37 *Ibid*, para. 130.

38 For further information on this recommendation, see IBA ICC & ICL Programme, *Strengthening the International Criminal Court and the Rome Statute System: A Guide for States Parties* (n 2), recommendations 57 and 100.

39 Rome Statute, Article 59(4).

**Recommendation 4: States Parties should establish national surrender procedures that comply with their obligations as set out in the Rome Statute.**

National implementing legislation should require that national surrender proceedings are conducted in accordance with Article 59 of the Rome Statute. Building on the recommendations for State Parties to effectively implement the Rome Statute contained in *Strengthening the International Criminal Court and the Rome Statute System: A Guide for States Parties*,<sup>40</sup> the IBA ICC & ICL Programme recommends that national legislation should:

- Identify the competent national judicial authority that will conduct the national surrender proceedings.
- Require that the arrested person has access to competent legal representation during the surrender proceedings, which may be provided and funded through the ICC.
- Limit the scope of the proceedings to the three issues set out in Article 59, as well as the determination of any application by the suspect for interim release. Legislation should reflect that the competent judicial authority does not have the authority to review the merits of the ICC arrest warrant or whether it was properly issued.<sup>41</sup>
- Recognise the distinction between surrendering a suspect to the ICC and extraditing a person to another state, reflected in Article 102 of the Rome Statute, and preclude the application of traditional inter-state grounds for the refusal of extradition requests, such as the political offence exception, to ICC requests for surrender.<sup>42</sup>
- Reflect the procedure prescribed in Article 89(2) to ensure that any challenges brought by the suspect on the basis of the principle of *ne bis in idem* are determined by the ICC.<sup>43</sup>
- Provide that the competent judicial authority may order effective remedies to the arrested person if it is found that the arrest process was not properly implemented or their rights have been violated. In the event that violations are found to have occurred, the competent judicial authority should promptly notify the ICC Pre-Trial Chamber of its findings and seek its recommendations, which should be given full consideration before rendering a decision on any applicable remedies.<sup>44</sup>
- Establish a procedure for determining applications by the suspect for interim release that accords with Article 59(4) and (5) of the Rome Statute, including providing for judicial dialogue with the ICC Pre-Trial Chamber regarding the application and requiring the competent judicial authority to fully consider its recommendations.<sup>45</sup>

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40 IBA ICC & ICL Programme, *Strengthening the International Criminal Court and the Rome Statute System: A Guide for States Parties* (n 2), recommendations 80 and 81.

41 Rome Statute, Article 59(4).

42 For further information, see IBA ICC & ICL Programme, *Strengthening the International Criminal Court and the Rome Statute System: A Guide for States Parties* (n 2), recommendation 80.

43 *Ibid.*

44 *Ibid.*

45 *Ibid.*

- Provide that, once surrender has been ordered by the competent authority, the person shall be delivered to the Court as soon as possible<sup>46</sup>
- Provide that, in the event that a competing request is received from another state for the extradition of the same person, the rules on competing requests outlined in Article 90 of the Rome Statute will be applied<sup>47</sup>

### 1.3 Procedures in the event of problems

State Parties that enact legislation in accordance with the recommendations in this section should be able to comply with the Court's requests for arrest and surrender. However, as Article 97 points out, certain problems may still arise, including insufficient information being provided to execute the request, an inability to locate the suspect and situations where it is found that the person identified for an arrest is clearly not the person subject to the arrest warrant. In the event that these or any other problems arise, Article 97 requires that States Parties must consult with the ICC to resolve the matter. In several decisions, the ICC has recognised that the obligation to consult extends to situations where States Parties claim they cannot cooperate with arrest and surrender operations on the basis of immunities.<sup>48</sup>

*Recommendation 5: States Parties should require national authorities to consult with the ICC without delay in the event that problems are identified that may impede or prevent the execution of a request for arrest and surrender, in order to resolve the matter.*

The obligation to consult is fundamental to securing cooperation in the event that problems arise and should therefore be reflected in national implementing legislation.<sup>49</sup> Indeed, States Parties will violate their obligations to cooperate with the Court if they simply ignore problematic requests or refuse to comply. Consultations require a States Party to engage with the ICC in good faith in order to resolve the matter and cooperate effectively.<sup>50</sup> If the matter cannot be resolved through consultations, the State Party must respect any decisions by the Court clarifying its responsibilities to cooperate with arrest and surrender procedures.

### Useful resources on establishing national procedures for complying with ICC requests for arrest and surrender

#### Websites:

- National Implementing Legislation Database: <https://iccdb.hrlc.net/data>

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46 Rome Statute, Article 59(7).

47 For further information, see IBA ICC & ICL Programme, *Strengthening the International Criminal Court and the Rome Statute System: A Guide for States Parties* (n 2), recommendation 95.

48 See Kress and Prost, 'Article 97', in Ambos (ed), *Rome Statute of the International Criminal Court: Article-by-Article Commentary* (4th Edition, CH Beck, Hart Publishing and Nomos, 2022), p.2577.

49 For further information, see IBA ICC & ICL Programme, *Strengthening the International Criminal Court and the Rome Statute System: A Guide for States Parties* (n 2), recommendation 91.

50 William A Schabas, *The International Criminal Court: A Commentary on the Rome Statute* (Oxford University Press, 2016), p.1339 notes that Article 97 'declares something that States Parties to the Rome Statute operating in good faith will do so in any case'.

## Guides:

- IBA ICC & ICL Programme, *Strengthening the International Criminal Court and the Rome Statute System: A Guide for States Parties* (October 2024), recommendations 80, 81 and 91: [www.ibanet.org/document?id=Strengthening-the-International-Criminal-Court-A-Guide-for-States-Parties-2nd-Edition](http://www.ibanet.org/document?id=Strengthening-the-International-Criminal-Court-A-Guide-for-States-Parties-2nd-Edition)
- Amnesty International, *International Criminal Court: Updated Checklist for Effective Implementation* (2010): [www.amnesty.org/en/documents/ior53/009/2010/en](http://www.amnesty.org/en/documents/ior53/009/2010/en)
- Commonwealth Secretariat, *Model Law: Rome Statute of the International Criminal Court* (2011): [https://thecommonwealth.org/sites/default/files/key\\_reform\\_pdfs/P15370\\_ROL\\_Model\\_Rome\\_Statute.pdf](https://thecommonwealth.org/sites/default/files/key_reform_pdfs/P15370_ROL_Model_Rome_Statute.pdf)
- Human Rights Watch, *Making the International Criminal Court Work: A handbook for implementing the Rome Statute* (2001): [www.hrw.org/legacy/campaigns/icc/docs/handbook\\_e.pdf](http://www.hrw.org/legacy/campaigns/icc/docs/handbook_e.pdf)
- Case Matrix Network, *Implementing the Rome Statute of the International Criminal Court* (2017): [www.legal-tools.org/doc/e05157/pdf](http://www.legal-tools.org/doc/e05157/pdf)

## Commentaries:

- Kimberly Prost, 'Co-operation with the ICC: Arrests and Surrender, the Gathering of Evidence and Asset Forfeiture', in Commonwealth Secretariat, Ben Brandon and Max du Plessis (eds), *A Practical Guide to Prosecuting ICC Crimes in Commonwealth States* (2005): [www.thecommonwealth-ilibrary.org/index.php/comsec/catalog/download/805/805/6451?inline=1](http://www.thecommonwealth-ilibrary.org/index.php/comsec/catalog/download/805/805/6451?inline=1)
- Cedric Ryngaert, 'Article 59' (Arrest proceedings in the custodial state) in Ambos (ed), *Rome Statute of the International Criminal Court: Article-by-Article Commentary* (4th Edition, CH Beck, Hart Publishing and Nomos, 2022)
- Claus Kress and Kimberly Prost, 'Article 88 (Availability of procedures under national law)', 'Article 89 (Surrender of persons to the Court)', 'Article 91 (Contents of request for arrest and surrender)', 'Article 97 (Consultations)' and 'Article 98 (Cooperation with respect to a waiver of immunity and consent to surrender)' in Ambos (ed), *Rome Statute of the International Criminal Court: Article-by-Article Commentary* (4th Edition, CH Beck, Hart Publishing and Nomos, 2022)
- William A Schabas, *Commentary on the Rome Statute of the International Criminal Court* (Oxford University Press, 'Article 88', 'Article 89', 'Article 91', 'Article 97', 'Article 98')
- Olympia Bekou and Daley Birkett (eds), *Cooperation and the International Criminal Court: Perspectives from Theory and Practice* (Brill Nijhoff 2016)
- Bert Swart, 'Arrest and Surrender' in Antonio Cassese, Paola Gaeta and John RWD Jones (eds), *The Rome Statute of the International Criminal Court: A Commentary* (Oxford University Press, 2002)

## 2. Strengthen conditions to encourage voluntary surrender

In light of the high number of ICC suspects currently at large, a key focus of the action plan should be to shore up prompt cooperation with arrest and surrender when it is attainable. Some suspects may be willing to engage with the ICC to challenge the OTP's allegations against them or, in some cases, to make an admission of guilt. However, it is unlikely that they will do so unless they are confident that their rights will be respected and that they will receive a fair trial before the ICC. Drawing from an examination of the incentives proposed in the 2014 draft action plan, as well as the IBA ICC & ICL Programme's ongoing concerns regarding the rights of accused persons at the ICC, this section suggests incentives that it considers appropriate to encourage voluntary surrender and identifies disincentives that should be addressed.

### 2.1 Developing incentives for voluntary surrender

Incentives for voluntary surrender were first considered by the ASP in the 2014 first draft of an action plan on arrest strategies. It recommended that a comprehensive package of incentives should be defined and communicated to suspects so that they can assess the benefits of voluntary surrender.<sup>51</sup> Incentives relating to legal aid, detention, sentencing and release were proposed that aimed 'at facilitating a positive determination to voluntary surrender'.<sup>52</sup> However, records of subsequent negotiations on the draft action plan indicate that many of the incentives put forward proved contentious for States Parties.<sup>53</sup> Indeed, the IBA ICC & ICL Programme observes that several proposed benefits, such as providing legal aid to suspects and funding visits from family members while they are in ICC detention, are necessary to give effect to the rights of all suspects, regardless of whether they surrender voluntarily to the ICC or not. Other suggested incentives, such as a reduction or commutation of sentences, are inconsistent with the provisions set out in the Rome Statute. Unfortunately, while further discussions on whether other incentives for voluntary surrender would be appropriate, they do not appear to have taken place.

***Recommendation 6: The action plan should identify appropriate incentives to encourage suspects to voluntarily surrender themselves to the Court.***

Acknowledging that incentives may be decisive in encouraging some suspects to surrender themselves to the Court, States Parties are encouraged to revisit this issue, taking into account the discussions conducted in 2014/2015, as well as the views of the ICC, civil society and other stakeholders. To guide the development of appropriate incentives, consideration should be given to whether the benefits offered to suspects at large in exchange for surrender are consistent with the Rome Statute, the system's overarching aims to end impunity and the rights of victims to access justice before the ICC.

In particular, the IBA ICC & ICL Programme encourages States Parties to consider the following potential incentives:

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51 2014 report on arrest strategies (n 14), Appendix III, *Draft action plan on arrest strategies*, para. 29.

52 *Draft action plan on arrest strategies* (n 51), para. 28.

53 Report by the Bureau of cooperation, ICC-ASP/14/26/Add.1, Annex IV: *Report of the draft action plan on arrest strategies, submitted by the Rapporteur*, 16 November 2015, para. 17.

- **Providing safe passage for suspects to voluntary surrender to the ICC.** Recognising that, in some instances, suspects may face serious security threats in the country where they are located, the Court should be able to take measures and seek cooperation and assistance from States Parties to provide suspects with the option of surrendering safely to the ICC. This may include measures to protect the suspect's rights if they hand themselves in to national authorities, such as ensuring that they are provided with a highly qualified lawyer to represent their interests from the moment of their arrest until their surrender to the Court. In extreme situations, the ICC may require cooperation from a neighbouring State Party to facilitate the suspect's entry into its territory for the purpose of arrest and surrender to the Court.
- **Offering protection measures for the suspect's family.** Even if suspects are provided with safe passage to the Court, they may be unwilling to surrender themselves to the ICC if it means leaving behind family members who also face serious risks. Although the Rome Statute does not directly require the ICC to provide protective measures to a suspect's family, the national authorities where such family members are located should support the Court by offering national protective measures to the family to secure voluntary surrender. Where national authorities are unable or are not willing to provide protective measures, other States Parties should offer to temporarily or permanently relocate the family members to their territory. States Parties should encourage and work with the ICC through the ASP to ensure that the Court is able to offer protective measures to a suspect's family, when needed.
- **Affirming that voluntary surrender will be considered in determining applications for interim release and mitigation of a sentence.** Although the Rome Statute does not permit the Court to provide assurances to suspects that, if they voluntarily surrender to the ICC, they will be granted interim release or, in the event of a conviction, their sentence will be reduced (both of which are judicial matters for the ICC Judges), measures can be taken to affirm that voluntary surrender will be considered when determining these matters. Some decisions on interim release and sentencing have already considered voluntary surrender in making determinations.<sup>54</sup> Nonetheless, the ASP may consider amendments to the Rules of Procedure and Evidence to expressly recognise that voluntary surrender will be considered when assessing the statutory criteria for interim release and that it will be considered as a mitigating factor when determining a sentence.<sup>55</sup>
- **Offering education, vocational training and work opportunities to suspects at the ICC Detention Centre.** Although all ICC detainees should be provided with such opportunities in accordance with international standards, and the Regulations of the Court recognise that every detained person is entitled to participate in a work programme,<sup>56</sup> the ICC should be able to engage with suspects at large to identify opportunities tailored to their individual needs in advance of their surrender to the ICC. Especially in light of the length of the ICC's process and the potential that a suspect will spend years in ICC detention, such opportunities may appeal to suspects that are seeking to rebuild their lives or those looking to provide some financial support to their families.

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54 See, for example, *Prosecutor v Ntaganda*, the decision on the defense's application for interim release, ICC-01/04-02/06-147, 18 November 2013, paras 43–47; and *Prosecutor v Ntaganda*, sentencing judgment, Trial Chamber VI, ICC-01/04-02/06-2442, 7 November 2019, paras 22, 227–228.

55 See, in particular, ICC, Rules of Procedure and Evidence, Rule 118 (Pre-trial detention at the seat of the Court) and Rule 145(2)(a) (Determination of Sentence).

56 United Nations Standard Minimum Rules for the Treatment of Prisoners, Rule 4(2); Regulations of the Court, Regulation 99(1)(a).

- **Affirming that a suspect’s proximity to their family will be considered when designating a state to enforce a sentence of imprisonment in the event of a conviction or when designating a state to release the suspect to on the completion of their case or sentence.** Although it would be inconsistent with the Rome Statute to provide assurances to a suspect prior to their surrender on where they will serve their sentence in the event of a conviction or where they will be released at the conclusion of their case or sentence, it should be possible to assure suspects that proximity to their family is an important factor that will be considered when making these decisions. Proximity to family may already have been taken into account in some decisions designating a state of enforcement of a sentence or release; however, the ASP may consider amending the Rules of Procedure to expressly require the Presidency to consider this issue.

## 2.2 Addressing disincentives to voluntary surrender

In addition to establishing appropriate incentives for voluntary surrender, it is equally, if not more, important that the ICC and States Parties identify any factors that may dissuade suspects from voluntarily surrendering themselves to the ICC. So far, efforts to encourage arrest and surrender have paid little attention to this issue. However, as part of the IBA ICC & ICL Programme’s ongoing work to promote fairness and respect for the rights of the accused before the Court, the programme has identified a number of concerns regarding the treatment of accused persons and the effectiveness of the ICC’s systems from the perspective of the defence that should be addressed.

*Recommendation 7: The action plan should identify and address disincentives to voluntary surrender.*

The action plan should acknowledge that suspects at large are unlikely to voluntarily surrender themselves to the ICC unless they are confident that their rights will be respected. In particular, it should encourage suspects to engage with the Court by:

- **Significantly increasing the number of State Party signatories to agreements on interim release, enforcement of a sentence and final release.** The current low numbers of States Parties that have signed cooperation agreements with the ICC severely restrict the ability of the Court to respect, protect and fulfil the rights of accused persons before the Court.
  - With only two signatories to agreements on interim release,<sup>57</sup> and the refusal of States Parties to accept a person on their territory, in one case the Court has been unable to grant conditional interim release to a suspect, even though they meet the statutory criteria for release.<sup>58</sup>
  - With only 15 signatories to agreements on enforcement of sentences,<sup>59</sup> the Court has limited options in deciding to designate a State Party to enforce a sentence of imprisonment in their national detention facilities.

<sup>57</sup> Argentina and Belgium.

<sup>58</sup> See, for example, *Prosecutor v Mokon*, decision on interim release, Pre-Trial Chamber II, ICC-01/14-01/22-173-Red, 8 March 2023.

<sup>59</sup> *Report of the Court on cooperation* (2024) (n 8), para. 41; ICC press release, ‘ICC and Latvia conclude Agreement on Enforcement of Sentences’, 28 March 2025, [www.icc-cpi.int/news/icc-and-latvia-conclude-agreement-enforcement-sentences](http://www.icc-cpi.int/news/icc-and-latvia-conclude-agreement-enforcement-sentences) last accessed on 16 October 2025.

- With only two signatories to agreements on final release,<sup>60</sup> the Court has so far struggled to release one person after they were acquitted and another person after the OTP withdrew the charges against them during the pre-trial stage.<sup>61</sup>

Each of these scenarios significantly impact on the rights of suspects. The lack of agreements means that it is almost certain that suspects surrendered to the Court will be held in ICC detention during lengthy pre-trial and trial proceedings with little possibility of interim release. In the event of a conviction, it is possible that they will be imprisoned far away from their families. Even if they are acquitted or complete their sentence, they may not be released. Each of these concerns are likely to deter suspects from voluntarily surrendering themselves to the Court. Urgent efforts are required to increase the signatories to these agreements and improve cooperation with the Court, when requested.<sup>62</sup>

- **Ensuring that suspects who allege that their rights have been violated by national authorities during arrest and surrender have access to effective remedies.** In a number of the ICC's first cases, suspects have alleged that national authorities have violated their rights during the process of arrest and surrender.<sup>63</sup> However, to the IBA ICC & ICL Programme's knowledge, these suspects have been unable to obtain remedies either before national courts or the ICC. The frequency of such allegations and the lack of access to remedies sends a disturbing message to suspects at large that respect for their rights during arrest and surrender to the Court cannot be guaranteed or enforced. The action plan should therefore consider measures to strengthen safeguards for the rights of suspects during national arrest and surrender proceedings and ensure that they are able to pursue remedies for alleged violations before national courts, human rights courts and bodies and the ICC, including through the provision of legal aid, where necessary.
- **Ensuring adequate funding for a reasonable number of family visits each year for indigent detainees.** The ability of suspects to maintain contact with family members is likely to be a key concern in deciding whether they will voluntarily surrender themselves to the ICC. Although the Presidency has decided that, in light of the location of the ICC in The Hague, the Court has a positive obligation to fund a reasonable number of family visits for indigent detainees,<sup>64</sup> the ASP has established an unreliable funding mechanism to pay for them entirely through voluntary contributions to an ASP Trust Fund

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60 Argentina and Belgium.

61 See, for example, Report of the Court on Cooperation, ICC-ASP/21/24, para. 49 highlighting the challenges faced in releasing Charles Blé Goudé; Kate Gibson, 'The Elephant in The Hague: What happens to former ICC suspects and accused?' *Australian and New Zealand Society of International Law*, <https://anzsilperspective.com/the-elephant-in-the-hague-what-happens-to-former-icc-suspects-and-accused> last accessed on 15 October 2025, which describes the challenges faced by the ICC in releasing Maxime Jeoffroy Eli Mokom Gawaka.

62 For further information, see IBA ICC & ICL Programme, *Strengthening the International Criminal Court and the Rome Statute System: A Guide for States Parties* (n 2), recommendations 88, 89 and 101.

63 See, for example, *Prosecutor v Lubanga*, judgment on the appeal of Mr Thomas Lubanga Dyilo against the decision on the defence's challenge to the jurisdiction of the Court pursuant to Article 19 (2) (a) of the Rome Statute of 3 October 2006, Appeals Chamber, ICC-01/04-01/06-772, 13 December 2006; *Prosecutor v Gbagbo*, judgment on the appeal of Mr Laurent Gbagbo against the decision of Pre-Trial Chamber I on jurisdiction and stay of proceedings, Appeals Chamber, ICC-02/11-01/11-321, 12 December 2012; *Prosecutor v Al Hassan*, decision on the defence's request to terminate the proceedings and related requests, Trial Chamber X, ICC-01/12-01/18-1009-Red, 29 October 2020.

64 ICC, *Prosecutor v Germain Katanga and Mathieu Ngudjolo Chui*, decision on 'Mr Mathieu Ngudjolo's Complaint under Regulation 22(1) of the Regulations of the Registry against the Registrar's Decision of 19 November 2008', Presidency, ICC-RoR217-02/08-8, 10 March 2009.

for Family Visits.<sup>65</sup> In recent years, the amount of voluntary contributions has increased and the ASP has authorised the ICC to use resources from its regular budget to fund family visits in the exceptional and unavoidable situation that the resources of the Trust Fund are insufficient.<sup>66</sup> Nevertheless, the Court notes that ‘only a perennial funding will ensure the integrity of the proceedings, the proper management and administration of the ICC Detention Centre and avoid the Court incurring additional costs’.<sup>67</sup> To ensure that the Court fully respects the right of suspects to receive visits from their family,<sup>68</sup> the ASP should allocate sufficient resources in the annual budget of the Court to fund a reasonable number of family visits each year for indigent suspects.<sup>69</sup>

- **Strengthening the equality of arms between the defence and the OTP.** In some cases, it should be expected that suspects will voluntarily surrender themselves to the Court to challenge the allegations made against them by the OTP. Suspects will be aware that, in doing so, they will face a well-resourced and staffed OTP. Their decision on whether to voluntarily surrender to the Court will likely be influenced by their assessment of whether it is possible to present an effective defence before the ICC. Although the Rome Statute strongly reflects the rights of the accused to present a defence, concerns regarding equality of arms between the prosecution and defence at the ICC have emerged in the last decade. In particular, the IBA ICC & ICL Programme continues to call for improvements to the Court’s Legal Aid Policy and for institutional changes to strengthen the defence at the ICC,<sup>70</sup> including implementation of the recommendations by the 2020 Independent Expert Review of the ICC and the Rome Statute System to entrust the Office of Public Counsel for Defence (OPCD) with additional responsibilities and to reshape it into a Defence Office.<sup>71</sup>

## 2.3 Ensuring that suspects can make an informed decision on voluntary surrender

Suspects at large are unlikely to surrender themselves to the ICC unless they can make an informed choice on whether it will be in their interests to do so. Although some suspects, especially those in official state positions, may have access to information and advice about the ICC and the consequences of an arrest warrant, other suspects may have never heard of the ICC before the warrant was issued and may only have access to limited or incorrect information about the Court. Public availability of information tailored to the

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65 For further information about the trust fund for family visits, see: IBA ICC & ICL Programme, *Strengthening the International Criminal Court and the Rome Statute System, A Guide for States Parties* (n 2), 47–48.

66 Resolution of the Assembly of States Parties on the proposed programme budget for 2023, the working capital fund for 2023, the scale of assessment for the apportionment of expenses of the International Criminal Court, financing appropriations for 2023 and the contingency fund, ICC-Asp/21/Res 1, 9 December 2022, R 3.

67 *Report of the Court on cooperation* (2024) (n 8), para. 46.

68 See, for example, United Nations Standard Minimum Rules for the Treatment of Prisoners, Rule 58.

69 For further information, see IBA ICC & ICL Programme, *Strengthening the International Criminal Court and the Rome Statute System: A Guide for States Parties* (n 2), recommendation 9. See also Human Rights Watch, ‘Briefing Note for the Twenty-First Session of the International Criminal Court Assembly of States Parties’ (November 2022), [www.hrw.org/news/2022/11/22/human-rights-watch-briefing-note-twenty-first-session-international-criminal-court](http://www.hrw.org/news/2022/11/22/human-rights-watch-briefing-note-twenty-first-session-international-criminal-court) last accessed on 15 October 2025.

70 For further information, see IBA ICC & ICL Programme, *Strengthening the International Criminal Court and the Rome Statute System: A Guide for States Parties* (n 2), recommendation 8.

71 *Independent Expert Review of the International Criminal Court and the Rome Statute System: Final Report* (the ‘IER Final Report’), 30 September 2020, R322-327.

situation of suspects at large, as well as access to independent legal advice, may significantly increase the potential for suspects to engage with the ICC and hand themselves over to the Court for a trial.

***Recommendation 8: The action plan should seek to provide suspects at large with sufficient public information and the ability to seek legal advice, so that they can make an informed decision on whether to surrender themselves to the ICC to the ICC.***

Following the public announcement of an arrest warrant, public information efforts should be undertaken by the Court to ensure that persons who are the subject of an ICC arrest warrant fully understand the rationale, substance and significance of the warrant, as well as the avenues that are available to them, including the potential benefits of voluntary surrender. In addition to issuing press releases and making available public versions of relevant legal records relating to the warrant, a general resource booklet for suspects (similar to the *Booklet for Victims before the International Criminal Court*<sup>72</sup>) should be developed. The booklet should be linked to relevant public information on specific arrest warrants and made available on the ICC's website. If necessary, States Parties should support the allocation of additional resources to develop the booklet.

Furthermore, once an arrest warrant has been issued, suspects at large should be able to obtain competent, independent and confidential legal advice in order to fully understand their individual situation, the charges against them, the ICC's processes and the defences available to them, so that they can make an informed decision on whether to surrender to the Court. Suspects that require assistance in obtaining legal representation should be informed about the List of Counsel before the ICC maintained by the Registrar and be able to seek the assistance of the Counsel Support Section of the Registry (CSS) in appointing counsel, if necessary. As the current ICC Legal Aid Policy provides that legal aid can only be provided from the stage of national surrender proceedings, which follow an arrest, States Parties should support extending the scope of the policy to ensure that indigent suspects at large can benefit from legal representation prior to their arrest and surrender.<sup>73</sup> This issue could be assigned to the Bureau's facilitators on legal aid, which may consider, in consultation with the Joint Committee on Legal Aid and civil society, the feasibility of expanding legal aid to suspects at large and how to address any associated challenges, including how to protect and ensure attorney–client privilege in this context and the process of assessing suspects' indigence. Moreover, to ensure that the legal advice provided to suspects is of high quality, all lawyers appointed to represent suspects prior to their arrest should be able to seek assistance from the OPCD, which has dedicated expertise on the ICC, including its legal framework, procedures and jurisprudence. If necessary, States Parties should support the allocation of additional resources for the OPCD to perform these additional tasks.

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72 *Victims before the International Criminal Court: A Guide for the Participation of Victims in the Proceedings of the Court*, available at: [www.icc-cpi.int/sites/default/files/NR/rdonlyres/8FF91A2C-5274-4DCB-9CCE-37273C5E9AB4/282477/160910VPRSBookletEnglish.pdf](http://www.icc-cpi.int/sites/default/files/NR/rdonlyres/8FF91A2C-5274-4DCB-9CCE-37273C5E9AB4/282477/160910VPRSBookletEnglish.pdf) last accessed on 15 October 2025.

73 *Draft Legal Aid Policy of the International Criminal Court*, ICC-ASP/22/9, 22 November 2023, para. 30 confirms that the policy applies to 'initial proceedings between the arrest or voluntary surrender of the suspect and his or her first appearance before the Pre-Trial Chamber'. The Draft Legal Aid Policy was adopted through ASP Resolution ICC-ASP/22/Res.3, *Strengthening the International Criminal Court and the Assembly of States Parties*, 13 December 2023, para. 89.

# Useful resources on incentives and disincentives to voluntary surrender

## On incentives:

- *Report on arrest strategies by the Rapporteur*, ICC-ASP/13/29/Add.1, Annex VII, paras 46-56: [https://asp.icc-cpi.int/sites/asp/files/asp\\_docs/ASP13/ICC-ASP-13-29-Add1-ENG.pdf](https://asp.icc-cpi.int/sites/asp/files/asp_docs/ASP13/ICC-ASP-13-29-Add1-ENG.pdf)
- *Report on the draft Action Plan on arrest strategies, submitted by the Rapporteur*, ICC-ASP/14/26/Add.1, 16 November 2015: [https://asp.icc-cpi.int/sites/asp/files/asp\\_docs/ASP14/ICC-ASP-14-26-Add1-ENG.pdf](https://asp.icc-cpi.int/sites/asp/files/asp_docs/ASP14/ICC-ASP-14-26-Add1-ENG.pdf)

## On cooperation agreements:

- ICC, *Cooperation Agreements*: [https://www.icc-cpi.int/sites/default/files/Cooperation\\_Agreements\\_Eng.pdf](https://www.icc-cpi.int/sites/default/files/Cooperation_Agreements_Eng.pdf)
- IBA ICC & ICL Programme, *Strengthening the International Criminal Court and the Rome Statute System: A Guide for States Parties* (October 2024), recommendations 88, 89 and 101: [www.ibanet.org/document?id=Strengthening-the-International-Criminal-Court-A-Guide-for-States-Parties-2nd-Edition](http://www.ibanet.org/document?id=Strengthening-the-International-Criminal-Court-A-Guide-for-States-Parties-2nd-Edition)

## On family visits:

- IBA ICC & ICL Programme, *Strengthening the International Criminal Court and the Rome Statute System: A Guide for States Parties* (October 2024), recommendation 9: [www.ibanet.org/document?id=Strengthening-the-International-Criminal-Court-A-Guide-for-States-Parties-2nd-Edition](http://www.ibanet.org/document?id=Strengthening-the-International-Criminal-Court-A-Guide-for-States-Parties-2nd-Edition)

## On equality of arms:

- IBA ICC & ICL Programme, *Recommendations of the International Bar Association ICC & ICL Programme to the Independent Expert Review of the International Criminal Court* (April 2020), p.4–6: [www.ibanet.org/document?id=2020-IBA-submission-IER](http://www.ibanet.org/document?id=2020-IBA-submission-IER)
- IBA ICC & ICL Programme, *Strengthening the International Criminal Court and the Rome Statute System: A Guide for States Parties* (October 2024), recommendation 8: [www.ibanet.org/document?id=Strengthening-the-International-Criminal-Court-A-Guide-for-States-Parties-2nd-Edition](http://www.ibanet.org/document?id=Strengthening-the-International-Criminal-Court-A-Guide-for-States-Parties-2nd-Edition)
- IBA ICC & ICL Programme, *Priorities and Recommendations for the 23rd Session of the Assembly of State Parties to the Rome Statute of the ICC* (November 2024), p.8: [www.ibanet.org/document?id=IBA\\_Recommendations\\_ASP23](http://www.ibanet.org/document?id=IBA_Recommendations_ASP23)

### 3. Strengthen the Court’s capacity to track suspects and pursue arrests

Although appropriate efforts, including those outlined in Part 2 of this Guide, should be made to encourage suspects to voluntarily surrender to the ICC, many suspects will inevitably attempt to evade international justice. In these cases, suspects will need to be tracked to discover their location, prior to issuing requests for arrest to national authorities. The experience of other international criminal tribunals and the ICC so far suggests that, while the Court will require cooperation from States Parties and potentially other actors, the Court itself must take the lead in tracking suspects and initiating arrest operations. To perform these functions, the Court requires sufficient resources and appropriate tools.

#### 3.1 Providing additional resources for tracking and arrest efforts

In recent years, the Court has sought to strengthen its tracking capacity as a priority. Following a risk management exercise which identified the OTP’s inability to support the tracking and arrest of suspects at large as a major risk,<sup>74</sup> in 2025, the Office of the Prosecutor established the Tracking and Information Fusion Section to ‘reinvigorate its tracking function’ and enhance its analytical framework.<sup>75</sup> The Section includes the Suspects-at-Large Tracking Team (SALTT), which is responsible for tracking suspects combining information from human sources, open-source intelligence, social media data, signals, and communications and geospatial information to build a pattern of a suspect’s life, activities and networks.<sup>76</sup> SALTT works closely with the Registry’s Suspect-at-Large Unit (SALU), which forms part of the Judicial Cooperation Support Section and focuses on operational strategies and engagement to support the arrest of fugitives. Both units collaborate through the inter-organ Suspects-at-Large Working Group (SALWG). However, both SALTT and SALU report significant resource challenges to performing their work. Although some States Parties have seconded national officials to support the tracking efforts of the Court, the short-term nature of secondments means they are insufficient to fully address the capacity challenges. At the same time, the Court is reporting a ‘record number of warrants of arrest, both public and under seal, that are available for execution’<sup>77</sup> and is forecasting ‘at least 10 decisions on applications for warrants of arrest [...] in connection with eight situations’ in 2026.<sup>78</sup>

***Recommendation 9: States Parties should support the allocation of sufficient resources for the Court to track and pursue arrests effectively.***

In the Court’s budget request for 2025, the OTP set out the resource challenges that it is facing in regard to tracking suspects and the negative impact on its work:

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74 *Proposed Programme Budget for 2026 of the International Criminal Court* (n 5), para. 466.

75 *Proposed Programme Budget for 2026 of the International Criminal Court* (n 5), para. 458.

76 *Proposed Programme Budget for 2026 of the International Criminal Court* (n 5), para. 460.

77 *Proposed Programme Budget for 2026 of the International Criminal Court* (n 5), para. 17.

78 *Proposed Programme Budget for 2026 of the International Criminal Court* (n 5), Annex XVII, Chamber’s program of work: Projected workload of all judicial activities in 2026.

‘A tracking team requires tracking focused investigators, analysts and other specialists assigned to profile the suspects, identify their support networks and financial resources, and track their movements. The Office is currently insufficiently able to support the tracking of suspects at large and their arrest by national authorities. That insufficiency contributes to the ongoing commission of international crimes. The lack of dedicated, specialized staff resources for tracking impacts significantly on the Office’s ability to generate the correct suspect profiles and arrest strategies and, ultimately, hinders the successful tracking of suspects.’<sup>79</sup>

Accordingly, the OTP requested resources to expand SALTT from two to seven staff in 2025, including expanding the number of investigators and analysts. However, although four of the additional posts were approved, they were only provided for 3–4 months each this year.<sup>80</sup> As a result, the OTP reports that SALTT has needed to consolidate its resources to establish a core in-house tracking team of six staff through the deployment of existing resources and the resources approved in 2025.<sup>81</sup> Given the resource challenges, it has focused on building a ‘functioning baseline capability’ and has prioritised suspects for tracking.<sup>82</sup> For 2026, the Court has requested that the ASP maintain this six member team structure.

The SALU currently only has two staff, which the Registry has requested should be expanded to a team of four in 2026. The Court proposes that this can be achieved at no cost through redeploying one post and offsetting the costs of another discontinued temporary position in the Registry.<sup>83</sup> The Unit has also requested modest increases to its travel, training and consultants budget to support its efforts.<sup>84</sup>

The resource requests of the OTP and the Registry show that, although progress has clearly been made in strengthening their structures and capacity to track suspects and pursue arrests, the units are currently not able to track all suspects effectively. As a result, the Court may be missing opportunities to arrest some suspects. States Parties are urged to support the ICC in further building its tracking capacity. They should start by approving the modest resource increases requested for 2026. Considering that the resources requested for 2026 still only provide a baseline capacity for tracking suspects, and acknowledging the potential for a significant increase in outstanding arrest warrants in 2026, the IBA ICC & ICL Programme encourages States Parties to engage with the ICC to identify the resource requirements of the SALTT and SALU with the aim of ensuring that they can track all suspects at large and respond promptly to all opportunities for arrests when they arise.

### 3.2 Exploring the feasibility of an ICC rewards programme

Rewards have played an important role in securing the arrest of a number of suspects charged by international criminal courts and tribunals. To date, these rewards have been provided by national rewards programmes, in particular, the US State Department’s Global Criminal Justice Rewards Program.<sup>85</sup> The US

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79 *Proposed Programme Budget for 2025 of the International Criminal Court*, ICC-ASP/23/10, 31 July 2025, para. 201.

80 *Report of the Committee on Budget and Finance on the work of its forty-fifth session*, ICC-ASP/23/25, 22 November 2024, paras 67–68.

81 *Proposed Programme Budget for 2026 of the International Criminal Court* (n 5), para. 471.

82 *Proposed Programme Budget for 2026 of the International Criminal Court* (n 5), paras 461–462.

83 *Proposed Programme Budget for 2026 of the International Criminal Court* (n 5), paras 851–853.

84 *Proposed Programme Budget for 2026 of the International Criminal Court* (n 5), paras 899, 908 and 919–920.

85 For further information regarding the US Department of State’s Global Criminal Justice Rewards Program, see: <https://2021-2025.state.gov/global-criminal-justice-rewards-program> last accessed on 24 October 2025.

rewards programme has offered rewards for some ICC suspects (such as Joseph Kony), but not others. The Court has indicated that it plans to liaise with other states regarding the possibility that they may also offer rewards.<sup>86</sup>

Proposals have also been made, most notably in the 2020 Independent Expert Review of the International Criminal Court and the Rome Statute System, to establish a rewards programme specifically for the ICC to ‘facilitate access to information from the general public for the location and arrest of fugitives’.<sup>87</sup> There are a number of advantages to this proposal compared to relying solely on national rewards programmes. Many states don’t have national rewards programmes and those that exist may be unwilling or unable to offer rewards in relation to all ICC suspects. A dedicated ICC rewards programme could be offered for information relating to all ICC suspects at large. The information received could also be submitted to a central mechanism and passed on directly to the OTP’s SALTT and the Registry’s SALU. However, although the ASP assessed the independent expert’s recommendations positively,<sup>88</sup> no steps appear to have been taken to establish an ICC rewards programme.

***Recommendation 10: States Parties should support the establishment of an ASP working group to develop a proposal for an ICC rewards programme, including options on how it should be funded.***

Although the IBA ICC & ICL Programme in principle supports the establishment of an ICC rewards programme, it acknowledges that developing an effective programme will require a number of complex policy and resource decisions. For example, decisions will need to be made regarding:

- whether the rewards programme should be established as part of the ICC or the ASP;
- how it will be staffed, administered and work in relation to the SALTT and SALU;
- how to assess information received for credibility and relevance;
- how to determine whether a reward should be offered and the amount of a reward;
- whether at risk informants are eligible for protection measures;
- whether certain informants (eg, government officials or family members of suspects) should be ineligible for rewards; and
- how to fund the rewards.

In light of these questions, the IBA ICC & ICL Programme agrees with the recommendation by the independent experts that ‘the ASP should consider setting up a working group to consider the possible ways such a program could be set up and funded’.<sup>89</sup> The ICC should also be actively involved in developing the programme to ensure that it meets the Court’s needs. The working group should consider the rules and working practices of existing national rewards programmes and develop a proposal tailored specifically

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86 *Report of the Bureau on cooperation*, ICC-ASP/23/23, 18 September 2024, Annex III: Recommendations for increased engagement with States Parties on the implementation of outstanding ICC arrest warrants, para. 29.

87 *IER Final Report* (n 71), R289.

88 *Matrix: Progress in the assessment of the IER recommendations*, 6 September 2024.

89 *IER Final Report* (n 71), R289.

to the ICC for consideration by the ASP. Recognising that the independent expert's recommendation was made five years ago, States Parties should support the establishment of a working group as soon as possible.

### 3.3 Imposing individual sanctions to limit suspects' ability to evade justice

The ability of suspects to evade justice often depends on the strength of their support networks, the resources available to them and their ability to move freely. To limit suspects' capacity to hide, states and intergovernmental organisations have supported international criminal tribunals by imposing individual sanctions on suspects at large, including freezing their assets, halting their monetary entitlements (salaries and pensions) and imposing travel bans. For example, the European Union froze all the funds and economic resources of individuals indicted by the International Criminal Tribunal for the former Yugoslavia (ICTY) and adopted measures to prevent them from entering or transiting through the territories of its Member States.<sup>90</sup> The UN Security Council has also established sanctions regimes pursuant to its Chapter VII powers to maintain and restore international peace and security that impose individual sanctions on persons suspected of committing crimes under international law, including some individuals who are the subject of ICC arrest warrants. All UN Member States have an obligation to comply with the Security Council's sanctions.<sup>91</sup> However, while individual sanctions can support the ICC's tracking and arrest efforts, in some instances, restrictions may present barriers to arrest and surrender. For example, a travel ban may prevent a suspect from travelling from a state that has provided them with a safe haven to a state that is willing to arrest them. Or a travel ban may create logistical problems in transferring a person following their arrest to The Hague for the purpose of surrender. It is therefore important that individual sanctions align with the individual arrest strategies of the Court and that sanctions can be removed promptly, if necessary, to react to opportunities for arrest and surrender.

*Recommendation 11: States Parties should put in place national procedures to impose individual sanctions on ICC suspects at large and support the establishment of ASP mechanisms to coordinate and support their efforts.*

The Court has recently stated that it plans to liaise with states on the possibility to impose sanctions on suspects at large.<sup>92</sup> States Parties have an obligation to cooperate with requests from the ICC to identify, trace and freeze or seize the proceeds, property, and assets and instrumentalities of crime for the purpose of eventual forfeiture.<sup>93</sup> Furthermore, providing that they are not prohibited by their domestic laws, States Parties should cooperate with any specific requests to impose other sanctions on suspects at large.<sup>94</sup> If national laws do not provide for these measures, States Parties should enact legislation to impose individual sanctions on ICC suspects on the basis of an ICC arrest warrant. In particular, States Parties are encouraged to follow the example of a number of jurisdictions (including the following States Parties to the Rome Statute: Australia, Canada, Estonia, Latvia, Lithuania, Norway and the UK, as well as the EU) in

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90 See 2014 report on arrest strategies (n 14), paras 47-48.

91 For more information, see the United Nations Security Council's Sanctions webpage: <https://main.un.org/securitycouncil/en/sanctions/information> last accessed on 15 October 2025.

92 *Recommendations for increased engagement with States Parties on the implementation of outstanding ICC arrest warrants*, (n 86), para. 29.

93 Rome Statute, Article 93(1)(k).

94 Article 93(1)(l) provides that States Parties shall comply with requests by the Court to provide 'any other type of assistance which is not prohibited by the law of the requested State, with a view to facilitating the investigation and prosecution of crimes within the jurisdiction of the Court'.

enacting ‘Magnitsky’ laws, which allow them to impose financial and travel-related sanctions on individuals and entities responsible for human rights abuses.

Unless individual sanctions against a suspect are covered by a UN Security Council sanctions regime, the ICC will need to rely on individual States Parties and intergovernmental organisations, such as the EU, to impose sanctions on suspects at large. This is likely to result in significant gaps in the sanctions applied to each suspect. Indeed, even where States Parties have enacted Magnitsky laws, civil society organisations have criticised the lack of coordination between states to ensure the greatest impact is achieved on those sanctioned.<sup>95</sup> To address these challenges, the IBA ICC & ICL Programme recommends that the ASP should establish mechanisms, made up of both experts on sanctions and representatives of States Parties from each region, to coordinate the efforts of States Parties to impose (and where necessary withdraw) individual sanctions against suspects at large, as well as to build the capacity of States Parties that lack the necessary legislation and expertise to establish and implement national individual sanctions regimes.

***Recommendation 12: States Parties should intensify their efforts to ensure that relevant United Nations Security Council sanction regimes list persons who are the subject of an ICC arrest warrant.***

Although the UN Security Council’s sanctions regime requires all UN Member States to respect sanctions that it imposes on individuals, there are currently few efforts to engage with the Security Council’s sanctions committees to ensure that ICC suspects are included on the relevant sanctions lists. One commentator has observed, ‘any congruence between persons who are the subject of ICC warrants and the target of [sanctions committees] sanctions has been accidental, due to them having been previously listed by the Sanctions Committee prior to the issuance of relevant ICC warrants’.<sup>96</sup> All UN Member States may submit requests to sanctions committees to include individuals on sanctions lists. Therefore, States Parties should work together, including through ASP structures, to request the inclusion of all persons that are subject to an ICC arrest warrant on the relevant Security Council sanctions lists, unless the ICC indicates that their inclusion on the list may be inconsistent with its individual strategy to seek the arrest and surrender of the suspect.

### **3.4 Encouraging the support of international and regional law enforcement agencies**

Several international and regional law enforcement agencies, including INTERPOL and Europol, play a vital role in connecting law enforcement agencies regionally and around the world in collaborating to address crime, especially when it occurs across borders. These agencies can provide valuable assistance to the ICC in pursuing suspects at large, including by publicising the ICC’s arrest warrants (such as through INTERPOL red notices) and facilitating the sharing of information with the Court (for example,

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95 See, for example, Human Rights First, Open Society Foundations, Raoul Wallenberg Centre for Human Rights and *Redress*, *Multilateral Magnitsky Sanctions at Five Years*, November 2022, [https://humanrightsfirst.org/wp-content/uploads/2022/11/Multilateral-Magnitsky-Sanctions-at-Five-Years\\_November-2022.pdf](https://humanrightsfirst.org/wp-content/uploads/2022/11/Multilateral-Magnitsky-Sanctions-at-Five-Years_November-2022.pdf) last accessed on 15 October 2025, p.8: ‘To date, only 11% of Magnitsky sanctions have been multilateralized by two or more jurisdictions’.

96 Rod Rastan, ‘Can the ICC function without state compliance?’ In Margaret M deGuzman and Valerie Oosterveld (eds), *The Elgar Companion to the International Criminal Court* (Elgar 2020), p.174.

by providing the Court with access to databases and platforms, such as Europol's Secure Information Exchange Network Application (SIENA)).

***Recommendation 13: States Parties should support the ICC's efforts to increase its engagement with INTERPOL, Europol and other relevant entities on suspects-at-large matters.***

Although the Court reports that it regularly engages with INTERPOL and recently entered into an agreement with Europol,<sup>97</sup> the Court has indicated that it intends to engage more with these and similar agencies 'with a view to discussing ways forward that could assist in increasing the implementation of pending ICC arrest warrants' and 'to explore ways of streamlining global law enforcement efforts in capturing and prosecuting individuals accused of severe crimes like genocide, war crimes, and crimes against humanity'.<sup>98</sup> The Court has specifically asked States Parties to encourage entities that they are members of to strengthen their engagement with the Court.<sup>99</sup>

## **Useful resources on strengthening the capacity of the ICC to track suspects and pursue arrests**

### ***On the resource needs of the Court:***

- *Proposed Programme Budget for 2025 of the International Criminal Court*, paras 201–204: [https://asp.icc.int/sites/default/files/asp\\_docs/ICC-ASP-23-10-ENG.pdf](https://asp.icc.int/sites/default/files/asp_docs/ICC-ASP-23-10-ENG.pdf)
- *Proposed Programme Budget for 2026 of the International Criminal Court*, paras 457–498, 834 and 851: [https://asp.icc-cpi.int/sites/default/files/asp\\_docs/ICC-ASP-24-10-ENG.pdf](https://asp.icc-cpi.int/sites/default/files/asp_docs/ICC-ASP-24-10-ENG.pdf)

### ***On rewards:***

- Independent Expert Review of the International Criminal Court and the Rome Statute System: Final Report (2020), paras. 767–774 and R289: [https://asp.icc-cpi.int/sites/asp/files/asp\\_docs/ASP19/IER-Final-Report-ENG.pdf](https://asp.icc-cpi.int/sites/asp/files/asp_docs/ASP19/IER-Final-Report-ENG.pdf)
- *Recommendations for increased engagement with States Parties on the implementation of outstanding ICC arrest warrants*, 18 September 2024, ICC-ASP/23/23, Annex III, para. 29: [https://asp.icc-cpi.int/sites/default/files/asp\\_docs/ICC-ASP-23-23-ENG.pdf](https://asp.icc-cpi.int/sites/default/files/asp_docs/ICC-ASP-23-23-ENG.pdf)
- *US Global Criminal Justice Rewards Program*: <https://2021-2025.state.gov/global-criminal-justice-rewards-program>

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97 ICC press release, 'ICC and Europol conclude agreements to enhance cooperation', 18 September 2024.

98 *Recommendations for increased engagement with States Parties on the implementation of outstanding ICC arrest warrants*, (n 86), para. 25.

99 *Ibid.*

## On sanctions:

- *Recommendations for increased engagement with States Parties on the implementation of outstanding ICC arrest warrants*, 18 September 2024, ICC-ASP/23/23, Annex III, para. 29: [https://asp.icc-cpi.int/sites/default/files/asp\\_docs/ICC-ASP-23-23-ENG.pdf](https://asp.icc-cpi.int/sites/default/files/asp_docs/ICC-ASP-23-23-ENG.pdf)
- United Nations Security Council's Sanctions webpage: <https://main.un.org/securitycouncil/en/sanctions/information>
- Rod Rastan, 'Can the ICC function without state compliance?' In Margaret M deGuzman and Valerie Oosterveld (eds), *The Elgar Companion to the International Criminal Court* (Elgar 2020)

## On support from international and regional law enforcement agencies:

- INTERPOL website: [www.interpol.int/en](http://www.interpol.int/en)
- Europol website: [www.europol.europa.eu](http://www.europol.europa.eu)
- *Recommendations for increased engagement with States Parties on the implementation of outstanding ICC arrest warrants*, 18 September 2024, ICC-ASP/23/23, Annex III, paras 8 and 26: [https://asp.icc-cpi.int/sites/default/files/asp\\_docs/ICC-ASP-23-23-ENG.pdf](https://asp.icc-cpi.int/sites/default/files/asp_docs/ICC-ASP-23-23-ENG.pdf)

## 4. Strengthen State Parties' cooperation with tracking, arrest and surrender operations

In addition to the responsibility of States Parties to comply with requests to arrest and surrender suspects found on their territory (see Part 1), there are other important cooperation measures that States Parties must take, in accordance with Part 9 of the Rome Statute, to support the Court in tracking suspects and facilitating their surrender to the ICC. Furthermore, as the Court highlights in its 2024 *Recommendations for increased engagement with States Parties on the implementation of outstanding ICC arrest warrants*, there may be measures that States Parties can take to provide operational support to the Court and other states in pursuing arrests.<sup>100</sup>

### 4.1 Cooperation with tracking suspects

Tracking suspects at large is essentially an investigative function of the Court. As well as conducting its own tracking efforts, including through open-source research, the Court may engage with national authorities to identify a suspect, their location, movements and networks. States Parties to the Rome Statute have a legal obligation to comply with these efforts, when requested. Article 93(1)(a) requires that States Parties shall comply with requests from the Court to assist it with 'the identification and whereabouts of persons'. Although, the provision does not specifically refer to suspects at large, they are clearly covered by the term 'persons'.<sup>101</sup> All States Parties should therefore ensure that they have procedures in place to cooperate promptly and effectively with tracking requests from the Court. The Court has specifically recommended that States Parties:

'Make available judicial measures and tools to facilitate access to information on the whereabouts of suspects, including access to special investigative techniques and tools in the hands of national law enforcement and intelligence services as needed (including solely for the purpose of validating or invalidating information collected by the Court).'<sup>102</sup>

***Recommendation 14: States Parties should establish national procedures to provide prompt, full and effective cooperation with tracking suspects at large, ensuring that their investigative measures comply with internationally recognised human rights.***

The ICC may request cooperation from national authorities, including national law enforcement and intelligence agencies, to establish the whereabouts of a suspect, monitor their movements and gather other information that is necessary to plan an arrest operation. Recognising that, in some instances, requests for cooperation with tracking a suspect may be time sensitive, States Parties should ensure that national procedures are in place to provide prompt consideration and responses to a request from the Court. In particular, procedures should:

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100 *Recommendations for increased engagement with States Parties on the implementation of outstanding ICC arrest warrants* (n 86).

101 Kress and Prost, 'Article 93', in Ambos (ed), *Rome Statute of the International Criminal Court: Article-by-Article Commentary* (4th Edition, CH Beck, Hart Publishing and Nomos, 2022), 2541.

102 *Report of the Court on Cooperation* (2024) (n 8), para. 67.

- require cooperation with establishing the whereabouts of a suspect, including monitoring the movements of a suspect and other information necessary to plan an arrest operation, for example, the suspect’s health status or networks;
- establish a national contact point to receive and respond to ICC requests for assistance with tracking, including facilitating, where necessary, direct communication between the ICC and relevant law enforcement or intelligence agencies; and
- permit a broad range of tracking measures that may be requested by the ICC, including access to bank records and phone data.

Since tracking may involve intrusive surveillance measures, including the use of facial recognition technologies, spyware and communication interceptions, it is essential that national authorities undertaking such measures comply fully with their obligations under international human rights law. In particular, safeguards should be put in place to ensure that all tracking measures that may interfere with the right to privacy of the suspect and other persons are consistent with the principles of legality, necessity and proportionality, reflected in international human rights law and standards.<sup>103</sup>

***Recommendation 15: States Parties should ensure that it is an offence under national law for a person to assist an ICC suspect at large in evading arrest.***

To dissuade members of the suspect’s networks from providing them with support to evade justice, States Parties should make it an offence under national law to be an accessory after the fact to Rome Statute crimes. Accessory after the fact covers assistance provided after the commission of a crime, without requiring a causal effect on the crime’s commission. Although it is not reflected in the Rome Statute, it is a standalone offence in many states, including those with common law and civil law traditions.<sup>104</sup> The Commonwealth’s Model Law to Implement the Rome Statute specifically includes an option for States Parties to incorporate this offence into national law.<sup>105</sup>

## 4.2 Cooperation with arrest operations

As the Court notes, ‘arrest operations may be complex to put in motion and require significant efforts by the requested states’.<sup>106</sup> However, the capacity and experience of national authorities in executing international arrest warrants will vary significantly from state to state. For example, some states have specialised units dedicated to the investigation and prosecution of crimes under international law and for cooperation with international criminal tribunals, whereas other states may only have a very small number of officials with a working knowledge of international criminal law. To overcome capacity challenges, states requested to arrest suspects may require the operational support of other States Parties.

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103 See, for example, UN General Assembly Resolution on the Right to Privacy in the Digital Age, UN Doc. A/RES/77/211, 15 December 2022; UN Human Rights Council Resolution on Terrorism and Human Rights, UN Doc. A/HRC/51/24, 7 October 2022; European Court of Human Rights, *Glukhin v. Russia*, judgment, application no. 11519/20, 4 July 2023.

104 See Manuel J Ventura, ‘Accessory After the Fact at the International Criminal Court? Reconciling Article 25(3)(c) in Spanish of the Polylingual ICC Statute’, 20(5) *Journal of International Criminal Justice* (2022), 1086-1117.

105 The Commonwealth, Model Law to Implement the Rome Statute of the International Criminal Court, Article 17B(e).

106 *Report of the Court on cooperation* (2024) (n 8), para. 29.

***Recommendation 16: States Parties should cooperate, when requested, with supporting arrest operations in other states, ensuring confidentiality of the operations.***

To ensure the success of arrest operations, the ICC recommends that, in some cases, once concrete information relating to a suspect's whereabouts is obtained, the Court may establish 'a very small grouping of States' with political, economic and/or strong diplomatic relations to the requested state to 'provide direct or indirect operational support necessary in relation to the arrest of the suspect in question.'<sup>107</sup>

Although a legal obligation to arrest a suspect at large extends only to the State Party whose territory the suspect is found on, other States Parties should cooperate with requests from the Court for such operational support, in accordance with Article 93(1)(l). This Article requires that, providing the Court's request for operational support is not prohibited by national law, States Parties shall provide 'any other type of assistance' to the Court 'with a view to facilitating the investigation and prosecution of crimes within the jurisdiction of the Court'.

In light of the sensitive nature of an arrest operation, States Parties providing support to arrest operations in another state should put in place strict protocols to ensure confidentiality in order to avoid the suspect learning of the operation and absconding.

### **4.3 Cooperation with surrender operations**

Once a suspect has been arrested by national authorities, the State Party that has the suspect in its custody has a legal obligation to surrender them to the ICC (see Part 1).<sup>108</sup> Recognising that transferring a suspect to The Hague may present a number of logistical challenges, the Court may request the cooperation of other States Parties to facilitate the transfer of the suspect to the custody of the Court. Cooperation with the transit of a suspect through a State Party's territory is required by Article 89. Article 88 requires that procedures for providing these forms of cooperation must be set out in national law.

***Recommendation 17: States Parties should establish national procedures to cooperate with transferring a suspect through its territory into the custody of the ICC.***

In many instances, the surrender of a person to the Court in The Hague may not be possible without transiting through another state. Article 89(3) therefore provides that a State Party 'shall authorise, in accordance with its national procedural law, transportation through its territory of a person being surrendered to the Court by another State, except where transit through that State would impede or delay the surrender'. Building on the IBA's recommendations for State Parties to effectively implement the Rome Statute contained in *Strengthening the International Criminal Court and the Rome Statute System: A Guide for States Parties*,<sup>109</sup> the IBA ICC & ICL Programme recommends that national legislation should:

- Permit the ICC to transport a person being surrendered to the ICC from another state through its territory.<sup>110</sup>

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<sup>107</sup> *Recommendations for increased engagement with States Parties on the implementation of outstanding ICC arrest warrants* (n 86), para. 23.

<sup>108</sup> Rome Statute, Article 89(1).

<sup>109</sup> IBA ICC & ICL Programme, *Strengthening the International Criminal Court and the Rome Statute System: A Guide for States Parties* (n 2), recommendation 82.

<sup>110</sup> Rome Statute, Article 89(3)(a).

- Establish a national contact point to receive and respond to ICC requests for cooperation with transit.
- Set out a clear procedure for authorising requests for the transit of a person through the State Party's territory for the purpose of surrender.
- Confirm that authorisation is only required if the person is required to be physically present on its territory. It is not required if a person is transported through a State Party's airspace without landing.<sup>111</sup>
- Ensure that national authorities consult with the ICC if they identify any issues that may impede or delay the surrender, before rejecting a request based on such grounds.<sup>112</sup>
- Provide that the person being surrendered may be detained in the custody of national authorities during the period of transit, if requested by the ICC.<sup>113</sup>
- Ensure immediate cooperation in the event that an aircraft transporting a person to the ICC needs to make an unscheduled landing on its territory, until a request for transit can be submitted by the Court.<sup>114</sup>

***Recommendation 18: When requested, States Parties should enter into an agreement with the Court to cooperate with air transportation.***

In addition to cooperating with the transit of a surrendered person through their territory, States Parties are encouraged to enter into a model agreement for cooperation with air transportation developed by the Court, which may enable the ICC to tap into a State Party's air transport capacity, such as making available military aircraft to ensure the successful transfer of arrested persons to the ICC.<sup>115</sup> As of October 2024, only one state has signed this agreement.<sup>116</sup>

## **Useful resources on other forms of cooperation with tracking, arrest and surrender operations**

*On cooperation with arrest operations in other states:*

- *Recommendations for increased engagement with States Parties on the implementation of outstanding ICC arrest warrants*, 18 September 2024, ICC-ASP/23/23, Annex III, paras 23–24: [https://asp.icc-cpi.int/sites/default/files/asp\\_docs/ICC-ASP-23-23-ENG.pdf](https://asp.icc-cpi.int/sites/default/files/asp_docs/ICC-ASP-23-23-ENG.pdf)

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111 Rome Statute, Article 89(3)(d).

112 Rome Statute, Article 97.

113 Rome Statute, Article 89(3)(c).

114 Rome Statute, Article 89(3)(e).

115 *Report by the Court on cooperation* (2024) (n 8), recommendation 24.

116 *Ibid.*

*On cooperation with surrender operations:*

- IBA ICC & ICL Programme, *Strengthening the International Criminal Court and the Rome Statute System: A Guide for States Parties* (October 2024), recommendation 82
- Claus Kress and Kimberly Prost, 'Article 89' in Ambos (ed), *Rome Statute of the International Criminal Court: Article-by-Article Commentary* (4th Edition, CH Beck, Hart Publishing and Nomos, 2022)

## 5. Strengthen political support for state cooperation

Political considerations inevitably play a role in most arrest and surrender initiatives. Often, states will face political pressure not to cooperate with the ICC's requests for arrest. This is likely to be a factor when a state executes an arrest warrant against one of its nationals, especially if the suspect enjoys political support within the country. It will commonly feature when a state is requested to arrest a suspect found on their territory, if they are nationals of states opposed to the arrest. However, while politics is often a factor, States Parties have a legal obligation to cooperate fully with the Court's efforts, regardless of the status of the suspect or the strength of political opposition to the arrest warrant. To ensure that political consent does not determine who is ultimately prosecuted by the ICC, which would undermine the effectiveness and legitimacy of the Court, States Parties must play a vital role in supporting the execution of all ICC arrest warrants and countering political opposition to arrests.

Traditionally, states have demonstrated political support for the arrest and surrender of suspects to international criminal courts by promoting public arrest warrants, avoiding non-essential contact with suspects, calling on states to cooperate when specific arrest opportunities arise on their territory and establishing conditionality policies for states that provide a safe haven to suspects. Although some of these measures have been employed in support of the arrest of ICC suspects, there is further potential for States Parties to strengthen and coordinate political support for arrests.

***Recommendation 19: States Parties should publicise all public ICC arrest warrants domestically and internationally and request that the Bureau of the ASP develop best practice guidelines for States Parties through its facilitators on cooperation.***

Although the ICC has a leading role to play in publicising arrest warrants after they are made public (including through such measures as requesting that INTERPOL issue a red notice to law enforcement worldwide), the Court underlines that States Parties can provide valuable assistance in raising awareness of warrants domestically and internationally, including through increasing engagement with national law enforcement personnel.<sup>117</sup> According to the Court, 'such efforts can help garner support from the international community, including States and civil society organizations', as well as 'encourage government officials and suspects to cooperate with justice initiatives.'<sup>118</sup> To ensure the effectiveness of awareness-raising measures across as many States Parties as possible, the IBA ICC & ICL Programme recommends that States Parties should request that the Bureau, in coordination with the Court, prepare best practice guidelines for States Parties to promote arrest warrants.

***Recommendation 20: States Parties should publicly affirm that they will fulfil their obligations to arrest and surrender all suspects found on their territories to the ICC.***

In recent years, arrest warrants for some senior officials of states have led to strong politically driven criticisms of the Court, including questioning its authority and accusing it of bias. Disturbingly, some criticisms have been made by ICC States Parties, which are legally bound to cooperate with the ICC and

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117 *Recommendations for increased engagement with States Parties on the implementation of outstanding ICC arrest warrants* (n 86), paras 9–10.

118 *Ibid*, para. 9.

support its effective functioning,<sup>119</sup> raising concerns that they might seek to politically interfere with its work. To protect the integrity and independence of the ICC it is essential that States Parties respond to criticisms of arrest warrants by affirming their commitment to uphold their legal obligations to cooperate with the Court's activities in all situations. States Parties should publicly affirm, including during the annual general debate at the ASP, their support for the work of the ICC, their confidence in the safeguards against politically motivated prosecutions set out in the Rome Statute and their willingness to fulfil their obligations to arrest and surrender to the Court all suspects found on their territories. In light of the fundamental principle that everyone shall be presumed innocent until proven guilty, States Parties should avoid publicly supporting arrest warrants against specific individuals.

***Recommendation 21: States Parties should condemn political attacks against the ICC connected to arrest warrants, support measures to protect the effective operation of the Court and protect ICC officials and staff from targeted attacks.***

Beyond criticisms of the ICC, arrest warrants in several instances appear to have triggered a range of hostile actions by states against the Court. Some actions appear to be aimed at undermining the legitimacy of the warrant and the authority of the Court. For example, some states, including ICC States Parties, have invited suspects to visit their territory in defiance of a warrant. Other actions, disturbingly, appear to take aim at the ability of the ICC to operate, for example, by imposing sanctions on the ICC Prosecutor, Deputy Prosecutors and ICC Judges.<sup>120</sup> At the end of 2024, ICC President Judge Tomoko Akane warned that such actions 'rapidly undermine the Court's operations in all situations and cases and jeopardise its very existence.'<sup>121</sup>

To their credit, the ASP and many States Parties have already taken some measures in response to some political attacks against the Court.<sup>122</sup> However, in light of the increasing number and serious nature of these political attacks, which threaten to undermine the operations of the Court, States Parties should support the further development of a long-term and coordinated strategy by the ASP to promote respect for arrest warrants when political attacks occur. This should include:

- individually démarching the authorities of a state that is seeking to undermine ICC arrest warrants, including through encouraging them to express support for the ICC and urging them to respect the independence of the ICC's judicial process;

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119 See, for example, Rebecca Ingber, 'Mapping State Reactions to the ICC Arrest Warrants for Netanyahu and Gallant', *Just Security*, 6 March 2025, [www.justsecurity.org/105064/arrest-warrants-state-reactions-icc](http://www.justsecurity.org/105064/arrest-warrants-state-reactions-icc) last accessed on 15 October 2025.

120 'IBA condemns the imposition of additional US sanctions against International Criminal Court judges and officials', 21 August 2025, [www.ibanet.org/IBA-condemns-the-imposition-of-additional-US-sanctions-against-International-Criminal-Court-judges-and-officials](http://www.ibanet.org/IBA-condemns-the-imposition-of-additional-US-sanctions-against-International-Criminal-Court-judges-and-officials) last accessed on 15 October 2025.

121 Judge Tomoko Akane, *President of the International Criminal Court, Opening remarks at the 23rd session of the Assembly of States Parties*, 2 December 2024, [https://asp.icc-cpi.int/sites/default/files/asp\\_docs/ASP-23-STMT-PICC-ENG.pdf](https://asp.icc-cpi.int/sites/default/files/asp_docs/ASP-23-STMT-PICC-ENG.pdf) last accessed on 15 October 2025.

122 See, for example, ICC press release, 'Presidency of the Assembly of States Parties expresses deep concern and objects to additional U.S. sanctions targeting ICC elected officials', 21 August 2025, [www.icc-cpi.int/news/presidency-assembly-states-parties-expresses-deep-concern-and-objects-additional-us-sanctions](http://www.icc-cpi.int/news/presidency-assembly-states-parties-expresses-deep-concern-and-objects-additional-us-sanctions) last accessed on 15 October 2025; 'Joint Statement in support of the International Criminal Court', 15 June 2024, signed by 93 States Parties, [www.legal-tools.org/doc/whl4qe3g/pdf](http://www.legal-tools.org/doc/whl4qe3g/pdf) last accessed on 15 October 2025; 'Joint Statement – Sanctions International Criminal Court', 7 February 2025, signed by 79 States Parties, [www.government.nl/documents/diplomatic-statements/2025/02/07/joint-statement--sanctions-international-criminal-court-icc](http://www.government.nl/documents/diplomatic-statements/2025/02/07/joint-statement--sanctions-international-criminal-court-icc) last accessed on 15 October 2025.

- employing ASP structures when States Parties are the source of political attacks to remind them of their obligations under the Rome Statute and to call on them to halt actions that threaten to undermine the authority of the ICC or its ability to function;
- issuing individual statements and/or joint statements, including through intergovernmental organisations, expressing support for the ICC and the implementation of all ICC arrest warrants; and
- taking individual measures or supporting collective measures by the ASP to ensure the effective operation of the ICC and to protect ICC officials and staff targeted by attacks.

***Recommendation 22: States Parties should support further elaboration of the ASP's guidance on non-essential contact between States Parties and suspects at large and establish procedures for States Parties to provide explanations when contact occurs.***

Once an arrest warrant is issued, the ASP urges States Parties to avoid contact with suspects at large ‘unless such contact is deemed essential by a State Party’.<sup>123</sup> The EU and its Member States have also agreed to avoid ‘non-essential contacts’,<sup>124</sup> and the United Nations Secretary-General has issued guidelines setting out a general rule that ‘there should be no meetings between United Nations officials and persons who are the subject of warrants of arrest issued by the International Criminal Court’.<sup>125</sup> These policies reflect a broad agreement that avoiding non-essential contact with suspects at large contributes to arrest strategies by affirming the Court’s authority, isolating the suspect politically and signalling solidarity with the victims.<sup>126</sup> Furthermore, States Parties have an obligation to comply with the requirement to avoid non-essential contact in order to refrain from frustrating the activities of the Court or undermining the authority of its decisions,<sup>127</sup> which are implicit in their general duty to perform their obligations under the Rome Statute in good faith.<sup>128</sup>

Several recent instances of States Parties inviting suspects at large to visit their territory, however, demonstrate that the current ASP strategy of leaving it entirely to individual States Parties to determine whether a contact is ‘essential’ is open to bad faith application. The IBA ICC & ICL Programme therefore urges States Parties to support the further development of ASP guidelines clarifying what good faith implementation of non-essential contact entails. In particular, States Parties should support the expansion of guidance currently provided by the ASP to:

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123 See, for example, *Resolution on cooperation*, ICC-ASP/23/Res.5, para. 8.

124 Council of the European Union, *Action Plan to Follow-Up on the Decision of the International Criminal Court*, 12080/11, 12 July 2011, <https://data.consilium.europa.eu/doc/document/ST-12080-2011-INIT/en/pdf> last accessed on 15 October 2025.

125 UN Secretary-General, *Guidance on contacts with persons who are the subject of arrest warrants or summonses issued by the International Criminal Court*, UN Doc. A/67/828-S/2013/210, 8 April 2013, <https://docs.un.org/en/A/67/828> last accessed on 15 October 2025.

126 Human Rights Watch, ‘EU Cooperation in International Criminal Court Arrests’, November 2024, [www.hrw.org/news/2024/11/26/eu-cooperation-international-criminal-court-arrests](http://www.hrw.org/news/2024/11/26/eu-cooperation-international-criminal-court-arrests) last accessed on 15 October 2025.

127 See in relation to the United Nations, UN Office of Legal Affairs, *Best Practices Manual for United Nations – International Criminal Court Cooperation* (2016), [https://legal.un.org/ola/media/UN-ICC\\_Cooperation/Best%20Practice%20Guidance%20for%20UN-ICC%20cooperation%20public.docx.pdf](https://legal.un.org/ola/media/UN-ICC_Cooperation/Best%20Practice%20Guidance%20for%20UN-ICC%20cooperation%20public.docx.pdf) last accessed on 15 October 2025.

128 Vienna Convention on the Law of Treaties, Article 26. International Law Commission, *Draft Articles on the Law of Treaties with commentaries* (1996), p.211, the Commission clarified that a requirement that ‘a party must abstain from acts calculated to frustrate the object and purpose of a treaty [...] was clearly implicit in the obligation to perform the treaty in good faith’.

- adopt a definition of ‘essential contact’ that requires that contact must be ‘strictly required for carrying out core diplomatic, consular and other activities and/or those activities which are UN-mandated or which arise from a legal obligation (eg, under headquarters agreements)’;<sup>129</sup> contacts may also be considered essential in order to advance peace negotiations to end armed conflicts;
- expressly exclude from the definition of essential contact ceremonial meetings, courtesy calls, receptions and photo opportunities with suspects at large and other forms of contact that are by their nature non-essential;<sup>130</sup>
- emphasise that ‘every effort should be made to meet and liaise with individuals other than the person subject to a warrant of arrest in order to conduct business’;<sup>131</sup> and
- restrict any essential contact with a suspect at large to interactions that are strictly necessary.<sup>132</sup>

Furthermore, States Parties should develop the current procedure to report to the ICC and the ASP when an essential contact is required to demonstrate that they have applied the ASP’s guidelines in good faith. At present, the ASP merely ‘acknowledges that States Parties may, on a voluntary basis, advise the Court of their own contacts with persons subject to a warrant of arrest.’<sup>133</sup> Instead, it is recommended that the ASP should *request* a State Party to inform the Prosecutor of the ICC, the Registrar and the President of the Assembly in advance of an essential contact taking place, including providing information relating to the meeting (timing, location) and explaining why it is considered essential.<sup>134</sup> If necessary, the President of the ASP should be able to seek further information from the State Party or remind the State Party of the ASP’s call for states to avoid contact if the meeting falls outside the ASP’s definition of essential contact.

***Recommendation 23: States Parties should request that the ASP appoint a group of experts to advise States Parties on their obligations and powers when a suspect at large travels through their airspace.***

Regular travel by some suspects at large raises an important question about whether States Parties should deny permission to suspects to travel through their airspace. A related question concerns whether a State Party may force an aircraft believed to be carrying a suspect to land in order to arrest and surrender them to the Court. Although international law is clear that states exercise full sovereignty and exclusive jurisdiction over their airspace, a complex body of international aviation law governs permissions relating to overflight, which appear to vary depending on whether the plane is a civil, charter or military aircraft.<sup>135</sup> Furthermore, complicated rules apply in relation to when an aircraft overflying a territory can be forced to land. Given the specialised nature of these important questions, expert guidance should be sought,

129 This definition was originally proposed by the European Union’s COJUR-ICC Working Party, ‘The EU’s response to non-cooperation with the International Criminal Court by third states’, 16993/13, 27 November 2013, para. 9, <https://data.consilium.europa.eu/doc/document/ST-16993-2013-INIT/en/pdf> last accessed on 15 October 2025.

130 UN Secretary-General, *Guidance on contacts with persons who are the subject of arrest warrants or summonses issued by the International Criminal Court* (n 125), para. 2.

131 *Ibid*, para. 3.

132 *Ibid*, para. 4.

133 *Resolution on cooperation*, ICC-ASP/23/Res.5, para. 8.

134 UN Office of Legal Affairs, *Best Practices Manual for United Nations – International Criminal Court Cooperation* (2016), p.10 establishes a similar procedure for the United Nations to inform the ICC of instances of essential contact.

135 See for example Jan Wouters and Bruno Demeyere, ‘Overflight’, *Oxford Public International Law*, <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1204> last accessed on 15 October 2025.

including through the ASP, to clarify States Parties' obligations and powers if they are faced with a situation involving a suspect at large seeking to travel through their airspace.

***Recommendation 24: States Parties should intensify and coordinate their efforts to call on states to arrest ICC suspects on their territory, including by participating in situation working groups established by the Court.***

Although the obligation to arrest a suspect applies to the States Parties on whose territory a suspect is found, the experience of other international criminal tribunals demonstrates that other states can play an important role in ensuring that a requested state cooperates with the Court. To date, the ASP has sought to engage States Parties in urgent diplomatic and political efforts to promote the execution of an arrest where a request has been made to a state and it is determined that there is an impending or ongoing situation of non-cooperation by that state.<sup>136</sup> A toolkit issued in 2018 identifies a range of measures that State Parties should take to promote cooperation, including lobbying the requested state to execute the warrant and conducting public advocacy to call for the arrest and surrender of the suspect.<sup>137</sup> All States Parties are encouraged to participate in these diplomatic and political efforts to ensure consistent responses to potential instances of non-cooperation with arrests and to depoliticise action taken to encourage states to meet their cooperation obligations.<sup>138</sup>

Furthermore, the ICC's 2024 *Recommendations for increased engagement with States Parties on the implementation of outstanding ICC arrest warrants* suggest that diplomatic and political support for arrests should be expanded beyond responding to potential instances of non-cooperation. In particular, the Court recommends establishing working groups made up of relevant states with political, economic and diplomatic ties to a situation to coordinate political efforts to promote the execution of specific arrest warrants.<sup>139</sup> According to the Court, working groups can serve as platforms for pooling resources, expertise and diplomatic relationships to engage effectively on maximising the chances of the successful implementation of arrest warrants.<sup>140</sup> The Court foresees that working groups could engage in diplomatic and advocacy efforts aimed at promoting cooperation with the arrest of a suspect, as well as engaging with relevant international organisations to raise awareness of the outstanding arrest warrant.<sup>141</sup> When requested, States Parties should commit to joining and participating actively in working groups established by the Court.

***Recommendation 25: States Parties should consider establishing conditionality policies for states known to provide a safe haven for ICC suspects.***

Conditionality policies – incentives offered to states in exchange for cooperation with arrest and surrender operations – have been widely credited as key strategic elements in achieving cooperation with

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136 *Assembly procedures relating to non-cooperation* (n 20), paras 11 and 16.

137 *Toolkit for the implementation of the informal dimension of the Assembly procedures relating to non-cooperation*, ICC-ASP/17/30, 28 November 2018, Annex III.

138 *Ibid.*, para. 10.

139 *Recommendations for increased engagement with States Parties on the implementation of outstanding ICC arrest warrants* (n 86), para. 13.

140 *Ibid.*, para. 17.

141 *Ibid.*, paras 19–21.

some international criminal tribunals. In particular, EU policies requiring that candidate states for EU membership from the former Yugoslavia must provide full cooperation with the ICTY were considered to have played an important role in the execution of outstanding ICTY arrest warrants.<sup>142</sup>

Conditionality policies do not feature directly in the ICC's 2024 *Recommendations for increased engagement with States Parties on the implementation of outstanding ICC arrest warrants*, although the Court notes that states with economic or trade relations with a situation country could encourage cooperation with the ICC.<sup>143</sup> Although conditionality policies for EU membership will not apply to many ICC situations, the 2014 draft action plan on arrest strategies notes that other rewards may incentivise state cooperation, including making the provision of development aid, economic and other assistance programmes (excluding humanitarian assistance) conditional on cooperation with the arrest and surrender of ICC suspects believed to be on a state's territory.<sup>144</sup> As conditionality policies will need to be tailored to specific situations, it is recommended that States Parties should consider whether they may be effective (including considering any negative impacts of withholding such incentives), in coordination with other States Parties, through working groups established by the Court to promote cooperation with arrest and surrender operations (see recommendation 24 above).

## Useful resources for strengthening political support for state cooperation with arrest and surrender operations

### *On promoting arrest warrants:*

- *Recommendations for increased engagement with States Parties on the implementation of outstanding ICC arrest warrants*, 18 September 2024, ICC-ASP/23/23, Annex III, paras 9–10: [https://asp.icc-cpi.int/sites/default/files/asp\\_docs/ICC-ASP-23-23-ENG.pdf](https://asp.icc-cpi.int/sites/default/files/asp_docs/ICC-ASP-23-23-ENG.pdf)

### *On non-essential contact:*

- *Resolution on cooperation*, ICC-ASP/23/Res.5, para. 8: [https://asp.icc-cpi.int/sites/default/files/asp\\_docs/ICC-ASP-23-Res.5-ENG.pdf](https://asp.icc-cpi.int/sites/default/files/asp_docs/ICC-ASP-23-Res.5-ENG.pdf)
- Council of the European Union, *Action Plan to Follow-Up on the Decision of the International Criminal Court*, 12080/11, 12 July 2011: <https://data.consilium.europa.eu/doc/document/ST-12080-2011-INIT/en/pdf>
- European Union's COJUR-ICC Working Party, 'The EU's response to non-cooperation with the International Criminal Court by third states', 16993/13, 27 November 2013: <https://data.consilium.europa.eu/doc/document/ST-16993-2013-INIT/en/pdf>
- UN Secretary-General, *Guidance on contacts with persons who are the subject of arrest warrants or summonses issued by the International Criminal Court*, UN Doc. A/67/828-S/2013/210, 8 April 2013: <https://docs.un.org/en/A/67/828>

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142 2014 *report on arrest strategies* (n 14), paras 36–38.

143 *Recommendations for increased engagement with States Parties on the implementation of outstanding ICC arrest warrants* (n 86), para. 15.

144 *Draft action plan on arrest strategies* (n 51), paras 24–27.

- UN Office of Legal Affairs, *Best Practices Manual for United Nations – International Criminal Court Cooperation* (2016): [www.un.org/sites/www.un.org.ola/files/documents/2018/10/best-practice-guidance-un-icc-cooperation-public.pdf](http://www.un.org/sites/www.un.org.ola/files/documents/2018/10/best-practice-guidance-un-icc-cooperation-public.pdf)

### ***On coordinating support for arrest and surrender:***

- *Recommendations for increased engagement with States Parties on the implementation of outstanding ICC arrest warrants*, 18 September 2024, ICC-ASP/23/23, Annex III, paras 14–22: [https://asp.icc-cpi.int/sites/default/files/asp\\_docs/ICC-ASP-23-23-ENG.pdf](https://asp.icc-cpi.int/sites/default/files/asp_docs/ICC-ASP-23-23-ENG.pdf)
- *Toolkit for the implementation of the informal dimension of the Assembly procedures relating to non-cooperation*, ICC-ASP/18/23/30, 2 December 2019, Annex III: [https://asp.icc-cpi.int/sites/asp/files/asp\\_docs/ASP18/ICC-ASP-18-23-ENG.pdf](https://asp.icc-cpi.int/sites/asp/files/asp_docs/ASP18/ICC-ASP-18-23-ENG.pdf)

## 6. Strengthen responses to non-cooperation

The failure of a State Party to cooperate with an ICC request to arrest and surrender a suspect at large found on their territory is a violation of their obligations under the Rome Statute and an internationally wrongful act, entailing the responsibility of that state under international law.<sup>145</sup> States that are not party to the Rome Statute but who are obliged to cooperate with the ICC by a United Nations Security Council Chapter VII resolution also commit an internationally wrongful act when they fail to implement a request from the ICC to execute an arrest warrant. Similarly, states that are not party to the Rome Statute but have ratified the Genocide Convention commit an internationally wrongful act when they fail to arrest suspects accused of genocide by the ICC.<sup>146</sup> Despite the seriousness of these breaches of international law, States Parties and other states have repeatedly failed to cooperate with ICC requests for arrest and surrender with little or no consequences. Unless states are held to account for their violations of the Rome Statute and internationally wrongful acts in accordance with international law, non-cooperation with the arrest and surrender of ICC suspects will continue to occur.

***Recommendation 26: States Parties should support the strengthening of the ASP's formal response procedure to ensure consistent and effective responses to all of the non-cooperation referrals received from the Court.***

To date, the ICC has made 12 judicial findings of non-cooperation by States Parties with arrest and surrender requests and has referred those matters to the ASP, in accordance with Article 87 of the Rome Statute. Yet, although the ASP adopted a formal response procedure to guide its consideration of such referrals in 2011, and updated those procedures in 2017, so far, the ASP has only taken limited measures in relation to one referral made by the ICC. In 2024, the Assembly took note in a resolution of the ICC's findings of non-compliance by Mongolia, which related to its failure to arrest and surrender Vladimir Putin, conveyed a letter to the Minister of Foreign Affairs and invited a representative of the government to a Bureau meeting.<sup>147</sup> Most other ASP sessions have avoided any meaningful consideration of the Court's referrals or action to address them. Two leading commentators opine '[t]his inaction represents perhaps the most significant blow to the effectiveness of the cooperation regime of the Rome Statute and correspondingly to the efficacy of the Court itself'.<sup>148</sup>

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145 International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, Article 2 states that 'There is an internationally wrongful act of a State when conduct consisting of an act or omission (a) is attributable to the State under international law; and (b) constitutes a breach of an international obligation of the State'. Article 1 confirms 'Every internationally wrongful act of a State entails the international responsibility of that State'. Kress and Prost, 'Article 87' in Ambos (ed), *Rome Statute of the International Criminal Court: Article-by-Article Commentary* (4th Edition, CH Beck, Hart Publishing and Nomos, 2022), 2475, it is argued that 'It is doubtful whether reference to those circumstances precluding wrongfulness which are listed in Articles 20-27 of the ILC Articles is at all conceivable in the context of the Statute'.

146 By violating Article VI of the Genocide Convention which states: 'Persons charged with genocide or any of the other acts enumerated in article III shall be tried by a competent tribunal of the State in the territory of which the act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted its jurisdiction.'

147 *Report of the Bureau on non-cooperation*, ICC-ASP/23/31, 5 December 2024, paras 35–36; *Strengthening the International Criminal Court and the Assembly of States Parties*, ICC-ASP/23/Res.1, 6 December 2024, para. 31.

148 Kress and Prost, 'Article 87' (n 145), 2497. See also Göran Sluiter and Stanislas Talontsi, 'Credible and Authoritative Enforcement of State Cooperation with the International Criminal Court', in Olympia Bekou and Daley J Birkett (eds), *Cooperation and the International Criminal Court* (Brill Nijhoff, 2016), 103. 'A finding of non-compliance without a follow-up action weakens the authority of cooperation obligations and, one may add, the authority of the Court as a whole.'

There are two major flaws in the ASP's formal procedures that should be addressed urgently, if they are to improve State Parties' cooperation with arrest and surrender operations. First, the Assembly must apply the formal procedures to all referrals received at the following session of the ASP and take appropriate formal measures to address the violation. Significantly, based on recommendations by the Bureau's focal points on non-cooperation to implement the procedures more consistently,<sup>149</sup> in 2024, the ASP decided to include 'non-cooperation issues arising during the intersessional period' on the agenda of future sessions.<sup>150</sup> If this process is too effective, it must include applying the ASP's formal procedures at the ASP's 24th session consistently to all referrals received in 2025.

Second, the procedures focus primarily on formal diplomatic and political responses, including sending open letters from the President of the Assembly to the requested state; inviting the requested states to discuss the matter at a meeting of the Bureau; organising a public meeting to allow for dialogue with the requested state; holding a plenary discussion of the matter at the next session of the ASP; and adopting an Assembly resolution on the matter.<sup>151</sup> These measures are important. However, they fall short of directly addressing or upholding the legal duties of the non-cooperating states under international law to cease their internationally wrongful act, perform the obligation breached if possible, offer assurances of non-repetition and make full reparation for the harm caused.<sup>152</sup> In the absence of such measures, one commentary observes that 'non-cooperative states do not appear impressed at all by the soft and diplomatic initiatives [...]. To the best available knowledge, no State has improved cooperation as a result of ASP involvement'.<sup>153</sup>

Recognising that a State Party's obligations to arrest and surrender a suspect are owed to all States Parties (*erga omnes partes*), Kress and Prost argue that the ASP is entitled to not only ask a requested State Party for immediate compliance and condemn its failure to cooperate, but, consistent with international law on state responsibility, they may also collectively pursue legal consequences, including countermeasures, for an internationally wrongful act. According to Kress and Prost, this may involve economic sanctions against the non-cooperating state.<sup>154</sup> However, they argue that measures should stop short of terminating the treaty vis-à-vis the non-cooperating state given the overall humanitarian goal of the Rome Statute.<sup>155</sup> Sluiter and Talontsi similarly call for more effective enforcement measures that 'really affect the non-complying state', to be decided by a designated committee within the ASP, including a temporary increase in contribution, a temporary loss of voting rights in the ASP and a temporary loss of the right to submit candidates for judicial vacancies.<sup>156</sup> These and other collective measures by the ASP aimed at ensuring that non-cooperating States Parties face legal consequences for failing to arrest and surrender ICC suspects should be fully explored in an effort to strengthen the ASP's formal procedures in response to referrals for non-cooperation with arrest and surrender operations.

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149 *Report of the Bureau on non-cooperation*, ICC-ASP/23/31, 5 December 2024, paras 45–46.

150 *Strengthening the International Criminal Court and the Assembly of States Parties*, ICC-ASP/23/Res.1, para. 36.

151 Assembly procedures relating to non-cooperation (n 20), para. 14.

152 International Law Commission, *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, Articles 29–31. See also Melville Ludwig Jacobs, 'General International Law as a Tool for Strengthening ICC Responses to Non-cooperation Through the Lens of R2P' in *The Consequences of Non-cooperation with the International Criminal Court* (Springer, 2025), 125–152.

153 Sluiter and Talontsi (n 148), 108.

154 Kress and Prost, 'Article 87' (n 145), 2497.

155 *Ibid.*

156 Sluiter and Talontsi (n 148), 109.

***Recommendation 27: In the absence of consensus within the ASP on collective measures to be taken in response to a referral from the Court on non-cooperation, concerned States Parties should coordinate with other States Parties or act individually to pursue diplomatic, political and legal responses to the failure of a State Party to arrest and surrender a suspect.***

Recognising that the ASP is a political body that generally makes decisions by consensus, it can be expected that, in some situations, the ASP will be unable to agree on how to respond to a referral for non-cooperation. In these circumstances, States Parties should consider two options to ensure that the ASP avoids inconsistent responses to non-cooperation, or, worse, applies measures to some states but not others for political reasons. First, when more than two-thirds of States Parties support taking measures, States Parties should call for a vote on the matter. Although, every effort should be made to reach ASP decisions by consensus, when this is not possible, the need to protect the integrity of the Rome Statute and the effectiveness of the Court should be given priority. Second, if no action is taken by the ASP, concerned States Parties should pursue measures individually or jointly with other concerned states to pursue diplomatic, political and legal responses. Diplomatic and political responses may include individually or jointly *démarching* the authorities of the non-cooperating state or issuing individual statements or joint statements, including through intergovernmental organisations, expressing support for the ICC and the implementation of all ICC arrest warrants. Legal responses should involve measures available to states under the international law of state responsibility. Although Kress and Prost note that the legal situation on the ability of States Parties to take measures individually is not clear, they acknowledge it is arguable that ‘failing the necessary collective response channelled through the ASP’, general customary international law applies. This would – as a last resort – include the adoption of individual countermeasures.<sup>157</sup> Indeed, it would be deeply harmful to the integrity of the Rome Statute system if a political initiative by a minority of State Parties to obstruct action by the ASP would deprive states injured by an internationally wrongful act, or other states entitled to invoke the responsibility of the non-cooperating States Party, an opportunity to enforce the legal duties of responsible states and seek legal remedies prescribed by international law through other mechanisms.

***Recommendation 28: States Parties should continue to call on the UN Security Council to respond to the ICC’s referrals of non-cooperation with the arrest and surrender of ICC suspects.***

To date, the ICC has referred to the UN Security Council 10 instances of non-cooperation with ICC arrest warrants issued in relation to the Darfur and Libya situations. Despite numerous calls by the ICC Prosecutor, the Security Council has so far failed to take action in response to any of the referrals to the UN Security Council. Although intervention by the UN Security Council, including by issuing official statements via UN Security Council resolutions and imposing political or economic sanctions, could have a significant effect on deterring non-cooperation,<sup>158</sup> geopolitical divisions within the Security Council mean that it is unlikely to engage on these matters in the immediate future. Nonetheless, especially in relation to non-cooperation involving the Darfur and Libya situations that were referred to the ICC Prosecutor by the UN Security Council, it is important that States Parties – including States Parties that are members of the

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157 Kress and Prost, ‘Article 87’ (n 145), 2497.

158 See, for example, Dapo Akande and Talita de Souza Dias, Institute for Security Studies, *Policy Brief: How the UNSC and ASP can enhance cooperation with the ICC (2019)*, p.5, <https://issafrica.s3.amazonaws.com/site/uploads/pb124.pdf> last accessed on 15 October 2025.

UN Security Council – continue to advocate for the Security Council to address the referrals it has received from the Court.<sup>159</sup>

## Useful resources on responding to non-cooperation

### Official documents:

- *Assembly procedures relating to non-cooperation*, ICC-ASP/17/Res.5, Annex II: [https://asp.icc-cpi.int/sites/asp/files/asp\\_docs/ASP17/RES-5-ENG.pdf](https://asp.icc-cpi.int/sites/asp/files/asp_docs/ASP17/RES-5-ENG.pdf)

### Guides:

- IBA ICC & ICL Programme, *Strengthening the International Criminal Court and the Rome Statute System: A Guide for States Parties* (October 2024), recommendations 110–112: [www.ibanet.org/document?id=Strengthening-the-International-Criminal-Court-A-Guide-for-States-Parties-2nd-Edition](http://www.ibanet.org/document?id=Strengthening-the-International-Criminal-Court-A-Guide-for-States-Parties-2nd-Edition)

### Commentaries:

- Kress and Prost, ‘Article 87’ Ambos (ed), *Rome Statute of the International Criminal Court: Article-by-Article Commentary* (4th Edition, CH Beck, Hart Publishing and Nomos, 2022)
- Göran Sluiter and Stanislas Talontsi, ‘Credible and Authoritative Enforcement of State Cooperation with the International Criminal Court’, in Olympia Bekou and Daley J Birkett (eds), *Cooperation and the International Criminal Court* (Brill Nijhoff, 2016)
- Dapo Akande and Talita de Souza Dias, Institute for Security Studies, *Policy Brief: How the UNSC and ASP can enhance cooperation with the ICC* (2019): <https://issafrica.s3.amazonaws.com/site/uploads/pb124.pdf>
- Melville Ludwig Jacobs, *The Consequences of Non-cooperation with the International Criminal Court* (Springer, 2025)

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159 *Strengthening the International Criminal Court and the Assembly of States Parties*, ICC-ASP/23/Res.1, 6 December 2024, para. 38.

## 7. Strengthen efforts to promote national implementing legislation

As highlighted in the IBA ICC & ICL Programme’s 2024 *Strengthening the International Criminal Court and the Rome Statute System: A Guide for States Parties* and further elaborated throughout this Report, the enactment of effective legislation by States Parties, as required by Part 9 of the Rome Statute, is central to achieving the arrest and surrender of ICC suspects at large.<sup>160</sup> This section draws together the recommendations in this Report to establish a checklist that can be applied by all States Parties in regard to either developing new or reviewing existing legislation. It also considers mechanisms for States Parties to promote the enactment of legislation with other States Parties.

**Recommendation 29: States Parties should enact or review existing implementing legislation to ensure that it provides for prompt, full and effective cooperation with arrest and surrender operations.**

Drawing on the recommendations in this Report, the IBA ICC & ICL Programme recommends that all national implementing legislation should comply with the following benchmarks.

| Areas of Cooperation                   | Benchmarks<br>National legislation should:   | Relevant Law                    |
|--|--|---------------------------------|
| Complying with ICC Requests for Arrest | <ul style="list-style-type: none"> <li>• Recognise ICC arrest warrants and authorise national authorities to execute them on behalf of the ICC.</li> <li>• Establish a national contact point who is responsible for receiving requests for arrest and surrender, the details of which should be communicated to the Court.</li> <li>• Ensure that requests by the ICC can be received by the national contact point by email to avoid delays.</li> <li>• Establish a procedure for the national contact point to convene promptly a taskforce of relevant national authorities (eg, law enforcement and intelligence services), necessary to develop and implement the arrest operation.</li> <li>• Set out the necessary national authorisations to approve the execution of arrest warrants, ensuring that all approvals are purely procedural and are provided promptly. National authorities do not have the authority to review the merits of ICC arrest warrants, including whether it was properly issued by the Court, or to exercise any political discretion as to whether to execute an ICC arrest warrant.</li> <li>• Provide expedited procedures to implement ICC requests for provisional arrest in urgent cases to avoid a suspect from absconding, pursuant to Article 92.</li> <li>• Recognise the specific contents of a request for the arrest and surrender of a person already convicted by the Court (for example, if a person has escaped), as set out in Article 91(3).</li> <li>• Incorporate Article 27 of the Rome Statute on irrelevance of official capacity into national law and expressly provide that immunities shall not bar cooperation with executing ICC arrest warrants.</li> </ul> | Articles 27, 89, 91, 92 and 98. |

<sup>160</sup> IBA ICC & ICL Programme, *Strengthening the International Criminal Court and the Rome Statute System: A Guide for States Parties* (n 2), s.2.3.

|  |   |                              |
|--|---|------------------------------|
| Complying with ICC Requests for Surrender                                    | <ul style="list-style-type: none"> <li>• Identify the competent national judicial authority that will conduct national surrender proceedings.</li> <li>• Require that the arrested person has access to competent legal representation during the surrender proceedings, which may be provided and funded through the ICC.</li> <li>• Limit the scope of the proceedings to the three issues set out in Article 59, as well as determining any application by the suspect for interim release. Legislation should reflect that the competent judicial authority does not have the authority to review the merits of the ICC arrest warrant or whether it was properly issued.</li> <li>• Recognise the distinction between surrendering a suspect to the ICC and extraditing a person to another state reflected in Article 102 of the Rome Statute and preclude the application of traditional inter-state grounds for refusal of extradition requests, such as the political offence exception, to ICC requests for surrender.</li> <li>• Reflect the procedure proscribed in Article 89(2) to ensure that any challenges brought by the suspect on the basis of the principle of <i>ne bis in idem</i> are determined by the ICC.</li> <li>• Provide that the competent judicial authority may order effective remedies to the arrested person if it is found that the arrest process was not proper or their rights have been violated. In the event of a finding that violations have occurred, the competent judicial authority should promptly notify the ICC Pre-Trial Chamber of its findings and seek its recommendations, which should be given full consideration, before rendering a decision on any remedies.</li> <li>• Establish a procedure for determining applications by the suspect for interim release that accords with Article 59(4) and (5) of the Rome Statute, including providing for judicial dialogue with the ICC Pre-Trial Chamber regarding the application of such procedures and requiring the competent judicial authority to fully consider its recommendations.</li> <li>• Provide that once a suspect's surrender has been ordered by the competent authority, the person shall be delivered to Court as soon as possible.</li> <li>• Provide that in the event a competing request is received from another state for the extradition of the same person, the rules of competing requests set out in Article 90 will be applied.</li> </ul> | Articles 59, 89, 90 and 102. |
| Consultations in the Event of Impediments to Cooperation                     | <ul style="list-style-type: none"> <li>• Require the Court to consult promptly with the ICC if it identifies problems that may impede or prevent the execution of an ICC request.</li> </ul>  | Article 97.                  |
| Supporting Incentives and Removing Disincentives for Voluntary Surrender     | <ul style="list-style-type: none"> <li>• Permit the relocation of a family member(s) of a suspect who voluntarily surrenders to the ICC to its territory.</li> <li>• Permit accepting a person granted interim release by the ICC onto its territory, in accordance with the ICC's model agreement on interim release.</li> <li>• Permit the enforcement of an ICC sentence of imprisonment in national detention facilities, in accordance with the ICC's model agreement on enforcement of sentences.</li> <li>• Permit accepting a person who has been released following the acquittal or termination of their case or who has served their sentence of imprisonment onto its territory, in accordance with the ICC's model agreement on release.</li> </ul>  | Articles 60, 103, 107.       |
| Strengthening the Capacity of the Court to Track Suspects and Pursue Arrests | <ul style="list-style-type: none"> <li>• Permit and set out procedures for imposing individual sanctions on ICC suspects at large.</li> </ul>   |                              |

|                                    |  |                           |
|------------------------------------|--|---------------------------|
| Cooperation with Tracking          | <ul style="list-style-type: none"> <li>• Require cooperation to establish the whereabouts of a suspect, including monitoring the movements of a suspect and the provision of other information necessary to plan an arrest operation, for eg, the suspect’s health status or networks.</li> <li>• Establish a national contact point to receive and respond to ICC requests for assistance with tracking, including facilitating, where necessary, direct communication between the ICC and relevant law enforcement or intelligence agencies.</li> <li>• Permit a broad range of tracking measures that may be requested by the ICC, including access to bank records and phone data.</li> <li>• Establish efficient procedures to ensure that all intrusive surveillance measures that interfere with the right to privacy of the suspect or other persons comply with the principles of legality, necessity and proportionality.</li> <li>• Ensure that it is an offence under national law to assist an ICC suspect at large to evade arrest.</li> </ul>   | Article 93(1)(a) and (l). |
| Cooperation with Arrest Operations | <ul style="list-style-type: none"> <li>• Authorise national authorities to participate in joint arrest initiatives coordinated by the ICC and to support arrest operations in other states.</li> </ul>   |                           |
| Cooperation with Transit           | <ul style="list-style-type: none"> <li>• Provide that the ICC may transport a person being surrendered to the ICC from another state through its territory.</li> <li>• Establish a national contact point to receive and respond to ICC requests for cooperation with transit.</li> <li>• Set out a clear procedure for granting requests for transit of a person on the State Party’s territory for the purpose of their surrender to the ICC.</li> <li>• Confirm that authorisation is only required if the person is required to be physically present on its territory. It is not required if a person is being transported through a State Party’s airspace without the aircraft landing.</li> <li>• Ensure that national authorities consult with the ICC if they identify any issues that may impede or delay the surrender of a suspect, before rejecting a request based on such grounds.</li> <li>• Provide that the person being surrendered may be detained in the custody of the national authorities during the period of transit, if requested by the ICC.</li> <li>• Ensure immediate cooperation in the event that an aircraft transporting a person to the ICC needs to make an unscheduled landing on its territory, until a request for transit can be submitted by the Court.</li> <li>• Permit cooperation in the transportation of a person by air for the purposes of their surrender to the ICC, including making aircraft available to the Court, in accordance with the ICC’s model agreement for cooperation with air transportation.</li> </ul> | Article 89(3).            |

***Recommendation 30: States Parties should support efforts by the ASP to intensify its promotion of effective implementing legislation.***

Given that less than half of all States Parties to the Rome Statute have enacted legislation providing for their cooperation with arrest and surrender operations, and some of those laws contain flaws, the IBA ICC & ICL Programme reiterates its call for the ASP to prioritise its efforts to promote effective implementation. In particular, the programme has:

- Urged the ASP to review and re-energise the implementation of its *Plan of Action to achieve universality and full implementation of the Rome Statute*, including by intensifying the provision of technical assistance to states.<sup>161</sup>
- Called on States Parties that have enacted legislation to review their laws every 10 to 15 years, taking into account the evolving experience and recommendations of the Court, to ensure that it remains an effective basis for providing full cooperation to the Court.<sup>162</sup>
- Recommended that States Parties support the establishment of a periodic review process to strengthen national cooperation frameworks. This would include the examination of a State Party's national frameworks to cooperate with arrest and surrender procedures, followed by dialogue with other States Parties, including recommendations to strengthen the legislation of a State Party under review.<sup>163</sup>

## Resources

- IBA ICC & ICL Programme, *Strengthening the International Criminal Court and the Rome Statute System: A Guide for States Parties* (October 2024), recommendations 70, 105 and 113:  
[www.ibanet.org/document?id=Strengthening-the-International-Criminal-Court-A-Guide-for-States-Parties-2nd-Edition](http://www.ibanet.org/document?id=Strengthening-the-International-Criminal-Court-A-Guide-for-States-Parties-2nd-Edition)

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161 IBA ICC & ICL Programme, *Strengthening the International Criminal Court and the Rome Statute System: A Guide for States Parties* (n 2), recommendation 105.

162 *Ibid*, recommendation 70.

163 *Ibid*, recommendation 113.

## Conclusion

This Guide provides 30 recommendations for States Parties to strengthen their individual and collective efforts to ensure that persons who are subject to an ICC arrest warrant are arrested and surrender promptly to the ICC for trial. The recommendations focus broadly on measures to establish incentives and remove disincentives to voluntary surrender; improve the capacity of the ICC to track suspects and pursue arrest warrants; strengthen state cooperation with tracking, arrest and surrender; intensify political support for arrests; develop consistent and robust procedures to respond to instances of non-cooperation; and ensure that all States Parties put in place effective national frameworks to guarantee prompt, full and effective cooperation with the Court. The IBA ICC & ICL Programme urges all States Parties to support and implement these recommendations at the national level in order to strengthen their cooperation with the ICC and through their involvement with the ASP, in collaboration with civil society, to ensure that all States Parties fulfil their legal obligations as set out in the Rome Statute.



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