



## Jurisdiction of the International Criminal Court: Ratification of the Rome Statute or Declaration under Article 12(3)?

There are two ways that a State such as Ukraine can accept the jurisdiction of the International Criminal Court ('ICC') pursuant to the Rome Statute ('Statute'): the State in question may either become a State Party to the Statute through **ratification** or accepting the Court's jurisdiction on ad hoc basis with respect to a given situation by lodging a **Declaration under article 12(3) of the Statute**.

### A State's Obligations and Rights

At first, the **obligations and rights** that a State incurs or obtains respectively from the two different paths to jurisdiction (ratification or Declaration) may appear small or even indistinguishable. However, whilst this may be true in relation to the obligations incurred, it is much less true in relation to a State Party's rights: **ratification enables a State to play a role in the governance and functioning of the ICC**.

### > Obligations

A State that has made a declaration accepting the jurisdiction of the Court pursuant to article 12(3) of the Statute accepts obligations (in line with those accepted as a State Party) to cooperate with the Court in accordance with Part 9 of the Statute, without any delay or exception.<sup>1</sup> They arise once the Court opens a full investigation<sup>2</sup> and encompasses, inter alia, the following obligations:

1

Complying with the requests for cooperation and documents issued by the Court under Article 87 of the Statute;

2

Assisting with the arrest and surrender of persons sought by the Court under Articles 89 and 92 of the Statute, including by:

- Arresting and surrendering persons to the Court;
- Providing access to information about such persons within its possession;
- Disseminating information and alerts pertaining to relevant suspects,
- Providing operational support by building its own legal and technical capacity to enable the confidential, prompt arrest and secure transportation of suspects to the Court;<sup>3</sup>

<sup>1</sup> ICC Rules of Procedure and Evidence, Rule 44(2).

<sup>2</sup> ICC Rules of Procedure and Evidence, Rule 44; O. Triffterer, K. Ambos, 'The Rome Statute of the International Criminal Court: A Commentary' 3rd edn., C.H. Beck, Hart, Nemos, 2015), pp. 684-685 ('Triffterer').

<sup>3</sup> ICC, Arresting ICC suspects at large: Why it matters, What the Court does, What States can do, available at: <https://www.icc-cpi.int/news/seminarBooks/bookletArrestsENG.pdf> p. 16.

- Identifying the whereabouts of a suspect, a victim or a witness;
- Obtaining, producing and serving upon the Court any form of evidence, including suspect interviews, witness testimony, expert opinions, official or judicial documents and reports;<sup>4</sup>
- Executing searches and seizures with respect to any (business or private) location as requested by the Court;<sup>5</sup>
- Allowing the examination of places or sites, including the exhumation and examination of grave sites;
- Enabling the protection of victims and witnesses and the preservation of evidence;
- Identifying, tracing, freezing or seizing proceeds, property and assets and instrumentalities of crimes for the purpose of eventual forfeiture;
- Any other type of assistance that is not prohibited by the law of the requested State with a view to facilitating relevant investigations and prosecutions.

## ➤ Rights

Importantly, whilst, pursuant to Article 15 of the Statute, anyone or any entity may provide information to the Prosecutor on alleged crimes, **only State Parties** may refer to the Prosecutor a situation in which one or more crimes within the jurisdiction of the Court appear to have been committed requesting the Prosecutor to investigate the situation for the purpose of determining whether one or more specific persons should be charged with the commission of such crimes.<sup>6</sup> Unlike the Article 15 path, a referral by a State Party pursuant to Article 16 enables the Prosecutor to initiate an investigation without seeking authorisation from the Pre-Trial Chamber.

Additionally, each State Party has a **seat at the governing table of the ICC** to directly impact the administration and future work of the Court.

### Membership allows the state to:

Propose and vote on amendments to the Court's governing rules, particularly the Rome Statute, Elements of Crimes, and Rules of Procedure and Evidence;<sup>7</sup>

Consider questions relating to non-cooperation;<sup>9</sup>

Nominate and elect the Prosecutor and the Judges of the Court;<sup>10</sup>

Provide management oversight over the Court, including over the Presidency, the Prosecutor and the Registrar regarding the administration of the Court;<sup>8</sup>

Consider and set the budget and future of the Court.<sup>11</sup>

<sup>4</sup> Triffterer, p. 2086.

<sup>5</sup> Ibid., p. 2089.

<sup>6</sup> Rome Statute, Article 14.

<sup>7</sup> Rome Statute, Articles 9(2), 51(2), and 121(1).

<sup>8</sup> Rome Statute, Articles 36(4), 42 and 112(2)(e).

<sup>9</sup> Rome Statute, Article 112(2)(b).

<sup>10</sup> Rome Statute, Article 112(2)(f).

<sup>11</sup> Rome Statute, Article 112(2)(d).