INTERNATIONAL CRIMINAL COURT – EUROPEAN UNION COOPERATION AND ALBANIAN INTEGRATION

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Herman von Hebel
Registrar of the International Criminal Court

One hundred and twenty-two States are now parties to the Rome Statute of the International Criminal Court (ICC), and 72 States have ratified the Agreement on the Privileges and Immunities of the International Criminal Court. The ICC is an independent, judicial institution, relying on States for enforcement and cooperation. The serious crimes under the ICC’s jurisdiction threaten the peace, security and well-being of the world as highlighted in the Rome Statute’s preamble. As is the case with the different regional groups within the ICC system, European Union (EU) member states are committed to cooperate for the prevention of crimes under the jurisdiction of the ICC and to put an end to the impunity of the perpetrators.

The EU and its member States are important supporters - political, financial and technical - and promoters of the ICC. The Court and the European Union share values of fundamental importance to humankind, to achieve an order of peace and justice. As such, the EU firmly committed to safeguard the integrity of the Rome Statute by Member States which aim to join the EU. In this respect, the EU has adopted a set of “Guiding Principles” (Council Conclusions of 30/09/2002) which set the minimum benchmarks to be respected by ICC State Parties if entering into bilateral non-surrender agreements.

The Court welcomes the commitment of countries to strengthen the international fight against impunity through the Rome Statute system. The Court similarly welcomes the support and commitment of Albania as a member state of the Rome Statute in this respect. The active support of the EU and the countries aspiring the EU integration is important in ensuring the compliance with the ICC. I would like to use this opportunity to express the ICC’s deep gratitude for the EU’s steadfast support of the Court in the context of global efforts to strengthen the rule of law and to promote peace, security and human rights everywhere. I note in this regard that Albania’s Cooperation and reforms in the area of justice, freedom and security, notably in combating crime and reforming the judiciary system are of particular importance for Albania and a core priority for its European agenda to fight impunity and punish the perpetrators.

The ICC can properly deliver its mandate effectively only if States cooperate in accordance with the obligations they have accepted under the Rome Statute. Ultimately, the ICC’s success in deterring impunity relies heavily on the support of its States Parties.

It is with the support of States as well as regional and international organizations, that the ICC’s role in the global efforts for peace, security and the prevention of mass atrocities can be further enhanced.

Herman von Hebel
Registrar
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<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>ASP</td>
<td>Assembly of States Parties</td>
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<tr>
<td>BIA</td>
<td>Bilateral Immunity Agreement</td>
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<tr>
<td>CFSP</td>
<td>Common Foreign and Security Policy</td>
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<td>EU</td>
<td>European Union</td>
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<td>Europol</td>
<td>European Union’s law enforcement agency</td>
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<tr>
<td>Frontex</td>
<td>European Agency for the Management of Operational Cooperation at the External Borders</td>
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<td>GAERC</td>
<td>General Affairs and External Relations Council</td>
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<td>ICC</td>
<td>International Criminal Court</td>
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<td>ICTY</td>
<td>International Criminal Tribunal for the former Yugoslavia</td>
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<td>OTP</td>
<td>Office of the Prosecutor</td>
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<td>SAP</td>
<td>Stabilisation and Association Process</td>
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<tr>
<td>SECI</td>
<td>Regional Centre for Combating Trans-border Crime</td>
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<tr>
<td>SSA</td>
<td>The Stabilisation and Association Agreement</td>
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<tr>
<td>TEU</td>
<td>Treaty of the European Union</td>
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<td>UN</td>
<td>United Nations</td>
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<td>USA / US</td>
<td>United States of America</td>
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Executive Summary

In spite of the abundant information regarding Albania’s struggle from transition towards the integration into European Union (EU), envisioning common international justice affairs still remains insufficient and it seems that a close approach to the International Criminal Court (ICC) and the Rome Statute has been largely ignored by the successive democratic governments of Albania. Albania’s relationship with the EU is often described as a patchy and gradual process of integration given its weak representation in international justice as it does not meet the EU requirements for political integration (conditionality) especially regarding the cooperation with international tribunals.

This document gives a picture of Albanian Europeanization by touching the issues of the limitation of an active cooperation between Albania and the ICC despite the fact that EU is the ICC’s main promoter. It also presents the prevalence of legal and political problems in the international justice context, as well as examples of countries such as Croatia and Serbia which succeeded in their path towards EU through their full cooperation with another international tribunal i.e. the International Criminal Tribunal for former Yugoslavia (ICTY).

Based on the analysis of official documents of both the ICC and Albania, and a range of interviews with representatives of the Court as well as personal observations in meetings and official events in ICC, this study explores whether the way Albania cooperates with the ICC meets the requirements and conditions for its integration in EU. The study shows that despite the positive progress Albania has made toward EU integration, the ICC should go mainstreamed in the EU – Albania relations.

The objective of this research is to draw conclusions and develop a set of recommendations on the steps Albania has to do in relation to a close cooperation and assistance in support of the ICC as a prospective EU Member State. In addition, Albania has to ratify two important amendments in order to comply fully with the Rome Statute: the Amendment to Article 8 of the Rome Statute; and, the Amendments on the crime of aggression of the Rome Statute.
INTRODUCTION

Albania's membership in the European Union (EU) is subject to the fulfilment of the Copenhagen criteria as a precondition for obtaining candidate status and then the initiation of accession negotiations. On December 2006, the European Council renewed the EU's commitment "that the future of the Western Balkans lies in the European Union" and reiterated that "each country's progress towards the European Union depends on its individual efforts to comply with the Copenhagen criteria and the conditionality of the Stabilisation and Association Process."

Any country, which aims the membership in the EU, should conform to the conditions set out by Article 49 and the principles provided in Article 6(1) of the Treaty on European Union (TEU). In order to join the EU, Albania must meet three relevant criteria established by the Copenhagen European Council in 1993 and strengthened by the Madrid European Council in 1995 such as the political, economic, and acceptance of the Community acquis.

Albania seems to fully support efforts of the European Union to strengthen its role as a cohesive force in international relations and its ability to promote European interests on the national and international scenes for serious issues related to common foreign, security policy and justice, in the fulfilment of political criteria as a condition for European Integration.\(^1\)

In terms of international justice, a key role in fighting impunity is played by the International Criminal Court. In this regard, Albania signed the Rome Statute on 18 July 1998 and deposited its instrument of ratification on 31 January 2003. Albania has aligned with the Council Decision of EU advancing universal support for the ICC and promoting the widest possible participation in it.\(^2\) On January 2013, Albania celebrated its 10\(^\text{th}\) anniversary of ratification of the Rome Statute.\(^3\) This anniversary represented an occasion to reflect on the world’s first permanent institution designed to hold individuals accountable for violations of serious international crimes: inter alia, genocide, war crimes, crimes against humanity and aggression. However, a controversial event occurred on May 2, 2003: Albania ratified a bilateral immunity agreement

\(^1\) R. Beqiri, *Enforcement of Human Rights as a Guarantee of Rule of Law and European Integration*, South-East European Countries towards European Integration, 1st International Conference, October 2012, pp. 762-769


with the United States of America (USA) in violation of Article 98 of the Rome Statute. The purpose of the Agreement was that officials, employees, military personnel or other national of USA present in the territory of the Republic of Albania should not be surrendered or transferred by any means for any purpose to the ICC, to any other entity or third country, for the purpose of surrender to or transfer to the ICC.

The Agreement does not comply with the relevant EU Common Position and Guiding Principles. This caused debates about the legitimacy of Albania’s position towards the ICC and about the European Commission’s Progress Reports of 2008-2013 as well as the conditionality that once the Rome Statute is ratified it should be obligatory to all the Member States. An immunity agreement is not in line with the principle of complementarity of the Rome Statute and the support of the EU to the ICC in fighting impunity. Hence, the Commission’s Opinion on Albania’s application for membership of the European Union in 2010 noted that "Albania needs to align with the EU position"\(^4\) and it will have to change the legislation before its accession.

EU is a crucial supporter in the political, financial and technical spheres and a promoter of the ICC and other international criminal tribunals. The principles of the ICC founding document, the Rome Statute, are fully in line with the principles and objectives of the EU. Regarding the external policies, the EU preservation of peace and the strengthening of international security are of fundamental importance and a priority for the EU. The serious crimes under the jurisdiction of the ICC are of concern to the EU which is committed to cooperate for the prevention of such crimes and to put an end to the impunity of the perpetrators. The EU is firmly committed to safeguard the integrity of the Rome Statute by all the Member States of those which aim to join EU in the future. In this respect, the EU has adopted a set of “Guiding Principles” in the Council Conclusions of September 30, 2002 which set the minimum benchmarks to be respected by ICC States Parties if they enter into bilateral non-surrender agreements.

For other Western Balkan countries, full cooperation with another important ad hoc tribunal such as the International Criminal Tribunal for former Yugoslavia (ICTY) remains a condition on their way towards the EU; an illustration of this is the respective cases of Croatia which obtained the EU status on July 1, 2013, and Serbia which was granted EU candidate status in March 2012 after their credible measures to reinvigorate cooperation with ICTY in The Hague.

\(^4\) Commission Opinion on Albania’s application for membership of the European Union, 9 November 2010.
However, it seems that the European integration of Albania should pass several obstacles before the accession in order to fulfil all obligations, to take responsibilities and seriously cooperate with EU Member States and the international community in fighting against the impunity of the perpetrators by investigating, extraditing, surrendering or transferring them to the ICC.

i. **PURPOSE OF THE RESEARCH**

The research on the “International Criminal Court, European Union Cooperation and Albanian Integration” is organised under three core pillars:

i. *International Criminal Court*: Principles; universality and integrity of the Rome Statute; structure; functions; principle of complementarity;

ii. *European Union*: Values and principles; cooperation and assistance agreement with the ICC; political, technical and financial support to the ICC;

iii. *Albania*: Enhancing EU perspective; history of ratification of the Rome Statute, re-evaluating the agreement with the United States.

The question of the study is whether the way Albania cooperates with the ICC meets the requirements and conditions for its integration in EU. In order to reply to this research question, the study analyses three key trends from three perspectives: *first*, the relation between EU and the ICC, *second* the cooperation of Albania with ICC and *third* the European Integration process with EU through the cooperation with the ICC.

The full cooperation and contribution of Albania *inter alia* its political, technical and financial assistance to the Court’s work will be an important step towards combating impunity for war crimes, crimes against humanity and genocide. At the same time, it will contribute to reinforce bilateral relations within the future EU - Republic of Albania framework.

This research is the first made in Albania with respect to EU integration via the cooperation of the Republic of Albania with the ICC as an international permanent tribunal, which has the full support of the EU.
ii. METHODOLOGY

The research relies on a combination of desk and field research directly from the ICC in order to assure a comprehensive and evidence based analysis of the relations between Albania and the ICC. As a result, primary and secondary sources such as official international and domestic documents set by the respective institutions of the Albanian Government, the European Union institutions and ICC bodies are necessary to understand and explore the legal and institutional framework, which these relations are based on. On the other hand, field research from the ICC brings unique insight through personal observation of the court activities and interviews that have been conducted with, the President of ICC, Judge Sang-Hyun Song, six (6) staff members of the ICC who gave an overview of the environment of the Court and aspects of their daily work, international justice and challenges they face; and a statement of the Registrar Mr Herman von Hebel on Albania’s cooperation.

The research also includes examples of States willing to integrate into EU and their level of cooperation with international tribunals such as the ICTY. That allows an understanding of the dynamic of the cooperation between the EU and ICC on in criminal matters thus promoting effectiveness of ICC, primarily to national judicial systems. It also allows the identification of the proper implementation of the Rome Statute in the Albanian legislation and elimination of obstacles towards EU accession.
CHAPTER I

THE OBLIGATION AND NEED TO COOPERATE WITH THE ICC AND COMPLEMENTARITY

1.1 International Criminal Court’s Principles, Structure and Situations

1.1.1 Rome Statute of the International Criminal Court

The idea of a permanent international criminal court has been discussed for decades since the Second World War. The efforts to establish an international criminal court before the United Nations (UN) involved the idea of the creation of a permanent tribunal with jurisdiction in all matters connected to international crimes or only over genocide.5 The Security Council of the UN played a crucial role in the establishment of the ICC6 and later referred cases to the Court, acting under Charter VII.7 As a general rule, only the parties to a treaty are bound by its obligations according to the principle pacta tertii nec nocent nec prosunt8 and as such these obligations are binding only for the States Parties to the Rome Statute. The latter entered into force on 1 July 2002, in accordance with its article 126.9 The current status is that there are 139 signatories and 122 States Parties.

The International Criminal Court is an independent, permanent international court, established as a court of last resort to help end of impunity for the perpetrators accused of the most serious crimes of international concern, namely genocide, crimes against humanity, war crimes and aggression.10 The ICC’s expenses are financed primarily by the States Parties with voluntary

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6 Rome Statute, Article 13(b).
7 UN Charter, Article 13(b).
8 Vienna Convention on the Law of Treaties 1969 (1155 UNTS 331), Article 2(1)(a). According to this article, a treaty is an international agreement concluded between States in written form and governed by international law that is binding on states that are parties to it. A party to a treaty consents to be bound by the treaty upon ratification. (Article 2(1)(g))
9 The Statute was adopted on 17 July 1998 by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court. In accordance with its article 125, the Statute was opened for signature by all States in Rome at the Headquarters of the Food and Agriculture Organization of the United Nations on 17 July 1998. Thereafter, it was opened for signature in Rome at the Ministry of Foreign Affairs of Italy until 17 October 1998. After that date, the Statute was opened for signature in New York, at United Nations Headquarters, where it will be until 31 December 2000.
10 In the Review Conference of Rome Statute held in Kampala, Uganda between 31 May and 11 June 2010, it established that the ICC will exercise its jurisdiction over the crime of aggression after 1 January 2017.
contributions from their governments, and by international organisations, individuals, corporations and other entities. The initiation of this “judiciary machinery” will not be activated if a case is investigated or prosecuted by a national judicial system, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution against a person criminally responsible. In addition, the ICC only tries the criminals allegedly responsible for the heinous crimes.

In his address to the 6th Assembly of States Parties to the Rome Statute of the International Criminal Court, the UN Secretary General Mr Ban Ki-moon emphasized that “there can be no sustainable peace without justice. Peace and justice, accountability and reconciliation are not mutually exclusive. To the contrary, they go hand in hand. It is up to all of us to advance the cause of justice and peace everywhere.”11 In the workshop on the ratification and implementation of the Kampala Amendments to the Rome Statute held in April 2013, he stated that he was firmly committed to the goal of achieving universal ratification of the Rome Statute and its amendments, and will continue to use every opportunity to encourage Member States that have not yet done so to ratify or accede to the Rome Statute.12

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11 UN Secretary-General Ban Ki-moon’s remarks to the Sixth Assembly of States Parties to the Rome Statute of the International Criminal Court (general debate), UN Headquarters, 03 December 2007.
12 UN Secretary-General Ban Ki-moon’s message, delivered by Zachary Muburi-Muita, Head of the United Nations Office to the African Union, to the workshop on the ratification and implementation of the Kampala Amendments to the Rome Statute of the International Criminal Court, on 15 April 2013, Gaborone, Botswana.

World map on acceptance of ICC jurisdiction13
The ICC is complementary to the national systems and as a result states have the first opportunity to investigate and prosecute a suspect. In contrast to the other ad hoc tribunals such as the ICTY, it does not adhere to the complementary position of national judicial system with an international tribunal but rather emphasizes the primacy of national criminal jurisdiction.

A map of States Parties to the Rome Statute of the International Criminal Court in 2013

According to Article 50 of the Rome Statute, the official languages of the Court shall be Arabic, Chinese, English, French, Russian and Spanish, while the working languages of the Court shall be English and French.

So far, 21 cases in eight (8) situations have been brought before the ICC and most of the cases are from Africa which leads part of the international community to express inter alia the idea that the Court is functioning as an African Court.

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15 See the questionnaire in Annex 2, question 5. Anonymous 2 (AN_2) working in the Office of the Prosecutor responded that “Currently the court is facing the former prosecutor’s approach and strategy he was applying, which lead to the idea that the Court is functioning as an African court. The future challenge is change this image about the Court”.

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Pursuant to the Rome Statute, the Prosecutor can initiate an investigation on the basis of a referral from any State party or from the United Nations Security Council. In addition, the Prosecutor can initiate investigations *proprio motu*\(^\text{16}\) on the basis of information on crimes within the jurisdiction of the Court received from individuals or organisations (“communications”).

### 1.1.2 Structure of the Court

The International Criminal Court is an independent permanent institution which has an international legal personality.\(^\text{17}\) Even though the Court was established by the United Nations (UN), it is *not part* of it, but it maintains a cooperative relationship with the UN.\(^\text{18}\)

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\(^{16}\) Meaning: on the Prosecutor’s own initiative.

\(^{17}\) Rome Statute, Article 4(1).

\(^{18}\) Rome Statute, Article 13(b). See also *The Relationship Agreement between the International Criminal Court and the United Nations* entered into force on 4 October 2004 and which regulates the working relationship between these two organizations and to address crimes that threaten international peace and security pursuant to the Rome Statute and the Charter of UN. The Relationship Agreement therefore reflects a delicate balance between independence and cooperation, respecting the autonomy and confidentiality of both institutions. [http://www.icc-cpi.int/NR/rdonlyres/916FC6A2-7846-4177-A5EA-5AA9B6D1E96C/0/ICCASP3Res1_English.pdf](http://www.icc-cpi.int/NR/rdonlyres/916FC6A2-7846-4177-A5EA-5AA9B6D1E96C/0/ICCASP3Res1_English.pdf)

\(^{19}\) Gjykata eshte e vendosur ne Hage, ne zonen e Vendeve te Ula, atje ku po ndertohe selite e reja te perhershme te Gjykates, prane zones se njohur turistike Scheveningen ne periferite e qytetit. [http://www.icc-cpi.int/en_menus/icc/about%20the%20court/permanent%20premises/Pages/permanent%20premises.aspx](http://www.icc-cpi.int/en_menus/icc/about%20the%20court/permanent%20premises/Pages/permanent%20premises.aspx)
The Court is composed of four organs: the **Presidency, the Judicial Divisions, the Office of the Prosecutor and the Registry**.²⁰

- **Presidency**

  The Presidency is responsible for the administration of the ICC with the exception of the Office of the Prosecutor and has three main areas of responsibility: judicial/legal functions, administration and external relations. It aims to maintain relations with states and other entities and to promote public awareness and understanding of the Court. According to Article 38 of the Rome Statute, the Presidency is composed of three judges of the Court.²¹

- **Judicial Divisions**

  The Judicial Divisions consist of eighteen judges²² organized into Pre-Trial Division, Trial Division and Appeals Division. The judges of each Division sit in Chambers and they are responsible for conducting the proceedings of the Court at different stages. Assignment of judges to Divisions is made based on their expertise in criminal law procedure and international law.

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²⁰ See the Organogram of ICC 2014 in Annex 1 which reflects the current status of the Court and ASP referred to internal use.
²¹ The current Presidency of the Court is composed of Judge Sang-Hyun Song (Republic of Korea) as President, Judge Sanji Mmasenono Monageng (Botswana) as First Vice-President, and Judge Cuno Tarfusser (Italy) as Second Vice-President, who are elected by their fellow judges, for a term of three years.
²² Some of the judges of the Court are from Eastern European countries such as Anita Ušacka (Latvia), Ekaterina Trendafilova (Bulgaria), Robert Fremr (Czech Republic).
• **Office of the Prosecutor**

The Office of the Prosecutor (OTP) is headed by the Prosecutor, Ms Fatou Bensouda (The Gambia), who was elected by the States Parties for a term of nine years. The office is responsible for receiving referrals and any substantiated information on crimes within the jurisdiction of the Court, for examining them and for conducting investigations and prosecutions before the Court. The OTP is currently conducting preliminary examination in a number of situations including Afghanistan, Georgia, Guinea, Colombia, Palestine, Honduras, Korea and Nigeria.

• **Registry**

The Registry is a neutral organ which is responsible for the non-judicial aspects of the administration and servicing of the Court. The Registry is headed by the current Registrar Mr Herman von Hebel (The Netherlands), elected for a term of five years and who is the principal administrative officer of the Court. The Registrar exercises his or her functions under the authority of the President of the Court. The Registry provides judicial and administrative support to all the offices of the Court and has specific responsibilities in the areas of defence, victims and witnesses, outreach, and detention centre.

• **Other Offices**

The Court also includes other semi-autonomous offices such as the Office of Public Counsel for Victims and the Office of Public Counsel for Defence which are under the responsibility of the Registry for administrative purposes but independent with respect to their proper function. The Assembly of States Parties has also established a Trust Fund for the benefit of victims of crimes within the jurisdiction of the Court and the families of these victims.

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23 ICC website on the structure of the court.  
24 Ibid.
1.2 Principle of Universal Jurisdiction and Complementarity

1.2.1 Principle of Universal Jurisdiction

Considering the provisions in the Rome Statute and the ICC criminal jurisdiction over the most serious crimes of international concern as elicited above, all the States Parties are obliged to take measures for the prosecution or extradition of those responsible under the maxim aut dedere out judicare. This refers to the obligation of a state under the international law either to extradite someone who has committed a crime of international concern to another state, which is prepared to try him or to have him prosecuted before its own courts.

Pursuant to the Rome Statute Albania as a State Party is therefore obliged to submit to the obligation to prosecute or extradite (transfer) every person suspected to have committed international serious crimes. In the meantime, the universal jurisdiction binds all the states to cooperate or initiate the proceedings to prosecute, surrender, and extradite the suspects of serious crimes to the ICC despite where and against whom the crimes were committed.

However, the Court does not have a universal jurisdiction. It has a limited jurisdiction and exercises it:

1. if the accused is a national of a State Party to the Rome Statute;
2. if the alleged crime took place on the territory of a State Party;
3. if a situation is referred to the Court by the United Nations Security Council; and, or
4. if a State not party to the Statute “accepts” the Court's jurisdiction.

Even though the ICC has a complementary power to the existing national judicial systems, it may only exercise its jurisdiction when national courts are unwilling or unable to investigate or prosecute such crimes. Therefore, the primary responsibility to investigate and prosecute the Rome Statute crimes occurring within their jurisdiction is upon the States.

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27 Simbeye, Yitiha, Immunity and international criminal law, 2004, p. 45-51,
Territorial jurisdiction. Considering its limited power to exercise fully the universal jurisdiction, the Court is allowed to exercise its jurisdiction only in the following cases, where:

- the accused who committed a crime is a national of a State Party or have accepted the jurisdiction of the ICC; (Article 12(2)(b));
- the alleged crime was committed on the territory of a State Party; or
- a situation is referred to the Court by the UN Security Council (Article 14).

Crimes within the jurisdiction of ICC. As mentioned before, according to Article 5 of the Rome Statute, the ICC has jurisdiction over four groups of crimes committed by nationals of a State Party or on the territory of a State Party on or after 1 July 2002, the date of entry into force of the Rome Statute. These crimes are referred to as the "most serious crimes of concern to the international community as a whole": the crime of genocide, crimes against humanity, war crimes, and the crime of aggression.\(^29\)

Temporal jurisdiction. According to the jurisdiction ratione temporis, the ICC can only prosecute crimes committed on or after 1 July 2002, the date on which the Rome Statute entered into force.\(^30\) When a State becomes a Party to the Statute after its entry into force, the Court exercises its jurisdiction only with respect to crimes committed after the entry into force of the Statute for that State, unless that State has made a declaration under article 12, paragraph 3.\(^31\)

1.2.2 The Obligation to Cooperate

The ICC is based on the principle of complementarity which binds all State Parties of the ICC with the obligation to cooperate and assist the Court in all requests for assistance. Under the general obligation to cooperate, Article 86 provides that the States Parties shall, in accordance with the provisions of the Rome Statute, cooperate fully with the Court in its investigation and

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\(^29\) In June 2010, at the ICC's first review conference in Kampala, Uganda, it adopted amendments defining "crimes of aggression" and expanding the ICC's jurisdiction over them. The ICC will not be allowed to prosecute for this crime until at least 2017. Furthermore, it expanded the term of war crimes referred to in Article 8, for the use of certain weapons in an armed conflict not of an international character.

\(^30\) Rome Statute, Article 11

\(^31\) Article 12(3) reads: If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question. The accepting State shall cooperate with the Court without any delay or exception in accordance with Part 9.
prosecution of crimes within the jurisdiction of the Court. Moreover, the States are obliged to cooperate fully with the execution of arrest warrants and surrender requests, as well as provide other forms of cooperation set out in article 93 of the Rome Statute. This was reiterated at the ASP 12th session, on 27 November 2013 as a major challenge for the Court considering the lack of cooperation from some States in the implementation of judicial orders, irrespective of them being parties to the Rome Statute or not; the lack of ideological and financial support from some States as well as the absence of support by others to safeguard its reputation and credibility. Indeed, the political support to the Court is crucial so that it obtains the necessary cooperation from States Parties, even though this remains a major challenge for the Court in preserving “its judicial independence as it will continue to involve on a complex internal political scene.” The Court’s independence is not just a consideration of political nature; it seems to also be both structural and financial: a better understanding by Member States of the functioning of the ICC as an independent court as well as the need for streamlining judicial proceedings in order to avoid lengthy trials entail structural internal reforms and considerable financial support from Member States.35

One of the main topics of the ASP session was also the Agreement on Privileges and Immunities. The Assembly emphasized the importance of respect for the privileges and immunities of the Court’s staff and officials in accordance with article 48 of the Rome Statute, called upon States Parties to ratify the Agreement on Privileges and Immunities, and also called upon States Parties and other States, where possible, to consider entering into agreements or arrangements with the Court concerning, inter alia, protective measures for witnesses and so forth. Those difficulties confirm that the universality of the Rome Statute beyond the numerical ratification is not yet a reality. In this regards, a staff member of the Court is of the view that “as long as the international society remains a community of individual sovereign States, the non-cooperation of

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32 The Assembly of the States Parties adopted, by consensus, resolution ICC-ASP/12/Res.3 on cooperation, addressing the importance of timely and effective cooperation and assistance from States Parties and other States under an obligation or encouraged to cooperate with the Court, in particular when it concerns the arrest and surrender of individuals subject to arrest warrants, to arrest strategies, the feasibility of establishing a coordinating mechanism of national authorities dealing with cooperation with the Court, the protection of witnesses by strengthening States’ support to the Court and so forth.

33 See Annex 2, question 5, response of Ms Marie-Alvine Tchekanda (MAT) working in the Registry.

34 Ibid, the response of Ms Anne-Aurore Bertrand (AAB) working in the Registry.


36 Ibid, response of (AAB). She stated that: “The Court is facing an important challenge in protecting its witnesses at the moment. The signature of relocation agreements falls within the realm of voluntary cooperation and we need that States make this extra step to support the Court”.

37 Ibid, Resolution ICC-ASP/12/Res. Adopted at the 12th plenary meeting, on 27 November 2013, by consensus.
States will hamper the efforts of the Court to ensure that justice is done and is seen to be done”.

1.2.3 Principle of Complementarity

The complementarity principle in the Rome Statute of the ICC is one of the cornerstones on which the international criminal justice is based. It regulates the theoretical and practical division of labour between the Court and domestic jurisdictions. While the United Nations ad hoc Tribunals have precedence or primacy over national jurisdictions, the ICC will only exercise jurisdiction when a state is inactive or “unwilling or unable genuinely to carry out the investigation or prosecution” of alleged perpetrators of core international crimes such as war crimes, crimes against humanity and genocide. The ICC is complementary to its domestic counterparts, creating a relationship of vertical influence and guidance with respect to national criminal law systems.

Article 17 of the Rome Statute dictates that the ICC does not come into play unless a state is either “unwilling” or “unable” to genuinely prosecute and punish international crimes committed within its jurisdiction. Consequently, if a state tries to shield the person(s) responsible for mass atrocities by undertaking sham prosecutions designed to acquit, the ICC may step in and take over the proceedings. Article 20(3) contains a similar ground for admissibility when national proceedings have already been concluded.
Article 20, paragraph 3, specifies that, if a person has already been tried by another court, the ICC cannot try them again for the same conduct unless the proceedings in the other court were not genuinely carried out.\textsuperscript{43}

The logic conclusion is that the complementarity principle requires from all States to show good faith in delivering themselves justice to avoid impunity and ensuring accountability at national level.\textsuperscript{44}

\textbf{1.2.4 States Parties, the Assembly of States Parties and Multiculturalism}

As of May 2013, 122 States are parties to the Statute of the Court, including all of South America, nearly all of Europe, most of Oceania and roughly half of the countries in Africa. A further 31 countries, including Russia, have signed but not ratified the Rome Statute. While three of these states: Israel, Sudan and the United States of America, have informed the UN Secretary General that they no longer intend to become states parties and, as such, have no legal obligations arising from their former representatives' signature of the Statute. The UN member states such as China or India, have neither signed nor ratified or acceded to the Rome Statute.

The Assembly of States Parties (ASP) consists of one representative from each state party.\textsuperscript{45} At its 12th meeting in The Hague, on November 27, 2013, the ASP addressed the importance of timely and effective cooperation and assistance from States Parties and other States under an obligation or encouraged to cooperate with the Court in criminal matters. It emphasized the importance of States Parties enhancing and mainstreaming diplomatic, political and other forms of the jurisdiction of the Court; or (b) Otherwise were not conducted independently or impartially in accordance with the norms of due process recognized by international law and were conducted in a manner which, in the circumstances, was inconsistent with an intent to bring the person concerned to justice.”

\textsuperscript{43}Article 20, Rome Statute.

\textsuperscript{44} See Annex 2, question 5, response of (DSA): “It must also explain that the fight for justice and the fight against impunity require from those countries alleging to be targeted to show good faith in delivering themselves justice and ensuring accountability at national level as covered by the complementarity principle”.

\textsuperscript{45} Each state party has one vote and "every effort" has to be made to reach decisions by consensus. If consensus cannot be reached, decisions are made by vote. The Assembly is presided over by a president and two vice-presidents, who are elected by the members to three-year terms. The Assembly meets in full session once a year in New York or The Hague, and may also hold special sessions where circumstances require. Sessions are open to observer states and non-governmental organizations. The Assembly elects the judges and prosecutors, decides the Court's budget, adopts important texts (such as the Rules of Procedure and Evidence), and provides management oversight to the other organs of the Court. Article 46 of the Rome Statute allows the Assembly to remove from office a judge or prosecutor who "is found to have committed serious misconduct or a serious breach of his or her duties" or "is unable to exercise the functions required by this Statute".
of support for, as well as promoting greater awareness and understanding of the activities of the Court at the international level, and encouraged States Parties to use their capacity as members of international and regional organizations to that end; to explore possibilities for facilitating further cooperation and communication between the Court and international and regional organizations.\textsuperscript{46}

However, one of the advantages and disadvantages of the ICC is multiculturalism. The recruitment of ICC staff requires to consider like many other organisations the skills and competences which demand that staff keep themselves professional,\textsuperscript{47} but it also implies a diversity of culture for a Court employing more than 800 staff who may have to defend “the reputation of the Court before those who tarnish its integrity”.\textsuperscript{48}

\textsuperscript{46} Ibid, Resolution ICC-ASP/12/Res. Adopted at the 12th plenary meeting, on 27 November 2013, by consensus.

\textsuperscript{47} See Annex 2, question 4, response of (AN_2).

\textsuperscript{48} Ibid, response of (MAT).
CHAPTER II

EUROPEAN UNION AND INTERNATIONAL CRIMINAL COURT

2.1 EU’s political, judicial, technical and financial support to ICC

The European Union (EU) is a crucial supporter in the political, judicial, financial, technical sphere and a promoter of the ICC and other international criminal tribunals. The support of the EU to the ICC might be considered as "one of the symbolic anchors of the EU’s external policies, fully in line with EU’s defining values." The determination of the EU to work for the prevention of crimes of international concern and the ending of impunity for perpetrators of such crimes is becoming more and more evident also in its relation with countries which aim to integrate the EU.

EU has consistently given strong support, politically, financially and technically to the ICC through the EU Common Position and an EU Action Plan on ICC. EU remains also one of the most important contributors to the ICC budget.

Since 2001, the EU took a Common Position in order to support the effective functioning of the Court and to advance universal support for the Court by promoting the widest possible participation in the Statute. The EU firmly committed to achieve the universality and to safeguard the integrity of the Rome Statute by all the Member States which aim to join EU in the future. In this respect, the EU has adopted a set of “Guiding Principles” in the Council Conclusions of 2002 that set the minimum benchmarks to be respected by ICC States Parties if entering into bilateral non-surrender agreements.

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With regards to the external policies, the preservation of *peace and the strengthening of international security* – in conformity with the Charter of the United Nations, as provided in Article 11 of the TEU – are of fundamental importance and a priority for EU.

The ICC Review Conference held in Kampala was a clear sign of the continuing commitment of the EU countries as an unwavering commitment of the EU confirming that all the parties to the ICC should fully respect their obligations deriving from International Law. In one of the statements of the President of the European Council, Mr Herman von Rumpuy, the relation of the EU and ICC is identified as very important in the fight against impunity: *"The European Union has always been a staunch supporter of the fight against impunity of those who have committed serious crimes. The most serious crimes of concern to the international community must not go unpunished and their prosecution must be ensured by the members of the international community."*

This highlights the EU commitment to advance universal support for the ICC by promoting the widest possible participation of the non-state parties in the Rome Statute.

### 2.2 EU cooperation agreement with the ICC

The EU was the first Regional Organisation to sign with the ICC an agreement on cooperation and assistance on 10 April 2006\(^5^\) which entered into force on 1 May. It places a general obligation of cooperation and assistance on the EU and the ICC, with particular emphasis on the exchange of classified information and documentation of mutual interest.\(^5^\) The EU and ICC cooperation agreement was signed in light of the fundamental importance and the priority that must be given to the consolidation of the rule of law and respect for human rights and humanitarian law, as well as the preservation of peace and the strengthening of international security, in conformity with the United Nations Charter and as provided for in Article 11 of the Treaty on European Union.

Considering the serious commitment of the EU and the ICC to the administration of justice in accordance with the rule of law and procedural fairness with particular reference to the rights of

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\(^5^\) The agreement does not apply to ICC requests for information from individual Member States, which are governed by bilateral arrangements, nor does it affect the competence of the European Community to achieve the objectives of the agreement through separate measures.
the accused as provided in the Rome Statute, the aspiring countries that wish EU Integration should ensure the same as all EU member states to follow such commitment.

According to the EU and ICC Cooperation Agreement, the obligation of cooperation and assistance has an important meaning. The EU and the Court have agreed 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, 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.\footnote{The EU has already assisted the ICC’s Office of the Prosecutor on several occasions such as in June 2004, the Office of the ICC Prosecutor expressed interest in receiving strategic information from the EU on issues of concern to its investigations and suggested the negotiation of a Cooperation Agreement. Article 3 of the EU-ICC cooperation agreement: The EU and the Prosecutor may agree that the EU provide the Prosecutor with documents or information on condition of confidentiality and solely for the purpose of generating new evidence and that such documents or information shall not be disclosed to other organs of the Court or third parties, at any stage of the proceedings or thereafter, without the consent of the EU. The rules on classified information of Article 9 shall apply.}

In addition, EU Member States which are parties to the Rome Statute cooperate judicially with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court. For example, the plane provided by France to the Court for the transfer of Thomas Lubanga from the Democratic Republic of Congo to The Hague. On November 2013, the Belgian authorities arrested Aimé Kilolo Musamba, the Dutch authorities arrested Jean-Jacques Mangenda Kabongo and Narcisse Arido was arrested by the French authorities, in response to requests for arrest and surrender from the ICC.\footnote{ICC-01/05-01/13-1-Red2-tENG}

\section*{2.3 EU Conditionality in the Western Balkans: Political Criteria and International Tribunals}

The EU accession conditionality for the Western Balkan countries established the political criteria defined as “\textit{[the] stability of institutions guaranteeing democracy, the rule of law, human rights and the protection of minorities}” by the Copenhagen European Council in 1993.\footnote{European Council in Copenhagen, Conclusions of the Presidency, Bull EU 6-1993, Pt. I.13.}
As a promoter of international justice, the EU has always been a close collaborator of international tribunals especially the International Criminal Tribunal for the Former Yugoslavia (ICTY). EU’s insistence towards the Western Balkans to cooperate with the ICTY springs from a conviction that the Tribunal is a key factor in rebuilding the rule of law following armed conflicts in the Western Balkans, ending impunity for international crimes and facilitating reconciliation across the region.\(^{58}\) The ICTY was established with the promise of promoting peace and to punish those individuals who were most responsible for the atrocities, thereby precluding notions of collective responsibility and guilt by association.\(^{59}\)

Considering some countries of the former Yugoslavia inherited a difficult legacy of mass atrocities and human rights abuse from the wars of the 1990s, the EU posed conditions with respect to Serbia and Montenegro, Bosnia and Herzegovina, and Croatia to deal with war crimes through the full cooperation with ICTY. This cooperation required the transfers of war crimes suspects to the Tribunal in The Hague. Meanwhile, the Stabilisation and Association Process (SAP) for South East Europe established by the Commission Communication of 26 May 1999,\(^{60}\) includes also a full cooperation with the ICTY in order to establish international justice by solving ethnic tensions and trying the war criminals, to promote reconciliation and cross-border cooperation in the region.

Overall, the support of the EU towards the ICC as a requirement to other countries aspiring to EU integration is of paramount importance. Supporting and cooperating with the ICC is serving "a noble cause that reveres the inherent right to life of each human being."\(^{61}\)

### 2.4 Successful Stories: EU Approach to Cooperation of Croatia and Serbia with ICTY

The EU maintained a principled and consistent approach towards Croatia and Serbia in relation to its cooperation with the ICTY.\(^{62}\) It is necessary to affirm that for the EU and its institutions,

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\(^{58}\) Rangelov, Iavor, *EU conditionality and Transitional Justice in the Former Yugoslavia*, p. 371. See also Report by the Commission on the SAP in South East Europe (n 6).

\(^{59}\) Ibid.


\(^{61}\) See Annex 2, question 13, response of (MAT).

impunity for war crimes and genocide are incompatible with the values of the Union, and that full cooperation with the ICTY was the key for both countries, Croatia and Serbia to have closer ties to the EU.\(^6\)

So far, Croatia has been the most successful example in the membership in EU through a serious commitment to the cooperation with the ICTY. Following the progressive development in its relations with the ICTY noted by the European Council, the conditionality to deliver General Ante Gotovina was a requirement to further the accession negotiations for Croatia. While reaffirming its commitment to Croatia’s accession to the EU, in October 2005 ICTY Chief Prosecutor Carla Del Ponte reported that Croatia was now cooperating fully with the Tribunal\(^6\) after General Gotovina was arrested in the Canary Islands and transferred to The Hague.

The SAA negotiations with Serbia were officially opened on 10 October 2005.\(^6\) There has been many tensions, hence in May 2006, the Commission supported by the General Affairs and External Relations Council (GAERC) decided to suspend the negotiations of the Stabilization and Association Agreement with Serbia in light of the successive governments’ continuous failure to cooperate with the ICTY: in particular Serbia’s failure to transfer under the custody of the ICTY wartime Bosnian Serb Commander Ratko Mladic. The Commission’s regular annual progress report on Serbia in November 2006 emphasized that full cooperation with the ICTY was a precondition for the resumption of SAA talks.

On 26 February 2007, the International Court of Justice (ICJ) ruled that Serbia’s failure to transfer Ratko Mladic to the ICTY amounted to a violation of its obligations under the Convention on Genocide. The Court also ordered Serbia to transfer to the ICTY individuals indicted for genocide and to cooperate fully with the Tribunal for Ratko Mladic and Bosnian Serb wartime President, Radovan Karadžić.

To transfer Mladic as a condition for resuming SAA negotiations demanded more from Serbia than was expected of Croatia, for whom the transfer to the ICTY of Croatian General Ante Gotovina was a precondition for EU candidate status rather than SAA talks. What the case of Gotovina actually demonstrated is the value of a clear, firm and consistent position on the part of

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\(^6\) Press Release, Council of the EU 12514/1/05 REV 1 (Presse 241) 4 October 2005.

\(^6\) Serbia Progress Report 2006, p.5

the EU as regards ICTY cooperation, since there is little doubt that without firm EU pressure Gotovina would have ever been brought to justice.66

In July 2006, the Serbian government adopted an Action Plan on cooperation with the ICTY. The implementation of the Action Plan suffered of a number of deficiencies, as regards the coordination between the civilian and military security services and the role and power of the prosecution. In the Progress Report 2006, it was stated that "Serbia has not yet met its obligation to fully co-operate with the ICTY, which is a key priority of the European Partnership."67

Considering the strong links between EU and Serbia to establish a relationship based on reciprocity and mutual interest which should allow Serbia to further strengthen and extend its relations with EU member states, in March 2012 Serbia was granted EU candidate status and in September 2013, the Stabilisation and Association Agreement (SAA)68 entered into force.

In relation to the general principles of the SAA, importance was given to the full cooperation with the ICTY as an essential element of the Agreement. In addition, Article 4 highlighted that "The contracting parties [EU] reaffirm the importance they attach to the implementation of international obligations, notably the full cooperation with ICTY." This indicates the importance and approach of EU integration through the cooperation of ICTY for the Western Balkans, highlighting the successful case of EU Integration of Croatia on June 1, 2013. Serbia continues to have a positive attitude towards the ICC and has consistently refused to sign bilateral agreements giving exemptions from ICC jurisdiction. It is important that Serbia continues to support fully the ICC and the integrity of its Statute in line with relevant EU decisions.69

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68 Stabilisation and Association Agreement (SAA) between the European Communities and their member states of the one part and the Republic of Serbia, of the other part.
CHAPTER III

THE TRIANGLE ICC, EU AND ALBANIA

3.1 Albania’s Position Toward the EU Integration

3.1.1 Stabilisation and Association Process and Copenhagen political criteria

The European Union core values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities are set out in the Treaty on European Union (TEU) are common to all Member States and they play an important role, especially in two specific cases:

i. Any European State which respects the values referred in Article 2 and is committed to promote them, is eligible for admission to become a member of the Union under the procedure for accession;

ii. Failure by a Member State to respect these values may lead to the suspension of that Member State’s rights deriving from the membership of the Union.

As a result, any country which aims the membership in the EU should conform to the conditions set out by Article 49 and the principles provided in Article 6(1) of the TEU. Relevant criteria were established by the Copenhagen European Council in 1993 and strengthened by the Madrid European Council in 1995.

The governments of Albania throughout these years of democratisation fully supported the efforts of the European Union to strengthen its role as a cohesive force in international relations.

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70 See key dates of the Albania toward EU in Annex 1.
71 Art 50, TEU. Official Journal of the European Union C 83/43, 30.03.2010
72 In order to join the EU, Albania must meet three criteria as following:
   1. political: stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities;
   2. economic: existence of a functioning market economy and the capacity to cope with competitive pressure and market forces within the Union;
   3. acceptance of the Community acquis: ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union.
and its ability to promote European interests on the national and international scenes. The country seems to be seriously committed in its readiness/ability to participate fully in the Common Foreign and Security Policy (CFSP) and the common security and defence policy as a state that enhances EU perspective. The European Commission Opinion delivered since 2010 identifies justice, foreign, security and defence policies as serious issues in the fulfilment of political criteria as a condition for European Integration. However, it seems that the European integration of Albania should pass several obstacles before the accession in order to fulfil all the obligations and take responsibilities to seriously cooperate with EU member states and the international community in fighting against the impunity of the perpetrators by investigating, extraditing, surrendering or transferring them to the ICC.

The Stabilisation and Association Agreement (SAA) between Albania and the EU entered into force in April 2009. Albania presented its application for membership of the European Union on 28 April 2009. In December 2010, the Council noted that the opening of accession negotiations would be considered once the Commission has assessed that the country has achieved the necessary degree of compliance with the membership criteria and, in particular, has met the key priorities set out in the Commission’s Opinion.

In the conclusions of the *Enlargement Strategy and Main Challenges 2013-2014* on Albania, the Commission of the EU recommended that the Council should grant Albania, the status of a candidate country subject to the completion of key measures in the areas of judicial, public administration reform and revision of the parliamentary rules of procedure. In December 2012, with a view to decide whether to grant candidate status, the Council invited the Commission to report as soon as the necessary progress is achieved and to take into account further actions taken by Albania to fight corruption and organised crime, including by conducting proactive investigations and prosecutions of such cases. In light of Albania achieved the necessary progress, the Commission recommended that the Council should grant Albania the status of a

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74 In this regard, the Progress Report 2013 stated that Albania has adopted the remaining key judicial, public administration and parliamentary reform measures with cross-party consensus. In the fight against corruption and organised crime, Albania has taken initial steps towards improving the efficiency of investigations and prosecutions and strengthening cooperation between law enforcement bodies. The number of convictions in corruption and in money laundering cases has increased, as has the number of investigations into the trafficking of people and drugs. The new government in Albania has made a strong commitment to fighting corruption and has prioritised this issue in its programme.
candidate country with the understanding that Albania will continue to take action in the fight against organised crime and corruption.

**Key conclusions of the 2013 Progress Report on Albania.**

Albania has made further progress towards fulfilling the Copenhagen political criteria for membership of the EU. "**Important steps were made to reform the judiciary, improve the fight against corruption, increase the seizures of narcotics and criminal assets, and implement recommendations to fight money laundering. Amendments to the Criminal Code addressed trafficking in human beings. Measures on antidiscrimination were taken to enhance protection of human rights. Albania's constructive engagement in regional cooperation remains essential.**"  

However, the Commission recommended in its Progress Report that additional and sustained efforts are necessary to fully comply with the political criteria. "As regards democracy and the rule of law, it is essential to build on recent sustainable progress and (...) concrete measures to strengthen the accountability, independence and efficiency of the judiciary are necessary. The track record of investigations, prosecution and convictions in corruption cases at all levels needs to be strengthened, building on initial results. The fight against organised crime needs to be further upgraded."  

3.1.2 **Albanian Cooperation in Criminal Matters with EU**

Under the SAA, Albania is committed to attach particular importance to the consolidation of the rule of law, and the reinforcement of institutions at all levels in the areas of administration in general and law enforcement and the administration of justice in particular, and home affairs. The aim of the cooperation is to strengthen the independence of the judiciary and improve its efficiency, to improve the functioning of the police and other law enforcement bodies, to provide

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76 Progress Report 2013  
77 Presenting the annual Enlargement Package on the priorities for 2014, Commissioner ŠtefanFüle said that: "Enlargement is a process in the making and despite the economic crisis it is a good policy – it constitutes part of the solution. Enlargement continues to be one of the most effective EU policies. By addressing 'fundamentals' first - such as the fight against corruption, sound economic governance, freedom of expression and media, human rights and protection of minorities - it strengthens political and economic stability in the aspiring countries and the EU as a whole."

adequate training and to fight corruption and organised crime.  

If those requirements are met they will also benefit the cooperation between Albania and the ICC.

Pursuant to Chapter IV relating to Cooperation in Criminal Matters between EU and Albania, Article 85 of SAA, reads as follows: "Regional cooperation and compliance with recognised international standards in combating organised crime shall be promoted."

Albania’s Cooperation and reforms in the area of justice, freedom and security, notably in combating organised crime and corruption, reforming the judiciary and police, including the strengthening border management, regional and cross-border cooperation (Frontex), are of particular importance for Albania and a core priority for its European agenda. Albania is also a priority area for Europol and the Regional Centre for Combating Transborder Crime (SECI). Strategic agreements with Europol were signed in 2007 by Albania especially in the areas of counterterrorism and combating trafficking.

On criminal matters as identified by the Progress Reports, "Albania still maintains a 2003 bilateral immunity agreement with the United States, granting exemptions from the jurisdiction of the International Criminal Court. This does not comply with the EU Common Position on the integrity of the Rome Statute or with the related EU guiding principles on bilateral immunity agreements. The country needs to align with the EU position."

The position toward the ICC is equally very important as a pre-condition to comply with the European core values: human rights, democracy and rule of law, as mentioned several times in the current Progress Reports of the European Commission regarding Albania. As part of the external relation to EU policy, the EU through its Progress Reports to Albania continues to pay close attention to the implementation of a serious commitment of a potential candidate country and partner aiming the integration.

79 Ibid.
80 Communication from the Commission to the European Parliament and the Council, Western Balkans: Enhancing the European perspective, 05.03.2008 [SEC(2008) 288]
81 This concern was also noted by Mr Clive Rumbold, Head of political and economic Section in the Delegation of European Union in Albania. Contacted him via email on 29 October 2013.
3.2 Albania and International Criminal Court

On 30 August 2004, in accordance with Article 87, Paragraph 1, of the Rome Statute, the Republic of Albania declared that the requests of the Court shall be sent through diplomatic channels to the Ministry of Justice, Department of International Judicial Cooperation in Albania. Meanwhile, in accordance with Article 87, Paragraph 2, of the Rome Statute, the requests for cooperation and all the supporting documents of the requests, shall be in Albanian language and in one of the working languages of the Court, English or French.

3.2.1 The compliance of the Ratification of the Rome Statute with the Constitution

On September 23, 2002, the Albanian Constitutional Court issued a decision following the request of the Prime Minister for judiciary review of the ratification of the Rome Statute in the Parliament of Albania and its compliance with the Constitution.

The decision included specific issues related to sovereignty, complementarity, the transfer of powers to the judiciary in international organizations, failure to account by the International Criminal Court's immunity from prosecution, which national law provides a variety of subjects for, failure in certain cases from the ICC to the principle of "ne bis in idem".

During the examination of the ICC statute, the Constitutional Court acknowledged that the ICC appeared as a complement to national criminal jurisdictions to conduct prosecutions against persons who commit serious crimes which affect the entire international community and may undermine peace, security and livelihoods. The compliance of the Rome Statute with the Constitution is considered to be of a general importance for Albania which is making continuous efforts to integrate consistent international structures especially those of the Atlantic powers. The

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82 Notifications made under article 87 (1) and (2), unless otherwise indicated, the declarations and reservations were made upon ratification, acceptance, approval, accession or succession


84 Meaning: failure to adjudicate twice for the same charge.

85 The international law enjoys a privileged position in proportion to the national law. Article 122 of the Constitution defines that each international agreement ratified by the Parliament shall become part of the national law after its publication in the Official Journal. It is directly enforced saving the cases when it is not self-applicable and when its implementation requires the issuance of a law. The international agreement ratified by virtue of law prevails over the national laws which are not compatible with it. The norms issued by the international organizations prevail over the internal law, in case of a conflict.
Constitutional Court noted also that there is no excess of limits in the transfer of some powers to the judiciary in a given international interest as it is e.g. the prosecution of the authors of crimes of genocide, crimes against humanity, war crimes and aggression.

Furthermore, the Constitutional Court highlighted that immunities or special procedural rules which may be attached to the official position of the person, under national or international law, should not impede the ICC from exercising its jurisdiction over such a person. In this case, the Constitutional Court deemed necessary to express that since under the Constitution all the accepted rules of international law are part of domestic law, the lack of immunity in international criminal proceedings for certain crimes becomes part of the Albanian legal system.

Finally, the Constitutional Court, while examining the provisions of the Statute in the spirit and content of the Constitution of the Republic of Albania, found that the Statute did not come in conflict with the Constitution. Consequently, there were no constitutional obstacles to its ratification.

The Constitutional Court stated also that the ratification of the ICC Statute constituted an important contribution to Albania in creating opportunities and spaces in the fight against terrorism in any form it might appear.86

The incorporation and application of the provisions of the Rome Statute in the national legislation was a positive sign of a future cooperation between Albania and the Court. The impact of such cooperation at the national level is an advantage: "Alleviated burden of the Judiciary in the lawsuit against perpetrators of mass crimes; Deterrence of the commission of mass crimes; Support of the international community in the prosecution of perpetrators of mass crimes and better understanding of the mission of the Court for the citizens."87

3.2.2 Albanian Criminal Code on International Crimes

The universal jurisdiction on international crimes is provided in Article 7(a) of the Albanian Criminal Code as following:

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87See Annex 2, question 8, response of (MAT).
"The criminal law of the Republic of Albania is also applicable to the foreign citizen, who is situated in the territory of the Republic of Albania and has not been extradited, and who has committed outside of the territory of the Republic of Albania one of the following crimes:

a) crimes against humanity;
b) war crimes;
c) genocide;
d) crimes with terrorist purposes;
e) torture.

Criminal Law of the Republic of Albania is also applicable to a foreign citizen, who out territory of the Republic of Albania commits an offence, for which special laws or international agreements to which Albania is a party, determine the applicability of Albanian legislation."\(^{88}\)

On the Special Part, Chapter 1 of the Criminal Code the following crimes are mentioned: genocide (Article 73), \(^{89}\) crimes against humanity (Article 74), \(^{90}\) war crimes (Article 75). \(^{91}\)

The above shows that the Albanian Criminal Code, appears to be in conformity with the Rome Statute as it refers to crimes falling under the said statute. However, the ratification and implementation of the Kampala Amendments in the Criminal Code "is essential for the complementarity principle according to which the primary responsibility for prosecuting crimes of international concern lies on each individual State. In that respect when the national legislation has been adapted accordingly, it allows cooperation between Albania State and the Court and gives full meaning and effect to the Rome Statute’s provisions."\(^{92}\)

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\(^{88}\) Amended by Law No. 9686, dated 26.02.2007, Article 2, (as amended by Law no. 23/2012)

\(^{89}\) Article 73, Genocide: "The execution of a premeditated plan aiming at the total or partial destruction of a national, ethnic, racial or religious group directed towards its members, and combined with the following acts, such as: intentionally killing a group’s members, serious physical and psychological harm, placement in difficult living conditions which cause physical destruction, applying birth preventing measures, as well as the obligatory transfer of children from one group to another, is sentenced with no less than ten years of imprisonment, or with life imprisonment."

\(^{90}\) Article 74, Crimes against humanity: "Homicides, exterminations, using as slaves, deportations and exiles, and any kind of torture or other human violence that are committed by a pre-mediated concrete plan, against a group of civil population for political, ideological, racial, ethnic and religious motives; all are punishable by non less than fifteen years in jail or by life imprisonment."

\(^{91}\) Article 75, War crimes: Acts committed by different people in war time such as murder, maltreatment or deportation for slave labor, as well as any other inhuman exploitation to the detriment of civil population or in occupied territory, the killing or maltreatment of war prisoners, the killing of hostages, destruction of private or public property, destruction of towns, commons or villages, which are not ordained from military necessity, are sentenced with no less than fifteen years of imprisonment, or life imprisonment.

\(^{92}\) See Annex 2, question 8, response of (DSA).
"It also requires from such State to ensure that the law enforcement units from police to justice system is afforded with the necessary resources and knowledge and expertise to ensure the effectiveness of the complementarity principle."93

The next issue is whether the existence of agreements which prima facie contradict the provisions of the Rome Statute do not impede the ability of Albania to fully cooperate and support the ICC.94

3.2.3 Bilateral Immunity Agreements (BIAs) "Article 98": Albania and US95

After the ratification of the Rome Statute, Albania signed a Bilateral Immunity Agreement (BIA) with the United States on May 2, 2003 in Tirana and ratified it on June 19, 2003.96 The reactions as reported by the news were critical when in June 16, the Foreign Affairs Parliamentary Committee approved the US - Albanian bilateral immunity agreement signed in Tirana. After the ratification, which came days before an EU - Balkans summit, former Albania Foreign Minister Paskal Milo said, "If we had waited [until after the summit to ratify], the decision would have had the same value for the United States after Saturday. Just when the EU summit is raising hopes for our future, we should have shown some more respect."97 The spokesperson for EU Commissioner Patten stated that despite differing with the EU Common position, the signature of the impunity agreement will not affect negatively the eventual Albanian integration in the EU.98

At a press conference, a European Commission spokesperson is quoted to have said, "The Albania agreement is not in compliance with the EU guiding principles and GAC Conclusions. While the ICC is not a Copenhagen criteria, we understand that the EU attaches a great importance to the ICC."

93 Ibid.
94 Ibid, question 13, response of (DSA): “Cooperate should be understood as provided for under the Rome Statute, especially its Part IX International Cooperation and Judicial assistance. As to “support”, qualifies as a political stance to uphold/defend the activities of the Court and its mandate”.
95 Summary of Information on Bilateral Immunity Agreements (BIAs) or so-Called "Article 98" Agreements as of July 8, 2006 http://www.iccnow.org/documents/BIAdb_Current.pdf
96 State Department information states that the agreement entered into force July 7, 2003. On this event, the US Secretary of State Mr Colin Powell stated that: “Article 98 Agreement was an important one for us. (...) this was a case where we came to an understanding of our mutual interest and our needs were such on the Article 98 Agreement, which is consistent with the Rome Statute. So Mr. Prime Minister, I thank you for your understanding and for this expression of friendship toward the United States, and pleased to be able to reciprocate. Thank you". Also see Annex 3.
97 Reuters, June 20, 2003
98 Albanian Journal (Gazeta Shqiptare), May 9, 2003
Apart from the debates, it is important to understand the meaning of a bilateral immunity agreement and why it is contrary to the significance of the Rome Statute. The Bilateral Immunity Agreements (BIAs) go beyond the scope of Article 98 of the Rome Statute, which intended to address conflicts with existing international agreements and not to place any country’s citizens, military or employees above the reach of international law. The BIAs content is in violation to the international law and can constitute a breach by the States Parties which signed or ratified it. It is considered an *inexcusable attempt* to gain impunity from the crimes defined in the Rome Statute of the ICC.

Moreover, the US interpretation of Article 98 is contrary to the overall intention/purpose and language of the ICC Statute. The US government’s so-called “Article 98” agreements have been constituted solely for the purpose of providing individuals or groups of individuals with immunity from the ICC. Furthermore, the agreements do not ensure that the US will investigate and, if necessary, prosecute alleged crimes. Therefore, the intent of these US bilateral immunity agreements is contrary to the overall purpose of the ICC, which is to ensure that genocide, crimes against humanity and war crimes be addressed either at the national level or by an international judicial body.

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99 Article 98(2) was designed to address any potential discrepancies that may arise as a result of these existing agreements and to permit cooperation with the ICC. The article also gives the “*sending state*” priority to pursue an investigation of crimes allegedly committed by its national s. This provision is consistent with the Statute’s complementarity principle, which gives the country of the nationality of the accused the primary duty to investigate and, if necessary, prosecute an alleged case of genocide, war crimes, or crimes against humanity.

100 US Bilateral Immunity Agreements or so-called Article 98 Agreements, Questions and Answers; http://www.iccnow.org/documents/FS-BIAs_Q&A_current.pdf

101 Ibid.

102 According to Article 98 "*Cooperation with respect to waiver of immunity and consent to surrender*", there are two important issues in the request of a State to cooperate with the ICC following its obligations under the customary international law (Article 98-1) and under international agreements. The article read as follows:

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

2. The Court may not proceed with a request for surrender which would require the requested State to act inconsistently with its obligations under international agreements pursuant to which the consent of a sending State is required to surrender a person of that State to the Court, unless the Court can first obtain the cooperation of the sending State for the giving of consent for the surrender.”

103 Ibid note 78.
3.2.4 Debates: ICC and Albania in the Crossroads

One of the most interesting public debates on the position of “Albania and the International Criminal Court” was the article of the Italian politician Emma Bonino in the newspaper “Shekulli”. She underlined the indifference of the Albanian politics regarding the hesitation for the ratification of the Rome Statute. She stated "In concrete terms, Albania is left outside of the European group of Nations who have accepted, already in the humankind history, to ratify the 1998 Rome Statute for the establishment of the International Criminal Court.” She noted that the ICC is defined as a revolution in the international jurisprudence and justice.

"Meanwhile Albania with the intolerable crimes against Albanian minorities in the neighbouring countries, in north, west and south of the country, in other circumstances could be the most interested country to applause and support the establishment of such Court…On the behalf of the European Union, Havier Solana has criticised recently the USA attitude in front of ICC and isolation of USA from the rest of the world. Also … well known international organization as Amnesty International, or Human Rights Watch have criticised too. Albania is for long time in silence between the feeling of debits in front of the decisive contribution of a friendly country for the liberation of Kosovo, and the philosophy of the alignment in the majority of European countries. It is understandable why the Albanian politicians have been in trouble to open such public debate in front of the public opinion and preferred the passivity, while there are missing few days from the entering in force of the ICC on July.”

Considering the responses of ICC staff members interviewed on the possible impact of the BIAs on the cooperation between ICC and European Union, different viewpoints were identified. The signature of such immunity agreements “shows the reluctance of a State to relinquish its jurisdiction to the ICC and therefore how the effectiveness of ICC judicial proceedings may be feared.”

However, "there are already States Parties that have signed the BIA without [it] impacting their relationship with the Court." The issue of the BIAs appears simple but also risky as highlighted by one of the interviewees: “there is certainly such a risk where an American citizen

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105 See Annex 2, question 10, the responses of ICC staff members.
106 Ibid.
107 See Annex 2, responses of AAB and AN_2 who noted that the BIAs don’t impact on the relationships between EU and ICC.
is arrested and has to be transferred under the jurisdiction of the Court. Such situation would only happen if the United States of America which is not State Party to the Rome Statute does not investigate or prosecute its citizen. In the meantime, one has to consider that the so-called article 98(2) agreements were signed at a time when the Bush Administration was strongly opposed to the ICC. The reality has changed over the past 10 years and the USA has shown support to the Court in situations like Darfur and Libya where the UNSC took resolutions to refer those situations to the ICC without the USA opposing them. Therefore, the likelihood that such a situation occurs is very low and exclusively for the situation of American citizen. Cooperation agreement between States aiming at integrating the EU and the Court aren’t jeopardised consequently.”

3.2.5 Indirect support of USA to the ICC

The participation of the United States as an observer in ICC meetings during the first term of the Obama Administration, the USA’s position of principled engagement with the Court, and its willingness to support individual investigations and prosecutions on a case-by-case basis are an encouragement for the ICC and the support it receives from the international community. As a result, there is definitely an improvement in the relationship between the USA and the ICC. The Administration has taken a number of positive steps including its willingness to support individual investigations and prosecutions carried out by the Court.

As a signatory to the Rome Statute, the USA is only committed to support the “object and purpose” of the treaty. Reaffirming USA commitment would reinforce the Administration’s current position of supporting the Court, which would also be in line with former State Department Legal Advisor Mr Harold H. Koh’s public statements on three separate occasions.

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108 Ibid, question 10, response of (DSA)
10 Interview with President of the ICC Judge Song in November 2013. He stated that the BIAs don’t have any impact not considering the positive commitment of the US toward the ICC.
11 Koh stated this at NYU’s Center for Global Affairs on October 27, 2010, the Grotius Center of Leiden University on November 16, 2012, and the New York City Bar Association on November 26, 2012, see Letter of the American branch of the International Law Association and International Criminal Court Committee to Ambassador Stephen J. Rapp, July 25, 2013.
USA government is engaged in an indirect funding of the ICC through its rewards for justice programmes by paying up to $5 million for information leading to the arrests of fugitives in atrocity cases.\textsuperscript{112} “The offer of rewards for ICC fugitives will be the biggest step that US has taken toward engagement and support”\textsuperscript{113} for the court while the discrete and indirect relation that USA has towards the ICC is focused in protecting crucial witnesses, sharing DNA data and providing forensic assistance.\textsuperscript{114}

Overall, the USA participation in the 11\textsuperscript{th} Session of the Assembly of States Parties to the ICC, its commitment to assist states in building their capacity to prosecute atrocity criminals at the national level, assistance being provided to Ugandan forces to apprehend members of the “Lord’s Resistance Army” and numerous supportive statements made by Administration officials are an evidence that the interest of USA in cooperating closely with the Court is increasing.

The popularity of the Court despite certain criticism is a significant sign and its approval rating has arisen in American public opinion polls,\textsuperscript{115} leading to a positive development of such relationship from outright hostility to a measure of cooperation between USA and ICC.

3.2.6 Albania’s obligation to the ICC despite the BIA

In the preamble of the Vienna Convention on the Law of Treaties it is clearly stated that the principles of free consent, good faith and the \textit{pacta sunt servanda} rule are universally recognized. The principle \textit{pacta sunt servanda} which means that every treaty in force is binding upon the parties to it and must be performed by them in good faith\textsuperscript{116} is an important indicator that Albania has to respect the provisions of the Rome Statute.

The signature of the BIA by Albania as a State Party to the Rome Statute is interpreted as a breach of Albania’s obligations toward the Rome Statute, concretely Articles 27, 86, 87, 89 and

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\textsuperscript{114} Ibid.

\textsuperscript{115} Ibid.

\end{flushleft}
90 of the Statute, Article 18\textsuperscript{117} of the Vienna Convention on the Law of Treaties and also the national extradition law. In particular, as of the ratification of the Rome Statute, Albania is obliged to cooperate with and assist the Court.

Even though Albania violates the spirit of the Rome Statute by signing the BIA with the US, as a State Party to the Rome Statute, it still continues to have all prior obligations related to the ICC.\textsuperscript{118} This apparent conflict of obligations towards Article 98 has to be resolved even if the current support to the ICC by the Obama administration is a positive move. Also, the validation of such immunity agreement remains a matter for determination by the judges of the ICC should the issue be raised before them one day. The answer to the question is that Albania has the obligation under the customary international law to give assistance to the Court in surrendering a person even when that person would enjoy immunity.

\section*{3.3 The active Role of Albania Towards the ICC as a Precondition for EU Integration}

The EU Action Plan provided certain actions for the efficient implementation of the Rome Statute. EU countries are committed to make the maximum efforts to enhance the efficiency of the activity of the Court. Therefore, the potential candidate countries to integrate EU have the obligation to take further steps in the area of common policies in relation with EU.

EU countries have established \textit{ad hoc} teams of relevant expertise, such as judges, prosecutors, legal experts, analysts, investigators and forensic personnel to provide their national expertise in order to find out the best practices which can be used in the international arena, especially by the ICC. This means that Albania as a potential candidate state to EU, should establish similar teams in order to create operational capacity for the development of its national legislation according to ICC case law but also to be a proactive country in cooperating with non-States Parties to ICC with the aim to boost the participation and implementation of the Rome Statute and its instruments.

\footnote{\textsuperscript{117} Obligation not to defeat the object and purpose of a treaty prior to its entry into force: A State is obliged to refrain from acts which would defeat the object and purpose of a treaty.}

\footnote{\textsuperscript{118} http://www.iccnow.org/documents/FS-BIAs_Q&A_current.pdf}
Albania, as a State Party to the Rome Statute plays an important role in applying the principle of individual criminal responsibility as a measure to maintain or restore international peace and security, thereby excluding the use of force, as well as a tool for the stabilization and democratization of post-conflict societies.

Moreover, participating in seminars, symposiums, conferences or other national or international events, either of academic or official character may be necessary for the widest dissemination of the values, principles and provisions of the Statute and related instruments for the implementation of the Common Position, and for the cooperation of Albania as a future EU country with the ICC.119

Albania should make every possible effort to promote highly qualified candidates for all staff positions in ICC in order to give opportunities to its citizens to be elected into international organisations or tribunals as a unique opportunity for integration. Even though ICC staff members are recruited independently from their countries,120 ICC States Parties play an important role in the employment of their nationals in the Court: for example the judges are nominated by their States.121 At national level, some countries encourage their nationals to apply when there are vacancies announcements.122

Anyone can be employed for the benefit of international justice and for the benefit of the victims. Citizens of some countries can benefit from bringing justice to them through the Court, and having their stories being heard. That is true when they are victims of crimes under the jurisdiction of the Court. Lack of such initiative may be related to the fact that the ICC is not such a priority for the Albanian government or the fact that Albania has little information about the Court or about interaction with the Court.

119 EU Action Plan to follow-up the Common Position on ICC, p.9.
120 See Annex 2, question 11, the responses of the ICC staff.
121 Annex 2, question 15, response of (DSA) that: the only places where involvement of States Parties can be noticed is with the appointment of judges who are generally nominated by their countries taking into account the requirements under article 36 of the Rome Statute. Because elections allow the appointment of judges from a particular regional group, it’s only during a session of the Assembly of States Parties that judges are elected by representatives appointed by their State and holding accreditation. The other instances where States representatives engage with the Court outside the ASP sessions are The Hague Working Group and New York working group meetings, where a variety of issues such as budget, legal aid, witnesses and victims, strategic plan, etc. are discussed on a regular basis with the Court.
122 Annex 2, question 12, response of (DSA) in which he noted that there is a sharing of information for advertising purpose with States Parties and other stakeholders so that the vacancy announcements be published in their respective countries or online on particular websites. Whether there is an active role [or not] in ensuring recruitment through States’ lobbying is unknown to me.
With regards to the participation in the meetings of the Assembly of States Parties, it is very important that Albania takes an active role in order to be among the EU countries and to ensure support to the efficiency of the Court and preserve the integrity of the Rome Statute. For this purpose, Albania should monitor each development of the situations and cases before the Court for the surrender of persons to the Court and take appropriate action if requested. Such cooperation is useful “especially with regard to the national capacity to arrest and surrender a person who is charged before the ICC after the issuance of an arrest warrant. The same applies when a country needs to cooperate on the collection of evidence that will be presented before the ICC.”

Most particularly, the implementation of the Rome Statute in the Albanian legislation is an opportunity to establish within the Ministry of Foreign Affairs or the Ministry of Justice a team dedicated to the ICC which would work directly with the Albanian Embassy in The Hague and provide feedback from the capital to The Hague. Many States Parties do so by participating to The Hague Working Group meetings during which several topics related to the Court’s activities are discussed, from budget to cooperation or witnesses’ protection, etc.

In compliance with the EU Common Position which addresses the issue of the universal participation in the Rome Statute, Albania has to be committed for cooperation, technical and financial assistance (Article 2). Further, Article 5 of the Common Position provides that the Union and its Member States shall follow developments concerning effective cooperation with the Court, and that they shall, as appropriate, refer to the EU Guiding Principles with regard to proposals for agreements or arrangements concerning conditions for the surrender of persons to the Court, which seems to give another answer to the question of Albania’s obligation for cooperation with ICC.

3.3.1 Rule of Law and Effective Application of the Principle of Complementarity

Albania should take further steps in the strengthening of the Rule of Law and the Judicial System through the Effective Application of the Principle of Complementarity under the Rome Statute by considering these recommendations:

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123 Annex 2, question 8, response of (AN_1).
1. The adoption of implementing legislation on the serious crimes referred to the Rome Statute, general principles of international criminal law and universal jurisdiction;\textsuperscript{124}

2. Strengthening the ability and will of Albanian institutions to provide proactive cooperation and resources in EU criminal matters;

3. Reinforcing the availability of human, budgetary and structural resources for the judicial system in order to cope with the high standards of technical areas and training of EU countries;

4. Promoting independent national investigations, prosecutions and trials for international crimes;

5. The important role of Albanian Parliamentarians in strengthening the Rule of Law by supporting the ICC and EU in fighting impunity and establishing effective justice;

6. Albania has to ratify two important amendments\textsuperscript{125} in order to comply fully with the Rome Statute: 1. Amendment to Article 8 of the Rome Statute and 2. Amendments on the crime of aggression to the Rome Statute of the International Criminal Court.

The harmonious incorporation and application of the provisions of the Rome Statute into the national jurisdictional system is very important for the government and the citizens in order to ensure protection, justice for the victims and fair trial for the alleged officials.\textsuperscript{126}

**3.3.2 Geographical Representation of Staff - Albanian nationals**

In the 12\textsuperscript{th} session of the Assembly of States Parties in The Hague in November 2013, were discussed the continued efforts in the recruitment of staff in ICC, with a view to seek equitable geographical representation and gender balance, as well as to seek expertise on specific issues, including trauma-related psycho-social needs and violence against women or children.

\textsuperscript{124}See Annex 2, question 8, the response of Tomas Hamilton (TH) from the Chambers who noted that "the realisation of ending impunity depends on the implementation of the Rome Statute. The difficulty is implementing real change, rather than simply drafting legislation."

\textsuperscript{125}On 26 September 2012, in accordance with article 121(5) of the Rome Statute. The Amendment first entered into force in regard to San Marino one year after the deposit of its instrument of ratification From 31 May to 11 June 2010, the Review Conference of the Rome Statute, held in Kampala, Uganda adopted the amendments on the crime of aggression on 11 June 2010 by Resolution RC/Res.6.

\textsuperscript{126}See Annex 2, question 8, the response of AN_2.
Currently, there is only one Albanian national working as an ICC staff, in the Office of the
Prosecutor in a P3 position, among more than 700 employees. However, in comparison to the
region, Serbia has 4 nationals and Croatia also 4 nationals by March 2013.\footnote{Report of the
Committee on Budget and Finance June 2013, on the work of its twentieth session of ASP
November 2013}

Albania should send Albanian personnel to the ICC, in assisting in the situations with their
expertise. This would permit Albania to both support the Court and allow Albanian nationals to
play a greater role in the Court’s actual work. Gaining work experience from the tribunal benefits
the Albanian lawyers by exposing them to the values and principles of international criminal
justice.\footnote{See also Annex 2, question 3, the response of (TH).} Hence, the ICC could also benefit from the extensive expertise of Albanian nationals
in relation to the legal, sociological, organisational, negotiation fields of expertise,\footnote{See Annex 2, question 2.} including those who have worked at other international tribunals such as the ICTY but also in national
level. In terms of benefits or advantages for Albanian nationals working in an International
Tribunal it is likely that they would be similar to what is gained or felt by the current ICC staff
interviewed: contributing to the fight against impunity\footnote{Annex 2, question 3, the response of (AAB).} and fulfilling an ideal of justice and
respect for victims of mass crimes.\footnote{Ibid, response of (AN_1), “Any citizen of any country could be concerned and involved at any point and ICC
proceedings may have a preventive effect and offer a judicial response to the commission of crimes as well.”}

The benefits of the Albanian nationals working in the ICC, are clearly related to the expansion of
the message of the Court.\footnote{Ibid, response of (DSA). He noted that “the implication of staff in the work of the Court participates in expanding
the message of the Court, but also adjusting misrepresentations about the Court’s activities.”}

One of the interviewee stated that:

“.. An experience from within allows a citizen of a country to understand the difficulties faced by
the Court but also the impact of its work. Such insight contributes to clarify whether at an
academic, political or social level the ideas or perceptions people have about the Court.
Therefore reaching out people allows to share the work of the Court but also to ensure through
formalised mechanisms the complementarity principles... Experience has demonstrated also that
many former staff, visiting professionals and interns have returned to their home country and
recruited in departments of their country dealing with matters related directly or indirectly to the Court."\textsuperscript{133}
CONCLUSIONS AND RECOMMENDATIONS

This research and the key issues it covers in relation to Albania, ICC and EU whether from the existing documents or the interviews carried out with ICC staff members reaffirm the importance of complementarity and cooperation between the Court and individual States as well as regional organizations. It also highlights the importance of the fight for justice and the fight against impunity. Below are some of the conclusions and recommendations resulting of the above analysis and necessary for Albania’s integration in EU.

- Albania’s integration process requires a pragmatic approach where the cooperation with international tribunals especially with the ICC should be considered seriously. The responsibility of the Republic of Albania to abide by the values and principles of the EU demands implementing the EU policy in support to the ICC. The integration process includes opportunities and risks hence the relation between Albania and ICC should be considered in a balanced and neutral manner towards any bilateral immunity agreement, which might impede the establishment of an efficient international criminal justice.

- Albania’s integration process requires the government to be responsible, by including the main stakeholders and the national public opinion in a straightforward debate with respect to the ICC. It also implies the responsibility for Albania to keep itself updated of the judicial activities of the Court with a view to understand the crucial role played by every EU country and aspiring member state in maintaining justice.

- Moreover, Albania has to ratify two important amendments in order to comply fully with the Rome Statute: 1. The amendment to Article 8 of the Rome Statute; and, 2. The amendments on the crime of aggression to the Rome Statute. Under consideration at the parliamentary level, these amendments should be adopted in the domestic legislation specifically in the criminal code and code of criminal procedure incorporating the Kampala definition of the crime of aggression.

- To ensure a better coordination of the multi-dimensional obligations arising from the Integration Process regarding international justice, Albania should be more pro-active in supporting ICC fight against impunity throughout its in-line institutions i.e Ministry of
The only real possibility for Albania to be among EU countries is through a political integration which complies with the recommendations of the Progress Reports and its implementation of the Rome Statute. This political move will positively and effectively impact the organisation and functioning of a transparent judicial system operating in compliance with international criminal justice system.

The ICC should go mainstream in the EU – Albania relations. In this respect, the ratification and implementation of the amendments of the Rome Statute should be raised as a political and human rights issue in the negotiation of EU agreements with Albania.

The full cooperation and contribution of Albania namely its political, judicial, technical and financial assistance to the Court’s work will be an important step towards combating impunity for war crimes, crimes against humanity and genocide. At the same time it will contribute towards the strengthening of the bilateral relations within the future EU-Albania framework.

The interpretation of the signature of the BIA by Albania as a State Party to the Rome Statute is that Albania is in breach of its obligations under the Rome Statute. As of the ratification of the latter, Albania is obliged to cooperate with and assist the Court; also according to the Vienna Convention on the Law of Treaty.

The necessity of political will at the national level for national complementarity programs is very important towards exploring new challenges for Albanian criminal issues. The challenge remains the shaping and implementing of national prosecutions for grave crimes and the ways in which different actors, including the international community and civil society, can demonstrate political will and overcome political negligence towards EU Integration and Global International Justice related to ICC.

The secondment of Albanian nationals to the ICC would both support the Court and permit Albanian nationals to play a greater role in the Court’s actual work, which will ultimately benefit Albania in terms of complementarity. Gaining work experience from the tribunal would benefit the Albanian lawyers by exposing them to the values and principles of international criminal justice.
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June 2003: Thessaloniki Summit; the EU perspective for the Western Balkans is confirmed
June 2006: The Stabilisation and Association Agreement (SAA) with the EU is signed
April 2009: The SAA enters into force. Albania presents its application for membership of the EU
November 2010: The Commission issues its Opinion on Albania's application for EU membership, including a set of 12 key priorities to be fulfilled in view of opening of accession negotiations
December 2010: Visa-free travel to Schengen area for citizens of Albania
October 2013: European Commission publishes the 2013 Progress Report on Albania
QUESTIONAIRES AND RESPONSES - Interviews with ICC Staff Members

During the internship at the ICC, a large amount of relevant information about the experiences of ICC staff was collected by directly questioning or talking to them.

Structured interviews of 15 questions were addressed to the ICC staff and contractors from the main three organs of the ICC: Chambers, Office of the Prosecutor and Registry.

The purpose of the interview was to get a vivid feedback on the professional and personal experience of the people working within the Court, their background, perspectives, cooperation matters and support to the Court.

Hereinafter, there are the questionnaire and a compilation of some interesting extracts regarding their views on the work at the ICC and the importance of cooperation. The full interviews are appended as annexes to this study.

ICC Staff Members Interviewed

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<td>Tomas Hamilton (TH)</td>
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<td>Dahirou Sant-Anna (DSA)</td>
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<td>Office of the Prosecutor</td>
<td>Anonymous (AN_2)</td>
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**The Questionnaire**

1. How would you describe the relevance of your professional experience to the work of the Court?

2. What aspects of your career, experience or expertise outside your professional competence do you consider especially relevant to the work in the ICC?

3. Why is it important to work in an International Tribunal? How can a citizen of a specific country benefit from this?

4. What do you think can be the biggest challenges facing you as staff member/contractor in the ICC?

5. What are currently some of the major challenges facing the Court, and what will be some of the major challenges in the coming years?

6. Describe ICC with 3 words in relation to your job profile.

7. The Rome Statute requires every candidate to have excellent knowledge and be fluent in English or French. What is your knowledge and fluency in English/French, if it is not your native language? How important is the knowledge of these languages in order to work in ICC?
8. How important is for a country to apply the provisions of the Rome Statute directly or through its national legislation incorporating offences and procedure under the Rome Statute? What might be the impact at the national level?

9. Have you ever had any difficulties in taking independently position on any matter even when it would go against the interest of the government of your country?

10. Do you think that the bilateral immunity agreements between the USA and some European countries aiming to get integrated to the EU might jeopardise cooperation between ICC and European Union?

11. Do you think that the States Parties to the ICC Rome Statute play an important role in the employment of their nationals in the Court? Have you been nominated by a state?

12. How does the support and cooperation of the States Parties to the ICC benefit their nationals in working in the Court?

13. Do you think that because the European Union provides support to the ICC, supporting and cooperating with ICC is an important requirement for countries (Western Balkans, Albania) aspiring to integrate the European Union? Please feel free to mention what you understand with the term "support and cooperate".

14. Do you think that each country has to actively participate in the Assembly of States Parties sessions? How would "a passive" country effect in its nationals who are working or want to work in the ICC?

15. If there are any questions, you wish were asked in this questionnaire but were not, or if there are any matters that you otherwise wish to bring to the attention of the research in this questionnaire, please feel free to address them here.
**RESPONSES**

1. In describing the relevance of the professional experience to the work of the Court all interviewees highlighted that as professional lawyers, doctors in International Law, having legal and analytical skills contributes to the Court’s work. (AN_1 and 2)

(MAT) noted that her contribution to the work of the Court is valuable. She said: *I have been successfully involved in numerous implementations of judicial orders which require full cooperation of requested States (Members or non-members). My experience also as the coordinator of the recent amendments of the Regulations of the Registry is indubitably an achievement of great relevance to the work of the Court. As for (TH), he said that professional training after being called to the Bar of England and Wales is highly relevant to the work in Chambers.*

Having *good knowledge of public internal law, criminal law and [have had] an education in both civil and common law (...) is crucial to deal with the day to day legal questions arising from the activities of the Court*, according to AAB.

With a professional experience of 10 years holding different positions and responsibilities, in the Registry, DSA who holds a PhD in International Law and is acting as the legal officer of the Detention Section deals with persons in custody or under the authority of the Court pending their final judgement. As many other staff of the Court, he is engaged in issues of legal nature pertaining to the mandate of the Registry. His core business consists of providing legal advice, drafting legal documents, and negotiating a number of agreements which are essential to the functioning of the Court. He notes about his various expertise and knowledge that *they are specifically of relevance to the management of the Court’s detention centre as the mandate of the Registry clearly involves non-judicial aspects of the administration of the Court and servicing the latter (article 43(1) of the Rome Statute).*

2. As to question no: 2 *what aspects of the career, experience or expertise outside your professional competence do you consider especially relevant to the work in the ICC*, the interviewees answered: legal and intellectual background (AN_2), sociological background, personal commitment (MAT); organisational and negotiation skills to be able to work in a
multicultural environment, common law tradition background (TH); legal training and professional experiences in several countries also provide greater tools to deal with the complex and transnational issues before the Court (AAB); there are many fields of expertise other than the legal one which allow the Court to properly function (Human Resources, Finances, Procurement, Interpretation, etc (DSA).

3. With respect to the reason why it is important to work in an International Tribunal and how can a citizen of a specific country benefit from this, the common opinion was in making a contribution to the fight against impunity (AAB). (MAT) notes that the work in ICC equips her with a better knowledge of other national legal systems and a more inclusive approach of mass crimes committed all-over the world, meaning that mass crimes committed in a part of the world are no more, no less serious than the same crimes committed elsewhere.

(AN_1) gives the reason of fulfilling an ideal of justice and respect for victims of mass crimes. Any citizen of any country could be concerned and involved at any point and ICC proceedings may have a preventive effect and offer a judicial response to the commission of crimes as well.

(TH) says: It’s important for the work of the tribunal to have good lawyers. I suppose gaining work experience from the tribunal benefits the citizen by exposing them to the values and principles of international criminal justice.

(AN_2) considers it as one of the means that anyone can use for the benefit of international justice and the benefit of the victims. Citizens of some countries can benefit from bringing justice to them through the court and having their stories being heard. That is true when they are victims of any crime which is under the jurisdiction of the Court. However, for any other type of citizen, he/she will not have any direct benefit from the court.

(DSA) notes that the implication of staff in the work of the Court participates in expanding the message of the Court, but also adjusting misrepresentations about the Court’s activities. An experience from within allows a citizen of a country to understand the difficulties faced by the Court but also the impact of its work. Such insight contributes to clarify whether at an academic, political or social level the ideas or perceptions people have about the Court. Therefore reaching out people allows to share the work of the Court but also to ensure through formalised mechanisms the complementarity principles. Depending on the network or relationships with
officials of a particular country, and other stakeholders, the ratification of the Rome Statute can be a reality, thus benefiting at least legally to the citizen of the said country. Experience has demonstrated also that many former staff, visiting professionals and interns have returned to their home country and recruited in departments of their country dealing with matters related directly or indirectly to the Court.

4. Referring question no.4 in their opinion regarding the biggest challenges facing you as staff member/contractor in the ICC, MAT replied that the biggest challenge is defending the reputation of the Court before those who tarnish its integrity. Lack of resources and, therefore, a need for a better distribution of work seems to be another challenge (AN, AAB).

(AN_2) The biggest challenge is to adapt yourself with different cultures and keeping yourself professional

(DSA) identifies two possible challenges: professionally (career opportunities) and ethically (confidentiality and independence). Professionally, there are no real career opportunities in that the Court functions on the basis of application to available positions. When a staff is at a particular grade, he/she cannot expect after a number of years to move automatically at another level. To be able to do so, he/she must apply for another position. Ethically and at every level staff at the ICC work as international civil servants bound by confidentiality and independence vis-à-vis their country. As such, they cannot share information that is covered by confidentiality with representatives of their State. These have been the challenges so far.

While (TH) says that considering the emerging nature of the international law the ICC faces such a broad range of challenges – political, institutional and legal. Since the Court is still establishing its role as a global institution there are a lot of unanswered questions.

5. Question 5 relates to the current major challenges facing the Court now and in the coming years. (MAT) considers major challenges the lack of cooperation from some States in the implementation of judicial orders irrespective of them being parties to the Rome Statute or not; the lack of support from some States (ideological and financial) the struggle to safeguard its reputation and credibility. AN_1 has another view: A better understanding by Member States of the functioning of an independent court and the need for streamlining judicial proceedings in
order to avoid lengthy trials. This entails structural internal reforms but bigger financial support from Member States as well since the number of proceedings is increasing.

AN_2 noted that: *Currently the court is facing the former prosecutor’s approach and strategy he was applying which lead to the idea that the Court is functioning as an African court. The future challenge is change this image about the Court.*

(TH) notes that the major challenges will be obtaining enough prosecutions to satisfy stakeholders and public opinion. The quantity is a real issue, as well as quality. For (AAB), *the political support to the Court is crucial so that to obtain the necessary cooperation from our States Parties. Also, the Court is facing an important challenge in protecting its witnesses at the moment. The signature of relocation agreements falls within the realm of voluntary cooperation and we need that States make this extra step to support the Court. One of the major challenges of the Court in the future will be for the Court to preserve its judicial independence as it will continue to involve on a complex internal political scene.*

According to (DSA), the *Court is still a young institution despite its 11 years of existence. One of the challenges remains the cooperation from States. Because the Rome Statute mainly relies on States cooperation and assistance and because the international society remains a community of individual sovereign States, the non-cooperation of States will hamper the efforts of the Court to ensure that justice is done and is seen to be done. Additionally, the image of the Court has been scorned by scholars and political actors over the past year, considering they perceive the Court as a tool against the interests of many African States. It must also explain that the fight for justice and the fight against impunity require from those countries alleging to be targeted to show good faith in delivering themselves justice and ensuring accountability at national level as covered by the complementarity principle.*

6. The question no. 6 was about providing **3 words to describe the Court in relation to (your) job profile.** (MAT) replied: Challenging, inspirational, committed; (AN_1): Independence, integrity, fairness; (TH): International criminal law; (AAB): accountability, Justice and Peace; while (DSA) responded: Fairness, Creativity, sound reasoning. (AN_2): Professionalism, important experience, future opportunities
7. The Rome Statute requires every candidate to have **excellent knowledge of and be fluent in English or French**. The interviewees were asked about their fluency both in English/French, in order to work in ICC. All the interviewees were proficient and fluent French users. The excellent knowledge of at least one of those languages is imperative in order to work at the ICC notes (MAT). However to better understand and work on evidence which are mainly in French at the moment (AAB), ideally, staff members should be fluent in both French and English for a better understanding of all ICC staff members and, when applicable (AN_1); anyone who wants to join the Court should have at least one of them (AN_2). (DSA) underlines that **those able to speak both French and English in addition to having the requisite skills and competence for a job are great assets for the Court.** However, despite those two languages being the working languages of the Court, a majority of the staff works in English, recruitment interviews take place in English and proceedings are supported with interpretation. The importance of the language depends on the area in which staff work. For example, all detained persons are Francophones though some fluently understand English. Being bilingual is key within the Detention Section for a Legal Officer or any other staff as interaction with non-francophone staff will take place in English while it would be in French with the detained persons.

8. On the importance of a country to apply the **provisions of the Rome Statute directly or through its national legislation incorporating offences and procedure under the Rome Statute and the impact this might have at the national level**, the interviewees replied as following:

(MAT): *The application of the provisions of the Rome Statute by a country is mainly a step after the incorporation of such provisions in the national legislation, provided that they were inexistent at the beginning. Implementing the Rome Statute provisions is a sign of favourable cooperation between the related State and the Court. It is generally observed in States which are either parties to the Rome Statute or are considering their accession to it. Once the country fully cooperates with the Court, it implies that both entities work hand in hand and are complementary to each other from a judicial point of view. The impact of such cooperation at the national level is all positive:*

- **Alleviated burden of the Judiciary in the lawsuit against perpetrators of mass crimes;**
- **Deterrence of the commission of mass crimes;**
• Support of the international community in the prosecution of perpetrators of mass crimes;
• Better understanding of the mission of the Court for the citizens.

(AN_1): Very important for effective cooperation with the ICC, especially with regard to the national capacity to arrest and surrender a person who is charged before the ICC after the issuance of an arrest warrant. The same applies when a country needs to cooperate on the collection of evidence that will be presented before the ICC.

(AN_2) thinks that the integration of the Rome Statute into the national jurisdictional system would be very important for the government and the citizens. Both sides will have some sort of protection, citizens will have someone to bring justice to them and officials will have fair trials.

(TH): The realisation of ending impunity depends on it. The difficulty is implementing real change, rather than simply drafting legislation.

(AAB): It is crucial from a cooperation perspective. It is very cumbersome from national agencies to execute requests for cooperation without the adequate implementing legislation enabling them to do so.

(DSA): Implementing the Rome Statute at national level or adapting national legislation is essential for the complementarity principle according to which the primary responsibility for prosecuting crimes of international concern lies on each individual State. In that respect when the national legislation has been adapted accordingly it allows cooperation between that State and the Court and gives full meaning and effect to the Rome Statute’s provisions. In terms of impact, it might discourage individual persons in such State to engage in activities that might be qualified as international crimes falling under the jurisdiction of the Court. But it also requires from such State to ensure that the law enforcement units from police to justice system is afforded with the necessary resources and knowledge and expertise to ensure the effectiveness of the complementarity principle.

9. On the question as to whether the interviewees have ever had any difficulties in taking independently position on any matter even when it would go against the interest of the government of their country, all of them replied `no` in light of their position as staff
members of an international organisation which is an independent judicial court vis-à-vis any government. (DSA) notes that he has been recruited by the Court independently of any involvement of his country, in addition to the absence of any link between the government of his country and himself. He sees no particular concern as to taking position in the interest of the Court. Loyalty to the organisation is essential for the achievement of its goals.

10. Regarding the **bilateral immunity agreements between the USA and the potential candidate countries aiming the integration into EU**, the ICC staff members were asked if this might jeopardise the cooperation between ICC and European Union. The answers from 3 interviewees was `yes`. (MAT) replies that *unfortunately, it might be negatively because politics come into play; and who says politics makes reference to the safeguard of most profitable interest for the benefit of the main actors of the political game. This approach has shown that at the end of the day, the cooperation between the ICC and those countries might not always serve justice.*

(AN_1) notes that *signing such immunity agreement shows the reluctance of a State to relinquish its jurisdiction to the ICC and therefore how the effectiveness of ICC judicial proceedings may be feared. In any event, one needs to keep in mind that ICC has always jurisdiction of last resort. The most important is the global fight against impunity and to ensure that perpetrators will be fairly tried at least nationally.* (AAB) has a different point of view and says that *there are already States Parties that have signed the BIA without impacting their relationship with the Court.* (AN_2) states NO.

A detailed explanation by (DSA) is to be noted: *There is certainly such a risk where an American citizen is arrested and has to be transferred under the jurisdiction of the Court. Such situation would only happen if the United States of America which is not State Party to the Rome Statute does not investigate or prosecute its citizen. In the meantime, one has to consider that the so-called article 98(2) agreements were signed at a time when the Bush Administration was strongly opposed to the ICC. The reality has changed over the past 10 years and the USA has shown support to the Court in situations like Darfur and Libya where the UNSC took resolutions to refer those situations to the ICC without the USA opposing them. Therefore, the likelihood that such a situation occurs is very low and exclusively for the situation of American citizen.*
Cooperation agreement between States aiming at integrating the EU and the Court aren’t jeopardised consequently.

11. In reference to the question of whether the States Parties to the ICC Rome Statute play an important role in the employment of their nationals in the Court and if they personally have been nominated by a state, all the interviewees replied that they have been recruited independently by their country, as it is question of skills and needs (AN_2). (AN_1) notes that the recruitment is through a fair process at the ICC based on competencies. Only few high-ranked positions are based on nominations. A support by a Member State of its national who has candidate at the ICC may be useful or detrimental but in any event should not be decisive. (TH) says: I’m unaware of such a nomination process. As far as the UK is concerned I did not think there was a nomination process for staff (excepting judicial office).

However, (MAT) considers that member states of the ICC play an important role in the employment of their nationals in the Court. High officials of the Court such as the Judges are nominated by their States. Also, Member States who have more financial power can also play an important role in the employment of their nationals in the Court via placement agencies at the national level.

(DSA) observes that at national level, some countries encourage their nationals to apply when there are vacancies announcements. Normally there is a sharing of information for advertising purpose with States Parties and other stakeholders so that the vacancy announcements be published in their respective countries or online on particular websites. Whether there is an active role [or not] in ensuring recruitment through States’ lobbying is unknown to me.

12. On the question of how do the support and cooperation of the States Parties to the ICC benefit their nationals in working in the Court, MAT replied that the recruitment at the ICC should not be based on the support and/or the cooperation of the Member States with the ICC. While (TH) highlight a very important issue that stipends for internships would do a lot now that the centralised programme has gone. (AN_2) thinks that it doesn’t have any role in supporting their nationals.

13. The ICC staff members were asked: Do you think that because the European Union provides support to the ICC, supporting and cooperating with ICC is an important
requirement for countries (Western Balkans, Albania) aspiring to integrate the European Union? Please feel free to mention what you understand with the term "support and cooperate".

(MAT) replied that the support of the EU towards the ICC as a requirement to other countries aspiring to EU integration is of paramount importance. Supporting and cooperating with the ICC is serving a noble cause which reveres the inherent right to life of each human being.

(AN_1) noted that showing to the EU that a Member State respects its international obligations under the ICC Statute should indeed be a good sign for a possible EU integration, bearing in mind that the ICC jurisprudence often refers to the ECHR jurisprudence.

(AN_2) noted that the Rome Statute is an agreement between States and the EU is not a State Party to the Statute as an entity. The EU countries are the State Parties and therefore any country can withdraw/cooperate etc. as it wishes.

(AAB) indicated that in view of the Action plan to follow up on the common position on the ICC, there is a clear willingness from the EU to actively support the ICC. From this perspective, yes support to the ICC can be an important requirement.

If such cooperation and support is a requirement for integration to the EU, this remains an internal affair to the EU and ultimately it benefits the ICC in implementing the Rome Statute - was the response given by (DSA). As a result the universality of the Rome Statute will be strengthened. Cooperate should be understood as provided for under the Rome Statute, especially its Part IX International Cooperation and Judicial assistance. As to support, my understanding is that such support qualifies as a political stance to uphold/defend the activities of the Court and its mandate.

14. Regarding the active participation of the countries in the Assembly of States Parties sessions and whether "a passive" country effect in its nationals who are working or want to work in the ICC, (TH) replied firmly: They should – the ASP’s work is extremely important for the future direction of the court. In addition, MAT said: The least a Member State should do is to actively participate in the sessions of the Assembly of States Parties. Otherwise, the nationals could be assimilated to the apathy of those states that might portray a lack of commitment in the
work of the Court. While (AAB) notes that this is the prerogative and the responsibility of the States Parties, indeed. A passive country would not have an impact on its nationals in my view but could have an impact on the support brought to the Court. (AN_2) said that only state Parties should be active at the Assembly of States Parties. I do not think that the countries should have any role or influence on the staff members. However, (AN_1) has a different point of view saying that regardless of a passive or active participation in the ASP, any participation is welcomed, bearing in mind though that the most important is for a country to impact on the ICC budget.

(DSA) explains that the active participation in the Assembly of States Parties (ASP) sessions implies the right to vote. Normally when States don’t pay their arrears (contributions to the budget) prior to the session, they lose their voting right. But in general, they can all participate to the debate and raise any particular matter of interest or concern at those sessions. It is less likely that their passive or active role impact their nationals working within the Court.

15. On the last question if the Staff members wish to ask a question which was not asked in the questionnaire or if there were any matters that they otherwise wish to bring to the attention of the research, none of them replied except (DSA) who stated that it is probably important to note that the only places where involvement of States Parties can be noticed is with the appointment of judges who are generally nominated by their countries taking into account the requirements under article 36 of the Rome Statute. Because elections allow the appointment of judges from a particular regional group, it’s only during a session of the Assembly of States Parties that judges are elected by representatives appointed by their State and holding accreditation. The other instances where States representatives engage with the Court outside the ASP sessions are The Hague Working Group and New York working group meetings, where a variety of issues such as budget, legal aid, witnesses and victims, strategic plan, etc. are discussed on a regular basis with the Court.
AGREEMENT

BETWEEN

THE GOVERNMENT OF THE UNITED STATES OF AMERICA

AND

THE GOVERNMENT OF THE REPUBLIC OF ALBANIA

REGARDING THE SURRENDER OF PERSONS TO
THE INTERNATIONAL CRIMINAL COURT

The Government of the United States of America and the Government of the Republic of Albania, hereinafter "the Parties,"

Reaffirming the importance of bringing to justice those who commit genocide, crimes against humanity and war crimes,

Recalling that the Rome Statute of the International Criminal Court done at Rome July 17, 1998 by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court is intended to complement and not supplant national criminal jurisdiction,

Considering that the Parties have each expressed their intention to investigate and to prosecute where appropriate acts within the jurisdiction of the International Criminal Court alleged to have been committed by their officials, employees, military personnel or other nationals,

Bearing in mind Article 98 of the Rome Statute,

Hereby agree as follows:

1. For purposes of this Agreement, "persons" are current or former Government officials, employees (including contractors), or military personnel or nationals of the United States of America.

2. Persons of the United States of America present in the territory of the Republic of Albania shall not, absent the express consent of the Government of the United States of America,

   (a) be surrendered or transferred by any means to the International Criminal Court for any purpose, or
(b) be surrendered or transferred by any means to any other entity or third country, or expelled to a third country, for the purpose of surrender to or transfer to the International Criminal Court.

3. When the Government of the Republic of Albania extradites, surrenders, or otherwise transfers a person of the United States of America to a third country, the Government of the Republic of Albania will not agree to the surrender or transfer of that person to the International Criminal Court by a third country, absent the express consent of the Government of the United States of America.

4. This agreement shall enter into force upon an exchange of notes confirming that each Party has completed the necessary domestic legal requirements to bring the Agreement into force. It will remain in force until one year after the date on which one Party notifies the other of its intent to terminate this Agreement. The provisions of this Agreement shall continue to apply with respect to any act occurring, or any allegation arising, before the effective date of termination.

Done at Tirana in duplicate, this 2nd day of May 2003, in the English and Albanian languages. In case of differences of interpretation, the English language text shall prevail.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA

[Signature]

FOR THE GOVERNMENT OF THE REPUBLIC OF ALBANIA

[Signature]