

How Hungary's Withdrawal from the International Criminal Court Affects the Credibility of the European Union

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Hungarian Prime Minister Viktor Orbán launched another attack on the rules-based world order. He invited Israeli Prime Minister Benjamin Netanyahu, who is under an arrest warrant of the International Criminal Court (ICC) for allegations of war crimes and crimes against humanity, for a state visit to Budapest. On this occasion, Orbán announced Hungary's withdrawal from the ICC, which he defined as "a politically biased" institution. With this move, Hungary undermines the EU's long-standing and consolidated support for the ICC.

The European Union and the International Criminal Court

The Rome Statute of the ICC entered into force on 1 July 2002. The EU is not a contracting party since the Statute is only open to sovereign States (Art. 125). From the outset, the EU actively promoted the further development of the ICC as a pillar of the international legal order. This resulted in the conclusion of a cooperation and assistance agreement between the EU and the ICC in 2006 and the adoption of a CFSP Decision committing the EU and its Member States to support the ICC's effective and efficient functioning. On the occasion of the 25th anniversary of the adoption of the Rome Statute, the EU Council reiterated "its unwavering support to the ICC for its central role in bringing justice to victims in all situations under its jurisdiction."

The EU's commitment to achieve universality and full implementation of the Rome Statute is a central tenet of its external action. In practical terms, this resulted in countless diplomatic demarches and statements in support of the ICC as well as the systematic inclusion of ICC clauses in agreements with third countries. For instance, Article 6 of the EU-Moldova Association Agreement provides that "the Parties agree to support the ICC by implementing the Rome Statute and its related instruments." Moreover, full cooperation with the ICC is part of the EU's pre-accession conditionality: "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." Compliance with this condition is included in the EU accession negotiations, more precisely in negotiating cluster 6 on 'external relations'. For instance, the EU's Common Position on negotiations with Albania explicitly provides that this country's bilateral immunity agreement with the United States is in contradiction with Council Decision 2011/168/CFSP and must be adapted at the latest by the date of its accession to the EU.

Double standards

Hungary's withdrawal from the ICC undermines the credibility of the EU's external action and leads to the exposure of double standards. How can third countries be expected to support the ICC, when an EU Member State fails to do so? There is also a certain hypocrisy in the EU's reactions. After Russian President Putin visited Mongolia in September 2024, there was an immediate reaction condemning Mongolia's disrespect for its obligations under the Rome Statute. When South Africa intended to invite Putin to a BRICS summit in 2023, the EU successfully exerted diplomatic pressure. After Netanyahu's recent visit to Budapest it has been remarkably silent in Brussels. There has been no official reaction on behalf of the EU institutions. Some Member State representatives communicated that they 'deeply regret' Hungary's withdrawal from the ICC and expressed their concern, whereas Belgian Prime Minister Bart De Wever described Orbán's decision not to arrest Netanyahu as a matter of *realpolitik*. In the past, other Member States such as France and Germany also cast doubts over the execution of the ICC arrest warrant.

The moderate reactions following Netanyahu's visit to Budapest and Hungary's withdrawal from the ICC are a sign of our times where politics trumps respect for international law. This is fundamentally problematic in view of the EU's constitutional

objective to ensure the strict observance and development of international law, as laid down in Articles 3 (5) and 21 TEU.

Legal and political remedies

Confronted with Hungary's disrespect for the EU's ambition to support the work of the ICC, the question returns whether there are any remedies available to address this situation. After all, the EU's position on the ICC is part of its Common Foreign and Security Policy (CFSP) and it is well-known that this is a peculiar field of EU law, with special rules and procedures including a more limited jurisdiction for the Court of Justice (Art. 24 TEU). Does that mean that any legal action is, by definition, excluded and that Hungary can simply ignore its commitments under the CFSP? Not necessarily.

As argued by Christophe Hillion, a Member States' systemic failure to comply with its CFSP obligations may well be regarded as a violation of the general principle of sincere cooperation, enshrined in Article 4 (3) TEU, in the sense that it undermines the attainment of the EU's external action objectives as defined in Article 21 TEU. Moreover, as explained by Niels Kirst, Hungary's intention to withdraw from the ICC cannot be disconnected from the broader commitment to respect the EU's values as defined in Article 2 TEU. It can be derived from the first recital of CFSP Decision 2011/168 that the EU's position in support of the ICC is an expression of its own values in the external field. Hence, a unilateral withdrawal from the Rome Statute signals a retreat from those values.

As can be derived from the Court's case law, compliance with the EU's common values "cannot be reduced to an obligation which a candidate State must meet in order to accede to the European Union and which it may disregard after its accession." (Case C-156/21, para. 126). Taking into account that the ratification of the Rome Statute is a condition for EU membership, as an expression of a commitment to a rules-based international legal order, Hungary's decision to withdraw from the ICC cannot be taken lightly. At the very least, it can be added to the already long list of concerns that triggered the Article 7(1) TEU procedure against Hungary.

In any event, simply ignoring this new frontal attack on one of the pillars of the EU's commitment to a rules-based international legal order is not an option. The discrepancy between Hungary's actions and its obligations under the EU *acquis* is becoming untenable. This is not a new or exceptional situation but a long-standing trend (see also here). With its unilateral actions, Viktor Orbán undermines the foundations of the EU's Common Foreign and Security Policy and, more broadly, the credibility of the European Union on the international stage.

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