

CM2510

The obligations of the EU and its Member States to prevent impunity for core international crimes, in particular when ICC suspects are present on EU territory

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In this comment, the Meijers Committee raises concerns about EU Member States undermining their obligations to arrest and surrender individuals wanted by the International Criminal Court (ICC). It highlights recent incidents of non-compliance that threaten the EU's commitment to justice and the rule of law.

The comment explains that EU legal instruments and the EU-ICC Cooperation Agreement impose clear obligations to support ICC enforcement. It calls for stronger EU action, including Article 7 TEU procedures and reforms to the European Arrest Warrant to enable surrender to the ICC.

The Committee also stresses the role of Eurojust and notes that withdrawal from the Rome Statute does not exempt Member States from relevant obligations. It recommends legal reforms, greater use of EU mechanisms, and national prosecution of core crimes to prevent impunity.



Standing committee of experts on international
immigration, refugee and criminal law

The obligations of the EU and its Member States to prevent impunity for core international crimes, in particular when ICC suspects are present on EU territory

1. Introduction

The Meijers Committee has noted with great concern recent developments that cast doubt about the compliance of some EU Member States with their obligations under international law regarding the investigation and prosecution of those suspected of core international crimes (genocide, crimes against humanity and war crimes).

In April 2025 Hungary has welcomed Israeli Prime Minister Netanyahu, against whom the International Criminal Court (ICC) has issued an arrest warrant on suspicion of war crimes and crimes against humanity¹, for an official visit. During the visit, Prime Minister Orbán also pledged to withdraw from the ICC Statute.² Leaders of other EU states – including Germany and Poland – have indicated they may not comply with the obligation to enforce the ICC's warrant if Netanyahu were to visit their country.³

In February 2025, the Italian authorities released the Libyan judicial police chief Osama Al Masri (who is accused of war crimes and crimes against humanity), after he had been arrested following an ICC arrest warrant – he was sent back on a state plane to Libya.⁴ This has led to the filing of a complaint with the ICC for obstructing the administration of justice (article 70 Rome Statute), alleging that this release was brought about by the Italian Prime Minister, Minister of Justice and Minister of Interior.⁵ On 25 February 2025 the ICC Prosecutor has requested the ICC Pre-Trial Chamber to make a formal finding of non-compliance against Italy and to refer the matter to the Assembly of States Parties and/or the UN Security Council pursuant to article 87(7) of the Rome Statute.⁶

The EU has long been a strong supporter of the ICC and of the fight against impunity for core international crimes, putting in millions of Euros in financial support. The EU proclaims to view the ICC as

‘the cornerstone in the fight against impunity and to help victims of atrocities to achieve justice. The EU is resolved to continue protecting the independence of the Court and the integrity of the Rome Statute. The EU promotes the national implementation of the Rome Statute and its principle of complementarity, in particular by strengthening national justice systems. The EU also encourages the universal ratification of the Rome Statute and full cooperation with the Court.’⁷

When a Member State refuses to apprehend – and where required, surrender – an ICC-sought

¹ <https://www.icc-cpi.int/news/situation-state-palestine-icc-pre-trial-chamber-i-rejects-state-israels-challenges>

² This is something the Hungarian government has already been considering for a longer time: see N. Tóth, ‘Is There Anything New Under the Sun After All? ICC Arrest Warrants at the Crossroads of PIL and EU Law’, EJIL: Talk! 11 December 2024, <https://www.ejiltalk.org/is-there-anything-new-under-the-sun-after-all-icc-arrest-warrants-at-the-crossroads-of-pil-and-eu-law/>

³ <https://www.theguardian.com/world/2025/apr/03/netanyahu-to-visit-hungary-as-orban-vows-to-defy-icc-arrest-warrant>

⁴ Centre for European Policy Studies (CEPS), <https://www.ceps.eu/the-italy-v-icc-row-exposes-deep-rooted-hypocrisy-in-eu-migration-policy/>

⁵ <https://www.statewatch.org/media/4732/icc-submission-italy-al-masri-obstruction-5-2-25.pdf>

⁶ ICC Prosecution's request for a finding of noncompliance under article 87(7) against the Republic of Italy for the release of Osama Elmasry / Almasri NJEEM, 25 February 2025, ICC-01/11-163-US-Exp, Par. 40.

⁷ https://www.eeas.europa.eu/eeas/international-criminal-justice_en

suspect present on EU territory, this undermines the values of human dignity, the rule of law and respect for human rights upon which the EU is founded and undermines the EU's integrity and efficacy to spread this message to third states.⁸

In this comment, the Meijers Committee stresses that the European Union is legally bound to take action to ensure that Member States cooperate with the International Criminal Court and comply with its requests to surrender suspects against whom an arrest warrant has been issued. First, it will be argued in par. 2 that the EU should act against Member States who refuse to cooperate with ICC arrest warrants. Second, it will be argued that EU Member States shall make use of mutual recognition instruments – in particular, the European Arrest Warrant as well as other instruments such as the European Investigation Order (par. 3) to allow them to live up to their obligations to investigate and prosecute core international crimes, and that the EAW Framework Decision should be reformed to better enable cooperation with the ICC through this instrument. Third, there is a role for Eurojust in pressuring Member States to comply with ICC obligations (par. 4). Finally, this comment emphasises that EU Member States cannot simply relinquish their obligations under international and European law by withdrawing from the ICC Statute (par. 5).

2. Why the EU should take action against Member States that do not cooperate with the ICC

All EU Member States are now parties to the ICC. Based on article 59(1) of the Rome Statute, a State Party to the ICC which has received a request for provisional arrest or for arrest and surrender (which the Court can send when the Pre-Trial Chamber has issued a warrant of arrest: see article 58 Rome Statute) shall immediately take steps to arrest the person in question.⁹ Member States' obligations under international law are clear, yet enforcement of such obligations – which is envisaged through the Assembly of States Parties or the Security Council¹⁰ – is often politically complicated. Therefore, pressure by the EU is crucial.

Non-compliance of Member States with the Rome Statute, in particular by refusing to execute the Court's arrest warrants, is not only a matter of international law but also a matter of EU law. Since the ICC's inception, the European Union has adopted several instruments that aim to reinforce cooperation of Member States and the EU itself with the ICC, and to promote the ICC among third states through its external policies. The EU Council has adopted several Common Positions regarding the ICC¹¹ as well as Action Plans to implement these Positions.¹²

⁸ See also M. Faro Sarrats, 'Hold the line: EU actions must counter Orban and Netanyahu's defiance of the ICC', *European Council on Foreign Relations*, 4 April 2025, <https://ecfr.eu/article/hold-the-line-eu-actions-must-counter-orban-and-netanyahus-defiance-of-the-icc/>

⁹ Art. 90 par. 1 Rome Statute provides that 'The Court may transmit a request for the arrest and surrender of a person, together with the material supporting the request outlined in article 91, to any State on the territory of which that person may be found and shall request the cooperation of that State in the arrest and surrender of such a person. States Parties shall, in accordance with the provisions of this Part and the procedure under their national law, comply with requests for arrest and surrender.'

¹⁰ According to art. 87 par. 7 Rome Statute, 'Where a State Party fails to comply with a request to cooperate by the Court contrary to the provisions of this Statute, ... the Court may make a finding to that effect and refer the matter to the Assembly of States Parties or, where the Security Council referred the matter to the Court, to the Security Council.'

¹¹ Council Decision of 13 June 2002 setting up a European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes, *OJ L 167/1* (2002); Council Decision 2003/335/JHA: Council Decision 2003/335/JHA of 8 May 2003 on the investigation and prosecution of genocide, crimes against humanity and war crimes, *OJ L 118* (2003).

¹² Council, Action Plan to Follow-Up on the Common Position on the International Criminal Court, 28 January 2004, 5742/04, <https://data.consilium.europa.eu/doc/document/ST%205742%202004%20INIT/EN/pdf>; Council, Action Plan to follow-up on the Decision on the International Criminal Court, 12 July 2011, 12080/11,

Council Decision 2003(335) aims to maximise the ability of MS law enforcement authorities to cooperate in the field of investigation and prosecution regarding genocide, crimes against humanity and war crimes. Amongst other things, it states that 'Insofar as the law enforcement authorities in a Member State become aware that a person suspected of crimes as referred to in Article 1 is in another Member State, they shall inform the competent authorities in the latter Member State of their suspicions and the basis thereof' (par. 3(3)).

The EU has also entered into the Agreement between the International Criminal Court and the European Union on Cooperation and Assistance, which entered into force in 2006.¹³ The Agreement is legally binding.¹⁴ Its preamble states that 'the European Union is committed to supporting the effective functioning of the International Criminal Court and to advance universal support for it by promoting the widest possible participation in the Rome Statute'. Article 4 of the Agreement contains an obligation of cooperation and assistance:

'The EU and the Court agree that, with a view to facilitating the effective discharge of their respective responsibilities, they shall cooperate closely, as appropriate, with each other and consult each other on matters of mutual interest, pursuant to the provisions of this Agreement while fully respecting the respective provisions of the EU Treaty and the Statute. In order to facilitate this obligation of cooperation and assistance, the Parties agree on the establishing of appropriate regular contacts between the Court and the EU Focal Point for the Court.'

Under this agreement the EU and ICC moreover 'shall cooperate, whenever appropriate, by adopting initiatives to promote the dissemination of the principles, values and provisions of the Statute and related instruments' (article 6). The EU 'undertakes to cooperate with the Court and to provide the Court with such information or documents in its possession as the Court may request pursuant to Article 87(6), of the Statute' (article 7(2)).¹⁵

While the Agreement in principle binds the EU and not Member States, all Member States have agreed to it by way of adopting Council Decision 2006/313/CFSP, which approves the Agreement on behalf of the EU.¹⁶ Together, these instruments can thus be interpreted as binding the EU to take decisive action against Member States who refuse to execute arrest warrants – which is something only individual Member States can do.

The European Parliament in 2011 expressed deep concern about (third) States Parties to the ICC welcoming Sudan's then president al-Bashir on their territories 'despite their clear legal obligation under the Rome Statute to arrest and surrender him', asking the EU and its Member States

'in the event of a partner country issuing an invitation to, or expressing a willingness to allow, visits on its territory by an individual who is the subject of an ICC arrest warrant,

<https://data.consilium.europa.eu/doc/document/ST-12080-2011-INIT/en/pdf>

¹³ Agreement between the International Criminal Court and the European Union on Cooperation and Assistance, OJ L 115, 28 April 2006, p. 0050 – 0056.

¹⁴ C. Paulussen, 'Legal Assistance in the Context of the International Criminal Court', in: C. Fijnaut & J. Ouwerkerk (eds), *The Future of Police and Judicial Cooperation in the European Union*, 2010, Martinus Nijhoff, p. 189-230, p. 220; M. Groenleer and L. Van Schaik, '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* (2007), p. 982.

¹⁵ Article 87(6) of the Rome Statute provides that 'The Court may ask any intergovernmental organization to provide information or documents. The Court may also ask for other forms of cooperation and assistance which may be agreed upon with such an organization and which are in accordance with its competence or mandate.'

¹⁶ Council Decision 2006/313/CFSP, OJ 2006 L 115, p. 49.

to exert strong pressure on that country without delay, with a view to either arresting or supporting an arrest operation or, as a minimum, to preventing the travel of such an individual (...)¹⁷

Currently, it is EU Member States themselves who (potentially) refuse to arrest and/or surrender ICC-sought suspects, which clearly undermines the EU's stance towards third countries.

The EU's legal obligations of cooperation with the ICC (as outlined above) oblige it to take action against such Member States. The refusal of an EU Member State to arrest and surrender in such cases can lead to a serious breach of the EU's values of respect for human dignity, the rule of law and respect for human rights on which the EU is founded (article 2 TEU), which should be given weight in the consideration of an article 7 TEU procedure. This is even more obvious should a Member State withdraw from the Rome Statute.

3. The potential of EU mutual recognition instruments to deal with suspects of core international crimes

The EU's mutual recognition instruments for international cooperation, such as the European Arrest Warrant and the European Investigation Order, explicitly mention 'crimes within the jurisdiction of the International Criminal Court' as part of the list of offences regarding which state authorities should execute decisions without checking the double criminality requirement.¹⁸ The Council's position 2003(335), as indicated above, furthermore posits that 'Member States shall assist one another in investigating and prosecuting the crimes referred to in Article 1 in accordance with relevant international agreements and national law' (article 3(1)), including by informing another Member State when the law enforcement authorities in a Member State become aware that a person suspected of core international crimes is present in that Member State (article 3(3)).¹⁹

3.1. The European Arrest Warrant

Because of the principle of mutual recognition, the Framework Decision (FD) on the European Arrest Warrant (EAW) could prove to be a powerful tool in the EU Member States' efforts to prevent impunity for core international crimes. Failing to comply with a European Arrest Warrant despite an obligation to do so, can lead to infringement proceedings before the European Court of Justice.

However, the Framework Decision on the EAW is concerned with cooperation between Member States and presupposes that an EAW is issued for the purpose of prosecution or execution of a sanction *by the authorities of another Member State* (Article 1(1) FD); it does not contain explicit provisions on (further) surrender to the ICC.²⁰ The question whether an EAW can be used to

¹⁷ European Parliament, REPORT on EU support for the ICC: facing challenges and overcoming difficulties, 2011/2109(INI), https://www.europarl.europa.eu/doceo/document/A-7-2011-0368_EN.html, par. 23 and 25.

¹⁸ Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States; Directive 2014/41/EU of the European Parliament and the Council of 3 April 2014 regarding the European Investigation Order in criminal matters

¹⁹ Council Decision 2003/335/JHA of 8 May 2003 on the investigation and prosecution of genocide, crimes against humanity and war crimes, OJ L 118

²⁰ Except for the provision in Article 16(4) Framework Decision 2002/584 on competing requests for surrender, which states that 'This Article shall be without prejudice to Member States' obligations under the Statute of the International Criminal Court.' Member States' obligations under the Statute of the International Criminal Court

enable surrender to the ICC seems not to have been envisioned when drafting the Framework Decision, and several of the Framework Decision's provisions complicate using the instrument with the purpose of (subsequent) surrender of a suspect to the ICC. Some authors have suggested that the obligations of EU Member States *qua* ICC States Parties to cooperate with the ICC in the investigation and prosecution of crimes (articles 86 and 89 Rome Statute) may sometimes necessitate the use of the European Arrest Warrant and that using the EAW in this way may be warranted under international law – at least if other means are not available. Tóth has posited that

'Since the ICC Statute is not 'only' an international treaty, but also part of the municipal law of EU member states (except Hungary²¹), a warrant of arrest issued by the ICC can be legally equated to one issued by the authorities of any EU member state. At least in theory. If this assumption holds, it is likely, though alternative interpretations of the relevant rules could also be possible, that a warrant of arrest issued by the ICC could serve as a basis for issuing a European Arrest Warrant (EAW), which would then have to be executed in all EU member states.'²²

Vierucci also argues that the EAW system could be used as such, pointing to the principle and practice of free movement of persons within EU territory:

'the EAW may constitute an effective means for an EU Member State to locate and apprehend a person wanted by the Court who has taken refuge within the EU boundaries. For example, if the Court requests Spain to hand over a national who happens to be on the territory of another EU member, the requested state, instead of simply notifying the Court that its national is no longer on its territory, may have recourse to the EAW in order to track down, arrest and have the person surrendered, if necessary, through the Schengen Informatic System or Interpol.'²³

A possible complication could be article 28(4) of the EAW Framework Decision, which only allows the surrender of the person to a further (third) state with the consent of the executing authority. This restriction may be thought to include the (so far theoretical) situation of surrender to the ICC, so that the Member State who has refused to cooperate with the ICC, would have to give consent to surrender the suspect to the ICC. Vierucci, however, argues that 'in such cases, the principle [of consent of the executing authority, CM] becomes inoperative because consent to surrender to the ICC was given a priori, when the EU Member States became parties to the ICC Statute.'²⁴

As such use of the EAW system would, admittedly, be far-fetched from its original purpose and

take precedence over the execution of the EAW. See the Handbook on how to issue and execute a European arrest warrant, European Commission, 6 October 2017, C 335/1, par. 8.1.2.

²¹ This is because Hungary has ratified but never fully implemented the ICC Statute in its domestic law, while due to a 'moderately dualistic' system it would be difficult for Hungary to execute ICC arrest warrants without an appropriate domestic legal basis. See Tóth 2024. This, however, leaves unaffected Hungary's international law responsibilities to execute ICC arrest warrants and, accordingly, its responsibilities in EU law as described in this comment.

²² Tóth 2024. Alternatively to using the EAW system, Tóth has pointed to the option of qualifying an ICC request for surrender as an 'alert for arrest for extradition purposes' to be entered by an issuing Member State in the Schengen Information System (SIS II), based on article 26(1) Regulation (EU) 2018/1862, having the same effect as an EAW (article 31 Regulation (EU) 2018/1862).

²³ L. Vierucci, 'The European Arrest Warrant - An Additional Tool for Prosecuting ICC Crimes', *Journal of International Criminal Justice*, 2004, vol. 2, p. 275285.

²⁴ Vierucci 2004, p. 278.

its stated aims (article 1(1) FD), the Meijers Committee recommends amending the EAW Framework Decision in order to better enable such cooperation with the ICC and to strengthen the prosecution of core international crimes. An amended EAW instrument should make it clear that an EAW can also be issued for the purposes of further surrender to the ICC, if the ICC has issued an arrest warrant against a suspect. The need for consent of the executing state (article 28(4)) should be removed for such cases.

Immunity attached to the official capacity of a suspect may also present challenges; under article 20 of the EAW Framework Decision the executing Member State may need to waive an immunity, but article 27(2) of the ICC Statute rules that ‘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’. The Framework Decision should therefore be amended to make sure that article 27(2) of the Rome Statute shall prevail over any rules on immunity regarding official capacity (article 20 FD) in case of (further) surrender to the ICC.

In the meantime, at least Member States themselves should, as much as possible (considering, amongst other things, the rules on jurisdiction), use mutual recognition instruments such as the current EAW system to strengthen domestic prosecution of core international crimes. Under article 1 and article 17(1)(a) Rome Statute, the principle of complementarity applies, which means that the ICC comes into the picture only if national states are unwilling or unable genuinely to carry out the investigation or prosecution. Where possible and appropriate, as coordinated with the ICC, Member States should themselves pursue investigations and issue European Arrest Warrants with an eye to domestic prosecution. In this regard, it is recommended that the EU adopt rules to oblige Member States to apply universal jurisdiction and the *aut dedere aut judicare* principle to core international crimes. Moreover, in the EAW FD the (optional) refusal ground in article 4(7)(b), according to which an EAW may be refused if it relates to offences that ‘have been committed outside the territory of the issuing Member State and the law of the executing Member State does not allow prosecution for the same offences when committed outside its territory’, should be repealed with regard to core international crimes.²⁵

3.2. Other EU mutual recognition instruments

What is more, mutual recognition with regard to investigatory measures and evidence – via the European Investigation Order (Directive 2014/41) – could be employed as a tool to oblige Member States to cooperate in investigations for international crimes: e.g. by ordering a hearing by videoconference or the searching of premises, or ordering to transfer existing evidence. An EIO may be issued ‘when necessary and proportionate for the purpose of the proceedings referred to in article 4 taking into account the rights of the suspected or accused person’, such proceedings including (a) ‘criminal proceedings that are brought by, or that may be brought before, a judicial authority in respect of a criminal offence under the national law of the issuing State’. The situation where ‘criminal proceedings *may be brought before* a national judicial authority’ points to the possibility of using the EIO in relatively early stages of an investigation.

Though the EIO Directive allows executing authorities relatively broader grounds for refusal than the EAW Framework Decision, including when ‘in a specific case the execution of the EIO would

²⁵ As explained in par. 3.2, Article 3(1)(a) of the new Regulation on the transfer of proceedings in criminal matters (which will enter into force in 2027) Member States have already tried to come up with a solution for the impunity that this rule can create – however, this is only applicable to a suspect or accused person who is present in *and* is a national of or a resident in the requested State.

harm essential national security interests, jeopardise the source of the information or involve the use of classified information relating to specific intelligence activities' (art. 11(1)(b) Directive 2014/41), such provisions should arguably be interpreted narrowly in case of core international crimes. As explained in par. 4, with regard to core international crimes Eurojust also has a role in supporting Member States to preserve, analyse and store evidence and enable its exchange.

The new Regulation on the transfer of proceedings in criminal matters²⁶, which will take effect from 1 February 2027, could also prove useful in the future to enable domestic prosecutions in EU Member States for core international crimes. One of the aims of the Regulation is to avoid impunity by ensuring that criminal proceedings can take place if the surrender of a suspect under the EAW system is delayed or refused. The Regulation, amongst other things, establishes jurisdiction (if there is not yet jurisdiction) in the requested State in situations in which the requested State refuses to surrender a suspect on the basis of article 4(7)(b) of the EAW Framework Decision.²⁷ According to recital 18, 'This is of particular importance as regards serious crimes violating fundamental values of the international community, such as war crimes or genocide, where a risk of impunity might arise due to a European arrest warrant being refused on the basis of article 4, point (7)(b), of Framework Decision 2002/584/JHA.' The authority of an EU Member State which conducts criminal proceedings can then request for a transfer of criminal proceedings to another Member State, thereby establishing jurisdiction via article 3(1)(a).²⁸ Victims can also propose to requesting or requested Member States to transfer criminal proceedings (art. 5(2)(j) Regulation). The rule in article 3(1)(a) is only applicable to a suspect or accused person who is present in *and* is a national of or a resident in the requested State, though. Moreover, in some cases it can be doubtful whether such a requested state, which is refusing to surrender a person, is genuinely willing to pursue prosecution (in light of the ICC's complementarity principle). Therefore, it would be preferable to amend the EAW system itself and abolish the rule in article 4(7)(b) of the EAW Framework Decision for core international crimes, as argued in par. 3.1.

4. The role of Eurojust in case of ICC arrest warrants to EU Member States

Eurojust is competent to deal with genocide, crimes against humanity and war crimes (annex 1 Eurojust Regulation²⁹) and plays an important role in coordinating domestic investigations and prosecutions for core international crimes.³⁰ It also hosts the 'European Network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes' ('Genocide Network') which was established by the Council in 2002.³¹ The Network's mandate is

²⁶ Regulation (EU) 2024/3011 of the European Parliament and the Council of 27 November 2024 on the transfer of proceedings in criminal matters.

²⁷ This is a refusal ground for executing an EAW for offences which have been committed outside the territory of the issuing state while the law of the executing state does not allow prosecution for the same offences when committed outside its territory (art. 3(1)(a) Regulation).

²⁸ A rather broadly worded ground for the requested state to refuse to take over the criminal proceedings is when 'the requested authority considers that the transfer of criminal proceedings is not in the interests of efficient and proper administration of justice' (art. 12(2)(b) Regulation). However, the Regulation appears to regard the prevention of impunity for international core crimes (see rec. 4 and 18) as a particularly important aspect of the proper administration of justice, thus showing the need for a strict interpretation of this refusal ground in such cases.

²⁹ Regulation (EU) 2018/1727 of the European Parliament and of the Council of 14 November 2018 on the European Union Agency for Criminal Justice Cooperation (Eurojust), and replacing and repealing Council Decision 2002/187/JHA.

³⁰ See also the letter of understanding that the ICC's OTP and Eurojust signed in 2007:

<https://www.eurojust.europa.eu/sites/default/files/InternationalAgreements/Letter-of-Understanding-ICC-Eurojust-2007-04-10-EN.pdf>

³¹ Council Decision of 13 June 2002 setting up a European network of contact points in respect of persons

to ensure perpetrators do not attain impunity within the Member States.³²

According to article 4 par. 1(j) of the amended Eurojust Regulation, Eurojust shall ‘support Member States’ action in combating genocide, crimes against humanity, war crimes and related criminal offences, including by preserving, analysing and storing evidence related to those crimes and related criminal offences and enabling the exchange of such evidence with, or otherwise making it directly available to, competent national authorities and international judicial authorities, in particular the International Criminal Court.’³³ This amendment to the Eurojust regulation was prompted by the military aggression by Russia in Ukraine and the need to cooperate with the ICC in that context. While the provision is mostly focused on evidence, it is not limited to that (‘including by...’).

In carrying out its tasks, Eurojust may ask the competent authorities of the Member States concerned, giving its reasons, to (amongst other things) undertake an investigation or prosecution of specific acts or to take any other measure justified for the investigation or prosecution of crimes within its competence (article 4 par. 2(a) and (g) Eurojust Regulation), to which the authorities shall respond with undue delay.³⁴ In order to fulfil its tasks of supporting Member States in preventing impunity for genocide, crimes against humanity and war crimes, it is vital that Eurojust also takes up a role in putting pressure on uncooperative Member States – while giving support to other, more cooperative Member States – in case a suspect sought after by the ICC is present on EU territory.

5. Obligations of EU Member States withdrawing from the ICC Statute

Finally, it should be stressed that even if an EU Member State were effectively to withdraw from the ICC Statute, it would still be bound by certain obligations to cooperate with the ICC.³⁵ Under article 87(5) of the Rome Statute, states that are not parties to it may still be asked to cooperate with the ICC based on an ‘ad hoc arrangement, an agreement with such State or any other appropriate basis’; in case they fail ‘to cooperate with requests pursuant to any such arrangement or agreement, the Court may so inform the Assembly of States Parties or, where the Security Council referred the matter to the Court, the Security Council.’ Arguably, the agreement between the EU and the ICC, although it does not bind Member States directly, can be regarded as such.

There is yet another basis upon which non-States Parties can be bound to cooperate with the ICC, namely – when it comes to war crimes – as signatories to the Geneva Conventions. In this context, states have an *aut dedere aut judicare* obligation to bring to justice or hand persons over for trial persons alleged to have committed grave breaches of those Conventions.³⁶ Even though these obligations are concerned with trials within states themselves, it has been argued that they can be interpreted as to encompass a duty to cooperate with the ICC.³⁷

responsible for genocide, crimes against humanity and war crimes, 2002/494/JHA.

³² <https://www.eurojust.europa.eu/judicial-cooperation/practitioner-networks/genocide-network>

³³ 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.

³⁴ Regulation (EU) 2018/1727.

³⁵ See C.Y.M. Paulussen, *Male captus bene detentus? Surrendering suspects to the International Criminal Court* (PhD Tilburg University), 2010, Intersentia, p. 691 etc.

³⁶ Art. 49 Geneva Convention I, art. 50 GC II, art. 129 GC III and art. 146 GC IV. See Paulussen 2010 (supra note 28), p. 693.

³⁷ Paulussen 2010 (supra note 28), p. 693-694. Similar arguments can be made as regards the crimes of genocide and apartheid under the Genocide Convention and Apartheid Convention.

6. Recommendations

Based on the above, the Meijers Committee considers that:

- The above analysis provides compelling arguments for the European Commission to take action whenever a person against whom an ICC arrest warrant has been issued, is present on the territory of an EU Member State and that State refuses to arrest that person or (where required) surrender the person to the ICC. Such refusal contravenes the EU's values in article 2 TEU and should be given significant weight in the consideration of an article 7 TEU procedure.
- The instruments above show that there is a need for the European Commission, Parliament and Council to take a clear stance against Member States considering to withdraw from the Rome Statute, which presents a serious breach of the EU's values in article 2 TEU. This may ultimately necessitate triggering an article 7 TEU procedure.
- There is a need to amend the EAW Framework Decision to enable the application of the European Arrest Warrant by Member States to the effect of (further) surrender of persons to the ICC, in case the ICC has issued an arrest warrant. This includes repealing the prohibition on subsequent surrender without consent of the executing authority (article 28(4) EAW Framework Decision) for such cases. The Framework Decision should also be amended to make sure that article 27(2) of the Rome Statute shall prevail over any rules on immunity regarding official capacity (article 20 FD) if there is an ICC arrest warrant. The Meijers Committee recommends that the European Commission take the initiative for such amendments.
- Moreover, it would be advisable to draft guidelines with regard to the use of the European Investigation Order in relation to core international crimes, in particular when persons suspected of such crimes are present on the territory of a Member State. Such guidelines could also explicate the role of Eurojust, which has an important task in supporting Member States to preserve, analyse and store evidence for core international crimes and enable its exchange.
- The Meijers Committee urges the authorities of Member States, as much as possible, to use mutual recognition instruments such as the EAW to strengthen domestic prosecution of core international crimes. Where possible and appropriate, as coordinated with the ICC, Member States should themselves pursue investigations and issue European Arrest Warrants with an eye to domestic prosecution.
 - To this end, the Meijers Committee recommends the European Commission to take the initiative for adopting rules which would oblige Member States to apply universal jurisdiction and the *aut dedere aut judicare* principle to core international crimes.

- Moreover, the Meijers Committee recommends repealing the (optional) refusal ground in article 4(7)(b) with regard to core international crimes.
- The Meijers Committee recommends Member States' authorities to seriously consider issuing European Investigation Orders when this can help obtain evidence regarding core international crimes.
- It is advisable that Eurojust use its competences to put pressure on uncooperative Member States, while giving support to cooperative Member States, in case a suspect sought after by the ICC is present on EU territory.