

Information Regarding the Arrest, Summons and Confirmation of Charges Procedures Constituting the Pre-Trial Phase of the International Criminal Court

Once the Prosecutor has gathered enough evidence of criminal activity against a person, he makes an application to the Pre-Trial Chamber for an arrest warrant or a summons. This application must include specific reference to the crimes alleged and a summary of the evidence showing reasonable grounds to charge the person. The Prosecutor may not obtain a warrant or summons for witnesses or experts.

The Pre-Trial Chamber will issue an arrest warrant if two conditions are met: first, reasonable grounds must exist to believe that the person committed the crimes alleged, and second, if there is a danger that that the person will not appear at trial, will obstruct the Court's investigation, or will continue to commit the crimes. The Prosecutor will make an application only when he believes these conditions have been met, so the Pre-Trial Chamber is likely to grant an arrest warrant. The Pre-Trial Chamber issues an arrest warrant to the State or States where the person is believed to be located. The text of an arrest warrant identifies the person sought and the crimes alleged, and include a statement of the relevant facts.

Because the ICC has no police force of its own, it relies on States Parties to the Rome Statute, who are obligated to mobilize their police forces to carry out arrest warrants from the Court. State authorities arrest the person and bring him or her before the competent court of the State. This court must then determine that the warrant applies to the person, and that the person has been afforded due process. The court of the State may not pass judgment on the propriety of the arrest warrant itself. The State must detain the person until it receives orders from the ICC to transfer the person into custody of the Court. Upon such orders the State delivers the person to the custody of the Court.

The Pre-Trial Chamber may issue a summons in lieu of an arrest warrant if it is satisfied that the summons will be sufficient to secure the person's appearance before the court. A summons is less restrictive than an arrest warrant, but it may include restrictions on liberty other than detention. The Pre-Trial Chamber may not issue a summons, and must issue an arrest warrant, if the person might obstruct or endanger the investigation and proceedings, or commit further crime. Like an arrest warrant, a summons includes identification of the person sought and the crimes alleged, and a statement of the relevant facts. The Pre-Trial Chamber will issue a summons directly to the person, who is obligated to present himself or herself before the Pre-Trial Chamber.

When the person arrives at the Court, either voluntarily or pursuant to an arrest warrant, he or she must appear before the Pre-Trial Chamber. At this appearance, the Pre-Trial Chamber informs the person of the charges alleged and of his or her rights under the Rome Statute. The Pre-Trial Chamber sets a date for the confirmation of charges hearing, and makes this information public.

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Within a reasonable time after surrender of the person to the Court, the Pre-Trial Chamber holds a confirmation of charges hearing. At least 30 days prior to the hearing, the Prosecutor provides the person with a description of the charges to be brought and a list of the evidence to be presented. This requirement allows the person to prepare a defense for the hearing. Present at the hearing are the Prosecutor, the person charged, and his or her counsel. The Prosecutor presents the charges, along with enough evidence to establish “substantial grounds” to believe that the person committed the crimes. This is higher standard of proof than the “reasonable grounds” standard for issuing an arrest warrant. The evidence presented can include testimony by witnesses and victims, and all other evidence that may be introduced at trial. The person can object to the charges or evidence brought by the Prosecutor and present his or her own evidence including calling witnesses, but is not obligated to do so. The Pre-Trial Chamber will confirm the charges if it determines that there are substantial grounds to believe that the person committed the crimes. Once the charges have been confirmed, the Presidency institutes a Trial Chamber that will conduct the trial of the person, now referred to as “accused.”

A confirmation of charges hearing can also take place without the person present. The Pre-Trial Chamber holds a hearing in absentia if, after the arrest warrant has been issued, the person charged has waived the right to be present, or has fled or cannot be found, and all reasonable steps have been taken to locate the person. A hearing in absentia serves two main purposes. First, it allows time-sensitive evidence, including witness testimony, to be presented and thus preserved for trial. The Pre-Trial Chamber could convey a compilation of evidence to the Trial Chamber, or, in other circumstances, the Prosecutor could re-introduce evidence from the pre-trial phase into the trial subject to objection by the Defense. Second, a hearing in absentia enables the Pre-Trial Chamber to compile evidence creating a case against the person. This may increase public condemnation of the person’s acts and convince a harboring State to turn over the person to the Court.

The Pre-Trial Chamber makes its determination to hold a hearing in absentia after consulting with the Prosecutor. The same rules apply to hearings in absentia that apply to confirmation of charges hearings with the person present, including introduction of witness testimony and other evidence. The absent person may send counsel to represent him or her. Additionally, the Pre-Trial Chamber has the option to appoint counsel to represent the absent person if it is “in the interest of justice” to do so. Counsel for the absent person can exercise rights on behalf of the person, and has the opportunity to make motions contesting the validity of evidence presented by the Prosecutor. If the Pre-Trial Chamber confirms the charges in absentia, its written decision will likely be longer than it would be if the person were before the court. The decision will analyze the evidence presented, since this evidence might not be presented again at the trial phase. Unless a person charged in absentia appeals his or her arrest or charges to the Pre-Trial Chamber, the person will be brought directly before the Trial Chamber upon his or her arrest.