

BLOG — POST

International Criminal Court: what can the European Union do?



The International Criminal Court is one of the cornerstones of the rules-based international order which the EU wants to uphold. It is currently under threat of being dismantled by President Donald Trump. However, with the 'Blocking Statute' adopted in 1996, the EU has the means to protect this institution located on its territory. Although this tool has shown significant limitations in the past, the EU should now activate it to counter US sanctions.

I • The difficult birth of the International Criminal Court

After the Second World War, the international community established the International Court of Justice (ICJ), which has its seat in The Hague in the Netherlands. It was intended to enable the peaceful resolution of disputes between states. However, its actual impact has since been severely limited by the fact that all parties must agree to submit to its jurisdiction: a state cannot bring a case before the ICJ against another state unless the latter also agrees to have the matter heard in The Hague.

At the same time, the international tribunals in Nuremberg and Tokyo were tasked with determining individual responsibility for the atrocities committed during the Second World War. Subsequently, other ad hoc international tribunals were established to try war crimes or crimes against humanity committed in Lebanon, the former Yugoslavia and Rwanda, among other.

Despite several attempts, however, tensions linked to the Cold War had prevented the establishment of a permanent, universal court to try individuals responsible for crimes of aggression, war crimes, crimes against humanity and genocide. The fall of the Berlin Wall and the period of détente that followed in the 1990s did, however, make it possible to revive international negotiations on this issue. These led to the treaty known as the Rome Statute, so called because it was signed in Rome in 1998. It established the International Criminal Court, which is also based in The Hague in the Netherlands. The adoption of this Statute marked a major step forward for the rules-based international order that the EU has championed since its inception, even though this progress was subsequently called into question.

II • The ICC has done a great deal of work since 2002

Following its ratification by 60 states, the Statute came into force in 2002, and the ICC's first trial took place in 2009. Over the past 24 years, the Court has brought proceedings concerning crimes committed in Uganda, the Democratic Republic of the Congo, Sudan, the Central African Republic, Kenya, Libya, Côte d'Ivoire, Mali, Georgia, Burundi, Bangladesh, Myanmar, Afghanistan, Palestine, the Philippines, Venezuela and Ukraine. In particular, in 2023 it indicted Vladimir Putin for the abduction of Ukrainian children. Ten people have already been convicted of war crimes and crimes against humanity, committed solely in Africa at this stage.

Of the 193 United Nations member states, 125 have now ratified the Rome Statute, including all member states of the European Union. However, 29 other states, including Russia and the United States, have never actually ratified it despite having signed it. Meanwhile, China and India have never signed it. It is notably for this reason that the ICC has so far been unable to take up the case of the genocide against the Uyghurs – something for which it is often wrongly criticised: China is not a party to the Rome Statute. Of the five permanent members of the Security Council, three therefore do not recognise this jurisdiction.

III • Donald Trump wants to dismantle the ICC

Following this arrest warrant, a fierce campaign was launched against Karim Khan, the British prosecutor at the ICC who had charged Benjamin Netanyahu and Yoav Gallant. He was accused of sexual misconduct and abuse of power towards one of his assistants. Following an internal United Nations investigation, an independent panel of three judges selected by the Bureau of the Assembly of States Parties to the Rome Statute concluded in March 2026, in a non-binding advice, that these allegations were not sufficiently substantiated and that Karim Khan should be allowed to resume his duties. Despite this, under pressure from the United States, the Assembly of States Parties to the treaty decided to dismiss him last July.

At the same time, the US government has already imposed sanctions on 9 of the 18 judges, including the court's president, Tomoko Akane of Japan, and the French judge Nicolas Guillou, as well as four other members of the ICC, including the former Prosecutor Karim Khan and three of his colleagues. This effectively deprives them of access to their payment cards, all Microsoft software and, more generally, all services provided by US companies.

President Donald Trump also regularly calls on states to withdraw from the ICC. He did so again last week during the most recent UN General Assembly. So far six States - Mali, Niger, Burkina Faso, Chad, Nauru and Venezuela - have heeded his call. In recent days, Donald Trump and his administration have stepped up their vendetta against the ICC by now threatening to sanction the institution itself.

IV • The European Union has the means to defend the ICC

This campaign against the ICC, a cornerstone of the international rules-based order, has now been going on for nearly two years. Beyond statements, the European Union has so far taken no measures to protect this court, which is based on its territory, and its judges – some of whom are EU nationals – against US sanctions. This is despite numerous requests, particularly from the European Parliament and, in recent days, from the Dutch government. Yet it has both the opportunity and the means to do so.

In 1996, following extraterritorial sanctions already imposed by the United States against Iran, Cuba and Libya, the European Union did indeed adopt a 'blocking statute'. This statute was strengthened in 2018, following Donald Trump's withdrawal from the JCPOA, the international agreement on Iran's nuclear programme. The aim is to protect European entities from the effects of such extraterritorial sanctions: the statute prohibits European operators from complying with the foreign laws imposing them and entitles them to claim damages if they suffer losses as a result of such sanctions.

This statute has already been invoked in relation to US sanctions against Cuba and Iran since 2018. Its impact, however, has remained very limited in both cases because most European companies have nevertheless preferred to comply with the US sanctions and cease trading with Iran and Cuba so as not to risk losing their business in the United States. It is reasonable to assume, however, that regarding the ICC, the situation might be different for European companies that might provide catering, electricity or other essential services to the criminal court if the EU were to prohibit compliance with US sanctions.

This 'blocking statute' is what is known in European jargon as a 'delegated act'. This means that its implementation by the European Commission does not require a positive vote from the Council or the European Parliament. Such a decision could potentially only be blocked by a negative vote in the Council by a qualified majority (a vote by representatives of 55 per cent of the countries accounting for at least 65 per cent of the EU's population) or a majority vote in the European Parliament, an unlikely scenario.

In other words, if the European Commission were to decide to oppose the US sanctions, such measures could come into force quickly across the entire Union.

V • The ‘blocking statute’ must be invoked

On all matters concerning relations with Donald Trump and his administration, the European Commission has so far tended to keep a low profile. This was particularly the case in the summer of 2025 at Turnberry, when Ursula von der Leyen gave in to virtually all of the US’s trade demands. Similarly, it has always exercised the utmost caution on matters concerning the abuses committed by Benjamin Netanyahu’s government. However, this extreme caution has so far had only one result: it has encouraged both Donald Trump and Benjamin Netanyahu to push the boundaries ever further. And in particular against the ICC, which the EU hosts and is supposed to protect.

Unless the Union wishes to bring shame upon itself and hasten the collapse of the rules-based international order – which has been its *raison d’être* for 70 years – it no longer seems possible to postpone the showdown with Donald Trump over the International Criminal Court: the European Union must activate the ‘blocking statute’ without further delay. And it must ensure that, this time, it fulfils its function in full.