

Council Conclusions on the International Criminal Court (30/09/02)

The Council confirms that the European Union is firmly committed by the EU Common Position to support the early establishment and effective functioning of the International Criminal Court and to preserve the full integrity of the Rome Statute. The European Union reaffirms its determination to encourage the widest possible international support for the ICC through ratification or accession to the Rome Statute and its commitment to support the ICC as a valuable instrument of the world community to combat impunity for the most serious international crimes.

The International Criminal Court will be an effective tool of the international community to buttress the rule of law and combat impunity for the gravest crimes. The Rome Statute provides all necessary safeguards against the use of the Court for politically motivated purposes. It should be recalled that the jurisdiction of the Court is complementary to national criminal jurisdictions and is limited to the most serious crimes of concern to the international community as a whole.

The European Union will endeavour to secure that the Court will meet the highest standards of competence, fairness, due process and international justice. The European Union will do its utmost to ensure that highly qualified candidates will be elected as judges and prosecutors.

The Council has taken note of the proposal by the United States for new bilateral agreements with ICC States Parties regarding the conditions for surrender to the Court.

The Council notes that a number of bilateral and multilateral treaties between individual Member States and the United States already exist, as well as treaties with third states, which are of relevance in this context and on which an inventory has been established. The Council notes that Member States are ready to engage with the United States in a review of these arrangements which may fall into the category of agreements defined in Article 98, paragraph 2 of the Rome Statute.

The Council has developed the attached set of principles to serve as guidelines for Member States when considering the necessity and scope of possible agreements or arrangements in responding to the United States' proposal.

The Council recalls that the European Union and the United States fully share the objective of individual accountability for the most serious crimes of concern to the international community. The ad hoc tribunals for the former Yugoslavia and Rwanda were created as a result of our common efforts.

The Council expresses the hope that the United States will continue to work together with its allies and partners in developing effective and impartial international criminal justice. To this end, the Council proposes to develop a broader dialogue between the European Union and the United States on all matters relating to the ICC, including future relations between the United States and the Court. In particular this dialogue should address the following issues:

- The desirability of the United States re-engaging in the ICC process - the United States is entitled to be an observer to the Assembly of States Parties;
- The development of a relationship entailing practical cooperation between the United States and the Court in specific cases;
- The application of presidential waivers of the ASPA legislation to the main provisions of this legislation, in particular vis-à-vis Member States and their associated countries.

The Council notes that Member States will keep the Council informed about any new developments.

The Presidency will convey these conclusions to the United States, noting that they represent the EU position in response to the United States' concerns.

The Council will remain committed to the ICC and will keep developments under review.

ANNEX:

EU Guiding Principles concerning Arrangements between a State Party to the Rome Statute of the International Criminal Court and the United States Regarding the Conditions to Surrender of Persons to the Court

The guiding principles listed below will preserve the integrity of the Rome Statute of the International Criminal Court and – in accordance with the Council Common Position on the International Criminal Court – ensure respect for the obligations of States Parties under the Statute, including the obligation of States Parties under Part 9 of the Rome Statute to cooperate fully with the International Criminal Court in its investigation and prosecution of crimes falling within the jurisdiction of the Court.

The guiding principles are as follows:

- Existing agreements: Existing international agreements, in particular between an ICC State Party and the United States, should be taken into account, such as Status of Forces Agreements and agreements on legal cooperation on criminal matters, including extradition;
- The US proposed agreements: Entering into US agreements – as presently drafted – would be inconsistent with ICC States Parties’ obligations with regard to the ICC Statute and may be inconsistent with other international agreements to which ICC States Parties are Parties;
- No impunity: any solution should include appropriate operative provisions ensuring that persons who have committed crimes falling within the jurisdiction of the Court do not enjoy impunity. Such provisions should ensure appropriate investigation and – where there is sufficient evidence - prosecution by national jurisdictions concerning persons requested by the ICC;
- Nationality of persons not to be surrendered: any solution should only cover persons who are not nationals of an ICC State Party;
- Scope of persons:
 - Any solution should take into account that some persons enjoy State or diplomatic immunity under international law, cf. Article 98, paragraph 1 of the Rome Statute.

- Any solution should cover only persons present on the territory of a requested State because they have been sent by a sending State, cf. Article 98, paragraph 2 of the Rome Statute.
- Surrender as referred to in Article 98 of the Rome Statute cannot be deemed to include transit as referred to in Article 89, paragraph 3 of the Rome Statute.
- Sunset clause: The arrangement could contain a termination or revision clause limiting the period in which the arrangement is in force.
- Ratification: The approval of any new agreement or of an amendment of any existing agreement would have to be given in accordance with the constitutional procedures of each individual state.
