

EUROPEAN EXTERNAL ACTION SERVICE



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DIRECTORATE Global and Multilateral Issues

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Mr. Renan Villacis
Director of the Secretariat of the
Assembly of States Parties
International Criminal Court
Maanweg 174
2516 AB The Hague
The Netherlands

By e-mail: asp@icc-cpi.int

Dear Mr. Villacis,

I am pleased to enclose the European Union's reply to the request for information in paragraph 6, sub-paragraph (h) of the Plan of Action for achieving universality and full implementation of the Rome Statute.

Should you have any queries, please do not hesitate to contact the responsible official in the European External Action Service, Dr Christian Behrmann (christian.behrmann@eeas.europa.eu)

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Mara Marinaki', with a stylized flourish at the end.

Mara Marinaki
Managing Director

Reply of the European Union in response to the request for information in paragraph 6, sub-paragraph (h) of the Plan of Action for achieving universality and full implementation of the Rome Statute

In the Resolution ICC-ASP/5/Res.3, the Assembly of States Party (ASP) decided, *inter alia*, to adopt and implement a Plan of Action for achieving universality and full implementation of the Rome Statute. Paragraph 6, sub-paragraph (h) of the Plan of Action called upon States Parties to provide to the Secretariat information relevant to promotion of the ratification and full implementation of the Rome Statute.

Assembly resolution ICC-ASP/6/Res.2 of 14 December 2007 and resolution ICC-ASP/7/Res.3 of 21 November 2008 recalled the invitation to State Parties to submit the information requested by paragraph 6(h) of the Action Plan.

The European Union (EU), through the Council Working Party devoted to the ICC, COJUR ICC¹, agreed at its meeting on 23 February 2011 to provide an EU reply, where relevant, to the ASP Secretariat on the request for information contained in note ICC-ASP/10/S/PA/07 dated 7 February 2011.

The EU submitted information in 2007 and 2009.

1. THE EU'S COMMITMENT TO ACHIEVE UNIVERSALITY AND FULL IMPLEMENTATION OF THE ROME STATUTE

The European Union is a staunch supporter of the International Criminal Court (ICC). The principles of the Rome Statute of the ICC, as well as those governing its functioning, are fully in line with the principles and objectives of the Union. The consolidation of the rule of law, respect for the universality and indivisibility of human rights, fundamental freedoms and international humanitarian law as well as the preservation of peace, the prevention of conflicts and the strengthening of international security in conformity with the Charter of the United Nations and as provided for in Article 21 of the Treaty on European Union, are of fundamental importance to, and a priority for, the Union.

The serious crimes within the jurisdiction of the ICC are of concern for the EU, which is determined to co-operate for the prevention of those crimes and for putting an end to the impunity of the perpetrators thereof.

As pledged at the Kampala Review Conference (31 May -11 June 2010), the EU updated its 2003 Common Position on the International Criminal Court by a **Decision on the International Criminal Court** adopted on 21 March 2011². The objective of the Council Decision is to advance universal support for the Rome Statute by promoting the widest possible participation in

¹ International Criminal Court sub-area of the public international law working party

² OJ L 76 of 22.03.2011, page 56.

it, to preserve the integrity of the Statute, to support the independence of the ICC and its effective and efficient functioning, to support cooperation with the ICC and to support the implementation of the principle of complementarity.

In the same vein, the EU also agreed on an **Action Plan to follow-up on the Decision on the ICC** on 12 July 2011.

The new Action Plan comprises five sections:

1. Co-ordination of EU activities to implement the objectives of the Decision
2. Universality and integrity of the Rome Statute
3. Independence of the ICC and its effective and efficient functioning
4. Co-operation with the ICC
5. Implementation of the principle of complementarity

The Council has also adopted several Decisions³ in the area of Justice and Home Affairs with a view to strengthening co-operation among Member States on the fight against the impunity of those who have committed genocide, crimes against humanity and war crimes.

2 UNIVERSALITY OF THE ROME STATUTE

The realisation of this objective requires the use of a variety of instruments such as political dialogue, demarches or other bilateral means, statements in the UN and other multilateral bodies and support for the dissemination of the ICC principles and rules. It may also be important to assist countries which have the necessary political will but may encounter difficulties with ratification, accession or implementation of the Statute. This could involve, inter alia, concrete expert assistance, financial support or access to relevant information.

Achieving the widest participation in the Rome Statute is also an EU objective during enlargement negotiations and the accession phases of countries with an EU perspective, as adherence to the values of the Rome Statute and its ratification are part of the *acquis communautaire* to be fulfilled prior to becoming a member of the EU.

The Lisbon Treaty brings more continuity to EU action in this area. The EU is confident that the work by their delegations and close co-ordination with Member States will continue to contribute to steady engagement by the EU as we work towards the universality of the Rome Statute.

³ Decision 2002/494/JHA, of 13 June 2002 (OJ L 167, p. 1), setting up a European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes; Framework Decision 2002/584/JHA, of 13 June 2002 (OJ L 190, p. 1), on the European arrest warrant and the surrender procedures between Member States; and Decision 2003/335/JHA, of 8 May 2003 (OJ L 118, p. 12), concerning the investigation and prosecution of genocide, crimes against humanity and war crimes.

2.1 Demarches and Political dialogue

Since 2002, the EU has carried out over 341 demarches targeting more than 131 countries and international organisations⁴, at the rate of approximately 50 to 60 per year. These demarches encourage the ratification and implementation of the Rome Statute, as well as ratification of the Agreement on Privileges and Immunities, and highlight, wherever appropriate, the EU guidelines on bilateral non-surrender agreements. The EU's action has contributed to increase the number of States Parties. Bangladesh, Seychelles, and Moldova can be mentioned as successful examples.

The importance of supporting the ICC is also raised with third countries as appropriate at **political dialogue meetings and Summits**.

Internally, the EU also ensures that the ICC is mainstreamed into the work of other Council preparatory bodies, targeting in particular areas where the ICC is under-represented, such as Asia, Magrebh/Mashreq and the Middle East. The ICC is also discussed in the Human Rights and Africa working parties, the latter being regularly debriefed regarding situations where the ICC is involved.

2.2 Political support to the ICC

The EU - through Council Conclusions, the High Representative of the EU for Foreign Affairs and Security Policy (HR), Statements or Declarations by the HR on behalf of the European Union - supports the Court's work and also signals important landmarks such as the accession of States to the Rome Statute or relevant Court decisions.

In the run up to the Review Conference, the Council adopted **Conclusions on the Review Conference of the Rome Statute of the ICC** (25 May 2010) to welcome this conference, and in particular the stocktaking exercise, as an opportunity to advance the fight against impunity and underlined its unwavering support to the Court. In its statement responding to the situation in **Côte d'Ivoire**, the EU strongly condemned the use of violence against peaceful demonstrators and the deteriorating rule of law in the country (31 March 2011). Moreover, following the ICC's decision to issue summonses for six individuals in relation to the 2007-2008 post-election violence in **Kenya**, the EU issued a statement urging the named individuals to cooperate fully with the Court (Brussels, 12 March 2011). In its **Council conclusions on Libya** (12 April 2011 and again on 23 May 2011) the EU welcomed the Prosecutor's first Report to the UN Security Council on the violations committed by the Khadafi regime and underlined the significance of the Prosecutor's request for arrest warrants as well as the importance of cooperating with the Court. In its Council conclusions on **Sudan**, the EU persistently reminds the Government of Sudan of its obligation to cooperate with the Court pursuant to UNSC Resolution 1593.

The EU moreover took action via demarches and statements following the **visit of President Al-Bashir** to Chad (Brussels, 22 July 2010), Kenya (Brussels, 27 August 2010) and Djibouti

⁴ See Annex 1.

(Brussels, 14 May 2011) reminding these State parties of their obligations under international law to arrest and surrender those indicted by the ICC.

Finally the High Representative also welcomed the ratification of the Rome Statute by the Republic of Moldova (14 October 2010), Bangladesh (26 March 2010), Seychelles (12 August 2010), Saint Lucia (19 August 2010), Grenada (20 May 2011) and Tunisia (24 June 2011)

The EU also takes political initiatives to pursue the objectives set out in the Decision.

The **EU Strategy for Central Asia**⁵, adopted by the European Council in June 2007, is another example of how the EU mainstreams the ICC into its external policies. The EU acknowledges that Central Asia remains significantly underrepresented in the Court system, and thus includes the Rome Statute ratification among the objectives to be pursued in its new partnership with Kazakhstan, Kyrgyzstan Republic, Tajikistan, Turkmenistan and Uzbekistan. In its strategy, the EU commits itself to sharing with the Central Asian States its experience in the adoption of the necessary legal adjustments required to accede to the Rome Statute of the International Criminal Court, to provide technical assistance and to establish close cooperation aimed at making the legislative and constitutional amendments required for accession to and implementation of the Rome Statute.

2.3 The European Union Special Representatives

The EU currently has nine Special Representatives (EUSRs) in different regions of the world. The EUSRs promote EU policies and interests in troubled regions and countries and play an active role in efforts to consolidate peace, stability and the rule of law.

The EUSRs currently in office cover the following regions: Afghanistan, Bosnia and Herzegovina, Kosovo, Central Asia, the Middle East (to be appointed), the Southern Mediterranean Region, the South Caucasus and the crisis in Georgia (to be appointed), Sudan and the African Union.

EUSRs support the work of the High Representative in the regions concerned. They play an important role in the development of a stronger and more effective Common Foreign and Security Policy (CFSP) and in the EU's efforts to become a more active, more coherent and more capable actor on the world stage. They provide the EU with an active political presence in key countries and regions, acting as a "voice" and "face" for the EU and its policies.

Some of the EUSRs have a clear mandate related to the ICC such as the EU Special Representative for Sudan⁶, who has to follow the situation and maintain regular contacts with, among others, the Office of the Prosecutor of the ICC. Other former EUSRs also played an important role in cooperating with and promoting the ICC in their respective areas, namely the Great Lakes or Moldova.

⁵ Doc. 10133/07

⁶ Article 3 f) of Council Joint Action 2007/108/CFSP of 15 February 2007 extending the mandate of the European Union Special Representative for Sudan JO L 46 of 16.02.2007.

Particularly noteworthy is the intense cooperation between the EUSRs for Sudan with the Court, as well as the support of the EUSR to the African Union to the ICC in its endeavour to open a liaison office in Addis Ababa and contribute to better understanding of the Court's work.

2.4 ICC Clauses

The EU systematically seeks the inclusion of a clause supporting the ICC in negotiating mandates and agreements with third countries.

So far the revised Cotonou Agreement⁷ of 2005 is the only binding legal instrument including an ICC-related clause⁸, it applies to 76⁹ **African, Caribbean and Pacific countries**. This clause is a good starting point to be followed when negotiating other agreements, although it is necessary to adopt a case-by-case approach.

To date, an ICC clause has been agreed in the Partnership and Co-operation Agreements (PCAs), Trade Co-operation and Development Agreements (TDCAs) and Association Agreements (AAs) with Indonesia, Republic of Korea, South Africa, the Andean Community, Iraq, Mongolia, the Philippines, Vietnam and Central America. ICC clauses are currently being negotiated in the PCAs and AAs with Thailand, Malaysia, Singapore, Russia, Ukraine, Moldova, Armenia, Azerbaijan, and Georgia.

The TDCA with South Africa was signed in September 2009 and the PCA with Indonesia in November 2009.

In the framework of the **European Neighbourhood Policy (ENP)**¹⁰, ICC clauses are included in the Action Plans with the following countries: Armenia, Azerbaijan, Egypt, Georgia, Jordan, Lebanon, Moldova and Ukraine.

2.5 Support to the ICC in UN fora

EU support to the ICC is also expressed within the framework of the United Nations. Following the presentation of the annual Reports of the ICC to the UN General Assembly (UNGA), the latest in October 2010, all the EU Member States rallied behind the annual resolution supporting the ICC, as they have done since the presentation of the First Report in 2005.

The EU's priorities for every session of the UN General Assembly always include a point on international justice¹¹, recalling the need to end impunity for the most serious international crimes

⁷ The Cotonou Agreement covers Relations between the European Union and the African, Caribbean and Pacific (ACP) states.

⁸ Doc. 8851/05. Article 11.

⁹ Equatorial Guinea, South Africa and Sudan have not ratified the agreement. Cuba did not sign the agreement.

¹⁰ http://ec.europa.eu/world/enp/documents_en.htm

and reaffirming its commitment to support the ICC and to promote the universality and integrity of the Rome Statute.

EU Member States played an active role in the adoption of UNSCR 1593 (2005) authorising the Security Council – for the first time - to refer a case (Darfur) to the ICC. Moreover, in its Resolution UNSCR 1970 (2011), the Security Council unanimously adopted a decision to refer the situation in the Libyan Arab Jamahiriya to the ICC.

EU Member States have also supported references to the Court and its work in different General Assembly and Security Council resolutions dealing with torture¹², sexual violence¹³, internally displaced persons or rights of the child¹⁴.

The EU will continue its efforts to promote the rule of law at the national and international levels.

2.6 Technical and financial assistance

The relevant framework for the provision of technical assistance to interested states is set out in the EU Action Plan. Diverse forms of assistance are envisaged.

The EU has also drawn up a list of experts to provide countries with technical assistance. The EU experts may be mandated to provide technical assistance on behalf of the EU, including tasks such as:

- Co-operating with requesting third states in any technical issue related to the participation in and implementation of the Rome Statute and its instruments, including cooperation mechanisms.
- Participating in seminars, symposiums, conferences or any other national or international event, either of academic or of official character, as well as to relevant civil society events, as may be necessary for the widest dissemination of the values, principles and provisions of the Statute and related instruments, as well as for the implementation of the Decision on the International Criminal Court, and for the co-operation of the EU with the ICC

2.6.1 EU Funding¹⁵

Since 1995, the EU, through the Commission, has funded civil society organisations working to promote the adoption of the Rome Statute and its subsequent entry into force under the European Initiative for Democracy and Human Rights. Since 2003, after the Rome Statute came into force,

¹¹ The EU priorities for the 66th UNGA (doc. 11298/11)

¹² Resolution 62/148 reference to ICC in PP6)

¹³ Resolution 62/134 (reference to ICC in PP6)

¹⁴ Resolution 62/141 (reference to ICC in OP41(e) and OP55)

¹⁵ Currently being transformed, with an emphasis on the establishment of thematic programmes such as the Stability Instrument, under the new Financial Perspectives.

the EU has provided funding of more than € 20 million to the global ratification campaigns undertaken by civil society organizations and to projects of the ICC. The European Commission has been the principal financial supporter of many of these organizations whose work has gone a long way in increasing the ratification rate of the Rome Statute and awareness of the mandate of the Court and to promoting the complementarity principle and the principle of cooperation.

Since 2004 the European Commission has also directly supported the Court's Internship and Visiting Professional's Programmes with grants totalling more than € 6 million to date. This has strengthened awareness of the Court's mandate and proceedings among key personnel from national ministries and legal communities and enhanced the practical implementation of the principle of complementarity. A number of participants in previous programmes are reported by the Court to have already contributed substantially to stimulating ratification processes in their respective countries.

The seminar and training of lawyers on the ICC **List of Counsel**¹⁶ is a manifestation of the Court's commitment to engaging the legal profession with its work and its progress and to establishing a dialogue from which both sides can benefit.

The **ICC Legal Tools Project**¹⁷ seeks to be a practical and sustainable vehicle for legal information, knowledge transfer and legal empowerment, aimed at strengthening capacity, primarily at the national level, to work more effectively and professionally on core international crimes as enshrined in the Rome Statute and national legislation.

In addition, the European Commission and Member States provide consistent political and financial support to other existing special tribunals, such as the International Criminal Tribunals for Rwanda and Yugoslavia, the Special Court for Sierra Leone, and the Khmer Rouge Special Chamber in Cambodia.

2.7 Cooperation with other partners

In the framework of its Decision and Action Plan, the EU is willing to consider perspectives and opportunities for joint and/or co-ordinated efforts with third states to fully implement the ASP Action Plan particularly toward enhancing the universality of the ICC while protecting its integrity. In particular, the EU, its Member States and some third states have carried out demarches, provided technical assistance and funding, and participated in the organization of conferences and other awareness-raising events. In order to strengthen the activities of the actors in the field, co-ordination between the EU and other players seems to offer major advantages as opposed to acting alone.

In the framework of its bilateral relations with Japan, Brazil, Canada, Australia and South Africa,

¹⁶ <http://www.icc-cpi.int/Menus/ICC/Structure+of+the+Court/Defence/Consultations/>

¹⁷ <http://www.legal-tools.org/en/what-are-the-icc-legal-tools/>

which are expressed in different instruments¹⁸, the EU and these partners seek co-operation to strengthen its action in support of the universality of the Rome Statute. The EU and these partners have agreed to promote the universality and implementation of the Rome Statute through increased cooperation. This co-operation has been translated into concrete action by the exchange of information and joint demarches (i.e. the Philippines and Cameroon).

2.8 Implementation of the Rome Statute

In accordance with the Decision and Action Plan, the EU is committed to promoting the implementation of the Rome Statute.

At the Review Conference, the EU announce the development of a “complementarity toolkit” which will describe how the application of the principle of complementarity can be strengthened through existing and future justice and rule of law assistance. This practical guidebook aims at better integrating the special needs linked to the fight against ICC-related crimes into rule of law and development programmes on the basis of existing good practices. The development of this toolkit was the subject of an expert workshop which took place in Pretoria, South Africa (13 and 14 April 2011), and brought together State, NGO and ICC experts. The drafting of this toolkit will be conducted by the Commission/EEAS in close co-operation with EU Member States.

3. EU COOPERATION AND ASSISTANCE

The EU was the first Regional Organisation to sign with **the ICC an agreement on co-operation and assistance** on 10 April 2006¹⁹. The agreement places a general obligation of cooperation and assistance between the EU and the ICC and foresees, inter alia, the regular exchange of information and documentation of mutual interest. The agreement does not apply to ICC requests for information from individual Member States, which may be governed by bilateral arrangements as appropriate, nor does it affect the competence of the European Union to achieve the objectives of the agreement through separate measures.

The EU and the ICC finalised in April 2008 the implementing arrangements concerning the exchange of classified information.²⁰

In this context, provisions were agreed between the EU and the ICC permitting one of the EU CSDP operations -EUFOR Chad/RCA- to provide support, if requested, to the Court in Chad on logistical and security issues.

¹⁸ *Action Plan for EU-Japan Co-operation 2001*, joint statement by the EU and Canada at the conclusion of the 2002 Summit, *EU-Australia Partnership Framework 2008*, *EU – Brazil Action Plan 2008* and *EU-South Africa Trade, Development and Co-operation Agreement 2009*.

¹⁹ JO L 115 of 28.04.2006 p. 49-56.

²⁰ docs 8349/1/08 REV 1 and 8410/08.

Another area of cooperation is the hosting by the European Institutions of ICC **diplomatic debriefings** in Brussels. The Council of the EU has hosted such debriefings several times over the past years.

The External Action Service (EEAS) and the High Representative for Foreign Affairs and Security Policy, Catherine Ashton, have been in regular contact with the Prosecutor. On 23 March 2010, for example, the High Representative met with Moreno Ocampo, the Prosecutor of the ICC. The President of the European Council, Mr Van Rompuy, met the President of the ICC, Judge Sung, on 10 September 2010.

4. EUROPEAN NETWORK OF CONTACT POINTS IN RESPECT OF PERSONS RESPONSIBLE FOR GENOCIDE, CRIMES AGAINST HUMANITY AND WAR CRIMES

The ICC remains complementary to national systems of criminal law. In the Council Common Position on the ICC, the EU Member States expressed their determination to work together to combat certain forms of crime. For this reason, the Council adopted a **Decision**²¹ in 2002 setting up a European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes. The purpose of this Decision is to make cooperation between the Member States in combating genocide, crimes against humanity and war crimes more efficient and to designate a relevant contact point within the police and justice systems of each Member State.

Each Member State has designated a **national contact point** for the exchange of information concerning the investigation of genocide, crimes against humanity and war crimes. The contact points will provide information on request or "motu proprio". The investigation and prosecution of genocide, crimes against humanity and war crimes continue to be the responsibility of national authorities.

The network has met ten times. The 10th meeting took place on 28 and 29 April 2011 in The Hague. The meeting was attended by representatives of 18 Member States, representatives of Canada, Norway and Switzerland, representatives of the ICC, the Special Court for Sierra Leone, Europol, Eurojust, the Commission and the General Secretariat of the Council as well as by civil society representatives.

5. EU FOCAL POINT

In order to assist in ensuring effective co-ordination and consistency of information, and in adequately preparing programmes and activities of the Union in the implementation of the

²¹ Decision 2002/494/JHA of 13.06.2002. OJ L 167 of 26.06.2002

Decision, an EU Focal Point was established in the General Secretariat of the Council, and transferred to the EEAS when this started operating in January 2011.

The EU Focal Point will make available the information flowing in from all relevant sources and in particular information concerning relevant meetings and other events and will seek to identify synergies or risks of overlap.

EU focal point for the ICC

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6. MORE INFORMATION

The documents referred to and other information can be found in

- <http://consilium.europa.eu/ICC>
- http://ec.europa.eu/external_relations/human_rights/icc/index.htm

ANNEX

LIST OF EU DEMARCHES (2002-2011²²): COUNTRIES AND INTERNATIONAL ORGANISATIONS

AFRICA	NORTH AFRICA MIDDLE EAST	EUROPE/ CIS	ASIA	OCEANIA	AMERICAS	INTERNATIONAL ORGANISATIONS
Angola	Algeria	Albania	Afghanistan	Fiji	Bahamas	AFRICAN UNION
Benin	Bahrain	Armenia	Bangladesh	Kiribati	Bolivia	ASEM
Botswana	Egypt	Azerbaijan	Cambodia	Papua New Guinea	Chile	CARICOM
Burkina Faso	Iran	Bosnia and Herzegovina	China	Samoa	Dominican Republic	PACIFIC ISLAND FORUM
Burundi	Iraq	Bulgaria	Indonesia	Solomon Islands	Guatemala	
Cameroon	Israel	Croatia	India	Tuvalu	Granada	
Cape Verde	Jordan	FYROM	Japan	Vanuatu	Haiti	
Chad	Kuwait	Georgia	Laos		Honduras	
Comoros	Libya	Kazakhstan	Maldives		Jamaica	
Congo Brazzaville	Lebanon	Kyrgyzstan	Malaysia		Mexico	
Congo DRC	Morocco	Moldova	Nepal		Nicaragua	
Eritrea	Oman	Monaco	Pakistan		Peru	
Ethiopia	Qatar	Russian Federation	Philippines		El Salvador	
Ghana	Saudi Arabia	Turkey	Singapore		St Lucia	
Guinea-Bissau	Syria	Turkmenistan	Sri Lanka		Surinam	
Côte d'Ivoire	Tunisia	Ukraine	Thailand		United States	
Kenya	United Arab Emirates (UAE)	Uzbekistan	Vietnam			
Lesotho	Yemen					
Madagascar						
Malawi						
Mali						
Mozambique						
Namibia						
Nigeria						
Rwanda						
Sao Tome and Principe						
Senegal						
Seychelles						
Somalia						
South Africa						
Tanzania						
Togo						
Uganda						
Zambia						
Zimbabwe						

²² Until 1st semester 2011