



EUROPEAN UNION AS A GLOBAL PLAYER IN ITS RELATIONS WITH THE INTERNATIONAL CRIMINAL COURT

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ABSTRACT

This article examines the role of the European Union as a global actor in its relations with the International Criminal Court (ICC), arguing that the EU has utilised its character as a distinct legal and political entity to gradually develop one of the most comprehensive institutional frameworks for cooperation with the ICC.

Employing a combined legal and political analysis grounded in realpolitik, this article adopts a contextual and analytical approach to assess the role of the EU in relation to the ICC in contemporary international affairs, with the aim of situating the discussion within the broader scholarly discourse on the role of law in political processes. Particular emphasis is placed on the established institutional mechanisms that enable the EU to act as a global actor in its engagement with the ICC.

The relationship between the EU and the ICC constitutes a matter of strategic importance for the EU, being fully consistent with the aims and principles of the United Nations Charter and conferring a degree of legitimacy that is not easily contested. In this context, the analysis encompasses the EU's unique legal and political framework for cooperation with the ICC, as well as its principal objectives, namely: coordination of the activities of various EU institutions, bodies, and Member States, safeguarding the independence and effective functioning of the ICC, promoting the universality and integrity of the Rome Statute and implementing the principle of complementarity.

The article further addresses the contested issue of immunities of high-ranking officials of States not parties to the Rome Statute and also provides a brief analysis of the immunity of EU officials, arguing that the EU, through its Cooperation Agreement with the ICC, has effectively conditioned the exercise of ICC jurisdiction over its officials and agents (and potentially other persons enjoying immunities under EU law and international law) on its internal decision-making processes.

Keywords: European union, Foreign policy, International Criminal Court, Jurisdiction, Universality, Judicial Immunity

1. INTRODUCTION

The International Criminal Court (ICC) is an unprecedented international judicial institution, whose jurisdiction has been accepted by 125 States,¹ endowed with broad and far-reaching competencies within an inherently politicized international system. Although the ICC does not enjoy universal jurisdictional acceptance, it has nevertheless emerged as a factor that cannot be disregarded in the formulation and implementation of both foreign and domestic policy, including by States that are not parties to the Rome Statute.² It has become embedded in the *realpolitik* of contemporary international relations.³ However, the ICC, as an international judicial institution, lacks its own enforcement powers and is therefore dependent on external support for the effective exercise of its functions.⁴

From an institutional and normative perspective, the ICC possesses all the characteristics of a judicial institution, and prosecutors have emphasized its “objectivity and independence” and “noninvolvement in political considerations.”⁵ However, the ICC remains an international judicial institution created through a complex

¹ Rome Statute of the International Criminal Court, United Nations Treaty Series, Vol. 2187, No. 38544. Hungary had initiated the process of withdrawal from the Rome Statute. However, on 25 May 2026, the newly formed Government of Hungary announced that it would discontinue that process and maintain Hungary’s status as a State Party to the Statute. The Presidency of the Assembly of States Parties welcomed Hungary’s decision to remain a State Party to the Rome Statute, Press release, The Hague, 25 May 2026, Available at: [\[https://www.icc-cpi.int/news/presidency-assembly-states-parties-welcomes-hungarys-decision-remain-state-party-rome-statute\]](https://www.icc-cpi.int/news/presidency-assembly-states-parties-welcomes-hungarys-decision-remain-state-party-rome-statute), Accessed 25 May 2026.

² Gajić, A., *International Criminal Court as Judicial and Political Actor*, in: M. Škulić; I. Miljuš; A. Škundrić (eds.), *Challenges of International Criminal Law and Criminal Law (Izazovi međunarodnog krivičnog prava i krivičnog prava)*, International Criminal Law Association, Palić, 2025, p. 334.

³ “Realpolitik is a system of politics based on concrete, practical goals, rather than on morality or abstract ideals.” Realpolitik, Political Dictionary, [\[https://politicaldictionary.com/words/realpolitik/\]](https://politicaldictionary.com/words/realpolitik/), Accessed 10 April 2026; H. Kissinger wrote: “No serious realist should claim that power is its own justification. No idealist should imply that power is irrelevant to the spread of ideals. The real issue is to establish a sense of proportion between these two essential elements of policy. Overemphasis of either leads to stagnation or overextension.” Kissinger, H., *Implementing Bush’s Vision*, Washington Post, 16 May 2005, Available at:

[\[https://www.washingtonpost.com/wp-dyn/content/article/2005/05/15/AR2005051500811.html\]](https://www.washingtonpost.com/wp-dyn/content/article/2005/05/15/AR2005051500811.html), Accessed 10 April 2026; “...there can be no purity in either political realism or political idealism. A foreign policy guided by cynical realism alone would be as unjust and deadly as one guided by naïve idealism alone.” Schuett, R., *Political Realism and Political Idealism*, 2026, Global Policy, 08. December 2025, Available at: [\[https://www.globalpolicyjournal.com/blog/08/12/2025/political-realism-and-political-idealism-2026\]](https://www.globalpolicyjournal.com/blog/08/12/2025/political-realism-and-political-idealism-2026), Accessed 10 April 2026.

⁴ See in particular: Damaška, M., *International Criminal Court between Aspiration and Achievement*, UCLA Journal of International Law and Foreign Affairs, Vol. 19, 2009, p. 20

⁵ Statement of ICC Prosecutor, Karim A.A. Khan QC, on the Situation in Ukraine: Receipt of Referrals from 39 States Parties and the Opening of an Investigation’, 2 March 2022, Available at:

political process and by a political decision, operating in dependence on States and international organizations, with significant potential for its actions and inactions to have repercussions on international relations. Therefore, the ICC is not only a judicial institution but also a distinct and differentiated political actor in contemporary international society.⁶

In this context, the European Union (the EU) has emerged as the most consistent and influential supporter of the ICC, despite (and in part because of) the fact that it is not and cannot be a party to the Rome Statute. By promoting the universality of the ICC, establishing comprehensive legally regulated relations with the ICC, providing operational support and influencing and supporting its policies through a wide range of activities, the EU has strengthened its role as a global actor, thereby enhancing its influence in international law and politics.

A legal and political analysis of the role of the EU with respect to the ICC would be analytically deficient without taking into account the current crisis, which can be characterized as a “seismic shift in geopolitics” with the potential to have “tremendous repercussions for the Court.”⁷ Taking into account EU activities in the preceding period, which have been extensively presented in a number of books and articles,⁸ this article focuses on the role of the EU in relation to the ICC, particularly in the context of the present crisis in international relations. This crisis involves, *inter alia*, significant activities of the ICC concerning the *Situation in*

[<https://www.icc-cpi.int/news/statement-icc-prosecutor-karim-aa-khan-qc-situation-ukrainereceipt-referrals-39-states>], Accessed 10 April 2026.

⁶ “Like all international organizations, the ICC is nested in global politics. International criminal law has been deeply affected by politics from the beginning.” Steinberg, R., *Politics and Justice at the International Criminal Court*, Israel Law Review, Vol. 57, 2024, pp. 308-350; See also: Gajić, A., *Napomene o kontroli međunarodnih sudova i tribunala (Remarks on the Issue of Control over International Courts and Tribunals)*, in: S. Nogo (ed.), *Suverenitet i rad međunarodnih sudova*, International Criminal Law Association, Tara, 2018, pp. 134-146.

⁷ ICC General Debate 2025, National Statement by Germany delivered at the 23rd Session of the Assembly of States Parties of the Rome Statute, Available at: [https://asp.icc-cpi.int/sites/default/files/asp_docs/ASP24-GD-GER-5-12-ENG.pdf], Accessed 10 April 2026.

⁸ See as illustrative contributions to this topic: Antoniadis, A.; Bekou, O., *The European Union and the International Criminal Court: An Awkward Symbiosis in Interesting Times*, International Criminal Law Review, Vol. 7, No. 4, 2007, pp. 621-655; Bekou, O., *The role of the ICC since its foundation and possible scenarios for the future: political support and cooperation by states*, Workshop *Envisioning International Justice: what role for the ICC?*, European Parliament, October 2021; Bekou, O., *Mainstreaming Support for the ICC in the EU's Policies*, European Parliament and Directorate-General for External Policies of the Union- Policy Department study, European Parliament, 2014; Strapatsas, N., *The European Union and Its Contribution to the Development of the International Criminal Court*, *Revue de Droit de l'Université de Sherbrooke*, Vol. 33, 2002-2003, pp. 399-424.

Ukraine,⁹ in respect of which the EU has expressed strong support, and which has led to issuance of arrest warrants against the President of the Russian Federation, Vladimir Putin, and the *Situation in Palestine*,¹⁰ which has resulted in the issuance of an arrest warrant against, *inter alia*, the Prime Minister of Israel, Benjamin Netanyahu. Those two “situations” place the activities of the ICC at the center of contemporary international affairs. The State of Israel and the Russian Federation are not parties to the Rome Statute, and these developments raise, *inter alia*, complex issues concerning the judicial immunities of high-ranking State officials from non-party States and have significant potential to shape the future understanding of the role of the ICC.

The prosecution of individuals for core crimes (war crimes, genocide, and crimes against humanity and aggression), was historically dependent on the will of the territorial State, and “states generally have been reluctant to punish their leaders or former leaders.”¹¹ States, as well as the EU, remain extremely cautious about being exposed to the jurisdiction of the ICC. The primary consideration in accepting the jurisdiction of the ICC and determining cooperation with the ICC is often the establishment of mechanisms through which such jurisdiction may be avoided. This article introduces a novel argument, advancing the hypothesis that the EU, like any global power, has made a sophisticated effort to avoid possible unwanted exposure to ICC jurisdiction.

This article argues that without strong EU support, the ICC would risk becoming “a dead letter on paper.”¹² Conversely, where such support exists, it emerges as an institution that cannot be disregarded in the formulation of foreign policy decisions, even by the most powerful states that have not accepted ICC jurisdiction. While it is not feasible to exhaustively enumerate all EU activities relating to the ICC within a single written contribution, this article highlights the main positions and activities of the EU that make the EU “a global player” with respect to the ICC.¹³

⁹ Situation in Ukraine, ICC-01/22, Available at: [<https://www.icc-cpi.int/situations/ukraine>], Accessed 10 April 2026.

¹⁰ Situation in the State of Palestine, ICC-01/18, Available at: [<https://www.icc-cpi.int/palestine>], Accessed 10 April 2026.

¹¹ Posner, E.; Yoo, J. C., *Judicial Independence in International Tribunals*, California Law Review, vol. 91 no. 1., January 2005, p. 67.

¹² “Something that has lost its force or authority without being formally abolished.” Merriam Webster Dictionary, [<https://www.merriam-webster.com/dictionary/dead%20letter>], Accessed 10 April 2026.

¹³ The EU identifies itself as a “staunch supporter of the International Criminal Court.” *The European Union and the International Criminal Court*, General Secretariat of the Council of the European Union, European Union, May 2010.

Employing a combined legal and political analysis¹⁴ of the relationship between the EU and the ICC, this article is based primarily on the examination of relevant international and EU legal instruments, official documents, official statements, and international practice, as well as relevant academic contributions. A contextual and analytical approach is applied to assess the relationship between the EU and the ICC in contemporary international affairs, thereby contributing to the broader discussion on the role of law in the political process. The emphasis is placed on the established institutional mechanisms that enable the EU to act a global actor in relation to the ICC.

The remaining parts of this article are structured as follows. First, it examines the context in which the EU has taken advantage of the contested jurisdiction of the ICC, enabling it to emerge as a key actor in relation to the Court and in global politics, together with an analysis of the legal and institutional framework governing cooperation with the ICC. It then examines the institutional division of tasks between EU Member States and EU institutions in the implementation of EU policy towards the ICC. Subsequently, separate sections address the key areas of EU policy towards the ICC, namely the promotion of the universality of the Court, the attainment of institutional influence through the election of judges and other ICC officials, the financing of the ICC, and the implementation of the principle of complementarity. The issue of immunities is addressed as a central topic in contemporary discussions relating to the ICC, introducing a novel issue that, to our knowledge, has not yet been addressed in academic literature, namely the immunities of EU officials from ICC jurisdiction. The concluding part presents several notes and proposals in addition to the concluding remarks of the study.

2. POSITIONING OF THE EU IN RELATION TO THE ICC: TAKING ADVANTAGE OF “CONTESTED JURISDICTION”

The role of the EU as a global actor in the field of international criminal adjudication cannot be fully understood without reference to certain historical and theoretical considerations and the foundational principles of the EU as expressed in its constitutive treaties, particularly the aims of the Union. Article 3(5) of the Treaty on EU provides that:

“In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens. It shall con-

¹⁴ Schwarzenberger noted long ago that the view that legal elements must be isolated from other aspects of international relations is rapidly losing its ground. Schwarzenberger, G., *The Inductive Approach to International Law*, Stevens & Sons, London, 1965, p. 56.

tribute to peace, security, the sustainable development of the Earth, solidarity and mutual respect among peoples, free and fair trade, eradication of poverty and the protection of human rights, in particular the rights of the child, as well as to the strict observance and the development of international law, including respect for the principles of the United Nations Charter.”¹⁵

In line with this constitutional framework, the position of the EU has been, since the establishment of the ICC, that “the principles of the Rome Statute, as well as those governing its functioning, are fully in line with the principles and objectives of the Union.”¹⁶ This formulation may be interpreted as providing a normative basis for the projection of EU influence and its articulation as a “normative power” in the context of strategic engagement with the Court, thereby facilitating the development of institutionalized forms of external action in international criminal justice.

Although the ICC is not an organ of the UN, it was established under its auspices and operates within a framework of institutional cooperation with the UN, as reflected in the Rome Statute¹⁷ and the Relationship Agreement between the UN and the ICC.¹⁸ The UN assumed a “general obligation to refrain from any action that would frustrate the activities of the Court and its various organs, including the Prosecutor, or undermine the authority of their decisions.”¹⁹

Against this background, the historical development of the project of international criminal adjudication is relevant insofar as it explains the legal and political space in which the EU subsequently positioned itself as a principal supporter of the ICC.

Proposals for the creation of an international criminal court of universal jurisdiction emerged as early as the interwar period.²⁰ The Advisory Committee of Jurists

¹⁵ Consolidated version of the Treaty on European Union [2012] OJ C 326/13; See: Kassoti, E.; Wessel, R., *The Normative Effect of Article 3(5) TEU: Observance and Development of International Law by the European Union*, in: F. Barbero (ed.), *Interacciones entre el Derecho de la Unión Europea y el Derecho Internacional Público*, Tirant lo Blanch, 2023, p. 20.

¹⁶ Council Common Position of 11 June 2001 on the International Criminal Court, [2001] OJ L 155.19, para. 3.

¹⁷ The Rome Statute contains 35 references to the UN.

¹⁸ The Relationship Agreement between the United Nations and the International Criminal Court of 4 October 2004, United Nations Treaty Series No. 1272.

¹⁹ Best Practices Manuel for United Nations – International Criminal Court Cooperation pursuant to the Relationship Agreement between the United Nations and the International Criminal Court, United Nations, 26 September 2016, p. 8; One of the most important obligations is to avoid unnecessary contacts. “The presence of United Nations officials at any ceremonial or similar occasion that is attended by a person who is the subject of an ICC arrest warrant should be avoided and standard courtesy calls should not be made.” *Ibid.*, p. 9.

²⁰ Bassiouni, M., *Establishing an International Criminal Court: Historical Survey*, *Military Law Review*, Vol. 149, 1995, pp. 49-63; McCormak, T., *Selective Reaction to Atrocity: War Crimes and the Develop-*

established by the Council of the League of Nations was tasked, *inter alia*, with drafting the Statute of the Permanent Court of International Justice and considering the establishment of a High Court of International Justice. The Belgian delegate Baron Descamps advocated the creation of a court to try “crimes against international public order and against universal law of nations” and, by its creation, “to avoid the problems associated with the creation of institutions *ex post facto*.”²¹ Strong opposition to the establishment of an international criminal court was diplomatically justified on the grounds that the realization of such an institutional project was considered “premature.”

Without engaging in a full historical account, it is important to note that the Nuremberg trials gave rise to questions concerning the establishment of an international criminal code and the creation of an international criminal court. The UN General Assembly has been seized of this issue since 1946.²² The International Law Commission (ILC) was tasked with drafting the Draft Code of Crimes Against Peace and Security of Mankind.²³ However, it was only in 1996 that the General Assembly adopted Resolution 51/207, deciding to convene a diplomatic conference of plenipotentiaries in 1998, “with a view to finalizing and adopting a convention on the establishment of an international criminal court.”²⁴

At the Rome Conference, thirteen EU Member States were part of the “Like-Minded Group” of States and non-governmental organizations advocating the creation of the ICC.²⁵ Prior to the Conference, no common position had been developed within the EU on several contentious issues, including the Prosecutor’s authority to initiate investigations *proprio motu*, the role of the United Nations Security Council, and the scope of the jurisdiction of the ICC. The United Kingdom and France, as permanent members of the Security Council, were aligned with the positions of the other permanent members of the Security Council.

ment of International Criminal Law, Albany Law Review, Vol. 60, No. 3, 1997, pp. 698-713.

²¹ Bassiouni, M., *op. cit.*, note 20, p. 60.

²² General Assembly Resolution “Affirmation of the Principles of International Law recognized by the Charter of the Nuremberg Tribunal,” UN Doc. A/Res/1/95 of 11 December 1946.

²³ Draft code of crimes against the peace and security of mankind (Part II) — including the draft statute for an international criminal court, UN, International Law Commission, Available at: [https://legal.un.org/ilc/texts/7_4.shtml], Accessed 10 April 2026.

²⁴ Final Act of the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome 17 July 1998, UN Doc. A/CONF.183/10.

²⁵ Groenleer, M., and Van Schaik, L., *United We Stand: The European Union’s International Actorness in the Cases of the International Criminal Court and the Kyoto Protocol*, Journal of Common Market Studies, vol. 45, no. 5, December 2007, p. 977.

The EU, acting as an observer at the Rome Conference, emerged as a strong supporter of the establishment of the ICC, with jurisdiction over the core crimes of genocide, war crimes, and crimes against humanity (aggression not being included at that stage), advocating an ICC characterized by a “considerable relationship with the Security Council and other international institutions,” as well as the establishment of a “strong, effective, highly qualified Prosecutor independent of Governments.”²⁶ All EU Member States ultimately voted in favor of the adoption of the Rome Statute, which largely accepted the position of the Like-Minded Group. This position stood in sharp contrast to that of other major powers, in particular the permanent members of the UN Security Council—the United States of America, the Russian Federation, and the People’s Republic of China—which advocated a more limited jurisdiction of the ICC, a stronger role for the Security Council, and a less independent Prosecutor.²⁷

Immediately after the Rome Conference, and while the entry into force of the Rome Statute remained uncertain, the Sixth (Legal) Committee of the UN General Assembly (1998), in its discussion on the ICC, heard a statement delivered by the Austrian delegate (Mr. Sucharipa) on behalf of the EU (and associated States not yet members of the EU), presenting the common position of the EU,²⁸ as follows:

“The European Union had consistently and strongly supported the idea of creating the Court ... For the Court to succeed in its task it needed the widest support of the international community, and he hoped that all States, whether or not they voted for the adoption of the Statute, would recognize the benefits of a universal criminal court.”²⁹

This position has subsequently remained a constant element of EU external action in the field of international criminal justice, including in its statements before UN bodies and the Assembly of States Parties to the Rome Statute.

The fact that certain “major powers” are not parties to the Rome Statute may significantly affect the effectiveness of ICC jurisdiction. Even if not fully effective,

²⁶ United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court, Rome, 15 June - 17 July 1998, Official Records Vol. I, Final Documents, Annex III. Of the Final Act, p. 76; See also: Vol. II, p. 80 and Vol. III, p. 13.

²⁷ Groenleer, M., *The United States, the European Union and the International Criminal Court: Similar values, different interests?*, International Journal of Constitutional Law, Vol. 14, No. 4, 2015, pp. 932-944.

²⁸ Official Records of the General Assembly of the United Nations, Sixth Committee, 4. November 1998, Agenda item 153: Establishment of an international criminal court, UN Doc. A/53/189 and 387, p. 4.

²⁹ *Ibidem*, p. 2.

however, the Court remains relevant from a political standpoint. Some authors argue that international organizations are a “product of major power interests ... in a way that induces weaker states to participate.”³⁰ However, formation of an international judicial institution whose jurisdiction is accepted by a large number of states cannot be ignored, because as Abot and Sindal argue:

“Independence enables international organizations to shape understandings, influence the terms of state interactions, elaborate norms, and mediate or resolve member states’ disputes. The acts of independent international organizations may be accorded special legitimacy, and they affect the legitimacy of members’ actions. Even centralization, seemingly more mechanical, can alter states’ perceptions and the context of their interactions.”³¹

EU policy towards the ICC appears to have been constructed around multiple foreign policy objectives, even if not always explicitly articulated, enabling the EU to assume a leadership position in this significant area of international relations. These objectives include the promotion of effective multilateralism, the maintenance of coherent legal relations among its Member States, the aim of ensuring that any attack affecting the EU falls within the framework of the Rome Statute, and the capacity to rely on the ICC in the conduct of its external action. In this way, the EU contributes to the establishment of both legal and political parameters that cannot be disregarded even by non-members of the ICC.

This suggests that support for the enforcement of ICC jurisdiction constitutes a matter of strategic importance for the EU, fully consistent with the aims and principles of the UN Charter and conferring a degree of legitimacy that cannot be easily contested even by “great powers.”

3. UNIQUE POSITION OF THE EU - LEGAL AND POLITICAL FRAMEWORK

It appears that the EU (which is neither a State, nor simply a group of States or a mere union of states, and not a classical international organization)³² has, in its relations with the ICC, made strategic use of its character as a distinct legal and

³⁰ Bosco, D., *Rough Justice – The International Criminal Court in the World of Power Politics*, Oxford University Press, New York, 2014, p. 72; Abbott, K.; Snidal, D., *Why States Act Through Formal International Organizations*, The Journal of Conflict Resolution, Vol. 42, No. 1, 1998, p. 3.

³¹ Abbott, K. W.; Snidal, D., *Why States Act Through Formal International Organizations*, The Journal of Conflict Resolution, Vol. 42, No. 1, 1998, p. 9.

³² Von Bogdandy, A., *Neither an International Organization Nor a Nation State, The EU as a Supranational Federation*, in: Jones E.; Menon, A.; Weatherill S. (eds.), *The Oxford Handbook of the European Union*, Oxford, 2013, pp. 761-776.

political entity.³³ Only States may become parties to the ICC; accordingly, the position of the EU vis-à-vis the Court is distinct both institutionally and legally. An analysis confined solely or predominantly to inter-State cooperation, without considering the EU's institutional capacities in relation to the ICC, would lead to a distorted and incomplete understanding of the ICC's position and functioning. The framework for cooperation between the EU and the ICC is of *sui generis* nature, unprecedented in the contemporary international legal and political order. The EU's specific institutional structure and distinct legal personality endow it with opportunities, as well as challenges, that go beyond those available to any individual State.

The first Common Position of the Council of the EU with respect to the ICC³⁴ was adopted on 11 June 2001, before the ICC became operational,³⁵ establishing a comprehensive framework for cooperation with and support for the ICC, as well as for the implementation of the Rome Statute.³⁶ Beyond strong political and diplomatic engagement,³⁷ the EU has progressively developed its political, institutional, and legal framework governing its relationship with the ICC.

The main normative framework governing the relations between the EU and the ICC is the Agreement between the EU and the ICC on Cooperation and Assistance, concluded on 10 April 2006 (the Agreement). This Agreement established the parameters of cooperation in a comprehensive manner. It has been further supplemented by, *inter alia*, the Letter of Understanding between Eurojust and the International Criminal Court of 10 April 2007, the Security Arrangements for the protection of classified information exchanged between the EU and the ICC of 15 April 2008, and the Working Arrangement establishing cooperative rela-

³³ On the issue of identity of the EU see: Gajić, A. *Self-Determination of the European Union*, in: Petrašević, T.; Duić, D.; Novokmet, A. (eds.), *EU and Comparative Law Issues and Challenges Series (ECLIC)*, EU at the Crossroads - Ways to Preserve Democracy and Rule of Law, Vol. 8, 2024., pp. 567-576.

³⁴ Council Common Position of 11 June 2001 on the International Criminal Court (2001/443/CFSP), [2001] OJ L 155/19; replaced by Council Common Position of 16 June 2013 on the International Criminal Court, [2013] OJ L 150, p. 67.

³⁵ The ICC became operational on 1 July 2002, when the Rome Statute entered into force.

³⁶ This is fully in line with the statement of Romano Prodi: "We must aim to become a global civil power at the service of sustainable global development. After all, only by ensuring sustainable global development can Europe guarantee its own strategic security." *Shaping the new Europe*, Presentation to the European Parliament by President Romano Prodi, Strasbourg, 15 February 2000, Available at: [<https://aei.pitt.edu/66298/1/1.2000.pdf>], Accessed 10 April 2026; See also: Mannes, I., *Normative Power Europe: A Contradiction in Terms*, *Journal of Common Market Studies*, Vol. 40, No 2, 2002, pp. 235-258.

³⁷ "Beyond the grand rhetoric surrounding the EU-ICC relations, the EU has undoubtedly committed substantial diplomatic capital and resources to the ICC cause." Antoniadis, A.; Bekou, O., *op. cit.*, note 8, p. 621.

tions between the International Criminal Court and the European Union Agency for Law Enforcement Cooperation (Europol) of 25 April 2023.

Under the Agreement, “with a view to facilitating the effective discharge of their respective responsibilities”, the ICC and the EU are committed to “cooperate closely, as appropriate, with each other and consult each other on matters of mutual interest ... while fully respecting the respective provisions of the EU Treaty and the Statute.”³⁸ It is provided that “in order to facilitate this obligation of cooperation and assistance, the Parties agree on the establishment of appropriate regular contacts between the Court and the EU Focal Point for the Court.”

To this end, the Agreement provides for the attendance of representatives of the ICC at relevant meetings and conferences organised under the auspices of the EU. It further provides for extensive cooperation, including the exchange of information and documents, arrangements concerning confidentiality and classified material, and rules governing the testimony of EU officials and staff, where relevant.³⁹

The Agreement also contains detailed provisions on cooperation between the EU and the Prosecutor of the ICC, as well as provisions establishing the obligation of the Secretary-General/High Representative to respond to requests within one month. A separate provision governs privileges and immunities (addressed in more detail below), while particular emphasis is placed on operational cooperation through the conclusion of “personal arrangements.”⁴⁰

It also provides for possible operational support by the EU, including the provision of expertise, services and facilities, subject to availability and to supplementary arrangements where required. It further envisages EU support for training and assistance programmes for judges, prosecutors, officials and counsel engaged in activities related to the Court, thereby confirming the operational and capacity-building dimension of EU–ICC cooperation.⁴¹

A particularly advanced form of operational cooperation is reflected in the Working Arrangement establishing cooperative relations between the ICC and the European Union Agency for Law Enforcement Cooperation (EUROPOL), concluded on 25 April 2023. This Arrangement provides, *inter alia*, a legal basis for the transfer of personal data by Europol and defines the scope of cooperation, which includes, among other matters, the exchange of specialist knowledge, support for

³⁸ Article 4 of the Agreement.

³⁹ Articles 7 and 9 of the Agreement.

⁴⁰ Article 13 of the Agreement.

⁴¹ Article 17 of the Agreement.

evidence-gathering activities, strategic analysis, information on criminal investigation procedures, training activities, and operational support in individual criminal investigations. It also establishes detailed modalities for cooperation, including points of contact, liaison arrangements, secure communication channels, and safeguards for the processing and protection of information.

In comparative terms, this framework appears significantly more detailed and operationally oriented than that provided by the Cooperation Agreement between the Office of the Prosecutor of the International Criminal Court and the International Criminal Police Organization (INTERPOL).

For the first time, following the situation in Ukraine, a Joint Investigation Team (JIT) has been established between certain EU Member States and the ICC, with the support of the European Union Agency for Criminal Justice Cooperation (Eurojust), providing legal, logistical, financial, and analytical support.⁴² On 5 October 2023, Europol became a participant in the JIT in Ukraine. One of the key outcomes of this cooperation is the establishment of the Core International Crimes Evidence Database (CICED), representing a significant development in the systematic collection and preservation of evidence.⁴³

The legal basis for the actions of EU in relation to the ICC, in addition to the above-mentioned agreements and arrangements, is provided by Council Decision 2011/168/CFSP of 21 March 2011 on the ICC, which repealed Common Position 2003/444/CFSP (the Decision). It provided the foundation for the amended Action Plan adopted by the Council of the EU to follow up on the Decision (Action Plan).⁴⁴

It is evident that the EU's foreign policy objectives are most effectively implemented through legally binding instruments and thus acquire not merely a policy dimension, but a legal one. Unlike common positions, the Decision is legally binding.

The Decision and the Action Plan structure EU action around five principal objectives: coordination of activities, promotion of the universality and integrity of the Rome Statute, safeguarding the independence and effective functioning of the Court, strengthening cooperation with the ICC, and implementation of the

⁴² Suhong, Y.; Tan, Y., *The Joint Investigation Team in Ukraine: Challenges and Opportunities for the International Criminal Court*, European Papers, Vol. 8, No. 3, 2023, pp. 1121-1124.

⁴³ Core International Crimes Evidence Database (CICED), Eurojust, 11. December 2023, Available at: [<https://www.eurojust.europa.eu/publication/core-international-crimes-evidence-database-ciced>], Accessed 10 April 2026.

⁴⁴ Action Plan to follow-up on the Decision on the International Criminal Court, Council of the European Union, 12 July 2011.

principle of complementarity. These objectives are operationalized through a detailed allocation of tasks between EU institutions and Member States and a set of implementing measures, thereby enhancing coherence in EU external action.

4. COORDINATION OF THE EU ACTIVITIES: DIVISION OF TASKS

The institutional and operational architecture of the EU constitutes one of the most developed and coherent systems of support for an international judicial body.⁴⁵ The Decision and the Action Plan provide the basis for the division of competences and the establishment of coordination mechanisms among the EU institutions (Council of the EU, High Representative of the Union for Foreign Affairs and Security Policy, European Commission, European Parliament, European External Action Service, and the Working Party on Public International Law (COJUR–ICC)), which are primarily responsible for the development and implementation of the EU policy towards the ICC.

The Decision⁴⁶ entrusts the Council and the High Representative with “the task of coordinating measures, where appropriate, by the EU and its Member States, for the implementation of the five principal objectives.”⁴⁷ It is the obligation of the EU to “ensure consistency and coherence between its instruments and policies across all areas of its external and internal action in relation to the most serious international crimes referred to in the Rome Statute.”⁴⁸

The COJUR–ICC is tasked with facilitating of regular consultations, exchanges with relevant actors, and preparatory coordination ahead of sessions of the Assembly of States Parties. This institutional framework is complemented by a structured system of focal points, including an EU Focal Point within the European External Action Service (EEAS) and corresponding national focal points in Member States, thereby enhancing the flow of information and operational coordination.

A key method for the implementation of EU policy on the ICC is the coordination of Member States’ activities.⁴⁹ In order to ensure effective cooperation and policy coherence, Member States are required to “to have an expert in their em-

⁴⁵ O. Bekou, *op. cit.*, note 8, pp. 19–23.

⁴⁶ Article 6 of the Decision.

⁴⁷ Universality of the Rome Statute (Article 2), support for the independence of the ICC (Article 3), cooperation with the ICC (Article 4), and the implementation of the principle of complementarity (Article 5).

⁴⁸ Article 8 of the Decision.

⁴⁹ Action Plan, note 39, para. 2.4.

bassies in The Hague and in their mission in New York dealing also with specific ICC matters.”

The Action Plan assigns a prominent role to the European External Action Service (EEAS),⁵⁰ which is tasked with mainstreaming ICC-related issues across its departments, including geographical and thematic divisions, crisis management structures, and Common Security and Defence Policy missions and operations. The EEAS is further responsible for ensuring coordination with the European Commission and for facilitating access of EU delegations to ICC and international justice experts, particularly in relation to situation countries and those under investigation or preliminary examination.

EU delegations also monitor relevant developments on the ground and share information through the network of focal points, while training of EU and Member State officials on ICC-related matters further contributes to the professionalism, sustainability and effectiveness of EU engagement.

The European Commission contributes to ensuring consistency between EU policies and financial instruments in relation to the most serious international crimes, while the European Parliament is regularly informed of significant ICC-related developments and may express views to be taken into account where appropriate.

A decade after the adoption of the Decision and the Action Plan, and in the context of their implementation, following the outbreak of the war between the Russian Federation and Ukraine the cooperation with the ICC is further enhanced through the attribution of specific tasks to Eurojust⁵¹ and Europol.⁵²

5. PROMOTING UNIVERSALITY OF ICC JURISDICTION AS A STRATEGIC TASK OF THE EU

The EU is a strong promoter of the universality of the ICC jurisdiction, a position that finds affirmation in the resolutions of the UN General Assembly⁵³ and the

⁵⁰ *Ibid.*, para. 2.5.

⁵¹ Regulation (EU) 2022/838 of the European Parliament and of the Council of 30 May 2022 amending Regulation (EU) 2018/1727 as regards the preservation, analysis and storage at Eurojust of evidence relating to genocide, crimes against humanity, war crimes and related criminal offences, [2022] OJ L 148.

⁵² For details see: Caecioniello, M., *The Role of the EU in the Investigation of Serious International Crimes Committed in Ukraine. Towards a New Model of Cooperation?*, European Journal of Crime, Criminal Law and Criminal Justice, Vol. 30, 2022, pp. pp. 229-230.

⁵³ See: United Nations General Assembly Resolution adopted on 29 October 2024 (Report of the International Criminal Court), UN Doc. A/RES/79/6, para. 2.

Assembly of States Parties.⁵⁴ In the quest for universality, as provided in the Action Plan, “the primary objective with regard to third countries is to maximize their political will for the ratification, accession and implementation of the Statute in order to achieve the desired universality.” U diplomatic engagement has accordingly supported resolutions and initiatives aimed at encouraging wider acceptance of the Rome Statute by third States.⁵⁵ In the Action Plan, it is provided that the objectives with respect to the universality of the Rome Statute “will continue to be relevant until universal participation in the Rome Statute is attained.”

EU officials and those of its Member States understand the aim of universality is difficult to achieve. As argued by Bosco:

“As a result of design choices, the ICC was born with a weak connection to major powers whose support it needs. Those major powers who are court members—the United Kingdom, France, Germany, Japan, and Brazil—are accorded no special powers or privileged place in the institution... Those states outside the court include the world’s uncontested superpower, the United States, and its most rapidly growing power, China. Nuclear-armed giants Russia and India have not joined the court. Regional powers including Turkey, Egypt, Israel, Saudi Arabia, Pakistan, and Indonesia have also kept their distance. Together, nonmembers account for two-thirds of the world’s population and almost three-quarters of its armed forces.”⁵⁶

The issue of universality cannot be separated from that of effectiveness. As Posner and Yoo observe, “we predict that the ICC will not be an effective tribunal. Although the Rome Statute is aimed at individual defendants, the ICC’s jurisdiction strikes at the heart of state interests.”⁵⁷ They further argue that “states with military forces operating abroad will fear that soldiers and their commanders, including the highest political authorities responsible for military activities, may be brought before an international court for war crimes prosecution and will, at a minimum, be inconvenienced and embarrassed.”⁵⁸

Since the ICC issued arrest warrants against senior officials of non-States Parties, and particularly in connection with the *Situation in Palestine*, divergent positions have emerged among EU Member States regarding the obligation to execute such warrants. Officials of certain members of the EU provided statements that they

⁵⁴ Strengthening the International Criminal Court and the Assembly of States Parties, Special Section, Universality of the Rome Statute, ICC-ASP/24/Res.6, 05. December 2025.

⁵⁵ See: Section 3 of the Action Plan.

⁵⁶ Bosco, D., *op. cit.*, note 30, p. 5.

⁵⁷ Posner, E.; Yoo, J., *Judicial Independence in International Tribunals*, California Law Review, Vol. 91, No. 1, 2005, p. 69.

⁵⁸ *Ibid.*

will not execute the arrest warrant against Israeli Prime Minister Netanyahu.⁵⁹ However, this has not prevented the EU from continuing, at least at the diplomatic level, to promote the universality and authority of the Rome Statute system. At the 24th (2025) session of the Assembly of States Parties, in the statement provided on behalf of the EU and all Member States except Hungary, it is stated:

“We also call on all States Parties to live up to their obligations and refrain from any action that would frustrate the activities of the Court or undermine its decisions. We note that a lack of cooperation may affect the Court’s ability to carry out its responsibilities. We call on all States Parties to redouble efforts to identify new avenues for strengthened cooperation with the Court and thank all those who are already doing so.”⁶⁰

This situation may be understood in light of Abbott and Snidal’s conclusion:

“In emphasizing the possibilities for formal organizations, we should not ignore the difficulty and even impossibility of some of the tasks that are presented to them. Despite these severe limitations, the fact that international organizations have not been abandoned by states is testimony to both their actual value and their perhaps greater potential.”⁶¹

Through its active promotion of the universality of the Rome Statute, as the only “major power” consistently supporting its jurisdiction, the EU contributes to a dynamic aptly captured by Posner and Yoo in the following terms:

“The conventional wisdom holds that independent tribunals led to political unification. We argue that political unification makes independent tribunals possible. In the international realm, where there is no political unification, international tribunals cannot be both independent and effective. This is not to claim, as some have, that international tribunals serve no useful purpose...[I]nternational tribunals can help states resolve disputes by providing information on the facts or rules of conduct. But they must act consistently with the interests of the states that create them.”⁶²

⁵⁹ *European leaders divided on ICC arrest warrant bid for Netanyahu*, Politico, 20 May 2024, Available at: [<https://www.politico.eu/article/european-leaders-divided-icc-arrest-warrant-bid-for-israeli-hamas-officials-benjamin-netanyahu-yahya-sinwar-karim-khan-war-crimes-crimes-against-humanity/>], Accessed 10 April 2026.

⁶⁰ Statement of Denmark on behalf of the European Union, Assembly of State Parties, December 2025, Available at: [https://asp.icc-cpi.int/sites/default/files/asp_docs/ASP24-GD-DNK-EU-1-12-ENG.pdf], Accessed 10 April 2026.

⁶¹ Abbott, K.; Snidal, D., *op. cit.*, note 31, p. 29.

⁶² Posner, E.; Yoo, J., *op. cit.*, note 53, p. 72.

6. ELECTION OF THE PROSECUTOR, JUDGES AND STAFF OF THE ICC AND FINANCING THE ICC

In operational terms, the issue of preserving integrity arises most prominently in the processes governing the election of judges, the Prosecutor, and the ICC's officials and staff, as well as in relation to the development of the legal foundations of the ICC. The Rome Statute establishes stringent criteria and procedures for the nomination and election of judges and senior officials. The candidacy procedure,⁶³ followed by the requirement of a two-thirds majority of members present and voting for election,⁶⁴ underscores the rigor of this system. The collective weight of the EU Member States, combined with established practices of coordination, enables the EU to play a decisive role in shaping the composition of the Court's judiciary and prosecutorial structures.

Moreover, effective functioning of the ICC is highly dependent on the financial resources available to the Court. As noted by Bekou, "the EU developed as one of the staunchest supporters of the ICC, not only in terms of its overall policy, but also in terms of generous financial support provided to the Court."⁶⁵ The EU Member States provide approximately half of the regular budget of the ICC, and in addition, the EU is a strong financial supporter of, *inter alia*, outreach activities, numerous non-governmental organizations engaged with the ICC, training programs, internship and visiting professional programmes, and technical events.⁶⁶

7. COMPLEMENTARITY

The principle of complementarity constitutes one of the foundational elements of the Rome Statute.⁶⁷ On the one hand, it operates as a limitation of the ICC jurisdiction, precluding its exercise where national authorities are willing and able to prosecute. On the other, it is an indispensable functional principle, given that the Court lacks the capacity to conduct large-scale prosecutions. Accordingly, the

⁶³ Procedure for the nomination and election of judges, the Prosecutor and Deputy Prosecutors of the International Criminal Court, ICC-ASP/3/Res.6.

⁶⁴ Article 36 (6) of the Rome Statute.

⁶⁵ Bekou, O., *op. cit.*, note 8, p. 3; See also: Wiebelhaus-Brahm, E.; Ainley, K., *The evolution of funding for the International Criminal Court: Budgets, donors and gender justice*, Journal of Human Rights, Vol. 22, No. 1, 2023, pp. 31–46.

⁶⁶ Bekou, O., *The role of the ICC since its foundation and possible scenarios for the future: political support and cooperation by states*, Workshop Envisioning International Justice: what role for the ICC?, European Parliament, October 2021, p. 10.

⁶⁷ Škulić, M., *Međunarodno krivično pravo*, Univerzitet u Beogradu – Pravni fakultet, Beograd, 2020, pp. 36–39; Škundrić, A., *Nadležnost međunarodnih krivičnih sudova i tribunala*, Univerzitet u Beogradu – Pravni fakultet, Beograd, 2021, pp. 120–124.

primary responsibility for the investigation and prosecution of core international crimes remains with States, which are under an obligation to implement the Rome Statute within their domestic legal systems.

The EU, through its Action Plan and its implementation, has developed a structured approach to the implementation of complementarity. This includes obligations for Member States to adopt the necessary implementing legislation, to exchange relevant information, and to promote the effective application of the Rome Statute. In addition, the EU provides both logistical and technical support to third States lacking the capacity to investigate and prosecute crimes falling within the jurisdiction of the Court, thereby reinforcing domestic accountability mechanisms.

In addition to the enhanced role of Eurojust and Europol, one of the most significant measures in this regard is the commitment to establish ad hoc expert teams composed of judges, prosecutors, legal advisers, investigators, analysts and forensic specialists. These teams are designed to be rapidly deployable, in the short or medium term, on a case-by-case basis, with sufficient operational capacity to assist national authorities. Furthermore, the EU and its Member States support existing initiatives, such as Justice Rapid Response, thereby contributing to a broader system of international criminal justice assistance. Through these mechanisms, the EU not only supports the functioning of the ICC, but also actively strengthens the domestic dimension of complementarity, which remains essential for the overall effectiveness of the Rome Statute system.

8. THE ISSUE OF JUDICIAL IMMUNITIES AT STAKE

The principal issue dividing States in their support for the ICC is, undoubtedly, the question of immunities of State officials from non-States Parties to the Rome Statute. International criminal courts are not designed as forums for mass trials substituting national jurisdictions; rather, they focus on high-ranking military and political figures, whose conduct is, almost by definition, attributable to the State or to a party to an armed conflict.⁶⁸ In this context, a central concern of States is to ensure that such officials remain beyond the reach of international criminal jurisdiction.⁶⁹

⁶⁸ Gajić A., *op. cit.*, note 2, p. 346.

⁶⁹ The most recently declassified files of the UK „make clear that Britain only signed up the ICC when it became clear that UK nationals would not be able to be prosecuted by it” as well as concerns about the use of nuclear weapon. *UK backs International Criminal Court since it can't prosecute Britons*, Declassified UK, 30. December 2025, Available:

The prosecution of political and military leaders after the end of a conflict is one matter, whereas their investigation and the issuance of arrest warrants during an ongoing situation constitute “a mission with high political bets.”⁷⁰ In this context, the principle of complementarity may not always operate as a sufficient safeguard against the exercise of the ICC’s jurisdiction.

While, in the case of the investigation concerning the President and high-ranking officials of the Russian Federation with respect to the *Situation in Ukraine*,⁷¹ the EU expressed unwavering support, the case of issuance of arrest warrants against Netanyahu and Gallant⁷² presents a different picture. In relation to the *Situation in Ukraine*, the ICC Prosecutor was supported even by the United States, but in connection with the Situation in Palestine, certain ICC officials, including the Prosecutor Karim Khan was imposed to US Sanctions.⁷³

Article 27 (2) of the Rome Statute reads as follows:

“Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person.”

This is the most disputed jurisdictional clause in contemporary international affairs since the ICC can establish jurisdiction of persons who are citizens or high officials of states not parties to the Statute.⁷⁴ It cannot be read in isolation of Article 98 of the Rome Statute that provides that:

“The Court may not proceed with a request for surrender or assistance which would require the requested State to act inconsistently with its obligations under international law with respect to the State or diplomatic immunity of a person or

[<https://www.declassifieduk.org/uk-agreed-to-international-criminal-court-because-it-cant-prosecute-britons/>], Accessed 10 April 2026.

⁷⁰ *Ibid.*, p. 346.

⁷¹ The Pretrial Chamber in relation to the Situation in Ukraine issued arrest warrants against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova Belova, since 2023; and Sergei Ivanovich Kobylash, Viktor Nikolayevich Sokolov, Sergei Kuzhugetovich Shoigu and Valery Vasilyevich Gerasimov, since 2024. Report of the International Criminal Court on its activities in 2024/25, UN Doc. A/80/342, 18 August 2025.

⁷² Up to date the ICC issued arrest warrants against “Benjamin Netanyahu and Yoav Gallant, since 2024” On 9 August and 25 October 2024, Pre-Trial Chamber I of the ICC “terminated the proceedings in relation to Ismail Haniyeh and Yahya Sinwar, respectively, following the withdrawal of the Prosecution’s warrant of arrest application because of their deaths.” *Ibid.*

⁷³ For details: Gajić, A., *op. cit.*, note 2, p. 351.

⁷⁴ See: Gajić, A., *Head of States Immunity in the Context of the Jurisdiction of the International Criminal Court*, in: Škulić, M; Miljuš I.; Škundrić A. (eds.), *Raskršća međunarodnog krivičnog i krivičnog prava*, Udruženje za međunarodno krivično pravo, Palić, 2023, pp. 60-68.

property of a third State, unless the Court can first obtain the cooperation of that third State for the waiver of the immunity.”

Article 98 does not address the authority of the ICC to investigate or to issue arrest warrants. The authorization to indict is separated from the conditions for cooperation, including the execution of arrest warrants.

The position of the United States, the Russian Federation and China (as well as certain other states) are that high-ranking officials of states not parties to the Rome Statute enjoy immunities from the jurisdiction of the ICC. The common position is well summarized by the delegate of the China in delivering its statement at the Assembly of States Parties (2024) arguing that under international law, heads of States and Government, ministers for foreign affairs “enjoy absolute immunity from criminal jurisdiction and inviolability” as well as, that in accordance with the international treaty law the Rome Statute cannot create obligations “for a third State without its consent.” It further claimed that:

“[I]n accordance with Article 98 of the Statute, the Court may not proceed with a request for cooperation that might result in a breach by the requested State of its obligations to a third State. It is our consistent view that the Court should act in strict compliance with the Rome Statute and may not exercise its jurisdiction over acts committed by nationals of non-State parties on the territory of non-State parties, unless referred by the UN Security Council.”⁷⁵

Article 27(2) of the Rome Statute binds States Parties and represents a treaty-based approach to immunity, excluding procedural bars based on official capacity. It is, however, in tension with the dispositive rules of customary international law on immunities. However, the EU is not a party to the Rome Statute, and it established a distinct regime concerning the immunities of its officials and servants.

While all EU Member States are parties to the ICC, EU officials (such as High Representatives, members of the Commission, other officials and servants) have a special status and enjoy immunity from criminal prosecution by virtue of their official functions.⁷⁶ In addition, nationals of Member States may act in a dual capac-

⁷⁵ Statement by the observer delegation of China to the 23rd Assembly of States Parties to the Rome Statute of the International Criminal Court, Assembly of States Parties to the International Criminal Court, Available at: [https://asp.icc-cpi.int/sites/default/files/asp_docs/ASP23-GD-CHN-3-12-ENG.pdf], Accessed 10 April 2026.

⁷⁶ See: Protocol (No 7) On the Privileges and Immunities of the European Union. Document 12012E/PRO/07 [2012] OJ C 326.

ity—as State officials and as members of EU institutions (for example, as members of the European Council or the Council of the European Union).⁷⁷

In the Cooperation Agreement, Article 12 (Privileges and Immunities) provides as follows:

“If the Court seeks to exercise its jurisdiction over a person who is alleged to be criminally responsible for a crime within the jurisdiction of the Court and if such person enjoys, according to the relevant rules of international law, any privileges and immunities, the relevant institution of the EU undertakes to cooperate fully with the Court and, with due regard to its responsibilities and competencies under the EU Treaty and the relevant rules thereunder, to take all necessary measures to allow the Court to exercise its jurisdiction, in particular by waiving any such privileges and immunities in accordance with all relevant rules of international law.”

This provision differs fundamentally from Article 27 (2) of the Rome Statute. While officials of States Parties to the Rome Statute do not enjoy immunity from criminal prosecution before the ICC,⁷⁸ persons covered by Article 12 of the Agreement still enjoy such immunities until they are waived by the competent EU institution, in accordance with international law.⁷⁹

This provision does not define precisely to whom it applies, referring only to persons who “enjoy, according to the relevant rules of international law, privileges and immunities.” It may therefore be construed that it applies not only to EU officials and servants but also to individuals who simultaneously function as State officials and as participants in EU institutional structures.

While Article 12 of the Cooperation Agreement is, *prima facie*, framed in terms favourable to the exercise of the ICC’s jurisdiction, particularly through the obligation “to take all necessary measures to allow the Court to exercise its jurisdiction”, it also makes clear that such exercise of jurisdiction depends on the prior waiver of privileges and immunities by the competent EU institution. Under international law, such a waiver remains discretionary in nature.

⁷⁷ In accordance with the Article 11 of the Protocol on privileges and immunities “Representatives of Member States taking part in the work of the institutions of the Communities, their advisers and technical experts shall, in the performance of their duties and during their travel to and from the place of meeting, enjoy the customary privileges, immunities and facilities.”

⁷⁸ This provision of the Rome Statute “constitutes a treaty waiver of immunity *ratione personae*” Akande, D., *International Law Immunities and the International Criminal Court*, *The American Journal of International Law*, Vol. 98, No. 3, 2004, note. 11 at p. 838.

⁷⁹ Similar provision is contained in Article 19 (Rules concerning United Nations privileges and immunities) of the Relationship agreement between the ICC and the UN.

Accordingly, although Article 12 appears at first sight to be consistent with the overall framework of cooperation established by the Rome Statute, it operates in a legally distinct manner. By making the exercise of ICC jurisdiction over EU officials and servants, as well as over other persons enjoying privileges and immunities under EU law, dependent on an internal EU decision to waive immunity, the Cooperation Agreement preserves a significant degree of institutional control by the EU over potential exposure to ICC jurisdiction. Had the drafters intended to exclude such immunities altogether, they could have introduced an express treaty-based waiver comparable to Article 27 of the Rome Statute.

9. INSTEAD OF CONCLUSION

This article is being finalized at a time when the Russia–Ukraine and Israeli–Palestinian conflicts are still ongoing, as well as during the broader crisis in the Middle East, involving the conflict between the United States and Israel, on the one hand, and Iran, on the other. At the time of submission of this article, the ICC has not issued any statement regarding these situations. The principal actors involved—including the United States, the United Arab Emirates, Israel, Iran, Lebanon, Kuwait, and Qatar—are not parties to the Rome Statute. Certain States Parties to the Rome Statute (Australia, Italy, Germany, the Netherlands, Spain, and Japan) have issued official statements refraining from direct participation in the conflict, relying, *inter alia*, on their international legal obligations.⁸⁰ While it cannot be claimed that their actions are solely due to obligations under the Rome Statute, it should not be overlooked that their foreign policy decisions are made or explained with awareness of their international legal commitments and possible exposure to ICC jurisdiction.

Within an inherently politicized international system, the EU, using its position as a distinct political and legal entity, has since the establishment of the ICC gradually developed one of the most comprehensive and coherent systems for cooperation with, support for, and promotion of the ICC in a manner that is neither purely idealistic nor devoid of strategic considerations. The EU's institutional and operational architecture for cooperation with the ICC, including cooperation with Eurojust and Europol, constitutes one of the most developed and coherent systems of support for an international judicial body, making the effectiveness of

⁸⁰ *Why countries are rejecting Trump's call to send ships to Strait of Hormuz*, Independent, 17 March 2026, Available at: [\[https://www.independent.co.uk/news/world/middle-east/trump-strait-of-hormuz-iran-nato-japan-australia-uk-b2939916.html\]](https://www.independent.co.uk/news/world/middle-east/trump-strait-of-hormuz-iran-nato-japan-australia-uk-b2939916.html), Accessed 10 April 2026.

the ICC significantly dependent upon EU support. For the work of the ICC, the EU is thus not merely important, but in many respects functionally indispensable.

In the Rome Statute system, which formally rejects a privileged role for “great powers,” the EU has positioned itself as a central and highly organized actor in the functioning and promotion of the ICC. However, an important question for further research is whether the EU merely supports the ICC’s independent mandate or whether the ICC increasingly operates within the parameters of EU foreign policy objectives. This article suggests that EU support is not only politically relevant but also structurally significant for the existence, functioning and practical effectiveness of the ICC. Nevertheless, it seems clear that the EU sees the ICC as an institution that contributes to safeguarding the EU’s strategic interests even in scenarios in which the Court’s effectiveness remains incomplete or contested.

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