

EU support for the ICC: facing challenges and overcoming difficulties

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The Committee on Foreign Affairs adopted the own-initiative report by Wolfgang KREISSL-DÖRFLER (S&D, DE) on EU support for the International Criminal Court: facing challenges and overcoming difficulties.

Members begin by recalling that the ICC is the first permanent international judicial body capable of trying individuals for genocide, crimes against humanity and war crimes, thus making a decisive contribution to upholding human rights and to international law by combating impunity. The Court plays a crucial deterrent role in sending a clear signal that **impunity for these crimes will not be tolerated**, thus contributing to security, justice and the rule of law as well as to the preservation of peace and the strengthening of international security.

However, Members stress that the fight against impunity can only succeed when all States Parties cooperate fully with the ICC, and when non-parties also provide assistance to the judicial institution.

Accordingly, the report makes certain observations and recommendations on strengthening cooperation.

1) The need to enhance support for the Court through political and diplomatic action: Members reiterate their full support for the ICC, the Rome Statute and the international criminal justice system, the Prosecutor's *proprio motu* powers and the progress in initiating new investigations. They urge Parties and non-parties to the Rome Statute to refrain from exercising political pressure on the Court in order to preserve and guarantee its **impartiality** and to allow for justice to be dispensed based on law, rather than on political considerations.

Members underline the importance of the principle of universality, and call on the EEAS, the EU Member States and the Commission to continue their vigorous efforts to promote **universal ratification of the Rome Statute** and the Agreement on Privileges and Immunities of the International Criminal Court (APIC) and national implementing legislation.

Welcoming the revised EU Action Plan agreed on 12 July 2011 which outlines effective, concrete measures to be taken by the EU to **deepen its future support** for the Court, Members stress that full and prompt cooperation between States Parties, including EU Member States, and the Court remains essential to the effectiveness and success of the international criminal justice system. They call on the EU and its Member States to comply with all requests by the Court to provide assistance and cooperation in a timely manner to ensure, *inter alia*, the execution of pending arrest warrants and the provision of information, including requests aimed at helping to identify, freeze and seize the financial assets of suspects.

Member States are also called upon to:

- enact national legislation on cooperation and to conclude framework agreements with the ICC for the enforcement of the Court's sentences and on matters of investigation;
- **transfer competences to the EU in the area of identification and confiscation of assets** of persons indicted by the ICC, notwithstanding the fact that judicial proceedings are initiated by the ICC;
- cooperate in exchanging relevant information through the existing Asset Recovery Offices as well as through the Camden Asset Recovery Inter-Agency Network (CARIN);

- ratify the amendments agreed at the Kampala Review Conference of amendments to the Rome Statute relating to the crime of aggression.

Fight against impunity for the worst crimes known to humanity: Members welcome the contribution of some EU Member States to the fight against impunity for the worst crimes known to humanity through the application of **universal jurisdiction**. They underline the fundamental role of international criminal jurisdictions in addressing the relevant violations of international law concerning the illegal recruitment of child soldiers. They firmly oppose children under the age of 18 years being conscripted into the armed forces or used in any way in military action.

Full cooperation with the ICC: Members take note of the Cooperation and Assistance Agreement between the EU and the ICC and call on EU Member States to **apply the principle of universal jurisdiction in tackling impunity and crimes against humanity**. They strongly encourage the EU and its Member States to **use every diplomatic opportunity and diplomatic instrument** to press for effective cooperation with the ICC, in particular with regard to the execution of pending arrest warrants. They also encourage the EU and its Member States, with the help of the EEAS, to put in place a set of stringent internal guidelines outlining a code of conduct for contact between EU and Member State officials and persons wanted by the ICC, in particular when the latter still occupy official posts. In the event of a partner country issuing an invitation to, or expressing a willingness to allow, visits on its territory by an individual who is the subject of an ICC arrest warrant, Members ask the EU and its Member States to exert strong pressure on that country without delay, with a view to either arresting or supporting an arrest operation or, as a minimum, to preventing the travel of such an individual. They note that recently such invitations have been issued to Sudan's president Omar al-Bashir by Chad, China, Djibouti, Kenya and Malaysia among others without arresting him and surrendering him to the Court.

Execution of arrest warrants: the report notes that the majority of the 18 arrest warrants issued by the ICC have not yet been implemented, including those against Joseph Kony and other leaders of the Lord's Resistance Army in respect of the situation in Northern Uganda, Bosco Ntaganda of the Democratic Republic of the Congo, Ahmad Muhammad Harun, Ali Muhammad Ali Abd-Al-Rahman and President Omar Hassan Ahmad Al Bashir of Sudan, and Muammar Mohammed Abu Minyar Gaddafi, Saif al-Islam Gaddafi and Abdullah Al-Senussi of Libya. Members recognise the recent decision by the ICC Prosecutor to issue arrest warrants for Colonel Gaddafi, his son Saif al-Islam and intelligence chief Abdullah al-Sanoussi, in relation to the alleged crimes against humanity and stress that their successful capture, and subsequent trial by the ICC, will serve as a crucial contribution to the fight against impunity in the region.

African States: Members note that African States had a major role in creating the ICC and regards their support and close cooperation as indispensable to the Court's effective functioning and independence. They call on the African States Parties to the Rome Statute of the ICC to fulfil their obligations under the ICC Rome Statute and actively to support the task of holding the world's worst offenders to account and break the cycle of impunity.

Actions in support of the ICC's work: Members propose a series of measures to support the ICC, the main ones being as follows:

- mainstreaming the work of the ICC and the provisions of the Rome Statute in its development programmes aimed at strengthening the rule of law;
- providing the necessary technical, logistical and financial assistance and expertise to developing countries which have only limited resources with which to adapt their national legislation to the principles of the Rome Statute;
- application by the EEAS and the diplomatic services of the EU Member States in a systematic and targeted manner of the diplomatic tools used by them both to raise support for the ICC and to promote wider ratification and implementation of the Rome Statute (include *démarches*, political declarations, statements, and ICC clauses in agreements with third countries);

- the High Representative/Vice-President and the EU Member States to launch diplomatic efforts to encourage UN Security Council members to pursue referrals to the ICC to open investigations into cases in which officials from States which are not a party to the Statute continue to enjoy ongoing impunity, including the recent situations in Iran, Syria, Bahrain, and Yemen;
- calling on more Asian, North African, Middle Eastern and Sub-Saharan countries to become parties to the Rome Statute;
- promoting the universality of the Rome Statute in the context of EU relations with third countries within the framework of the Cotonou Agreement;
- pursuing more systematically the inclusion of an ICC clause in negotiating mandates and agreements with third countries.
- Members stress the **need for the ICC to expand its focus beyond situations of armed conflict and, more proactively, to investigate human rights emergencies that escalate** to the level of crimes against humanity.

Other measures proposed include the following: i) calling on Turkey, the only official EU candidate that has not yet done so, to become a State Party to the Rome Statute; ii) affirming the crucial role of the EU Member States' diplomatic support for the ICC's mandate and for its activities in UN fora ; iii) enhancing diplomatic efforts to foster greater support for the Court in the UN Security Council, particularly for genocide ; iv) ensuring that coordination and cooperation with the ICC is included in the mandate of relevant regional EU Special Representatives (EUSRs); v) mainstreaming the ICC across the EU's foreign policy priorities; vi) ensuring that the EEAS has the necessary expertise and high-level capacity to make the ICC a real priority; vii) making every effort to prosecute and punish the perpetrators of **sex crimes against humanity**.

Members also consider that the effectiveness of the principle of complementarity of the Court lies in the primary obligation of its States Parties to investigate and prosecute war crimes, genocide and crimes against humanity. They express concern that not all of the EU Member States have legislation defining these crimes under national law over which their courts can exercise jurisdiction.

2) The need to ensure further financial and logistical assistance for the Court: Members welcome the EU's and individual Member States' support for the ICC thus far and recommends that current forms of support are continued. They call on the EU and its Member States to support the Court's efforts to enhance its field presence, as well as assisting communities victimised by crimes falling under the Court's jurisdiction. They recommend that Member States continue to provide adequate funding for the ICC Trust Fund for Victims (in order to complement potential upcoming reparation awards while continuing to carry out current assistance activities) and to contribute to the newly established ICC Special Fund for Relocations, and other related Funds. Adequate and stable funding is also required for civil society actors working on ICC-related issues within the European Instrument for Democracy and Human Rights (EIDHR). The report also encourages Member States and the EEAS to start discussions relating to the review of current EU financial instruments, in particular the European Development Fund (EDF), with a view to examining how they could further contribute to supporting complementarity activities in beneficiary countries in order to boost the fight against impunity. All the ICC States Parties are asked to promote joint efforts to improve trials at national level of the most serious crimes.

Lastly, Members recall that the European Parliament was one of the earliest vocal supporters of the Court and calls for the insertion of a section on the fight against impunity and the ICC in the EP Annual Report on Human Rights in the world. They suggest that the European Parliament play a more proactive role by promoting and mainstreaming the fight against impunity and the ICC in all EU policies and institutions