



***ASP Cooperation Plenary – Statement of Kate Orlovsky, IBA ICC & ICL Programme Director
8 December 2023***

Excellencies, distinguished colleagues, I am grateful for this opportunity to address you today on behalf of the International Bar Association (IBA) International Criminal Court and International Criminal Law (ICC & ICL) Programme¹, on this important topic.

The arrest and surrender of suspects to the ICC represents a key moment in the justice process. Because the Court does not have the ability to arrest and surrender suspects, the Court's ability to advance from investigation to trial is fully dependant on the cooperation of State Parties. The Court itself has identified the lack of implementation of arrest warrants as major strategic risk for the effective execution of the ICC's mandate. The execution of warrants of arrests is likewise the first priority affirmed by the yearly ASP Resolution on Cooperation, which expresses concern over the fact that warrants of arrest remain outstanding against 15 individuals, while still others may be outstanding that have been issued under seal.

Yet, the Rome Statute does not set out a detailed procedure that States Parties must follow in the execution of these requests, leaving a degree of procedural flexibility for States Parties to meet their obligations.

Without specific procedural guidance in the Rome Statute, it becomes of the utmost importance for States Parties to establish national frameworks, focused in particular on political and operational support, to ensure prompt response to the requests for arrest and surrender of persons to the ICC, as also recommended in the IER Report.

In addition, other forms of cooperation established by Article 93 of the Rome Statute contribute significantly to the Court's effort to trace suspects, including the identification of whereabouts of persons and the location of items. These obligations should also be considered and implemented in the development of national frameworks for cooperation.

For its part, the Assembly, in line with the mandate established by the Resolution on Cooperation, should increase its efforts to facilitate a comprehensive and systematic consideration of measures to increase the prospects of arrests, taking into account the experience of national, international, and

¹ The IBA is a strong supporter of the ICC. Since its establishment in 1947, the IBA has worked to protect and advance the rule of law, working with our membership of more than 80,000 individual international lawyers and some 190 bar associations and law societies spanning more than 170 countries. Our ICC & ICL Programme, based in The Hague, has promoted cooperation and support for the ICC and monitored issues related to fairness and equality of arms since 2005. As part of our implementing legislation project, the IBA ICC & ICL Programme has provided a broad set of recommendations in our [Guide for States Parties](#), which focuses in detail on the critical role that States Parties must play, individually and collectively, in strengthening the work of the ICC and the Rome Statute system, including the obligation to cooperate fully with the ICC's investigation and prosecution of Rome Statute crimes.:

hybrid tribunals. Consideration should be given to the development of conditionality policies creating positive or negative incentives for the cooperation of States Parties in the arrest and surrender of suspects as well as positive and negative incentives for the accused to voluntarily surrender. These policies should be enacted in close coordination with national authorities and/or international and regional organisations.

As States Parties develop procedures to cooperate with the Court in the arrest and surrender of suspects, it is important to bear in mind the essential obligation to protect fair trial rights. Ensuring that arrest and surrender respects the rights of suspects safeguards the legal process before the Court and may prevent delays and additional litigation in the pre-trial phase.

The rights of the arrested person are well established by the Rome Statute and relevant international human rights instruments. Article 59(2) of the Statute establishes that an arrested suspect should be brought without delay before the competent judicial authority in the custodial State to determine, *inter alia*, if the person's rights have been respected.

National procedures should reaffirm the rights of the arrested person and determine which remedies could be applied in the case of their violation, in close consultation with the ICC Pre-Trial Chamber that has jurisdiction over the case.

States Parties should give effective implementation to the Rome Statute provisions giving the arrested person the right to bring a challenge on the basis of the principle of *ne bis in idem* (Art. 89(2)) and to seek interim release pending surrender (Art. 59(3)). National procedures should also clearly specify the documentation that national authorities require the Court to submit, as such documentation may vary from state to state.

Finally, it is important to recall that the obligations for States Parties to cooperate in the arrest and surrender of suspects represent only a facet of the more general duty of States Parties to cooperate with the Court. In addition to creating national frameworks for the effective implementation of cooperation obligations, States Parties should increase their efforts towards ratifying and implementing the Agreement on Privileges and Immunities of the ICC, concluding voluntary agreements with the Court, and ensuring adequate funding for the Trust Fund for Family Visits. Arrest and surrender is the first step from which other cooperation obligations follow, including the ability to implement judicial orders for provisional and final release, and ensuring the right to family life can be respected while in ICC detention. While cooperation is essential to achieve arrest and surrender, it is equally important for the Court to have the necessary cooperation for the stages that follow.

Thank you.