



the global voice of
the legal profession[®]

International Bar Association International Criminal Court and International Criminal Law (ICC & ICL) Programme

Priorities and Recommendations for the 23rd Session of the Assembly of States Parties to the Rome Statute of the ICC

November 2024

Contents

Introduction	1
Protecting the Court and those cooperating with it against threats and attacks	3
Promoting effective state cooperation & responding to non-cooperation	4
A sufficient, sustainable, and predictable budget and budgetary process	7
Ensuring the fairness of ICC Proceedings	8
Amending the ICC's jurisdiction over core crimes	9

Introduction

This paper sets out the priorities and recommendations of the International Bar Association (IBA) International Criminal Court and International Criminal Law (ICC & ICL) Programme for the 23rd session of the Assembly of States Parties (ASP) to the ICC's Rome Statute, taking place from 2-7 December 2024 in The Hague.

The ICC context: challenges and opportunities

The 23rd ASP session will be held at a critical time for international criminal justice and the International Criminal Court.

In 2024, the ICC Office of the Prosecutor continued its investigations in 12 situations, including in ongoing conflicts in the situations in Afghanistan, Darfur/Sudan, the Democratic Republic of Congo, the State of Palestine and Ukraine, which led to the issuance and unsealing of several arrest warrants. With the issuance of arrest warrants against Israeli officials and a Hamas leader in November 2024, 30 individuals are now wanted by the Court. Proceedings against suspects from the Central African Republic, Darfur and Mali continued in the ICC's courtrooms, and the Court moved towards holding its first ever confirmation proceeding *in absentia* for alleged Lord's Resistance Army leader Joseph Kony.

Through the Trust Fund for Victims, the Court continued to implement assistance programmes for victims of crimes within ICC jurisdiction, as well as court-ordered reparations. In 2024, the implementation of reparations was completed in the Katanga case, and the Court issued its largest reparations order to date, for €52.4 million, which seeks to benefit more than 40,000 victims in the Ongwen case.

During 2024, the Court marked some important achievements at the policy level with the launch of a revised OTP Policy on Complementarity and Cooperation, and with consultations to develop OTP policies on environmental crimes, slavery crimes, gender persecution, and to develop a revised Court strategy in relation to victims. Critically, a new legal aid policy adopted at the 22nd ASP session entered into force in 2024, introducing key improvements and addressing long standing concerns related to the representation of the accused and victims and to the fairness of proceedings.

The Court is succeeding on many levels, but faces increasing challenges in a polarised international arena, and with the ICC increasing the profile of its investigations and cases. In this context, it is all the more clear that the Court can discharge its mandate effectively and independently only with the strong political support and cooperation of its States Parties.

Attacks against the Court, its officials, and those cooperating with it have concerningly soared. Policies of active opposition to the Court have increasingly been enacted by non-States Parties, including actual and potential sanctions against ICC officials and the institution by Russia and the United States as a consequence of the ICC's involvement in the situations in Ukraine and in the State of Palestine. The Court suffered a cyber-attack of major proportions in 2023, which imposed a revision of its security infrastructure.

It has never been more clear that States Parties must implement their obligations under the Rome Statute in order for the ICC to succeed. In addition to the primary responsibility to investigate and prosecute Rome Statute crimes, States Parties must uphold the Court's mission by providing strong political support and the necessary resources for discharging its mandate, and by defending the Court, its officials, and those cooperating with it from attacks and threats.

The number of States Parties has expanded in 2024, with Armenia officially becoming the 124th State Party and Ukraine set to become the 125th in January 2025 after depositing its instrument of ratification in October 2024. Expanding the number of States Parties and reducing the space for impunity worldwide remains critical to achieving the ICC's mission. Each State Party has an important role to play in providing critical support to the ICC.

For additional recommendations on steps States Parties and the ASP can take to support the effective functioning of the Court, please see the IBA ICC & ICL Programme publication [Strengthening the International Criminal Court and the Rome Statute System: A Guide for States Parties](#) (2nd Edition, October 2024).

Protecting the Court and those cooperating with it against threats and attacks

- **States Parties should express their unequivocal support for the ICC and its work in all situations.**
- **States Parties and the Assembly should prevent and respond strongly to threats and attacks against the Court, its officials, and those cooperating with it, through individual and collective measures and in consultation with civil society.**

Through its history, as a consequence of its efforts to end impunity, the Court, its officials, and those cooperating with it have faced political threats, intimidation and attacks. State actors, including Russia and the United States, have enacted policies of active opposition to the Court and its staff, in the form of financial sanctions, travel bans, and the initiation of criminal proceedings against ICC officials.

In 2020, the United States issued an Executive Order blocking and seizing assets of ICC officials involved in investigating crimes allegedly committed by US forces and its allies in the situation in Afghanistan, which was subsequently revoked after a change in administration. This year, following an ICC Prosecutor's application for arrest warrants in the situation in Palestine against Hamas leaders and Israeli officials, the US Congress has taken steps to approve a bill which would introduce sanctions against the Court, its officials and any foreign person who has been involved in these proceedings.¹ After the issuance of warrants against Israeli officials and a Hamas leader in November 2024, calls for sanctions to the Court from the US congress have increased, and States Parties should immediately lay the foundation for collective and individual measures to limit the impact.

Similarly, following the issuance of arrest warrants by ICC Pre-Trial Chamber II against Russian officials in the Ukraine situation, criminal proceedings were initiated by the Russian Federation against ICC officials, including six ICC judges and the ICC Prosecutor, issuing arrest warrants and placing them on a no-entry list.²

Furthermore, civil society organizations and human rights defenders have continued to face immense challenges in carrying out their accountability work and risks to their security as a consequence of their interactions with the Court.

Threats and attacks against the Court, its officials, and those cooperating with it, aim at undermining the Court's authority and obstructing its investigations, threatening to weaken the rule of law globally. States Parties must therefore continue to publicly reaffirm their strong support for the Court's work and their commitment to cooperating with all its investigations and cases.

In response to a recommendation by the Independent Expert Review, the Bureau adopted in 2022 a decision outlining possible measures as well as a compilation of good practices for responding to attacks against the Court.³ An annex to the strategy outlines a non-exhaustive list of measures that the Presidency of the Assembly may recommend that States Parties take individually and collectively to respond to threats and attacks, including issuing public statements and engaging in diplomacy

¹ Strengthening the International Criminal Court and the Rome Statute System: A Guide for States Parties (2nd Edition, October 2024), Section 3.5.

² 'The Presidency of the Assembly of States Parties rejects the criminal proceedings initiated against high officials of the Court' (ICC, 12 October 2023).

³ Implementation of IER Recommendation 169, (Bureau of the Assembly of States Parties, 12 August 2022), available at <https://asp.icc-cpi.int/sites/asp/files/2022-08/Bureau-Proposal-Rec-169-ENG.pdf>

initiatives. Furthermore, in 2024, the Court developed a concept note highlighting security and safety measures that States and the Assembly may take in response to attacks.⁴

States Parties should support initiatives aimed at expanding and strengthening the individual and collective response to threats and attacks against the Court, in consultation with relevant Court organs and officials. Civil society organizations and human rights defenders cooperating with the Court should be consulted in the development of these initiatives.

In addition to preventing and responding to attacks against the Court in the context of the ASP, States Parties should explore other measures that could be adopted at the national level or at the regional level, including the possibility to adopt blocking statutes that would limit the impact of sanctions.

Promoting effective state cooperation & responding to non-cooperation

- **States Parties should promptly execute requests for cooperation with the arrest and surrender of persons to the ICC, and should establish clear and effective national procedures for the execution of such requests, ensuring the respect of fair trial rights.**
- **All States Parties should have or put in place effective national frameworks to ensure the fulfilment of their Rome Statute obligations to cooperate with the Court. National legislation should reflect the general obligation to cooperate fully with the ICC and, where relevant, with defence and victims counsel, at all stages of proceedings, as well as the obligation to provide specific forms of cooperation.**
- **The ASP should continue to promote effective cooperation between States Parties and the Court, and should respond strongly to instances of non-cooperation, including through the Assembly's Toolkit for the implementation of the informal dimension of the Assembly procedures relating to non-cooperation.**
- **States Parties should enter into cooperation agreements with the ICC on interim release, victim and witness relocation, final release and enforcement of sentences.**

All States Parties have an obligation to provide full and effective cooperation to the ICC, in accordance with Part IX of the Rome Statute. The Court's ability to fulfil its mandate is largely dependent on state cooperation with its investigations, the arrest and surrender of suspects, the protection of victims and witnesses, ensuring that the rights of the accused are protected, and reparations orders.

The record of State Party cooperation with the Court remains however uneven, and in some areas, inadequate for the Court's needs.

Cooperation with the arrest and surrender of suspects

States Parties have a specific obligation under Article 89 of the Rome Statute to comply with ICC requests for the arrest and surrender of suspects. The execution of warrants of arrest is possible only through close cooperation among the Court, States Parties and other international institutions and law enforcement agencies, and the execution of each arrest warrant presents different operational, political, and legal challenges, increasing the complexity of this area of the Court's work.

⁴ ASP, Report of the Bureau on Cooperation (*full reference to be updated following the publication of the consolidated version of the report*)

The execution of arrest warrants is the first priority affirmed by the most recent ASP Resolutions on Cooperation, in which the Assembly expressed concern over the large number of arrest warrants that remain publicly outstanding, currently 31 with the issuance of arrest warrants in the Situation in the State of Palestine in November 2024. In respect of these specific arrest warrants, while a number of States Parties have signalled their political support and readiness to comply with the arrest warrants, other States Parties have indicated that they would not be prepared to enforce arrest warrants against Israeli leadership. This is in clear contravention to their legal obligations under the Rome Statute, and would constitute non-cooperation, absent a judicial finding otherwise (see below).

States Parties should establish clear and effective national procedures to promptly arrest and surrender persons to the ICC. In devising national legislation, States Parties should reflect the provisions of Articles 59, 89 and 91 of the Statute, which provide procedural and substantive safeguards for fair trial rights.

The Assembly of States Parties should continue to promote effective cooperation between states Parties and the Court, particularly in relation to the arrest and surrender of suspects. The ASP should continue to prioritise discussions on state cooperation for the arrest and surrender of suspects with a view to raising awareness on the importance of the issue and strengthening the relationship among key stakeholders. In particular, the ASP should strengthen existing spaces for the exchange of information among key stakeholders, as well as for the exchange of lessons learned and best practices, including from other international institutions and tribunals. The IBA ICC & ICL programme commends in this regard the leadership of the co-facilitators for cooperation, Ambassadors François Alabrune (France) and Ramatoulaye Ba Faye (Senegal).

The Assembly should support politically and financially initiatives of the ICC Office of the Prosecutor and Registry to strengthen state cooperation, in particular for the arrest and surrender of suspects. This includes enforcing the ‘Recommendations for increased engagement with States Parties on the implementation of outstanding ICC arrest warrants’⁵ and supporting efforts of the Court to increase its internal capacity and coordination in relation to the tracking of suspects, including through the annual ICC budget request. This also includes supporting measures that the ASP and States parties individually can take to promote state cooperation for the execution of arrest warrants such as the creation of rewards.

Civil society also plays a key role in promoting state cooperation for the arrest and surrender of suspects, contributing to tracking efforts and advocating for strong cooperation with the Court. In 2024, the IBA ICC & ICL Programme contributed to these efforts with the organisation of an Expert Roundtable on [‘Cooperation for Arrest and Surrender: Lessons learned’](#).

National Frameworks for Cooperation

In order to fulfil their statutory obligations, States Parties must establish national frameworks for effective cooperation with the Court. These national frameworks should recognise the legal status and powers of the ICC to perform its functions on the territories of the state at all stages of the proceedings, provide a basis in national law for all forms of cooperation set out in the Rome Statute, and set out clear national procedures to ensure that national authorities can provide prompt and effective cooperation.⁶

States Parties’ obligations to cooperate with the ICC are distinct from cooperation with other states on criminal matters or with other international criminal tribunals. Therefore, where possible, States Parties should develop standalone legislation specifically implementing their obligations to cooperate with the ICC.

⁵ ASP, Report of the Bureau on Cooperation (*full reference to be updated following the publication of the consolidated version of the report*)

⁶ Strengthening the International Criminal Court and the Rome Statute System (n.1), Section 2.3.1.

States Parties that have enacted cooperation legislation should review it every 10-15 years, taking into account the evolving experience and recommendations of the ICC. Relatedly, the ASP should support the establishment of a periodic review process to consider in depth national frameworks for cooperation and complementarity and to strengthen them.⁷

Voluntary Cooperation Agreements

In parallel to the development of cooperation legislation, States Parties should enter into cooperation agreements with the ICC on interim release, victim and witness relocation, final release and enforcement of sentences, and incorporate their provisions in national law. Cooperation agreements regulate core elements of the ICC proceedings and allow the Court to discharge its mandate effectively and in respect of the rights of the accused.⁸

Non-Cooperation

In addition to promoting effective cooperation individually and through the ASP, States Parties and the Assembly should respond strongly to instances of non-cooperation. Failure to cooperate with the Court, in particular when it comes to arresting and surrendering suspects, threatens the legitimacy of the ICC mandate and the fight against impunity.

The ICC faced instances of non-cooperation with requests for the arrest and surrender, including the failure by Jordan and South Africa to arrest former Sudanese President al-Bashir, and the failure by Mongolia to arrest Russian President Putin. To respond to and to prevent instances of non-cooperation, the ASP developed a set of formal and informal procedures involving the deployment of political and diplomatic efforts.

The ASP should respond strongly to instances of non-cooperation following findings of non-compliance by the Court, making use of the available procedures and strengthening them where possible. The ASP and States Parties should work together to prevent instances of non-cooperation, making use of and strengthening the Assembly's Toolkit for the implementation of the informal dimension of the Assembly procedures relating to non-cooperation. To give the necessary weight to ICC arrest warrants, States Parties should also avoid conducting business as usual with persons subject to warrants of arrest, avoiding contacts with them unless such contacts are deemed essential. The Assembly of States Parties should strengthen provisions related to non-essential contacts in its yearly Resolution on cooperation, providing clear guidance to States Parties in this area.

Agreement on Privileges and Immunities of the ICC

As an independent international court with international legal personality, the ICC requires privileges and immunities to exercise its functions on the territories of States Parties. The privileges and immunities that the Court shall enjoy in the territory of each State Party are defined by Article 48 of the Rome Statute and by the Agreement on Privileges and Immunities of the ICC (APIC), which was adopted by the Assembly in 2002 and entered into force on 22 July 2004. Despite its importance for the work of the Court, only 79 States Parties have ratified the Agreement. States Parties should ratify the Agreement on Privileges and Immunities and incorporate it into national law as part of their efforts to enact effective national frameworks for cooperation with the Court.

⁷ *Ivi*, Section 3.4.

⁸ *Ivi*, Section 2.3.1.6.

A sufficient, sustainable, and predictable budget and budgetary process

- **States Parties should provide the Court with sufficient resources to implement its mandate consistently, effectively, efficiently, and independently through its regular budget, limiting the need for voluntary contributions to fund ICC core activities.**
- **States Parties should support the development of a long-term strategic vision for the Court, including the resources needed to achieve it.**

The IBA ICC & ICL Programme places importance on the sufficiency, sustainability, and predictability of the ICC's budget and budgetary processes. The Court must be provided with the resources it needs to conduct its mandate in accordance with the requirements of the Rome Statute and in respect of its judicial and prosecutorial independence. All States Parties have an interest in this given the importance of the budget to the Court's ability to perform its mandate.

Although the annual budget of the Court has increased most years, with significant investments between 2022 and 2024, these increases have not matched the significant expansion in the Court's workload and have fallen well short of the resources that the Court has indicated it needs to function effectively. The lack of sufficient resources is reflected in recent initiatives by the ICC Office of the Prosecutor and Registry to seek voluntary contributions and seconded personnel for activities that are arguably core to its effective functioning.

While resources outside the regular budget have produced positive effects, including enabling the OTP to address resources challenges and to introduce updated work practices in the Office,⁹ civil society organisations including the IBA ICC & ICL Programme have expressed concern about the long-term sustainability of such practice, which may lead to unequal growth of the Court's functions and to perceptions of politicisation and double standards.¹⁰

The IBA ICC & ICL Programme reiterates the importance of funding ICC core activities and functions through the regular budget, limiting the need for voluntary contributions and seconded personnel. We additionally recall the importance of the Contingency Fund as a vital mechanism allowing the Court to act promptly and respond effectively in situations when unforeseen circumstances arise, and we encourage States Parties to ensure that the Fund is fully replenished and functional.

To date, there has not been full participation in the ICC's budgetary process, with only a minority of States Parties participating in the consideration of the budget. Given that the Assembly's budget decisions are vital to the effective functioning of the ICC, all States Parties should participate in the annual budget process to elevate its importance and credibility, and to strengthen decision-making through an increased engagement with the ICC on the budget request and financial needs of the Court.

In the long term, the ASP should support the ICC in the development of a ten-year strategic vision for the Court including with respect to the resources necessary to achieve it, in consultation with States Parties, civil society and other relevant stakeholders. This was proposed by the Independent Expert Review in Recommendation 363, which was positively assessed but not yet implemented.

⁹ ASP, Report of the Committee on Budget and Finance on the work of its forty-fourth session, ICC-ASP/23/15, para 80.

¹⁰ Strengthening the International Criminal Court and the Rome Statute System (n.1), Section 1.3.2.

Ensuring the fairness of ICC Proceedings

- **States Parties should support measures to enhance the equality of arms and strengthen the Court's systems to give effect to the rights of defendants and victims, including through an adequate representation of the defence in institutional processes.**
- **The Assembly of States Parties should provide, through its Omnibus resolution, the necessary mandate to continue the discussions on the issue of income taxation for defence and victims' teams in 2025, with the goal of finding effective solutions. Interim measures should be considered while a final agreement on the issue is reached.**
- **The Assembly of States Parties should support the continuous improvement of the ICC's legal aid system, taking into consideration the views of the legal profession and the need to ensure the fairness of judicial proceedings.**

The IBA ICC & ICL Programme places great importance on the adequate representation of defendants and victims, and on the fairness of ICC proceedings.

The IBA ICC & ICL Programme welcomed as a critical development the Assembly's adoption of a new Legal Aid Policy, which entered into force on 1 January 2024.¹¹ The new legal aid policy introduced key reforms including the extension of basic labour rights and employment protection to support staff members in external teams, the definition of a core team composition which better reflects the representation needs of defence and victims' teams, and a more efficient management of the legal aid system with an increased budgetary predictability. The IBA ICC & ICL Programme stresses the need for a more regular review of the legal aid policy, in line with the recommendations of the Joint Committee on Legal Aid and the Registrar, with the aim of further developing the legal aid system and ensuring the fairness of judicial proceedings.

The issue of income taxation for defence and victims' teams remains to be solved. The issue of taxation has a direct impact on the disparity of remuneration between external counsel and team members and their counterparts in the Office of the Prosecutor, and is central to upholding the principle of equality of arms. We welcome the discussions on the issue in 2024 and commends the efforts of the facilitator for legal aid, Ambassador Hugh Adsett (Canada), to identify viable solutions in coordination with States Parties and the legal profession. We strongly encourage the Assembly to provide the necessary mandates for the continuation of the discussions in 2025, with a view to finding effective solutions that uphold the rights of defendants and victims. As States Parties devise a suitable resolution for this issue, we strongly encourage the Assembly to consider interim measures as proposed in the context of the facilitation on legal aid.

There are a number of institutional initiatives that the Assembly should support to ensure fair trials and respect for the rights of accused persons, victims and witnesses at the ICC. In particular, the ASP should: support a full consideration of the Independent Expert Review recommendations aimed at improving the institutional representation of the defence by providing additional responsibilities to the Office of Public Counsel for the Defence (OPCD); support the OPCD's proposal to create a Focal Point for Enhancing Fair Trials; and support the provision of sufficient funds for family visits of detainees through the regular Court budget.¹²

¹¹ ASP, Strengthening the International Criminal Court and the Assembly of States Parties, ICC-ASP/22/Res.3, para. 89.

¹² Strengthening the International Criminal Court and the Rome Statute System (n.1), Section 1.3.1.

Amending the ICC's jurisdiction over core crimes

- **The Assembly of States Parties should support a meaningful review on the amendments over the crime of aggression in accordance with Resolution RC/Res.6 of the Kampala Review Conference, with the substantive involvement of civil society.**
- **During the review of the aggression amendments, State Parties should commit to bring the Court's jurisdiction over the crime of aggression in line with the other core crimes in the Rome Statute.**
- **The Assembly, through its Working Group on Amendments, should give adequate consideration to proposals to add core crimes to the Rome Statute.**
- **States Parties should ratify amendments to the Rome Statute that have been adopted by the Assembly so far.**

To ensure that the ICC is able to prosecute evolving international crimes, the Assembly of States Parties should support amendment processes that seek to close gaps in the definitions and scope of current core crimes in the Rome Statute and, when appropriate, incorporate emerging crimes.

The ICC's jurisdiction over the crime of aggression, established by the Kampala Review Conference in 2010 and activated by the ASP at its 16th session in 2017 after reaching the established number of signatories to the amendment, shall be reviewed in 2024, seven years after the beginning of the Courts exercise of Jurisdiction, in accordance with the Kampala resolutions.¹³

States Parties should support the convening of a review conference in 2025 to revisit the ICC's jurisdiction over the crime of aggression, with the substantive involvement of civil society. In particular, States Parties should support amending the conditions under which the ICC can exercise jurisdiction over the crime of aggression, bringing it in line with the Court's jurisdiction over other core crimes. The definition of the ICC's jurisdiction over the crime of aggression adopted in Kampala in fact does not allow the Court to exercise jurisdiction over the aggression against a State Party, if the crime is committed by nationals of non-States Parties. This has resulted in the impossibility for the Court to prosecute the crime of aggression in situations where it may have allegedly occurred, including in the situation in Ukraine, and promoted discussions over the creation of special ad hoc tribunal for the Russian aggression to Ukraine.

In addition to supporting the revision of the ICC's jurisdiction over the crime of aggression, States Parties should give adequate consideration to other initiatives and proposals aiming at closing gaps in the definitions and scope of current core crimes and new conduct that should fall within their definitions. These include the proposals to add ecocide as a fifth core crime of the Rome Statute, to expand the definition of apartheid as a crime against humanity to include gender in addition to race in its definition, and to prohibit slave trade as a crime against humanity and a war crime.¹⁴

Amendments to Rome Statute crimes, including the addition of new crimes, require adoption by two thirds of the Assembly and enter into force for each State Party one year after they ratify them. As a consequence, the ICC can only exercise jurisdiction over crimes introduced with amendments to the Statute in the territory of a State Party if the State Party has ratified such amendments. States Parties should ratify Rome Statute amendments without delay, and consider ratifying all amendments at the same time.

¹³ ASP, The crime of aggression, RC/Res. 6, para.

¹⁴ ASP, Report of the Working Group on Amendments (*full reference to be updated following the publication of the consolidated version of the report*)