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on EU Support for the ICC: facing challenges and overcoming difficulties
(2011/2109(INI))

Committee on Foreign Affairs

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on EU Support for the ICC: facing challenges and overcoming difficulties (2011/2109(INI))

The European Parliament,

- having regard to the Rome Statute of the International Criminal Court (ICC) that entered into force on 1 July 2002,
- having regard to the Convention on the Prevention and Punishment of the Crime of Genocide,
- having regard to its previous resolutions on the International Criminal Court, in particular those of 19 November 1998¹, 18 January 2001², 28 February 2002³, 26 September 2002⁴ and 19 May 2010⁵,
- having regard to its previous resolutions on Annual Reports on Human Rights in the World, the most recent being that of 16 December 2010⁶,
- having regard to the Council Common Position on the International Criminal Court⁷,
- having regard to Council Decision 2011/168/CFSP of 21 March 2011 on the International Criminal Court and repealing Common Position 2003/444/CFSP⁸,
- having regard to the Action Plan of 4 February 2004⁹ currently undergoing revision at the COJUR ICC,
- having regard to the European Security Strategy (ESS) of 2003 entitled ‘A Secure Europe in a Better World’ adopted by the European Council on 12 December 2003,
- having regard to the Stockholm Programme 2010-2014 entitled ‘An Open and Secure Europe Serving and Protecting Citizens’ (December 2009)¹⁰,
- having regard to the relevant UN Security Council resolutions, in particular the Sudan/Darfur 1593 (2005) and Libya 1970 (2011) referrals,
- having regard to Rule 48 of its Rules of Procedure,

¹ OJ C 379, 7.12.1998, p. 265.

² OJ C 262, 18.9.2001, p. 262.

³ OJ C 293 E, 28.11.2002, p. 88.

⁴ OJ C 273 E, 14.11.2003, p. 291.

⁵ OJ C 161 E, 31.5.2011, p. 78.

⁶ Texts adopted of that date, P7_TA(2010)0489

⁷ OJ L 150, 18.6.2003, p. 67.

⁸ OJ L 76, 22.3.2011, p. 56.

⁹ Document 5742/04.

¹⁰ OJ C 115, 4.5.2010, p. 4.

- having regard to the report of the Committee on Foreign Affairs and the opinions of the Committee on Development and the Committee on Women’s Rights and Gender Equality (A7-0000/2011),
- A. whereas justice and the rule of law are the pillars of sustainable peace, in that they guarantee human rights and fundamental freedoms,
- B. whereas the universal nature of justice implies its even application, free of exceptions and double standards,
- C. whereas justice should be seen as an indispensable element underpinning peacekeeping and conflict mitigation efforts,
- D. whereas the Rome Statute of the ICC makes a decisive contribution to the upholding of human rights, to international law and to the fight against impunity, playing a crucial deterrent role and sending a clear signal that impunity for crimes against humanity, genocide and war crimes will not be tolerated,
- E. whereas the ICC can only prosecute crimes committed on or after 1 July 2002, the date when the Rome Statute entered into force,
- F. whereas the ICC only acts in instances where national courts are unable or unwilling to hold credible trials at home, these instances making international courts essential for holding perpetrators of the worst international crimes to account,
- G. whereas the ICC is currently conducting investigations in seven countries (Uganda, Democratic Republic of the Congo, the Darfur region of Sudan, Central African Republic, Kenya and Libya), and the ICC prosecutor has recently requested the opening of an eighth investigation in Côte d’Ivoire,
- H. whereas a large number of ICC arrest warrants are still pending, including those against the Sudanese President al-Bashir and the Libyan leader Muammar Gaddafi,
- I. whereas fair trial, due process and victims’ rights are the fundamental principles of the Rome Statute system,
- J. whereas the Court’s aim is to deliver justice for victims and affected communities in a comprehensive manner, including through participation, protection and outreach activities,
- K. whereas the Court is currently forced to deal with a rapidly increasing number of investigations, cases and preliminary examinations, while the annual budget is incommensurate with needs, remains unchanged and may even be decreased, and the Court is increasingly subjected to unfair, politically motivated attacks,
- L. whereas the EU and its Member States have been staunch allies of the Court from its inception, offering continued political, diplomatic, financial and logistical support, including the promotion of universality and defending the integrity of the Rome Statute, with a view to protecting and enhancing the independence of the Court,

The need to enhance support for the Court through political and diplomatic action

1. Reiterates its full support for the ICC, the Rome Statute system and their primary objective of fighting impunity for genocide, war crimes, and crimes against humanity;
2. Recommends that the EU and its Member States fulfil all pledges made at the Kampala Review Conference of 31 May-11 June 2010 in a timely manner and report back on the implementation of the pledges at the next Assembly of States Parties, scheduled to take place on 12-21 December 2011 in New York;
3. Welcomes the updating of the EU Common Position on the ICC through the adoption of a decision on 21 March 2011; notes that the new decision takes into consideration the challenges faced by the Court and stresses that the decision provides a good basis for the EU and its Member States to assist the Court in tackling them;
4. Encourages the Polish Presidency to prioritise the revision of the EU Action Plan relating to the ICC, in the hope that the plan will outline effective and concrete measures to be taken by the EU with a view to deepening its future support for the Court;
5. Calls on all the EU Member States to sign framework agreements with the ICC in order to facilitate adequate and timely cooperation with the Court (as regards replying to information requests, asset tracking, freezing and seizing requests and executing arrest warrants, as well as in the areas of witness protection, relocation and the enforcement of sentences) and fully integrate the Rome Statute into national legislation;
6. Welcomes the adoption at the Kampala Review Conference of amendments to the Rome Statute relating to the crime of aggression and calls on all the EU Member States to ratify them and integrate them into their national legislation;
7. Recommends that the role of the EU Network of Contact Points for War Crimes, Crimes against Humanity and Genocide in facilitating cooperation between EU law enforcement authorities in the prosecution of serious crimes should continue to be strengthened;
8. Strongly encourages the EU and its Member States to take every diplomatic opportunity to press for effective cooperation with the ICC, in particular with regard to the execution of pending arrest warrants;
9. Strongly encourages the EU and its Member States, with the help of the EEAS, to put in place a set of internal guidelines, modelled on existing UN 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;
10. Asks the EU and its Member States, in the event of a partner country issuing an invitation to an individual who is the subject of an ICC arrest warrant, to exert strong pressure on that country without delay with a view to preventing the travel of such an individual, such invitations having been issued recently by Chad, China, Djibouti, Kenya and Malaysia, among others;
11. Expresses its deep concern that ICC States Parties such as Chad, Djibouti and Kenya have

recently welcomed Sudan's President al-Bashir to their territories, despite their clear legal obligation under the Rome Statute to arrest him;

12. Considers support for the ICC on the part of African states to be an indispensable factor in facilitating the Court's work and in determining its effectiveness;
13. Calls on the African States Parties to the Rome Statute of the ICC to ensure an increase, rather than a decrease, in African Union (AU) support for the task of holding the world's worst offenders to account;
14. Encourages the EEAS and the diplomatic services of the EU Member States to systematically monitor the impact of the diplomatic tools used by them both to raise support for the ICC and to promote wider ratification of the Rome Statute; notes that these tools include, inter alia, *démarches*, political declarations, statements, and ICC clauses in agreements with third countries, as well as political and human rights dialogues and that, as and when necessary, appropriate action should be taken based on the results of such impact assessments;
15. Recognises the role of the EU in promoting the universality of the Rome Statute and of the Agreement on Privileges and Immunities of the Court (APIC) and welcomes the recent accessions to/ratifications of the Rome Statute by Tunisia, Granada, Moldova, St Lucia and the Seychelles, which brought the total number of States Parties to 116;
16. Recommends that the EU, and particularly the EEAS, promote the universality of the Rome Statute and the fight against impunity, as well as respect for, cooperation with and assistance of the Court, including within the framework of the Cotonou Agreement and of dialogues between the EU and regional organisations, particularly the AU, the Arab League and the Association of South East Asian Nations (ASEAN);
17. Calls on the EU leaders to liaise with the key states that have not yet become party to the Rome Statute, particularly those that are permanent members of the UN Security Council (i.e. Russia, China and the United States), to encourage them to do so;
18. Welcomes the participation of the United States as an observer at the Assembly of States Parties of the ICC and expresses the hope that it will soon become a State Party;
19. Welcomes Tunisia's recent accession to the Rome Statute and hopes that this sends a positive signal to other North African and Middle Eastern countries, that they might follow suit;
20. Encourages Turkey, the only official EU candidate who has not yet done so, to become a State Party to the Rome Statute and to the Agreement on Privileges and Immunities (APIC) as soon as possible, stressing the need for any future candidate countries and the partner countries covered by the European Neighbourhood Policy (ENP) to do the same;
21. Reaffirms the need for the EU and its Member States to enhance their diplomatic efforts to promote a better understanding of the mandate of the ICC, i.e. the pursuit of perpetrators of war crimes, crimes against humanity, and genocide;

22. Affirms the crucial role of the EU Member States' diplomatic support for the ICC's mandate and for its activities in UN fora, including the UN Security Council;
23. Stresses the need for continued diplomatic efforts to encourage UN Security Council members to ensure the timely referral of cases, as most recently illustrated by the unanimous referral of the situation in Libya to the ICC by the UN Security Council;
24. Calls on the UN Security Council's members to find a way for the UN to provide the Court with financial resources, in particular to cover costs related to the opening of investigations into situations referred by the UN Security Council;
25. Calls on the EU Member States to ensure that coordination and cooperation with the ICC is included in the mandate of relevant regional EU Special Representatives (EUSRs), and recommends the creation of an 'EUSR for International Justice' post;
26. Advises the EEAS to ensure that the ICC is mainstreamed across EU foreign policy priorities;
27. Suggests that the EEAS ensure adequate staffing levels both in Brussels and within delegations of officials tasked with handling international justice issues and that the EEAS and the Commission develop further their staff training on ICC issues, establishing a staff exchange programme with the ICC in order to promote mutual institutional knowledge and facilitate further cooperation;
28. Encourages the EU Member States, in the context of the upcoming election of six new judges and a new prosecutor, to take place at the December 2011 session of the Assembly of States Parties, to nominate and elect the most highly-qualified candidates through a fair, transparent and merit-based process, ensuring both geographic and gender balance, and notes that the election of a new prosecutor is of utmost importance to the effectiveness and legitimacy of the Court;

The need to further assist the Court financially and logistically

29. Welcomes the EU's financial and logistical support for the ICC thus far and recommends that current forms of support (including the visiting professionals and internship programmes)¹ are continued and expanded further, especially in the following fields: outreach activities aimed at helping victims and affected communities; legal representation; witness relocation; the participation and protection of victims/witnesses, with special consideration for the needs of women and juvenile/child victims; the provision of support enabling the Court to cover urgent operational needs stemming from new investigations;
30. Recommends that the EU and its Member States increase their contributions to the ICC Trust Fund for the Victims and to the Witness Relocation Fund;
31. Encourages the EU to secure adequate and stable funding for civil society actors working

¹ Also including funding for an annual seminar and training session for ICC defence lawyers, funding for the ICC legal tools project, and funding for the NGO Coalition for the ICC, Parliamentarians for Global Action and other NGOs, particularly those from ICC situation countries.

on ICC-related issues within the European Instrument for Democracy and Human Rights (EIDHR), and encourages the EU Member States and existing European foundations to increase their funding for such actors;

32. Encourages the EU Member States and the EEAS to start discussions relating to the review of current EU financial instruments, with a view to examining how they could further contribute to supporting complementarity activities in beneficiary countries;
33. Recognises the current efforts by the Commission to establish an 'EU Complementarity Toolkit' aimed at developing national capacities for the investigation and prosecution of alleged international crimes, and encourages the Commission to ensure its implementation, with a view to integrating complementarity-related activities into aid programmes and achieving better coherence among the various EU instruments;
34. Calls on all the ICC States Parties to promote joint efforts to improve trials at national level of the most serious crimes, such as war crimes, crimes against humanity, and genocide;
35. Instructs its President to forward this resolution to the Council and the Commission, and to the governments and parliaments of the Member States.

EXPLANATORY STATEMENT

The International Criminal Court (ICC), since its inception on 1 July 2002, the day when the Rome Statute entered into force, has been successfully implementing its unique global mandate of pursuing perpetrators of war crimes, crimes against humanity, and genocide. Using the principle of ‘complementarity’ which stipulates that the Court would act only if the national courts in question are unable or unwilling to do so, the Court opened investigations into the situations in Uganda, the Democratic Republic of the Congo (DRC), Darfur (Sudan) and the Central African Republic (CAR), Kenya, and Libyan Arab Jamahiriya (Libya).

Despite its efforts, professionalism and commitment, ICC currently finds itself in a critical time juncture, due to political and financial circumstances beyond its control. It increasingly comes under unfair, politically-motivated attacks, its arrest warrants are frequently disregarded, and its current budget is not adequate to its needs. As the EU has been a staunch supporter of the ICC, the purpose of this report is to evaluate how it could further assist the Court in facing the challenges and overcome the difficulties of both political and financial nature it faces.

From its inception, the EU has supported the ICC through various political, diplomatic, financial and logistical actions whilst helping to promote the universality and integrity of the Rome Statute, and contributing to the independence and effective functioning of the Court.

From its side, the Court has thus far opened investigations in DRC, CAR and Uganda, doing so upon the specific request (State’s referral) from these very countries. In addition, the UN Security Council has referred to the Court the situations in both Sudan/Darfur and in Libya. In both situations, arrest warrants against the sitting heads of states and high officials have been issued, i.e. Sudanese president Omar Hassan Ahmad al-Bashir and the Libyan leader Muammar Gaddafi. In addition, the Pre-Trial Chamber II authorised the ICC Prosecutor to open an investigation in Kenya (It was the first time that the Prosecutor used his *proprio motu* powers to initiate an investigation without first having received a referral from governments or by the UNSC). It has indicted government officials and rebel leaders alike, demonstrated the even-handed reach of justice.

The ICC has publicly issued 18 arrest warrants and nine summonses to appear. Three trials are ongoing. The ICC Prosecutor recently requested authorisation from Judges to open an investigation in Côte d’Ivoire. His office has also made public that it is examining at least nine situations on four continents, including Afghanistan, Colombia, Georgia, Guinea, Honduras, Republic of Korea, Nigeria, and Palestine.

While the Court’s reach and deterring impact keeps increasing, it also increasingly faces various challenges and difficulties of both political and financial nature. Politically, it comes under a fire of unfair attacks from the hostile states and leaders. While such criticisms do not acknowledge the reality of the Court having a vast majority of cases referred to it either by the interested state parties themselves, or else referred by the UN Security Council, they do damage to the Court standing, negatively influencing public perceptions and the overall level of cooperation.

Financially, the Court struggles to cover its urgent operational needs as its budget does not increase proportionally to its workload. The new referrals are not accompanied by additional

funding, and the overall impact of the financial crisis has negatively impacted on the key ICC donors, resulting in stagnation of its budgetary resources.

The EU has traditionally been very active in galvanising support for the Court using various instruments from its political *repertoire*, including statements, declarations, *démarches*, political and human rights dialogues, relations with the partner countries within the Cotonou framework, or other regional initiatives (including ENP) as well on the regional fora (particularly through its relations with the African Union) the multilateral forums (particularly the United Nations). It has been actively helping to ensure new ratifications and implementation of the Rome Statute through diplomatic outreach and technical assistance to the partner countries, and responded using its political and diplomatic instruments.

Despite this strong level of support provided by the EU and its member states to the Court, much remains to be done on the political and diplomatic level, as well as practical level to help the Court overcome the current challenges and difficulties it currently faces. Closer monitoring of the constant implementation of ICC clauses in agreements with third countries, as well as impact of its political statements and declarations, would undoubtedly strengthen the EU's messages and standpoints on the ICC issues *vis-à-vis* the EU partner countries and organisations, notably the African Union. The EU's political and human rights dialogues have to consequently raise the ICC and international justice issues in general whenever appropriate. The EU and its member states should have timely and well coordinated joint responses to react to instances of non-cooperation with the Court, possibly through agreeing on an internal code of conduct in such cases.

Equally important is the EU outreach to the key non-state parties, particularly the permanent members of the UN Security Council (such as Russia, China and the United States) to ensure adequate cooperation and timely Court referrals. This has recently been done successfully in case of the Libya referral, unanimously referred also due to the strong political lobbying and outreach efforts of the EU member states.

In order to adequately assist the Court, the EU and its member states must ensure that their structures in charge of the ICC are able to respond to the Court's requests in a timely and effective manner. This could be achieved by ensuring adequate staffing and training levels within the European External Action Service (EEAS), both in Brussels as well as on the ground in the Delegations, particularly those located in the ICC situations¹ and countries under preliminary examination. One way to ensure the adequate training of its staff, the EEAS could consider putting in place a temporary staff exchange with the Court, in order to allow its staff to 'learn by doing.'

In terms of their direct support for the Court, the EU member states could do more in order to facilitate the sensitive issue of witness relocation. One way of doing so is to actively participate in and contribute to the Witness Relocation Fund, recently created by the ICC. Moreover, over half of the EU member states are still due to fully adopt the ICC implementing legislation. The full integration of the Rome Statute into national legislations of the EU member states should be considered as a priority action.

¹ The ICC uses the term 'situations' to refer to countries or locations where it has opened investigations. In case of the countries under preliminary examination, it proactively follows on the relevant developments there, without opening a formal investigation into.

As the EU CSDP operations continue to make an important contribution to global peace, justice and security, it would be appropriate to ensure that the CSDP missions could help through facilitating the Court's requests in a timely and effective manner¹.

In order to adequately support the Court politically, the EU has to ensure the high level political and diplomatic presence in the regions and countries in question. One way to enhance the EU profile in the field of international justice would be to create a 'thematic EUSR' for transitional justice, and mandate the EUSRs in the relevant countries and regions should include the ICC-related issues.

The EU member states, in their capacity of the members of the Assembly of the State Parties², have an important role to play in nomination and selection of the key officials of the Court, especially now with the imminent replacement of six judges and the prosecutor in December of 2011. The EU member states must ensure that the nominations are merit-based and that the selected candidates represent the highest professional standard, as well as maintain both geographic and gender balance.

As the Court fully relies on the cooperation from the states parties in order to successfully pursue the investigations, protect and relocate witnesses and apprehend the suspects, enforce sentences, it is of crucial importance that the EU member states reply timely and adequate to its various cooperation requests, including on providing information, executing the arrest warrants or tracking, freezing and seizing assets of the suspects.

In addition to the political and diplomatic challenges the Court currently experiences, inadequate funding continues to be a key impediment to its effectiveness. While it deals with new cases, their opening is not accompanied by an increase of funding. Even the UN Security Council referrals are not accompanied by an additional funding for the Court, which creates a serious funding gap. As a result, very important areas remain under funded, including the outreach, victims' services, and the ICC field presence (offices it keeps on the ground in the situation countries.)

The EU financial support to the Court made it an important donor. Under EIDHR, since 2007³, over 4 million EUR has been allocated to the ICC itself, while around 11 million EUR have been allocated to civil society organisations working on the ratification of other Court-related issues. This instrument has helped to fund various activities of the Court itself specifically the Internship and Visiting Professionals Programme, training activities for lawyers on the ICC List of Counsel, as well as the ICC Legal Tools Project.

Moreover, the EU member states as States Parties are the main direct contributors to the Court and contributed over half of the current expenditures of the Victims Trust Fund. It is essential that EU member states continue to provide the Court with sufficient resources to effectively fulfil its mandate, and honour their Kampala pledges to provide the additional funding to the

¹ Similarly to the UN peacekeeping operations, which have been requested to cooperate through furnishing information to the Court.

² The Assembly of State Parties is the management oversight and legislative body of the ICC, and composed of representatives of all states that have ratified and acceded to the Rome Statute.

³ 2007 is the starting date of the most recent cycle of the European Instrument for Democracy and Human Rights (EIDHR), under which certain specific activities of the ICC and some NGO campaigns in support of the Rome Statute system are being funded.

Fund.

Nevertheless, current forms of financial and logistical support could be further reinforced in order to ensure that the current funding gap the Court experiences is successfully bridged. The EU and its member states should ensure an adequate financial support for the Court's budget during the upcoming December meeting of the Assembly of State Parties in New York. On the occasion of the past such meetings, the Court's budget has not been increased.

Moreover, the EIDHR remains to be the sole EU instrument currently able to fund civil society organisations working on traditional justice issues, including those pertaining to the ICC. It is also important to discuss a potential role of the new financial instruments currently under discussion or those already existing currently under revision in supporting the 'complementarity' activities in partner countries. It is also important that no new instruments replace or eclipse EIDHR.

As the EU and its member states are spending millions on supporting the justice and security sector reforms in the countries, it would be very beneficial to better map and coordinate these efforts in order to avoid funding gaps and better ensure the 'complementarity' impact of its activities. The European Commission's current efforts to develop the so-called 'Complementarity Toolkit' i.e. a set of donor guidelines to be disseminated and applied within the EU with a view to attain better coherence and effectiveness, appears both timely and useful.

As the world we live in is unfortunately characterised by a proliferation of serious threats to human life and security, the Court's jurisdiction should adequately reflect it. A very important step on this path has been taken on the occasion of the ICC Review Conference in Kampala, which took place on 11 June 2010. On this occasion, the state parties agreed on the definition of a crime of aggression¹ as well as the conditions, under which the Court would be able, from 2017 onwards, to include the crime of aggression in its jurisdiction. In order for that to happen, at least 30 state parties must ratify the necessary amendments to the Rome Statute by 2017, and at least two-thirds of the state parties have to confirm this amendment through voting. The EU member states support in this context remains invaluable.

¹ Resolution RC/Res.6 'The Crime of Aggression' http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/RC-Res.6-ENG.pdf.