1. Introduction

Reading the title of this book – *The Future of Police and Judicial Cooperation in the European Union* – most people will probably think of cooperation regimes between European Union Member States. A good example in that respect is the European Arrest Warrant, to which unsurprisingly (but definitely not inappropriately!) a considerable part of this book is dedicated. However, this book’s title can also be read differently: the future of police and judicial cooperation in the EU may also refer to cooperation regimes which can be connected to organisations whose headquarters are located in the EU. One of those organisations is the one under examination in this contribution: the International Criminal Court (ICC), based in The Hague, the Netherlands.

This article will delve into the legal cooperation regime of this, in many aspects, historic court – which, it must be clarified from the start, does not only cover judicial assistance but also assistance in the field of police work – but it can obviously not address all its aspects. As the present book is focused on the EU context, this contribution will limit itself to an examination of the cooperation regime (1) between the ICC and individual EU Member States and (2) between the ICC and the EU as such.

This article aims to provide a general overview of the main characteristics of and some concrete examples related to these two central topics (brought together under the general heading ‘Legal Assistance in the Context of the ICC’) and is structured as follows: after this introduction (section 1) and before addressing the central subject in section 3, it may be good to first provide the reader with some brief and basic information on the Court (section 2). Although it must be admitted that the information in this part is rather elementary and undoubtedly well-known to practitioners and scholars working in the context of the ICC, it has nevertheless been included in this article as lawyers focusing on the EU context – most probably the target audience of this book – may not
be too familiar with the ICC’s characteristics. Finally, this contribution will end with a few short concluding remarks in section 4.

2. The ICC

2.1. Short Historical Overview

After the International Military Tribunals of Nuremberg and Tokyo, established after the horrors of the Second World War, efforts were made by the international community to establish a more general international criminal court. The Cold War halted this development but after the fall of the Berlin Wall, and after the experience of the ad hoc International Criminal Tribunals for the former Yugoslavia (ICTY) and for Rwanda (ICTR), the establishment of a permanent international criminal court came within reach. Hence, a few years later, on 17 July 1998, the Statute of the ICC, the first-ever permanent international criminal court in the world, was adopted in Rome. This Statute entered into force on 1 July 2002 and today, 108 States are party to it. Only individual States can become party to the ICC Statute, the EU as a whole for example cannot, although it can collaborate with the ICC as will be shown in more detail below.

2.2. Basic Features

What kind of a court is the ICC and how does it function? An explanation of a few basic ICC features may be helpful here.

First, its nature: the ICC is a permanent, general, independent international institution with international legal personality. To start with the first element, the ICC is permanent in nature, meaning that its power to adjudicate will not end some day (as is the case, for example, with the ICTY and ICTR, which will have to close their doors in the near future). Furthermore, it is a general court, meaning that its jurisdiction is not linked with a specific conflict – as again is in contrast to the ICTY and ICTR which were only designed to deal with crimes committed in the context of the conflicts in the former Yugoslavia and in Rwanda. In addition, it is an independent international institution. Although the United Nations was very much involved in the establishment of the ICC, it is not a UN organ. This again differs from the ICTY and ICTR, which are sub-organs of the UN Security Council. Finally, the ICC has international legal personality, meaning that it can act on the international plane, for instance by signing agreements with other international actors such as the UN and EU (this will be further discussed in 3.3.2.).