

Europe courts the U.S.

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COPENHAGEN - The European Union and Canada have been among the leaders in establishing the International Criminal Court (ICC), joined in the common goal of putting an end to impunity for genocide, crimes against humanity and war crimes. Yet quite a few of the observations made following last month's agreement on a common EU response to the United States's proposal for non-surrender agreements with the court are based on misunderstandings. These in turn led to the incorrect conclusion that the EU is now undermining the ICC.

Our aim is to re-engage the United States in the work of the court. With respect to the U.S. proposal for bilateral agreements, it is our view that many of the U.S. concerns can be solved on the basis of existing agreements. Each EU country will have to assess whether its existing bilateral and multilateral treaty relations with the United States can meet U.S. concerns. If a member state deems it necessary to amend existing agreements or to enter into a new agreement with the U.S., the EU guiding principles will apply.

If individual states stay within these red lines in their bilateral contacts with the United States, the ICC will not be undermined. And we make it quite clear that entering into agreements as currently drafted by the U.S. would be inconsistent with ICC states parties' obligations with regard to the ICC statute.

Under the guidelines, any solution should ensure that people who have committed crimes falling within the jurisdiction of the court do not enjoy impunity from prosecution, that there is an appropriate investigation and, where there is sufficient evidence, prosecution by national jurisdictions of people requested by the ICC. This will ensure accountability. The EU and the United States share the view that there should be individual accountability for the most serious crimes affecting the international community.

The EU approach is the best way to defend the court, as any other solution would have led to a weakening of the strong EU support for the ICC. A flat no to the United States proposal for bilateral agreements would have had a very damaging effect on trans-Atlantic relations. Furthermore, it would have endangered the vital U.S. engagement in peacekeeping operations around the world.

Having no common EU position would have caused irreparable damage to the court. The United States has already entered into bilateral agreements with 12 countries, which have not had the opportunity to avail themselves of the EU position. Leaving EU member states and others to conduct bilateral negotiations with the U.S. without strong EU unity and clear criteria for those bilateral agreements would result in a variety of agreements that surely would have undermined the court.

Establishing a framework that will preserve the integrity of the International Criminal Court and enable us to settle our differences with the United States with respect to the ICC was our political objective. Individual member states can now, if necessary, conclude bilateral agreements with the United States on the non-surrender of U.S. nationals to the court, so long as

they observe the strict benchmarks that ensure respect for our obligations as parties to the Rome Statute of the ICC.

Per Stig Moller is the foreign minister of Denmark, which currently holds the European Union presidency.