



European Commission

# European Commission support for the International Criminal Court



European Initiative  
for Democracy and Human Rights



**Report of the Conference held in Brussels  
28 and 29 January 2002 and follow-up**

"The EU is wholeheartedly and unreservedly a supporter of the establishment of the International Criminal Court"

The Rt. Hon. Chris Patten, CH  
European Commissioner for External Relations

# WELCOME by Mr. F. de Angelis, opening session on 28 January 2002

*Ladies and Gentlemen,*

*It is with immense pleasure that I find myself amongst such a great audience, that is to be gathered here for the next two days, to bring to light the various means that we are employing to support the current establishment of the International Criminal Court.*

*You are probably already aware of the fact that the European Commission has been actively supporting the idea of an international criminal jurisdiction and, once the Rome Statute approved, the prompt establishment of the Court.*

*The year 2002 will be a turning point, since the treaty will be entering into force during the next few months. It is to be crucial that the different players, institutional or not, that have shown their commitment in promoting the idea of an enhanced international justice (and which would be a better instrument than the ICC?) can gather to exchange their experiences and opinions, and also to draw new perspectives adapted to the present situation. This shall be done in full respect of the institutional prerogatives of each of those actors.*

*Present here today are representatives of Member States to the European Union. This underlines the fact that since the beginning, the EU, as a whole, has been playing a decisive role in supporting the creation of the Court.*

*Also present are representatives of Third States, such as Canada or Lesotho, that either occupy, or have occupied, important functions at the UN Preparatory Commission. This shows the extent to which all geographical regions are involved in the setting up of the Court.*

*Also present are the representatives of different International Institutions, such as the Council of Europe and the International Committee of the Red Cross, representatives of NGO's with whom the Commission has been working on the ICC for several years, as well as specialists in different fields of expertise. As you will certainly have seen, the agenda of this Conference is broad and the debates foreseen for the next two days will allow participants to constructively express their views in a constructive manner.*

*I would like to take a short time to remind you why we have chosen the beginning of the year 2002 to hold this Conference on the Court, and also why we have gathered participants with such different perspectives. To begin with, in the last 6 months the ICC has gained immense attention vis-à-vis the European Union's agenda :*

- The Council's Common Position from the 11<sup>th</sup> June 2001 represents the cornerstone of this support. This text is not only a strong encouragement to the prompt establishment of the Court through different means, but it also calls upon the European Institutions to allocate the different tasks allotted to them according to their individual competences. Indeed, the Council's Common Position calls for actions by both the Council and the Commission. In this regard, a first informal coordination meeting took place in November under the auspices of the Belgium Presidency.*
- The Commission adopted a very important document in May 2001 : the Communication to the Council and the Parliament on Human Rights. This document mentions four priorities for the Commission in the next years, and one of which explicitly mentions the support to the Court and to the existing ad hoc Tribunals.*
- The European Parliament has explicitly stated the importance of this issue. In fact, it was by following their own initiative that the Parliament and the Council voted a 5m Euro budget (showing an increase of over 60%) in 2002 for the budget line related to the ICC.*

*This major institutional development has taken place in parallel to an outstanding change in the*

movement for ratification leading to the entry into force of the Treaty. The pace of ratifications, especially in the last several months, led to the 48<sup>th</sup> ratification during the present month. Thus, if the 60 ratifications threshold is to be achieved in the coming months, then this consideration gives certain urgency to the need of acting in common agreement.

In such particular and unprecedented circumstances, which will undoubtedly spawn a new sense of dynamism, the Commission (EuropeAid Cooperation Office and Directorate General RELEX) took the initiative of holding this Conference.

As you know, the EuropeAid Cooperation Office, of which I am the Director of Directorate F «Horizontal Operations and Innovation», is in charge of managing projects lead with partners in the external relations' field. Our Directorate is also in charge of the management of projects in the Human Rights field. It will hence manage the new budget of 5 million euros allocated by the Budgetary Authority. We will select, in the programming framework drawn by DG RELEX, new actions required by the Court in order to assure its credibility next to the public opinion and against its opponents.

This new momentum calls for a reflections from each of us on a *modus operandi* renewed with actions of support to the Court. In the last years, the Commission has concentrated successfully, and through NGOs, on raising awareness among public opinion, promoting the ratification process and setting up of national legislations in order to adapt them to the Rome Statute.

Our purpose here is not to review the nature of those previous actions. Even though the Statute will enter into force in the next months, it is in the interest of the Court that its competence and credibility are recognised by the largest number of states in the world. At present, serious regional disparities exist, for instance in Asia. In such cases, support must be renewed. Moreover, the number of ratifying states that have adapted their national legislation in order to collaborate fully with the Court is still very weak. This type of action becomes henceforth a priority.

Nevertheless, it seems that the issue of the Court will, during 2002, come out of the limbo and specialists' circles to arrive into full daylight or at least to a pole position never occupied before by the Court. This situation might reveal itself to be either benefic or a source of danger, if a minimum preparation of each of the concerned players is not carried out on time.

The moment has come for each of us to, on the one hand, accelerate our own actions, and on the other, and in the interest of the future Court, collaborate fully in order to avoid any duplication of efforts, waste of energy and means. In our opinion, the best way to start was to gather all of you. This already allows enhancing the reciprocal information between participants.

Together with a comprehensive agenda, and a synthesis of the actions carried out by the players gathered here, we have provided you with a discussion paper in two different languages (French and English) on perspectives for future action to sustain the effective establishment of the Court. I will not address here the specific items; they are the outcome of our considerations completed by specialists in the subject. Those documents are only a basis for discussion. The main purpose of this Conference is to develop this first reflection in order to lead to a concrete plan of activities for the Commission in the years to come based on the conclusions of this Conference.

Nevertheless, the Commission is more aware than ever that for such an ambitious and innovating subject for Human Rights, the creation of this international jurisdiction, there is place for actions of all nature and from all different partners.

We are engaging in a synergy of efforts within the European Union for the creation of an ICC able to react to the high expectations of its promoters and public opinion, hoping that it will be followed by numerous manifestations of concrete coordination of actions.

The first tangible outcome should be to allow the Court, which will be located in the EU territory! (in The Hague), to function fully and promptly. It is our responsibility to watch over what is until today the symbol of change of international practices, so it cannot fail. The objective of creating a permanent international jurisdiction able to monitor the respect for Human Rights has never been so close.



# INTRODUCTION

The European Commission, EuropeAid Cooperation Office (hereafter EuropeAid), organised a Conference on *“The European Commission’s support for the establishment of the International Criminal Court”*, in Brussels during the 28th and 29th January of 2002.

This Conference represented a unique initiative since the European Commission started supporting the campaign in favour of the International Criminal Court (hereafter ICC) in 1995. Following a prior meeting held in April 2001 with a few actors, EuropeAid convened a larger conference with around seventy participants, from all around the world, involved at different levels in the establishment of the ICC : representatives from Member States of the European Union (hereafter EU), Canada and Lesotho, officials from the European Commission and the Council, international experts, including experts from the Ad Hoc Tribunals; representatives from the Council of Europe and from the International Committee for the Red Cross, and numerous members of Non Governmental Organisations (hereafter NGOs) well recognised in the ICC domain<sup>1</sup>.

The aim of the conference was to provide EuropeAid with constructive input for the implementation of future projects and activities during the period of 2002-04, helping it to ensure cooperation and complementarity of activities among different actors avoiding duplication of efforts. The final outcome should result in a reorientation of the EU financial support from a demand-driven process to an agreed-driven process.

The moment is particularly critical in view of the imminent entry into force of the Rome Statute. New challenges would seem to need new approaches, new priority actions and eventually identifying new actors and beneficiaries.

This publication presents the results of the works of the conference. The documents included are the following :

- I. **Discussion paper**, introducing the major thematic priorities at stake related to the establishment of the ICC, which served as a basis for the informal discussions;
- II. **Overview of past and current activities on the ICC**, including : European Commission (hereafter EC)’s measures in the framework of the European Initiative for Democracy and Human Rights (hereafter EIDHR), EU Member States’ actions and measures; International Organisations’ contributions and NGOs’ actions and campaigns;
- III. **Report** of the debates that took place during the two days’ conference;
- IV. **Executive summary and Recommendations**, pointing out the main areas identified by the participants for EC support but also for the EU and individual member states.

**Please, note that the Discussion paper and the Overview of past and current activities on the ICC were written prior to the conference, that the Report reflects the debate that took place at the conference, while the Introduction and the Executive Summary and Recommendations were finalised on the 21st of June with a view to the current publication and include the latest developments on the ICC until that date.**

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<sup>1</sup> See the annexe document containing the list of participants.



# I. DISCUSSION PAPER

## 1. Background

The European Union is a strong supporter of the ad hoc international tribunals and the establishment of the International Criminal Court. Addressing impunity is consistent with the importance attached to preventing, resolving and dealing with the consequences of conflicts.

The 'European Initiative for Democracy and Human Rights', chapter B7-7 of the UE Budget, was created on the initiative of the European Parliament in 1994. In order to provide an adequate instrument to support the ICC, the European Parliament (hereafter EP) created in 1995 a budget line B7-706 (then A-3041) intended to provide technical support to the United Nations (hereafter UN) Ad Hoc International Criminal Tribunals for Rwanda (hereafter ICTR) and the former Yugoslavia (ICTY) and to the preparatory work for the setting up and functioning of the ICC. The EC gave financial support to numerous activities carried out in partnership with NGOs and international organisations.

On 29 April 1999, the *Council Regulations*<sup>2</sup> provided a legal basis for all human rights and democratisation activities carried out by the European Union under Chapter B7-7. The Regulations also created the Human Rights and Democracy Committee to assist the Commission in the implementation of those Community operations.

On 8 May 2001, the Commission adopted the *Communication on "The EU's role in promoting Human Rights and Democratisation in third countries"*, which represents a crucial new policy landmark for the EU in this area, addressing the major changes, which have influenced activities in the last few years. The Communication identifies three areas where the Commission can act more effectively and coherently :

- Promoting coherent and consistent policies in support of human rights and democratisation, within and between the European community policies, and between those policies and action of the EU (especially the Common Foreign and Security Policy) and that of Member States;
- Through placing a higher priority on human rights and democratisation in the EU's relations with third countries and taking a more pro-active approach, in particular by using the opportunities offered by political dialogue, trade and external assistance;
- By adopting a more strategic approach to the EIDHR, matching programmes and projects in the field with commitments on human rights and democracy.

The third area is critically important for the programming of resources and for establishing a response strategy for EIDHR. To maximise impact, the Communication states that EIDHR should focus only on four thematic priorities aimed at addressing specific medium to long term goals, and it suggests identifying a limited number of target countries on which the Commission should concentrate EIDHR support. One of the thematic priorities is **"the support for the fight against torture and impunity and for international tribunals and criminal courts"**.

The Communication recognises that the crosscutting nature of human rights and democratisation requires considerable efforts to ensure consistency and coherence<sup>3</sup>. Community activities cannot be viewed in isolation from other EU actions. To promote human rights and democratisation objectives in external relations, the EU draws on a wide range of instruments and approaches. The Commission, which shares with the Council the Treaty obligation (Art. 3 TEU) to ensure the consistency of its external activities as a whole, should work to ensure that these different instruments are used coherently and effectively<sup>4</sup>. The European Parliament, the Commission<sup>5</sup> and the Council as well as Member States have each utilised their own means to support ICC.

*The European Parliament* has been a consistent supporter of the ICC through various means at its disposal : the continuous support to the budget line for international tribunals and ICC (the EC budget for those activities has been increased to 5 million euros for 2002); the adoption of resolutions supporting the establishment of the ICC<sup>6</sup> ; raising oral questions on the ICC to the



Council and Commission; and most recently, by deciding to have a debate on the ICC at the plenary of the mini session of February 2002.

*Member states*, as negotiators of the Rome Statute, have consistently supported the establishment of an independent and effective ICC. An important contribution has been made through their statements pro ICC in several multilateral fora (e.g. UN General Assembly, OSCE, hereafter Organisation for Security and Co-operation in Europe, Council of Europe, hereafter CoE). The EU Annual Human Rights Report always includes the establishment of the ICC and the fight against impunity as one of the priorities of the Union. Under the Presidency of Finland in 1999, the ICC was included as a theme of one working group of the first EU Human Rights Discussion Forum. Diplomatic *démarches* with third states have been undertaken by Member States individually as well as collectively by the EU.

*The Council Common Position* on the ICC of 11 June 2001 marked a highpoint of the consistency and coherence between the EU first and second pillars. Article 4 notes that the Council shall, 'where appropriate, coordinate measures by the European Union and Member States for the implementation of Articles 2 and 3'. Article 5 notes that the Commission 'intends to direct its action towards achieving the objectives and priorities of this Common Position, where appropriate by pertinent Community measures'. Articles 2 and 3 set up the priority practical efforts that Member States shall make to contribute to the effective establishment of the Court and the implementation of the Statute. Since the adoption of the Common Position, the Swedish and Belgian Presidencies<sup>7</sup> have convened several EC-EU coordination meetings.

Finally, the establishment of the ICC will have a clear financial impact on the EU. According to a hypothetical assessment of the financing of the ICC<sup>8</sup>, the total EU financial contribution to the ICC would amount to a 78,1660 % of the Court's costs.

## **2. Overview of current situation and perspectives of needs for 2002-04**

The Statute of the International Criminal Court, adopted by the Rome Conference of Plenipotentiaries, has been signed by 139 States and ratified or acceded to by 48 of them. It will enter into force after the sixtieth instrument of ratification, acceptance, approval or accession is deposited. It is likely that the entry into force will occur in 2002. While this is a historical success, it is a common misconception that the work to establish the ICC will be completed upon entry into force of the Statute. It is still unclear how much time will elapse between entry into force and the effective establishment of the Court. What are the lessons we can learn from the experience of the Ad Hoc Tribunals? Should the EC work on raising awareness of the challenges ahead to ensure that expectations remain realistic, thereby maintaining the credibility of the Court?

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<sup>2</sup> Council Regulations 975/1999 and 976/1999 on the development and consolidation of democracy and the rule of law and respect for human rights and fundamental freedoms, OJ 120/1 of 8 May 1999. The first regulation refers to developing countries and the second to all other countries.

<sup>3</sup> Report of the Comité des Sages "Leading by example - a Human Rights Agenda for the European Union for the year 2000", European University Institute, October 1998.

<sup>4</sup> The concern to implement the European Human Rights Policy is shared by both Commission and Member States, as shown by the topics identified for the Human Rights Discussion Forum organised under the Belgian Presidency, i.e. WG on "Means and approaches at bilateral and multilateral level".

<sup>5</sup> For a full description of the EC financial support to the ICC see "Overview of past and current activities".

<sup>6</sup> See the last EP resolution adopted on 18 January 2001.

<sup>7</sup> NGOs were invited to join the informal meeting on the ICC of November 7<sup>th</sup> 2001, which included discussions on the follow up of the Common Position.

<sup>8</sup> These estimations are included in the "PICT Discussion Paper on the Financing of the International Criminal Court. Annexe III", 2000, in a hypothetical scenario where neither the United States nor Japan are members of the Court and all Member States except Greece are states parties.



Several issues at stake have been identified : completion of the UN Preparatory Commission on the ICC (hereafter Prep Com); obtaining worldwide and geographically balanced adherence to the ICC; adoption of national implementing legislation to fully cooperate with the Court and to exercise national criminal jurisdiction over the ICC crimes; monitoring and supporting the work of the Assembly of States Parties; prompt and effective establishment of the ICC, ensuring its credibility and monitoring the future work of the Court; continuous generation of public awareness and support for the Court; and training for target groups such as law enforcement officials. What should be the EC efforts to tackle those issues?

*a. Support for the successful completion of the UN Prep Com*

The Final Act of the Rome Conference provides for the establishment of a Prep Com with the task of negotiating the necessary technical arrangements for bringing the Court into operation, including the preparation of draft texts of the additional instruments needed for the well functioning of the Court. The Prep Com on June 30th 2000 adopted by consensus draft texts of the Rules of Procedure and Evidence and Elements of Crimes. The eighth Prep Com of October 5th 2001 adopted four draft texts : Relationship Agreement between the Court and the UN, Rules of Procedure of the Assembly of States Parties (hereafter ASP), Financial Rules and Regulations, and an Agreement on the Privileges and Immunities of the Court.

Two Prep Com sessions have been scheduled for 2002, one from 8-19 April and the second from 1-12 July. Also, the UN Secretary General has called for preparations to convene the Assembly of States Parties at UN Headquarters.

Three working groups will continue their work on : definition of the crime of aggression, a relationship agreement between the court and the host country (The Netherlands) and a first-year budget for the Court. Two new working groups were set up to deal with more practical remaining issues. One will deal with documents that must be prepared for the ASP, including such matters as the Bureau of the Assembly, the Secretariat of the Assembly, nomination and election procedures for judges and the prosecutor, and a flow chart with a detailed timetable and agenda for initial ASP meetings. The other will focus on remaining financial issues, such as the remuneration of judges, prosecutor and registrar and the Victims' Trust Fund. As provisional rules will be necessary, focal points have been appointed for : budgetary and financial issues, human resources and administration and operational issues. A four-member subcommittee was established to act as interlocutor between the Prep Com and The Netherlands as host country.

After entry into force of the Statute, draft texts will be placed before the first meeting of the ASP for its consideration, and the Prep Com will be dissolved.

Should the EC support the monitoring of the process of negotiations? How important is it that observers, including NGOs, (representing all legal systems and sensibilities) remain actively engaged in the process of negotiations? Is it important to have reports on the proposals put forward and results of the negotiations for outsiders to understand and influence the process?

*b. Obtaining maximum and geographically balanced membership to the ICC.*

The Rome Statute has been signed by 139 States and ratified or acceded to by 48 of them. At the current pace of ratifications, it might be expected that 60 nations will ratify by June 2002, which means that entry into force could occur in autumn.<sup>10</sup>

Among the 48 countries that have ratified, there are : 23 from Europe, 10 from Africa, 10 from America, 1 from Asia and 4 from Oceania. Neither China, the United States, India, the Russian Federation, Indonesia, Japan or Brazil have ratified.

Securing the maximum number of ratifications, worldwide and geographically balanced, is critical to both the legitimacy and effectiveness of the Court. The need for worldwide support is fully consistent with the jurisdictional regime under the Rome Statute limiting the scope of the

Court's jurisdiction to the territorial state and the state of the nationality of the criminal. Only worldwide support can ensure effectiveness.

Art.2.1.of the Common Position states that *“in order to contribute to the objective of the early entry into force of the Statute, the European Union and its Member States shall make every effort to further this process by raising the issue of the widest possible ratification, acceptance, approval or accession to the Rome Statute, and the implementation of the Statute in negotiations or political dialogues with third States, groups of States or relevant regional organisations, whenever appropriate.»*

Which actions should the EC support to help legitimise the ICC? Should the EC support the definition of strategies with target countries? Are conferences and seminars still a useful tool? Should they have a regional or national focus? Should a list of experts be available for seminars and training? What type of legal expertise is required? How important is it to involve regional/local NGOs and other actors of civil society? What are the most effective advocacy efforts the EC should support? Are databases useful? Which instruments must be created to compile information about ratification and implementation?

*c. Ensuring the adoption of national implementing legislation to fully cooperate with the Court and to exercise national criminal jurisdiction over the ICC crimes.*

The Rome Statute emphasises that the ICC shall be complementary to national criminal jurisdiction<sup>11</sup>. Primary responsibility for investigating and prosecuting the crimes within the jurisdiction of the Court will continue to be the States' responsibility, and thus, only when the State concerned is unwilling or unable genuinely to proceed or where it prefers that the Court act, would the ICC be able to rule a case admissible. The most significant achievement of the ICC, in the long term, will result from it being used as a force in strengthening national laws and pushing national courts to comply with their duty to try and investigate those crimes. Also, under the Rome Statute, all States Parties are under the general obligation to cooperate with the requests of the Court. States are also obliged to provide any necessary procedures under national law for the cooperation called for under Part 9. This latter requirement will have important effects, as it calls for cooperation in the arrest and surrender of accused persons, and in a number of other areas (e.g. taking testimony, ensuring attendance of witnesses, locating evidence).<sup>12</sup>

One of the most important reasons for the failure of previous human rights and humanitarian law treaties to reduce the number of people affected by conflict and human rights abuses has been the fact that few countries implement their obligations under the treaty after ratification. This must not be the case with the ICC, therefore, it is imperative to ensure that strong domestic implementing legislation is adopted in every country, and this will take several years.

Article 2. 2) and 3) of the Common Position state that *“The Union and its Member States shall contribute to an early entry into force and implementation of the Statute also by other means, such as by adopting initiatives to promote the dissemination of the values, principles and provisions of the Rome Statute and related instruments».* *“The Member States shall share with all interested States their own experiences on the issues related to the implementation of the Statute and, when appropriate, provide other forms of support to that objective».*

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<sup>9</sup> E.g. NGO Coalition reports on the proceedings of each session of the Prep Com.

<sup>10</sup> Source : NGO Coalition for the ICC, [www.iccnw.org](http://www.iccnw.org)

<sup>11</sup> Preamble, Rome Statute PCNICC/1999/Inf/3.

<sup>12</sup> The ICC : a short introduction. Prepared by LCHR for a meeting held at the Constitutional and Legal Policy Institute, Budapest, October 2001.



Should the EC support efforts to maximise third states political will (weaken opposition, strengthen support) for the ratification and implementation of the Statute? What efforts are needed? What are the most useful instruments to support the dissemination and propagation of ICC rules and principles? How could the EC assist countries that are willing but not quite able to ratify and implement the Statute? What is the expertise required? Is expert assistance in drafting legislation available? Is a national experts type of seminar a useful instrument? Should other EC instruments such as twinning<sup>13</sup> be utilised? What training efforts are needed? Should the EC support the development of regional consultation processes? Should Member States and the EC work in coordination to develop coherent country or regional strategies? Is there enough access to databases with compiled information on political and legal constraints to ratification and implementation? How can NGOs maximize their impact in awareness campaigns?

*d. Continue generating public awareness of and support for the Court and provide training for target groups.*

Widespread public awareness of the existence of the Court and of its role and methods of functioning is also extremely important. Without such understanding, the international community will be much more critical of any challenges faced by the Court and will be unwilling to support its work. The assistance of humanitarian workers and non-governmental organisations, for example, will be critical to the Court's ability to fulfil its mandate, and widespread public support for the Court will be necessary for this to occur. Widespread support from the media in all regions will also be very important. As a result of the complementarity principle, it is very important that the training and education of national judges, parliamentarians, lawyers, prosecutors, law enforcement agencies and other officials at the national level begin as soon as possible.

Can the Court be successful without involvement of local NGOs and other actors of civil society worldwide? Should the EC support involvement of civil society from around the world in accordance with the objective of a Court as widely and geographically balanced as possible? What are the efforts still needed to affect public opinion and engage local NGOs and target groups in the ICC process? Should the EC support actions such as organising seminars or conferences, media outreach, developing info tools for general and more target groups, creating a list of expert, developing websites with information on the ICC in different languages? What is the best approach for training target groups (law enforcement actors)?

*e. Monitoring and supporting the work of the Assembly of States Parties.*

The Assembly of States Parties will comprise all States that have ratified or acceded to the Rome Statute, each with one vote. States that have not ratified but have signed might sit as observers. At its first meeting, the Assembly will have at least sixty members and a Bureau of eighteen members, including a President and two Vice-Presidents. Although the Assembly is structured to enable States Parties to oversee the Court's management without affecting its independence, the Assembly will perform a number of very important tasks. At its first session, after adopting its own rules of procedure, it will consider and adopt the draft texts that the Prep Com puts before it including, importantly, the Rules of Procedure and Evidence and the Elements of Crimes<sup>14</sup>, and will continue with negotiations on the crime of aggression. Importantly, it will also elect the judges, prosecutor and any deputy prosecutors. It will recommend to the judges candidates for the position of registrar and deputy registrar. The registrar and the ASP will also have to establish trust funds, create outreach programs, set up the victims unit and perform many other functions of particular importance in the treatment of the victims. Following the pace of ratifications, the first ASP could be held in September 2002.

Should the EC support the preparations and monitoring of the work of the ASP? Does the EC have any role to play in ensuring a transparent and fair process for nomination of the most highly qualified judges, registrar and prosecutor, that takes into account the representation of the principal legal systems, equitable geographic representation and a fair female and male representation? Should the EC support training of target groups, (e.g. judges, lawyers, prosecutors)? Should the EC support NGO participation as observers?

*f. Support the prompt and effective establishment of the ICC, ensuring its credibility and monitor the future work of the Court.*

After the entry into force of the Statute, an increasing number of steps must be taken before the Court can function effectively. Tapping the expertise of the ICTR, ICTY and of the Special Court for Sierra Leone is an indispensable part of this process. These ad hoc tribunals have had a primary role in the establishment of the ICC since its inception. They have contributed to the clarification of international criminal law, highlighted the need for state cooperation and introduced detailed Rules of Procedure and Evidence.<sup>15</sup>

According to Article 3 of the Common Position *“the Union and its Member States shall give support, including practical support, to the early establishment and good functioning of the Court. They shall support the early creation of an appropriate planning mechanism in order to prepare the effective establishment of the Court.”*

The rapid pace of ratification has caught many ‘unprepared’ and the number of ‘urgent pending’ issues to tackle is increasing every day. What could the EC support be with regards to all those actions? Among other areas of work the following have been identified : Planning for the inter-sessional meetings (including supporting or holding them); Supporting the Host State arrangements<sup>16</sup> (including security, municipal services, temporary and permanent premises); Developing various instruments for the effective functioning of the Court, such as procurement, staffing, detention, investigations, assignment of defence, establishment of a secretariat)? Establishing an international criminal bar<sup>17</sup>; Drafting of a code of conduct for counsel; Monitoring the establishment of a trust fund for victims; Supporting an outreach program (key to avoid a negative impact in the Court’s reputation due to the time gap after entry into force); Training for target groups (e.g. judges, prosecutors, lawyers); Ensuring adequate funding for the Court? Monitoring States cooperation with the Court; Should the EC support NGOs in their role to assist the Court and Member States in tackling the transitional issues? Should the EC support NGOs in their role to monitor the future work of the Court? On the future work of the Court, NGOs are entitled to, e.g. provide the Prosecutor with information on crimes<sup>18</sup>, assess whether a particular country has properly exercised its complementarity option or has undertaken an investigation or trial simply for the purpose of shielding its national from prosecution by the Court. All these issues need to be discussed.

### **3. Conclusions**

The Commission expects that this conference will facilitate its work in ensuring co-ordination and complementarity between actions carried out by all actors involved (Member States, International Organisations and NGOs). In the near future, the EC must find more effective ways to exchange and disseminate information, avoid unnecessary duplication of actions, maximise the impact of the ICC and integrate these into its general and sectoral policies. Some issues must be left to governments as future parties to the Court, but with an important role for NGOs.

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<sup>13</sup> Following the example of the twinning programs as foreseen by the Community pre-accession instrument PHARE.

<sup>14</sup> These are very complex documents adopted by consensus by the Prep Com. It has been said that attempts to ‘reopen’ them would affect the delicate balance of interests reflected therein.

<sup>15</sup> The Registrars of ICTY and ICTR intervened at the eight session of the Prep Com.

<sup>16</sup> The Foreign Minister of the Netherlands briefed the eight session of the Prep Com on the logistical arrangements under way, L/2985, 25 September 2001.

<sup>17</sup> A first discussion took place at the Paris conference “Creation of an International Criminal Bar for the ICC” 6-7 December 2001.

<sup>18</sup> Art. 15.2 of the Rome Statute.



## II. OVERVIEW OF PAST AND CURRENT ACTIVITIES ON THE ICC

### 1. European Commission : measures in the framework of the EIDHR

The European Commission has been playing a leading role in the campaign to create the International Criminal Court. From 1995 to 2001, the EC has given a financial support of around € 7 million to support the establishment of the ICC, mainly through activities carried out primarily in partnership with NGOs and the United Nations. The Budget Authority has increased the budget line for the International Ad hoc Criminal Tribunals and the International Criminal Court. At the initiative of the European Parliament, € 5 million have been allocated for 2002.

This section seeks to describe how this contribution has been performed through the European Initiative for Democracy and Human Rights from 1996 to the current days. Following is the list of grants per year on activities related to the establishment of the ICC.

#### 1.1 Grants in 1996<sup>19</sup>

*World Federalist Movement* (hereafter WFM) : EC Grant : € 60.000.

*No Peace Without Justice* (hereafter NPWJ) : EC Grant : € 115.000.

*Earth Action* was awarded a grant to pursue, through its large network of NGOs, lobbying actions to build support for the Court. Earth Action disseminated useful information via the Internet aimed at informing and mobilising citizen groups from all parts of the world, members of parliament, media commentators and other opinion leaders. E.C. Grant : € 55.000.

#### 1.2 Grants in 1997

*The University of Nottingham* held a workshop in June 1997 to assist the Prep Com by providing a forum for discussion on the various legal systems in order to facilitate the negotiations. EC Grant : € 61.845.

*Redress* carried out a project that played an active role at the 1998 December Prep Com session by lobbying government delegates to support the right to compensation for survivors of torture. EC Grant : € 55.000.

*United Nations*. A project was granted that aimed at allowing the participation of delegates from the Least Developed Countries (in the Prep Com sessions and in the Rome Diplomatic Conference, through the provision of airfares and subsistence allowances). Also, assistance to lobbying activities aiming at securing support for the Court, and to projects focusing on providing assistance to the Diplomatic Conference delegates. EC Grant : € 365.625.

*The International Commission of Jurists* supported activities focused on lobbying participants in the Prep Com sessions of December 1997 and April 1998, and in the Diplomatic Conference, as well as legal experts from the ministries of justice and foreign affairs of African and Latin American countries, in order to enlist their support for the creation of the ICC. EC Grant : € 76.600.

*WFM : "NGO Coalition for the ICC (CICC)"*. The Coalition assisted in the development and expansion of regional and national networks and coalitions in all parts of the world. Apart from that, the Coalition and its key partners engaged in a concerted campaign to raise awareness among the media and civil society of the importance of the establishment of an ICC. During the Rome Conference, the Coalition successfully provided technical and logistical support to the participants, and even directly sponsored the participation of 30 NGO experts from least developed countries. In addition, the Coalition kept the media informed of general developments, govern-

ment positions and NGO positions and activities via the CICC web site and the daily newsletter "Terra Viva». EC Grants : €100.000 and €200.000.

NPWJ carried out a set of activities in support of the Court : a international awareness campaign consisting of conferences, seminars, marches and concerts to enlist worldwide support for the establishment of the ICC while raising international awareness over human rights issues. The campaign continued at the Diplomatic Conference by lobbying delegates, providing expert legal counsel to smaller delegations and organising public events, demonstrations and appeals. Also, NPWJ published a Yearbook on the establishment of the ICC. This publication helped to increase support, in particular from small and least developed countries, for the establishment of an ICC and enabled the delegates present in Rome to improve their knowledge about the preparatory work accomplished before the Diplomatic Conference. EC Grants : €275.000 and €68.400.

### 1.3 Grants in 1998

WFM. EC Grant : €525.000.

NPWJ . EC Grant : €390.000.

### 1.4 Grants in 1999<sup>19</sup>

WFM : *"NGO Coalition for the ICC, Phase IV, Part 2, Completing the Establishment of the ICC»*. This project aimed at maintaining the momentum for the completion of the establishment of the ICC by : assisting governments in completing tasks set for the 'Prep Com for the ICC' in the Final Act of the Rome Statute; carrying out a global ICC education campaign and undertaking efforts to secure the greatest number possible of signatures and ratifications for early entry into force of the Statute; assisting in coordinating technical assistance for governments to facilitate their full participation in the treaty and cooperation with the Court; Continuing to develop and diversify membership and networks at national, regional and sectoral level. EC Grant : € 650.000, 12 months project.

*International Society for Human Rights* (hereafter ISHR) : *"Raising Military and Civil Awareness of the ICC in Eastern European Countries»*. This project aimed at promoting awareness and understanding of the International Criminal Court (ICC) within the armed forces and civil society in Eastern European countries. The activities involved were : training workshop in Germany for project staff and lecturers; seminar in Georgia, Moldova, Russia, Ukraine, Uzbekistan on development and basics of international law; a publicity campaign; a one-day evaluation conference. The participants were government officials, judges, prosecutors, lawyers, teachers, professors, high-school and university students, members of the armed forces, penitentiary personnel and representatives of international, governmental and non-governmental organisations. EC Grant : € 157.195, 10 months project.

*Parliamentarians for Global Action* (hereafter PGA) : *"Parliamentary Campaign for Ratification of the Statute to Establish an International Criminal Court and Continued support for ICTY and ICTR»*. This project aimed at ensuring widespread ratification and entry into force of the Rome Statute in co-operation with parliamentary networks around the world. It comprised sixteen meetings and conferences to be held in Africa, Asia, the Caribbean, Latin America and Europe. These should bring together parliamentarians, NGO activists and officials. The purpose of these meetings was to overcome national political and security concerns as well as technical legal difficulties in to order to facilitate the process of ratification. EC Grant : € 200.000, 18 months project.

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<sup>19</sup> Report by Jorge Cabaço containing information on EC financed projects from 1996 to 1998 in European Human Rights Foundation, September 99.

<sup>20</sup> In "European Initiative for Democracy and Human Rights, Compendium 2000", pp 133-139, European Human Rights Foundation, Brussels.



NPWJ : "Ratification Now!" 1999-2000 Campaign for the entry into force of the International Criminal Court and the support of the activities of the ad hoc Tribunals for the former Yugoslavia and Rwanda». The objective of this project was to contribute to the establishment of an effective permanent international criminal justice system, through the early entry into force of a permanent ICC. The purposes were : to achieve the signature and ratification of the Rome Statute by as many states as possible and to give technical and legal assistance to smaller delegations in context with the UN negotiations of the Rules of Procedure and Evidence and the Elements of Crimes in order to ensure the widest possible active participation. EC Grant : € 515.000, 10 months project.

#### 1.5 Grants in 2000<sup>21</sup>

*Intermedia*. Project to raise awareness among legal professionals and the general public around the world and, in particular in Rwanda, on the functioning of the international tribunal system. E.C. Grant : € 579.555.

*Centro di Iniziativa per l'Europa del Piemonte*. Project aimed at the creation of a research institute to carry out research and exchange information about the activities of the international criminal tribunals. E.C. Grant : € 551.062.

*Asian Forum for Human Rights and Development*. "Asia Regional Campaign to Promote the International Criminal Court». This campaign promoted the ICC in Asia and comprised : formation and strengthening of groups - the ICC Expert Group in Asia that would provide the necessary knowledge and expertise to the broader target beneficiaries; working Groups in each of the target countries that would work for the campaign for signing and ratification of the ICC Treaty in their respective countries; information dissemination to target groups and the actual campaign for signing, ratification and effective implementation. It pursued also better coordination of initiatives among sub-regions, namely South Asia, Northeast Asia, Central Asia and Southeast Asia, through meetings and joint activities. EC Grant € 205.760. 13 months project.

NPWJ. "Effective Implementation of Treaties on Human Rights, Humanitarian Law and International Criminal Law». This campaign intended to facilitate the effective implementation of international treaties on Human Rights, International Humanitarian Law and International Criminal Law by involving key governments in an international context. It aimed at promoting intergovernmental dialogue and collaboration both at political and technical level and also at the secondment of legal advisers in international fora in order to foster the widest possible participation in all the relevant negotiations at the United Nations headquarters. EC Grant : € 514.353, 10 months project.

#### 1.6 Grants in 2001<sup>22</sup>

WFM. "NGO Coalition for the ICC», Phase IV, Part 3 : "Completing the establishment of the ICC and Working to ensure its effectiveness». The objectives of this project are : to facilitate civil society involvement and cooperation with governments during the United Nations Prep Com on the ICC; to expand and strengthen the Coalition and its global networks by using the Coalition's Global South and European coordination offices in Lima and Brussels as working models; to promote universal acceptance of the ICC and Rome Statute; to promote and facilitate technical cooperation to ensure that strong domestic implementing legislation is adopted after ratification of the Rome Statute. EC Grant : € 750.000, 12 months project.

PGA. "Parliamentary Campaign for the Ratification and Effective Implementation of ICC Statute and the Promotion of the Rule of Law». The objectives of this project are : to reinforce the rule of law and democracy principles by facilitating the entry into force of the Treaty and the implementation of national legislation; to mobilise parliamentarians and increase awareness on the future ICC; to facilitate the process of ratification (organisation of regional conferences); to assist the implementation of national legislation by providing technical assistance. EC Grant : € 530.846, 18 months project.

NPWJ. "Effective Ratification and Implementation of the Rome Statute of the International Criminal Court". The objectives of this project are : to organise regional conferences to speed up the ratification process and to promote the awareness on the future establishment of the ICC; to provide technical assistance to the national implementation of legislation; to perform public awareness campaigns on the ICC. EC Grant : € 830.000, 12 months project.

### 1.7 Grants in 2002-2004

In light of the requirements set out in the Commission's Communication "The EU's role in promoting Human Rights and Democratisation in third countries», a response strategy must be set up to enhance the impact of EIDHR, and examine the best modalities to deliver assistance. Accordingly, the EIDHR must have a more strategic, prioritised and longer-term approach. The programming of the EIDHR falls under the responsibility of the Commission Directorate General for External Relations (hereafter DG Relex), in consultation with DG Development (hereafter DG Dev), DG Enlargement (hereafter DG Elarg) and EuropeAid. This strategic approach to the EIDHR programming was discussed with the Human Rights Management Committee, European Parliament and NGOs, with a view to its implementation in 2002.<sup>23</sup>

The Commission's Communication elaborated four main thematic priorities to improve the focus of EIDHR.<sup>24</sup> One of these priorities is the "Support for the fight against torture and impunity and for international tribunals and the International Criminal Court». As a sub-area for this priority, the Commission selected "International justice and fighting impunity» comprising the following specific objectives : the establishment of the International Criminal Court; effective mechanisms of the Court developed; supporting the operation of the ICTR and ICTY, and for the establishment and operation of the Special Court for Sierra Leone; increased public awareness and cooperation from the national authorities in Rwanda and the former Yugoslavia concerning the tribunals.<sup>25</sup>

The EC believes that the new challenges ahead (c.f. Discussion paper) demand a new and more comprehensive approach.

## 2. EU Member States : actions and measures

EU Member States, as negotiators of the Rome Statute, are fully involved and engaged in the establishment of an independent and effective International Criminal Court. In addition, Member States have taken a wide range of supportive actions and measures for the establishment of the ICC. This widespread support assumes different forms. The adoption of the Council Common Position on the ICC provided a framework for Member States action to promote the effective establishment of the Court.<sup>26</sup> This includes measures to ensure ratification and implementation by third states and measures for the prompt establishment of the Court. Moreover, Member States participate in educational campaigns on the ICC and the Rome Statute through the contribution and funding of seminars and conferences on ratification and implementing legislation. In general, those actions have been carried out in partnership with NGOs.<sup>27</sup>

<sup>21</sup> Report on the implementation of the EIDHR in 2000, Commission Staff Working Document, Brussels, 22 May 2001, SEC (2001) 801, pp. 35, 36. See also, EIDHR, Macro Projects, Compendium 2001" May 2001, pp 143-145, European Human Rights Foundation, Brussels.

<sup>22</sup> EIDHR's website at : [http://europa.eu.int/comm/europeaid/projects/eidhr/index\\_en.htm](http://europa.eu.int/comm/europeaid/projects/eidhr/index_en.htm) with information papers regularly updated about Commission activities by Franck-Olivier Roux, desk officer for International Criminal Justice EuropeAid Cooperation Office.

<sup>23</sup> "The European Union's role in promoting Human Rights and Democratisation in third countries' COM (2001) 252 final, 8 May 2001, pp.18.

<sup>24</sup> Idem, pp. 15-17.

<sup>25</sup> 2002-4 EIDHR Programming Document, European Commission, Annex 2, pp.26, pp. 36-37.

<sup>26</sup> The Council has set up a web page containing information on the ICC : <http://ue.eu.int/pesc/icc/en/Index.htm>

<sup>27</sup> Member States and NGOs were asked to provide a short description of such supportive measures. Of course the Commission was dependent on the quality and volume of information provided. Additional information should be most welcome, please send it to Franck-Olivier.Roux@cec.eu.int



**Austria** strongly supports all EU initiatives in favour of the International Criminal Court.

**Belgium** has been promoting the debate on implementing legislation. In December 2001, the Ministry of Justice held the conference "La Cour Pénale Internationale : la Belgique face à ses engagements", organised by Amnesty International. In March 2002, the Ministry of Foreign Affairs will hold the Conference "Fighting against Impunity", organised in partnership with the CICC. The Belgium Presidency, on behalf of the EU, lead various démarches, mainly with the United States but also with other third states in the margins of the UN General Assembly.

**Denmark.** In its bilateral contacts with other states, Denmark is actively working to ensure wide support for the ICC with a view to the early entering into force of the Statute of the Court. The Danish government has continuously supported the work of the CICC. In December 2001, Denmark granted the CICC an amount of DKK 334.000 in accordance with the organisation's application for support for Phase IV, part III of its activities. Also, PGA was awarded a grant in 2001.

**Finland.** Several seminars were co-organised by the Ministry of Foreign Affairs in order to raise awareness on the ICC, (e.g. at the Parliament and University of Helsinki). In 1998, 2000 and 2001, the Ministry of Foreign Affairs contributed to the work of CICC.

**France** organised a seminar in 1999 on the role and access of victims to the ICC<sup>28</sup>. In 2000, support was provided for several seminars on ratification awareness. The French Ministry of Foreign Affairs, the French Ministry of Justice and the European Commission provided support for a conference on the "Creation of an International Criminal Bar for the ICC." A Seminar on "Fight against Impunity" might be held in Paris during the second semester of 2002. France has also given financial support to the International Office for Francophone Countries in order to promote ratification of the Rome Statute in those countries. Moreover, in 2000 a grant was awarded to the CICC. Regarding actions under the EU Common Position, various messages were sent to foreign political leaders to ratify the Rome Statute. Moreover, démarches and letters were sent to the United States' Administration in order to hinder American Service Protection Act (hereafter ASPA)'s approval.

**Germany** is actively participating in the Prep Com negotiations (e.g. a German diplomat is the coordinator of the Working Group on Financial Regulations and Rules and another German diplomat is one of the focal points of the recently created implementation mechanism). Germany is fully engaged and supportive of the Council of Europe's consultation meetings on ratification and implementation.

The German government cooperated closely with NGOs in promoting understanding of the ICC, by supporting conferences on ratification and implementation of the Rome Statute, by sending panellists or moderators by financing the participation of outside experts (e.g. conferences in Berlin, Johannesburg, Moscow, Buenos Aires, Manila, Budapest and Prague). In 2000 and 2001, the Ministry of Foreign Affairs granted financial support to the CICC. The government also worked bilaterally and in concert with EU Member States and other like-minded States to convince States still hesitating to sign and/or ratify the Rome Statute. Germany has been very active in promoting the ICC, through several démarches with third States. Its efforts in preventing ASPA to succeed have been well recognised.

**Greece.** The Ministry of Foreign Affairs, the Ministry of National Defense and the Institute for International Relations sponsored a Conference on « The ICC : a new dimension in international justice » in Santorini, September 2000. Also, Greece funded NGOs whose agenda includes the ICC.

**Ireland** has reiterated its commitment to the ICC in several international fora. At domestic level, the Government has made efforts to ensure the public is informed about the ICC. The Joint Standing Committee on Human Rights, a body comprising representatives of NGOs and officials from the Department of Foreign Affairs, has often discussed the ICC. The issue of providing assistance to organisations and events aimed at supporting the ICC is to be discussed shortly at this forum.

**Italy** has hosted various events related to the implementation of the Rome Statute since 1998 : In

June 1999, a Prep Com inter-sessional meeting on "Rules of Procedure and Evidence" was held in Siracusa (I.S.I.S.C.) and funded by the Italian Ministry of Foreign Affairs. Many other conferences and seminars furthering the dissemination of the Statute between academics, officials and lawyers were held by the Judiciary (e.g., the Supreme Court), private institutions (e.g., the National Bar Association) or Universities (e.g., Verona, Teramo and Trento). The government have supported activities carried out by NPWJ over the last two years such as seminars and conferences in : Verona, December 2000; The Hague, December 2000; Bamako, December 2000; Accra, February 2001; Freetown, February 2001; Ischia, April 2001; Trento, June 2001; Manila, October 2001; Prague, December 2001. The 2002 celebrating event of the 1998 Rome Conference will likely follow, according to current assessment, the entry into force of the Statute. The Italian Government is considering appropriate initiatives. Different actions were taken by the Italian Government, under the Common Position, such as promoting the principle of universality through the widest possible participation to the Court, particularly from those regions currently under represented. In this spirit, some Asian States have been addressed by promotional initiatives in 2001 and exchange of views took recently place with Japan and India. These initiatives will be followed by measures of technical cooperation and assistance in 2002.

**Luxembourg.** The government provided a grant of € 2355 to the CICC in 2000.

**The Netherlands.** As future host to the Court, The Netherlands is engaged in numerous activities. The permanent site for the future Court has been selected and the preparations have started. Also, a Task Force has been recently established with the purpose of anticipating all the logistical and infra-structural issues for the establishment of the Court. The Government has also financed PGA and CICC in 2001.

**Portugal.** At the end of 2000, Portugal conducted démarches and actions, in coordination with the other EU Member States, to promote the signature of the ICC Treaty by the Lusophone Countries that had not signed : Mozambique, Cape Verde and Sao Tome and Principe. These actions took place next through their Embassies in Lisbon, through the Portuguese Embassies in those countries and also through the Community of Lusophone Countries. Such actions resulted in the signature of the Rome Statute by those countries before the 31st of December 2000. A similar action shall be engaged in the near future by Portugal with the aim to promote the ratification of the Rome Statute by all members of this Community. Upon a proposal by PGA, in February 2001, the Portuguese Parliament held a conference on 'ICC Ratification in Lusophone Countries' aimed at promoting and facilitating ratification and implementation in those countries. It included participation of parliamentarians from the Lusophone countries, lawyers, university teachers and NGOs. The Rome Statute was then translated to Portuguese and distributed to the Lusophone Countries.

**Spain.** At various stages since the Rome Conference, Spanish Embassies abroad have been instructed to make démarches with the countries where they are accredited in order to show a special interest about the signature by those countries of the Rome Statute (before 31 December 2001) and then about their ratification or accession to the Statute. This diplomatic activity has taken place more particularly in Latin America, Africa and the Mediterranean. In the same line, Spanish representatives and experts, with government support, have actively participated in conferences, seminars and other ICC-related meetings, mainly in Argentina, Chile, Colombia, Czech Republic, Mexico, Portugal and Venezuela. Since 1999, in order to foster better knowledge of the Rome Statute and to promote the ICC project, a number of courses and lectures have been organised in several Spanish cities, by many institutions such as the Congress of Deputies, the Higher Council of the Judiciary, the Ministry of Justice, the Royal Academy of Jurisprudence and Legislation, various Universities, the Diplomatic School, the School for the Administration of Justice, the Military School of Legal Studies, Bar Associations and Legal Societies, the Spanish Red Cross, etc. In May 2000, an Iberoamerican Encounter on International Criminal Justice was organised, under governmental auspices, at the

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<sup>28</sup> Séminaire international sur "L'accès aux victimes à la Cour Pénale Internationale". Paris 27-29 April 1999.

Americas House in Madrid, with participation of experts from 18 countries of Europe, North and South America and Africa. As a result of those meetings and other similar initiatives, several books or academic journals centred on the ICC or covering ICC-related matters have been published by the following institutions : the Congress of Deputies, the Higher Council of the Judiciary, the Ministry of Justice, the Diplomatic School, the Americas House and the Military School of Legal Studies. At present, a number of activities on the ICC are in the preparation phase. That is the case of a seminar with governmental and other experts from countries around the Mediterranean to take place in Seville; a conference of parliamentarians from Latin American and European countries in Madrid and support for a meeting of Latin American experts and decision-makers in Mexico City. Spain holds the EU Presidency until 30 June 2002.

**Sweden** has been very active at the UN Prep Com. In 2000, Sweden was engaged in extensive diplomatic actions to encourage the signature of the Statute. In June 2001, the Swedish Government hosted a meeting with experts from Denmark, Estonia, Finland, Latvia, Lithuania, Norway and Poland. The Swedish Government has given expert support to several regional conferences in Africa. In 2001, Sweden supported the Expert's Conference on the ICC in Manila and awarded a grant to the Coalition for the ICC. During the Swedish Presidency, the Government devoted a great deal of energy to the drafting of the Common Position, as well as to the plans for the future implementation of its provisions. At the moment, the Swedish Government has no detailed plans on future ICC action.

**United Kingdom.** A continuous ad hoc programme of bilateral lobbying in support of the ICC has been carried out by the United Kingdom Embassies around the world. In October 2000, the UK funded in full twenty participants to "*South East Asia and Pacific Nations '3 Day Experts' Conference on the ICC*" in Manila. In December 2001, the United Kingdom contributed with a second tranche of \$50,000 to CICC. In January 2002, the United Kingdom offered to co-sponsor (financially) the ICC Prep Com Inter-sessional Conference to be held in The Hague in March 2002; In February 2002, the Foreign Office Agency organises the 'Wilton Park International Conference' "*Towards Global Justice : Accountability and the ICC*".

### 3. International and Intergovernmental Organisations : contributions

International Governmental Organisations offer various possibilities of cooperation and partnership in the promotion and establishment of the International Criminal Court as well as in implementation measures.

**The Council of Europe (hereafter CoE)** has hosted two consultation meetings on the implications of ratification of the ICC Statute for the Member States. These were a joint initiative of the European Committee on Crime Problems (hereafter CDPC) and the Committee of Legal Advisers on Public International Law (hereafter CAHDI). The first Consultation meeting was held in May 2000 and the second in September 2001.<sup>29</sup> Their purpose is to facilitate an exchange of views and information among the members and observers to the Council of Europe. A merited outcome of these meetings has been the creation of a permanent website on the ICC that has been provided with reports on implementation and ratification by the member states themselves. Both the Parliamentary Assembly and the Council of Ministers have adopted recommendations and declarations calling for the establishment of the ICC.<sup>30</sup> Also, it should be mentioned the Venice Commission's Report on constitutional issues raised by the ratification of the ICC Statute, in December 2000.<sup>31</sup>

**The International Committee of the Red Cross (hereafter ICRC)** has actively contributed to the negotiations before, during and after Rome in its role as observer. An Advisory Department on International Humanitarian Law was created in 1996. This body has been crucial in developing humanitarian law nationally, including ICC matters by, e.g., carrying out extensive publications, providing translations of basic documents, especially on war crimes, and by advising States on implementation and ratification measures. The ICRC has held different conferences on the ICC. In March 2001, the "*Regional Conference on the Ratification and Implementation of the Rome*



*Statute of the ICC*", was held in Moscow. In 2002, January, a Regional Seminar on ratification and implementation of the ICC Statute shall take place in Abidjan, Cote D'Ivoire. Another regional conference on very technical issues related to implementation of the ICC shall take place in Budapest in 2002 for Eastern, Central countries and CIS.

**ICTY/ICTY.** The two existing ad hoc criminal tribunals have been playing a crucial role in relation to the ICC. The Prep Com and other instances have heard their expertise in International Criminal Law and in International Humanitarian Law, as well as in practical and logistical know-how in several occasions.

**OSCE/Office of Democratic Institutions and Human Rights (hereafter ODIHR).** The Human Dimension Implementation Meeting is a forum held by OSCE-ODIHR and directed both to Member States and NGOs to raise several Human Rights issues. Support for the ICC has been included in various statements over the last years. During these meetings, NGOs have organised side events (informative sessions) for Member States and NGOs on the ICC.

#### 4. Non Governmental Organisations : actions and campaigns

NGOs have been playing a leading role in the effective promotion of the ICC at a worldwide level. The moment of the adoption in Rome of the ICC Treaty consisted in the culmination of three and half years of intensive advocacy efforts and an unprecedented level of cooperation and coordination among NGOs themselves as well as between NGOs and governments and the UN Secretariat. Since then, NGO involvement has become stronger. NGOs have launched intense campaigns in support of the prompt and effective establishment of the ICC.<sup>32</sup>

**World Federalist Movement/NGO Coalition for the ICC (WFM/CICC).** The NGO Coalition for the International Criminal Court is the 'umbrella' organisation for all NGOs working on the ICC. It consists of a network of over one thousand civil society organisations and legal experts from all around the world, working since 1995, towards the establishment of the International Criminal Court. All the work done by the international secretariat is a project of WFM, it provides a flow of information on ICC issues and ensures coordination and complementarity among all involved. Since the adoption of the Rome Statute in 1998, the NGO Coalition Secretariat has been mandated, by its Steering Committee<sup>33</sup>, to focus on five interconnected goals : promoting education and awareness of the ICC and the Rome Statute at the national, regional and global level; facilitating the effective participation of civil society and NGOs in the negotiations of the Prep Com for the ICC, in particular, of representatives from the south; expanding and strengthening the global network of organisations working on the ICC; promoting universal acceptance and ratification of the Rome Statute, as well as promoting and facilitating technical cooperation to ensure the adoption of strong domestic implementation.

**Amnesty International (hereafter AI)** broad ICC activity comprises an active presence at the Prep Com and an extensive set of publications. AI has commented on every article of the Rome Statute. Publications include Info Kit for ratification and implementation in several languages. Different events have been organised by AI : e.g. "La Cour Pénale Internationale : la Belgique face à ses engagements. Les enjeux de la loi d'adaptation", December 2001, with the collaboration of

<sup>29</sup> The conclusions of this meeting can be found at:

<http://www.legal.coe.int/criminal/icc/Default.asp?fd=events&fn=Strasbourg2001ConclE.htm>

<sup>30</sup> Declaration on the International Criminal Court (Adopted by the Committee of Ministers on 10 October 2001, at the 768<sup>th</sup> meeting of the Ministers' Deputies).

The Parliamentary Assembly has adopted Recommendation 1408 in 1999, and Recommendation 1189 in 1992.

<sup>31</sup> Doc. CDL-INF (2001) 1.

<sup>32</sup> This report, by no means, represents a complete list of NGOs involved in ICC worldwide.

<sup>33</sup> The CICC's NGO Steering Committee is composed by: Amnesty International; Asociacion Pro Derechos Humanos; European Law Students Association; Federation Internationale des Ligues des Droits de l'Homme; Human Rights Watch; International Center for Human Rights and Democratic Development; International Commission of Jurists; Lawyers Committee for Human Rights; No Peace Without Justice; Parliamentarians for Global Action; Union Interfricaine pour les Droits de L'Homme; Women's Caucus for Gender Justice; The World Federalist Movement.

the Coalition for the International Criminal Court, Avocats Sans Frontière, Red Cross Belgium, Katholieke Universiteit Leuven's University of Law and the Flemish and French speaking lawyer's Bars in Brussels and the support from the Belgium Ministry of Justice. In 2002, AI is organising a Conference to be held in March, in Brussels, "Fighting Impunity : Stake and Perspectives". This event is jointly organised with the CICC and the support of the Belgium Ministry of Foreign Affairs.

**Centro Euromediterraneo per gli studi giuridici e i Diritti Umani (CESDU)** was actively involved in the campaign for the permanent International Criminal Court. In March 2001, on the occasion of the official inauguration of the Centre, a Strategy Meeting on the ICC took place where 96 jurists, representing over 30 countries, as well as the Ministers of Justice for Pakistan, Sierra Leone and Trinidad and Tobago were present. In July CESDU also took part in the initiatives organised by NPWJ for the anniversary of the Statute of Rome.

**Fédération Internationale des Ligues des Droits de l'Homme (hereafter FIDH)** has been very active at the Prep Com negotiations where it prepared position papers and lobbying documents for both governmental delegations and NGOs. As a French based international NGO, FIDH has been and continues to be a leading actor amongst the French Coalition of NGOs, being at the forefront of the campaign for the ratification and implementation of the ICC Statute in France. Recently, FIDH has decided to convene a working group of experts on ICC implementing legislation targeting civil law countries. The first project of the working group led to the September 2001 report "CPI – Loi française d'adaptation : enjeux et tabous". The group intends to draft a simple and concise kit of ICC implementing legislation for Civil Law Countries. FIDH organises regional conferences on international justice, the next one being scheduled on February 2002 in Moscow.

**Human Rights Watch (hereafter HRW)** has carried out extensive and global work for ratification and implementation and will continue to focus in 7 regions of the world : Latin America, the Caribbean, West Africa, Southern Africa, Asia, the Pacific and Central and Eastern Europe : press for ratification in target countries in these regions through missions to capitals to meet with parliamentarians, government officials, civil society and the media; press for the adoption of comprehensive law implementing the Rome Statute and, whenever possible, comment on the content of draft legislation and whether it meets the requirements under the Rome Statute, provides sufficiently for "complementarity" and meets other standards under relevant norms of international law (e.g. relating to fair trial); participation in regional, sub-regional and national seminars on the ICC, offering expert analysis of the Rome Statute in general and, in particular, on certain issues facing states as they try to ratify and implement the treaty (e.g. constitutional issues); in the period leading up to entry into force of the Rome Statute, HRW will develop a global media campaign to raise awareness of the ICC and the fact that it will soon be able to begin its work; work on certain issues for consideration by the first Assembly of States Parties : nomination and election process for the ICC judges, ensuring that candidates meet the requirements in the Rome Statute and are appropriate for election.

**The Lawyer's Committee for Human Rights (hereafter LCHR)** has been involved with the ad hoc tribunals and the negotiations towards an ICC from the beginning. LCHR has done many studies on outstanding issues related to the ICC based on a sound analysis of international law and on the purposes and 'principles served by the Court. LCHR participated in the Prep Com sessions; encouraged signature, ratification and effective implementation of the Rome Statute, especially in the United States, and is carrying out valuable analysis on the universal jurisdiction also as an adjunct to ICC implementation.

**No Peace Without Justice (NPWJ)** has carried out extensive campaigns to advocate a prompt establishment of the ICC. In particular, it sponsored in 1995-1996, activities aimed at supporting the ICC by raising awareness in the public opinion and advocating to national parliaments and governments on the necessity of ending impunity worldwide; in 1996-1997, programs to support the establishment of the ICC, through campaigns and appeals for the convocation of a UN Conference on the ICC; in 1998, advocacy activities during the UN Conference on the ICC and

judicial assistance to some delegations during the negotiations; in 1999, 2000 and 2001, international campaigns for the entry into force of the Rome and the ratification of the Rome Statute and in 2002, international conferences such as the "Conference on Ratification and Domestic Implementation of the Statute of the International Criminal Court" (Prague) and the conference "Internationalised Criminal Courts and Tribunals : Practice and Prospects" (Amsterdam).

**Parliamentarians for Global Action (PGA)** is a network of parliamentarians worldwide actively involved in promoting the ICC who has contributed significantly to the ratifications attained so far. PGA has organised comprehensive regional conferences on the ICC, among others, in Arusha, Buenos Aires, Lisbon and Windhoek, conferences that yielded strong committal Plans of Actions respectively for the East Africa, Mercado Común del Sur (hereafter MERCOSUR), Lusophone, and Southern African Development Community (hereafter SADC) countries. PGA has also conducted national parliamentary briefings on the ICC, as well as coordinated a "Pilot Project" in Namibia, a research project in which a PGA sponsored legal researcher investigated the incorporation of the Rome Statute into the Namibian legal order. Political leaders from many countries belonging to the PGA network presented parliamentary motions on ICC ratification and proposed ICC-related legislation. Looking into the future, PGA has already begun planning a series of activities throughout the globe to sustain its active role and complete the required 60 ratifications, as well as inform parliamentarians about the implications of the entry into force of the ICC Statute. In this regard, PGA is organising for March 2002 a Conference on ICC Ratification in South Asian States, for parliamentarians, government representatives, and NGOs from Bangladesh, India, Maldives, Nepal, Pakistan and Sri Lanka. This conference will take place in Nova Delhi, India.



### III. REPORT

#### 1. Overview of the current situation and perspectives on needs for 2002-2004

The year 2002 will be a crucial year. As the entry into force is getting closer (possible dates are : June, July, August or September 2002), the next sessions of the Prep Com of April and July will address crucial issues, such as the budget of the future Court. In preparation to the Prep Com, an inter-sessional meeting has been scheduled in March to take place in The Hague while a second inter-sessional meeting could take place in June.

The first meeting of the ASP should be held in September. During this meeting, the Assembly, after adopting its own rules of procedure will consider and eventually adopt the draft texts that the Prep Com had negotiated, including the rules on the budget and it is expected to adopt the rules and procedure for nomination of judges.

In January 2003, the election of judges should take place and the actual inauguration of the Court should occur in February 2003. The judges should then nominate the Registry and the Deputy Registry in February (or March) and in March, April or May the Assembly will elect them. According to those provisions, the Court should be operational by the second half of 2003 (the provisional site has already been chosen).

Mr. Yañez-Barnuevo, the Spanish Representative, emphasized that the first phase towards the creation of the Court, consisting in an exercise of rules setting, is almost finalised. The process now enters into a new phase of **institution building**, which concentrates on the needs of the ICC as an international judicial institution and therefore on practical arrangements relating to its setting up (budget, staff, communication, security, etc.)<sup>34</sup>.

The ICC will be a complex institution, to which States Parties need to give full authority and legitimacy. In order to achieve those objectives, States Parties should adopt a coalition building approach by embracing as many countries, associations and organisations as possible; and also benefit from the momentum by exercising political and diplomatic pressure to convince other countries to join. In this respect, the **role of the EU** should be in the forefront, by : providing assistance to third states, which are in the process of ratifying the Statute and/or putting in place implementing legislation; assisting the UN, supporting efforts at different levels and from different actors (e.g. NGOs).

According to the Convenor of the CICC, *Mr. William Pace*, the ICC is the centrepiece of globalisation of justice, which represents the prior component of the globalisation of democracy and of the rule of law. The globalisation of justice is critical to the credibility and accountability of the two other processes. The creation of the ICC represents an historical achievement and an original development of international jurisdiction. This institution is the result of an enduring partnership between : governments (and particularly like-minded states); international organisations (global, as the UN, and regional, as the EU and OSCE); the two ad hoc tribunals, ICTY and ICTR; and finally NGOs, such as the CICC, which brings together more than 1000 NGOs all over the world, that, together with national and international experts, major working groups and caucus, work for the establishment of the ICC. He acknowledged the EC and individual Member States contributions to this project.

In the year 2002, the role of the EU will be extremely relevant as it carries an enormous amount of responsibilities (host country, budget support<sup>35</sup>). In *Mr. Pace's* views, the EU has a leading role to play in promoting universal acceptance of the Court. The ratification, the entry into force of the Statute and the first ASP represent at the same time an objective and a beginning. Indeed, other issues are at stake, in particular : the implementing legislation, essential because the ICC will be complementary to national jurisdictions; universality and geographical balance within the ASP; the nomination procedure of the judges, where it is crucial that the highest candidates are chosen (judges, prosecutor, registrar), assuring regional and gender balance but also the highest profes-

sional standards. "This is the greatest institution building process we will witness in our life".

The German representative, *Mr. Kaul*, reiterated that this is a decisive phase of the realisation of the ICC. In a positive scenario planning, this process will lead, in a proper and organised way, to the establishment of the Court. The process of establishment of the ICC is primarily a **status-driven process** therefore, the States Parties must show their responsibilities by :

- Assuring a proper preparation and **successful result of the inter-sessional meeting** on 11-15 March in order to come to a common understanding on how to ensure success of this meeting and thereafter successfully completing the works of the Prep Com;
- Undertaking concrete steps to assure more ratifications while persisting in their efforts in finding the most effective manner to **approach the US and defend the ICC project** from hostile measures in Washington (cf. the ASPA). The EU must stay firm in its position, which was restated by the Belgian Presidency during its term;
- **Guarantying a close cooperation with and support to the host country;**
- **Continuing support and coordination with CICC**, an umbrella organisation that is the reference NGO for the campaign in favour of the ICC.

The worldwide effort towards universal ratification is being carried out also by parliamentarians all over the world, e.g. through PGA's active network. As confirmed by *Mrs. Shazia Rafi*, Executive Director for PGA, the last General Assembly of the Board of Parliamentarians decided to continue their campaign on ratification, through their national groups and in collaboration with the CICC. She pointed out that PGA will concentrate on the following actions : focus on target countries, namely Brazil, Russian Federation and the United States; continue to get effective national implementing legislation, by developing legal institutions and reinforcing existing ones; work on parliaments outside the EU and promote the creation of a parliamentary assembly on the ICC. PGA will also organise a meeting parallel to the first Assembly of States Parties, in Washington or Ottawa.

*Ms. Irune Aguirrezabal*, European coordinator of CICC, expressed the need to make sure that NGOs at the national level be involved in all the process and called the Commission to ensure that they can be assisted to work on the ICC. While the ratification pace can be seen as satisfactory, the implementation of the Statute will be a long-term phase. This is where local NGOs will be crucial through coalition building efforts together with legal experts. She also welcomed EuropeAid's initiative to gather different actors, aimed at ensuring coordination and complementarity of activities. She hoped Member States also find this meeting a useful one to draw some conclusions and translate them into concrete actions according to the Council Common Position.

## 2. Experienced learned from the Tribunals, including both current ad hoc tribunals and state of play for the Sierra Leone Special Court

The representative from the ad hoc International Criminal Tribunal for Rwanda, *Mr. Fomete*, introduced the second item on the agenda. He drew some lessons from the ad hoc jurisdictions and expressed concerns about the perspective of a weak starting up of the future Court. In the light of the experience of the ad hoc Tribunal for Rwanda, it appears critical for the image of the Court to assure a successful performance since the very beginning of the functioning of the Court. In order to give a strong message to the public opinion and most importantly to the opponents of the ICC, the following measures should be undertaken :

- **Activities' planning** : Before the entry into force of the Statute it is crucial to put in place mechanisms and structures which will assure a smooth functioning of the Court (cf. difficult start of the ICTR);

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<sup>34</sup> Mr. Antonio Yáñez-Barnuevo participated to the conference in his personal capacity.

<sup>35</sup> The estimated EU financial contribution to the ICC that is included in the Discussion paper is even an underestimation (cf. Discussion paper, page 3).

- **Communication policy** : set up a communication office with a spokesperson competent to speak on behalf of the Tribunal and answer to questions and most importantly overcome criticisms (cf. negative consequences of the lack of a communication at the ICTR);
- **Support to the ICTR and ICTY** : it is essential to make a success from the existing ad hoc tribunals and to continue to provide assistance to them even after the entry into force of the Statute of Rome, in order to ensure cooperation with and judicial assistance to the future Court;
- **Promote national implementing legislation** : the existence of national cooperation laws has been a crucial element to allow the two ad hoc tribunals to carry out their functions. The obligations to cooperate begin with the entry into force of the Treaty, irrespective or not of the current functioning of the Court. As outlined by the representative of the Italian government, *Mr. Bellelli*, national implementing legislation should foresee a real judicial assistance and cooperation with the Court together with provisions relating to substantive criminal procedures and legislation. Indeed, the critical point will be if national jurisdictions are capable of pursuing criminal cases internally, which implies that the crimes under the jurisdiction of the Court and the Statute's general criminal principles must be incorporated in national legal systems.

Mrs. Smith, Sierra Leone Country Director for NPWJ, completed those proposals as she made a strong appeal on the specific needs of the forthcoming Special Court Sierra Leone. This Court is in its start up phase and yet it faces some major problems related to the incredible lack of research and resources for it to function, as the host country is one of the least developed and poorest countries in the world. According to the first assessment made by the team sent by the UN, the following actions should be considered in order to allow the concrete creation of the Court : the most immediate need will be to provide proper assistance to the government of Sierra Leone to support its efforts in creating the Court; a less immediate need, although equally important, is the assistance to the Court (cf. the budget of the Special Court for Sierra Leone will be half the ones of ICTY and ICTR); public information and education campaigns, at the start-up phase and afterwards.

As for the practical needs outlined by *Mr. Fomete*, *Mr. Yañez-Barnuevo* insisted on the idea that they should also be completed by a comprehensive reflection on the judicial and theoretical framework, in which the Court will operate. In the ICTY, the majority of the jurists in the team had a common law background whereas the dominant system in former Yugoslavia is a civil law one. This is something extremely important and sensible if the ICC wishes to be considered as efficient and credible. It will be crucial to ensure a universal representation of all judicial systems, in order for the ICC to be representative and competent.

Solicited by the audience, the representative of the host country, *Mr. Verweij*, clarified that **the future Court will not be operational within one-year time**, despite expectations and possible damage this delay might cause to its image. During the transitional period from the entry into force until the effective functioning of the Court, the Dutch government will create the so-called **Advanced team** that will assure the starting up of the Court. *Mr. Verweij* also suggested that the EU could contribute to the formation of the advanced team. In his view, the concept of planning mechanism could be a synonymous of the advanced team foreseen. *Mr. Kaul* supported this opinion, by reminding the provision of article 3 of the Common Position, according to which "the EU has committed itself in the creation of an appropriate planning mechanism". *Mr. Pace* supported the Dutch government's efforts and recalled that, in this regard, CICC has been, and will continue to be, engaged in numerous consultations with experts, including the ad hoc tribunals, to assess and advice on the challenges ahead and help finding solutions. *Mr. Verweij* also stated that it is essential to continue supporting ICTR and ICTY against current attempts to cut their budget from the UN Budget Committee. The ICC should be protected from this kind of attempts.

Taking into account these warnings on the Court functioning timelines, several participants agreed on the need to outreach against a negative credibility of the ICC. A permanent ICC communication policy will be crucial for the Court to provide regular and updated information on a permanent basis and not in a punctual manner. Moreover, to tighten the ICC relationship with the



broader public, there should ideally be a permanent interlocutor between the Court and the Host Country, which at the same time should have also a strong relationship with the ASP.

### 3. Support for the successful completion of the UN Preparatory Commission on the ICC

As described in the discussion paper<sup>36</sup>, the eight session Prep Com has identified three categories of needs : human resources, budgetary and financial issues and operational issues. Those issues are to be addressed at the next inter-sessional meeting scheduled for March in The Hague. Until then, the focal points will conduct research works and try to build consensus among states on the most contentious issues. *Mr. Mochochoko* from Lesotho, focal point for the first category, pointed out some key conditions that would facilitate the task of the focal points and make possible a final agreement among states :

- **Support to focal points** in terms of research and preparation of documents;
- **Ensure worldwide states participation** to the inter-sessional meetings and to the Prep Com (mainly to assure participation from Least Developed Countries) : in this regard, the EU could contribute through a trust fund;
- **The outcome of the inter-sessional** itself. There will probably be a need to convene another inter-sessional meeting in June. Their positive works are crucial to the success of the Prep Com.

About the notion of the advanced team, it is essential to organise a well-structured, equipped and financed staff able to work with and assist the judges. In the words of *Mrs. Gerardin*, one of the French representatives and of *Mr. Kaul*, this preliminary team, which will be composed of experts and not of governmental delegates, should be objective, representative and impartial. It should also respect the same values that will run the Court, particularly the geographical balance, the gender representation concerns and the universality principle, by guaranteeing an equal representation of all judicial systems.

### 4. Ratification campaign : obtaining maximum and geographically balanced membership to the ICC

About the ratification campaign, representatives from several NGOs gave a comprehensive overview of the ratification status worldwide and illustrated their plans and priorities for the following years.

*Mr. Donat-Cattin* (PGA) outlined the lack of support for the Court in Asia, North Africa and Middle East. As far as the US is concerned, it appears difficult to believe that ratification will occur under the present Bush administration. In its future strategy, PGA will consider the following as priority countries : India, Republic of Korea, Thailand, Mongolia and Japan in Asia; the Russian Federation and Kazakhstan, in the post-soviet block. PGA will also organise conferences in Russia and South Africa to discuss the preparation of the Court. Another conference will take place in Latin America.

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<sup>36</sup> Cf. Discussion paper.

HRW, as illustrated by *Ms. Rosenthal*, will focus on ratification by Anglophone and Francophone Africa, Latin America, Asian Pacific and Central and Eastern Europe. Efforts will also take place in Asia and the Middle East to bring on board countries from those geographic areas. HRW is basically involved in : a. missions to targeted states, where they convene meetings with government officials and local NGOs; b. offering legal assistance to overcome constitutional issues raised by the ratification of the Statute; c. on the implementation side, HRW will carry out advocacy work, prepare comments on draft legislation (where they are public); d. raise crucial issues related to the setting up phase of the court, e.g. ensuring a transparent and efficient nomination procedure for the judges and other key staff officials of the Court; e. participate at the Prep Com, following negotiations and releasing legal statements; f. work in the USA, analysing possible negative effects of their anti-ICC position (damage control efforts) and eventually overcoming their arguments against the ICC.

The NPWJ campaign will focus on regional ratification, in the following geographical areas : North Africa, Middle East; Asia; Latin America and Caribbean. *Ms. Colitti* announced that NPWJ is organising the following events : a conference (co-sponsored by Spain) has been scheduled for February 2002 in Seville, bringing together e.g. Algeria, Morocco, Turkey, Greece and Cyprus; a conference will take place in Mexico next March; and another one in Asia next June, as a follow up to the Manila conference. Those conferences will address ratification and implementation issues. Finally, in July 2002, a ceremony will be organised in Rome to celebrate the fourth anniversary of the adoption of the Statute, perhaps in cooperation with the Italian government.

Many speakers expressed serious concerns about the Asian governments' attitude towards the ratification of the Rome Statute, and thus, the Asian under representation at the first ASP. The statistics are rather poor : out of the 10 Asian countries that have signed the Statute, only one country, Tajikistan, has so far ratified.

In this regard, concerning Asian general attitude towards the ICC, *Ms Serrano*, Asian coordinator of the CICC, gave an in depth description of the situation and pointed at key needs for the region.

First, she recalled how Asia's diverse historical backgrounds, with many countries still struggling over their colonial pasts and the dynamics among Asian countries themselves contribute to a general scepticism towards what they believe are 'Western concepts and practices', including international treaties and the ICC, in particular. In this respect, while a number of countries in the region like the Philippines, Cambodia, Thailand, Nepal and Tajikistan have signed as many international treaties as there are, some countries as Malaysia, China and India have the reputation of rejecting many international agreements. One must not forget that amongst those states that abstained and voted against the Rome Treaty were many governments from Asia.

Second, she reminded that a number of countries like Burma, Indonesia, Nepal, Pakistan, Sri Lanka and others are still engaged in internal and external conflicts and perceive the ICC as a real threat for officials who might be accused for crimes being committed. For this reason, the ICC appears then the least of their concerns and priorities, especially for those trying to hold on to power while they face demands for self-determination and effective governance, e.g. in Indonesia, Philippines, Sri Lanka and Nepal.

Third, she pointed at the principle of state sovereignty as a very sensitive one in most Asian countries. In many cases, this issue has been used more as an excuse and justification for committing human rights violations. Intrinsically linked to this crucial question is the problem of vulnerability of NGOs working on the human rights field. The protection of human rights defenders and NGOs continues to be a major concern in the region. This should be carefully considered by the Commission and Member States.

As a result, ICC remains unpopular in Asia and ways must be found to overcome this conclusion. *Ms. Serrano* acknowledged the support of the European Union and its individual members to FORUM-ASIA, which made possible many, if not all, of the initiatives to promote the ICC in Asia during the past and current years<sup>37</sup>. According to her experience, the growing trend in the region towards reviewing domestic legislation and structures to see if they comply with international

standards and treaties (cf. Indonesia, Cambodia, Mongolia, Thailand and Philippines) can be seen as a result of the NGO campaigns for justice and to end impunity, including the campaign for ICC. Although the prospects for getting justice for victims of crimes are rather remote, those changes are attempts to provide mechanisms for redress, thus, increasing the prospects for effective implementation of ICC through its complementarity provision.

The attacks in the US on the 11<sup>th</sup> of September somehow changed some of the prospects for ratification in countries known as strongly influenced by the US like Japan, South Korea, China, Philippines, Singapore and India. Nevertheless, there are certain factors within these countries that may provide a counter push to governments to ratify. This is the case of countries where exists a common ICC support from members of both the ruling and opposition parties and substantial civil society influence (e.g. Japan and Philippines), allowing some positive movements towards increased prospects for ratification. According to the expectations, within 2002, the following countries are most likely to ratify : in 2002 Cambodia and Mongolia, between 2002-2003, Thailand, South Korea and possibly, Bangladesh, Nepal and East Timor.

As for the worldwide ratification campaign, *Mr. de Angelis* underlined that it is a common understanding that the EU should play a major role while fighting against the misconception according to which the ICC will be a western driven Court. Representatives from the Member States made the following points : the EU should maximise the Common Position and use both political and technical means to support the ratification campaign worldwide; use both political and economical dialogue to promote the ICC in its relationship with third countries; undertake actions at two levels : quantitative and qualitative by providing assistance and technical exchange of information; envisage redistribution of tasks between the EU (Council, Commission) and EU Member States individually.

Different opinions were raised on whether there should be a more bilateral or multilateral approach. It was suggested that the EU should act on a more political level whereas national ministries can provide a more concrete assistance on technical and constitutional/legal issues. The Commission could also assist in making sure legal assistance is provided when needed. *Mr. Donat-Cattin* confirmed the added value of the bilateral talks by raising several examples of countries where bilateral political pressure could be decisive, such as Angola, Uganda, Tanzania and Ireland. In this respect, the combination of diplomatic action and NGO efforts can be extremely productive as in the case of India, where the demarche made by the Italian government, acting on behalf of the Council, was successfully complemented by PGA actions with national parliamentarians.

Bilateral démarches should however be complemented by a broader regional approach, according to *Mr. Figa Talamanca* from NPWJ. In some cases, NGOs can be effective by organising regional governmental conferences and assure follow up. The Belgian representative *Mr. Dive* counterbalanced this approach outlining the relevance of focusing also now on a country-by-country strategy, since that regional phase seems to have had its results already and a more focused strategy would seem more effective to help experts overcome particular obstacles. He also pointed at the importance of maintaining bilateral talks<sup>38</sup> carried out by Member States that allow addressing specific political and judicial problems in those states that are potentially able to ratify.

*Ms. Stoyles* from the CICC, outlined the relevance to make efforts at the regional level to include the ICC topic on the agenda of intergovernmental Summits (e.g. Commonwealth and Francophonie), focusing on issues such as the opportunities of being a state party and the importance to go further beyond the 60 ratifications.

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<sup>37</sup> FORUM-Asia is one of the focal points of the CICC in Asia. It coordinates national and regional initiatives towards the promotion of ICC and the campaign for ratification of governments in the region.

<sup>38</sup> Belgium and Italy will organise respectively bilateral talks with Asian governments, particularly Japan.



*Ms. Rosenthal* stated the crucial importance of local groups in view of the establishment of the future Court. Once the Court will be in place, intensive work will be done at the local level in order to hold the ICC accountable for fair trials, independence, witness, etc. If anything, it should be a standard practice to invite local NGOs to governmental conferences.

*Mr. de Angelis* concluded that bilateral, regional and supranational approaches are equally important and effective and they should all be complementary. The support to NGOs and local networks, and a broad education campaign are fundamental components of an inclusive and effective strategy.

From these various interventions, it was concluded that the real challenges, with a particular focus on Asia, but not excluding the continuation of the worldwide ratification campaign, are the following :

- **Increase the number of countries willing to ratify** and able to participate to the first ASP;
- **Develop expertise on the ICC** (with an in-depth knowledge of Asian culture and politics) both at governmental and non-governmental levels on issues such as complementarity, sovereignty, immunities, death penalty, extradition/surrender;
- Broaden the scope of understanding and the base of support of the ICC through **awareness building and education campaigns;**
- **Getting the support of the media** on the ICC;
- **Develop further capacities in research and documentation** of cases of possible crimes in the region that may be covered in the future by the ICC;
- **Develop capacities in campaign and advocacy** among victims and survivor groups;
- **Protection of human rights defenders and NGOs** in the region.

##### **5. Ensuring the adoption of national implementing legislation to fully cooperate with the Court and to exercise national criminal jurisdiction over the ICC crimes**

*Mr. Bernard* from FIDH made it clear that the technical and political dimensions of enacting national implementing legislation are essential. National implementing legislation lies at the heart of sovereignty. In most States Parties the elaboration of national implementing legislation raises more political concerns than technical or resources' problems. Notwithstanding, putting in place substantive and procedural legislation is an essential question in the perspective of the complementarity principle : a Member State who does not have defined and included the crimes foreseen by the Statute in its own legislation will not comply with the obligations established by the Statute and therefore will fail with its own duty to exercise its national jurisdiction.

An inclusive implementing legislation should therefore include : cooperation procedures with the Court (and a specific law on cooperation with the ICC would certainly make things easier), general principles of International Criminal Law (e.g. status of limitations, no immunity irrespective of the official capacity, non bis in idem), definitions of the crimes under the Statute. Ideally it should also be recognised the principle of universal jurisdiction. The adoption of national implementing legislation will therefore create common practises and similar procedures in the States Parties. This will imply a process of vertical harmonisation of international criminal law. On that point, it was also pointed out that it is necessary to start this process of legal harmonisation, especially regarding investigation rules.

*Ms. Kuntziger* from ICRC confirmed that the establishment of the Court would require both cooperation and adoption of substantive criminal law. In this respect, coordinated actions carried out by the ICRC and the NGOs will be complementary in assisting states on the adoption of their legislation. It is imperative however, that also EU states provide technical cooperation and exchange information on practical and substantive issues. ICRC has created an advisory body on international humanitarian law, which has permitted it to assist several states including on the ICC. ICRC has also produced several documents and lately a complete guide for common law countries<sup>39</sup>.

*Ms. Bolognese* from the CoE reiterated that adopting implementing legislation implies altogether training, willingness and ability to prosecute. In this respect, the CoE has been active at all levels. As she was speaking, out of its 43 members<sup>40</sup>, 41 had signed and 22 ratified. Progresses in implementing legislation, however, have been modest. Many member states seek assistance and the CoE has actively worked on the following issues : constitutional aspects of ratification; cooperation between the ICTY and the European Court for Human Rights (hereafter ECHR). The CoE has organised two consultation meetings on the ICC with the aim of exchanging information on the status of ratification and implementation and sharing different options to similar problems among member states. The third consultation meeting on the ICC will address a specific item : surrender of alleged criminals to the Court. *Mrs. Bolognese* suggested the following actions to help countries that are more in need of technical assistance : providing translation efforts; coordinating efforts in the area of research; creating joint EU-COE experts groups to give assistance to Eastern and Central European countries.

Finally, *Mr. Dive* announced that the Belgian government had recently adopted a draft cooperation law with the ICC. Opinions by the State Council and the Parliament were pending. Once officially adopted it would be sent to the CoE, CICC and Council websites for general consultation.

On the basis of the debate and following *Mr. de Angelis'* invitation, the participants made the following suggestions :

- **Promote the development of expertise** in the states involved;
- **Support NGOs' actions**, through the EU financial support and other donors;
- Put pressure on governments to **adopt substantive law**;
- EU countries should **compile a list with key journalists** to follow up on ICC related issues and put on a mailing list;
- **Promote awareness efforts** within member states;
- **Urge the harmonisation of criminal law** before the entry into force of the Court;
- **Promote the harmonisation of practices relating to Human Rights protection** on a broader level.

## **6. Continue generating public awareness of and support for the Court and provide training for target groups**

With respect to education and awareness raising, *Mrs. Stoyles* from the CICC, defined three main strategic goals :

The first one should be education to solicit involvement of influential people in the ICC campaign through : on-going training of NGOs, academics, bar associations, human rights commissions, UN agencies, international organisations and others who can help with the attainment of one or more of the goals of establishing the Court; obtaining support for the ICC from every region of the world (this has been crucial in the past, as like-minded governments, international organisations and NGOs worked in partnership in order to generate the necessary political support and also to address the potential legal barriers);

The second goal should consist in educating the general public and the media about the Court to prevent criticism, which may arise from a lack of information or misinformation of the process, of the concept of the Court or even of the way it will be functioning. Two critical examples are the need to use every opportunity to inform the media about the fact that achieving 60 ratifications will not mean immediate entry into force of the treaty; but even more importantly that on the day the treaty enters into force, there will not be a functioning Court able to start its work on that day.

<sup>39</sup> "Punishing Violations of International Humanitarian Law at the National Level. A guide for Common Law States", Advisory Service on International Humanitarian Law, ICRC, Geneva, September 2001.

<sup>40</sup> The CoE comprises 43 members soon to be 44, as Bosnia-Herzegovina was invited in January to join.

The third general education goal will focus on achieving widespread public understanding of the Court and the Statute, with the goal of having widespread general support for the Court.

The strategic goals in offering training are very concrete. Training should be focused on the Rome Statute and the supporting documents (e.g. Rules and Elements) and also in dealing sensitively with victims, especially victims of sexual violence or children. On one hand, training should be provided to staff of the Court, even the judges, who will have expertise in either criminal or international law. On the other hand, training should also be offered to officials at the national level. In light of the Court's complementarity regime, judges, prosecutors, defence counsels and others at the national level will need to know the contents of what may be new legislation, adopted when the country implements the Rome Statute, and they will need to understand how the ICC works and what the entire process is in order to fulfil their own role. Finally, there is also a need to train law enforcement officials who will be involved in these cases and will need to cooperate with the court<sup>41</sup>.

Last but not least, it is crucial to ensure training of those who will be involved in the work of the Court, such as NGOs and international organisations. Those groups will be able to provide evidence and information to the prosecutor; they should be involved in monitoring cases being handled by the national authorities; NGOs and others have a strong role to play in ensuring that an investigation or trial is not being carried out simply for the purpose of shielding someone from prosecution; finally, these same groups will need to be involved in monitoring the work of the court themselves, in acting as *amicus curiae*, in promoting interpretations of the law that will result in justice truly being served and the court being as effective as it has the potential to be.

The following suggestions were made to achieve the above goals :

- With respect to all of these education and training needs, as with every other goal, there is an important **role for governments to play**, for experts from the ad hoc tribunals to assist if possible, for international organisations such as the ICRC, and for NGOs, each of which can take on a different aspect of this important work;
- With respect to the general awareness goals, **widespread media campaigns** on the ICC, including the press, radio and TV if it is to be truly universal;
- Having basic **information materials** in print in as many languages as possible, as well as good electronic resources, supporting general information dissemination events;
- Specific **outreach efforts** to bring new groups and individuals on board to obtain their support for this work;
- Having **information meetings and seminars** as NGOs have been doing now for several years; normally these are held in a way that maximizes their benefit and minimises costs, such as side events during conferences on other issues, making sure that information materials are available, not just on the ICC but about its relevance to other issues;
- With respect to the more targeted education and training needs, there are some appropriate mechanisms for this already in place, such as **institutions to train law enforcement officials** and it will be important to support the additional of these new training objectives.

In other cases it will be necessary to develop **training opportunities**, for example, to train NGOs who may bring evidence to the prosecutor or monitor the national trials, including again the development of good training material in different languages.

## 7. Monitoring and supporting the work of the Assembly of States Parties

*Ms Oosterveld*, Canada's representative, introduced the item. Canada is amongst the most supportive states to the ICC and its activities comprise up to 30 different projects on the ICC per year both at diplomatic and technical levels. These include bilateral actions, conferences, training, and elaboration of practical guides.

The first meeting of the ASP shall decide upon different issues : the establishment of a Bureau (consisting of a President, two Vice-presidents and 18 members elected by the assembly for three-

year terms); the adoption of its rules of procedure; the nomination procedure for the judges and prosecutor and also consideration and adoption of the documents negotiated by the Prep Com<sup>42</sup>. At the ASP, each State Party shall have one vote. The second meeting of the ASP shall elect the organs of the Court (the Presidency, the Judges, The Office of the Prosecutor and the Registry).

During the next session of the Prep Com, to take place in April 2002, two new working Groups will meet. They will deal with substantial matters such as the nominations procedure, the draft agenda of the ASP, preparations of the Bureau, the subsidiary body, the Secretariat of ASP, the financial regulations for the Victims' Fund and the criteria for voluntary contributions. The pace of ratifications might not allow all the necessary documents to be prepared by the time the first ASP meets and some of them are as important as the Rules of Procedure. According to *Mr. Pace*, few governments are thinking systematically over these issues.

Research on several issues must be addressed and NGOs will be in an interesting position to do so if they maximise their efforts. Individual NGOs can not have the necessary expertise on all issues and that is basically why the CICC provides the framework for all NGOs to work together, having in view also the need to provide advise to states. The CICC believes the best expertise is in ICTR and in ICTY, their former judges and personnel. However, different problems arise such as how to extract relevant information, mostly confidential, and best use it. The government of The Netherlands has been playing a role model, and other governments will have to provide expertise and due mechanisms such as for hiring staff and for decision-making. This should be based on lessons learnt from the two ad hoc Tribunals (see point 2).

*Mr. Yañez-Barnuevo* focused on the importance of having at the first sessions of the ASP a wide participation from developing countries, especially least developed countries. In addition, participation from the ad hoc Tribunals should be encouraged. *Mrs. Rosenthal* pointed out the need for national experts' participation that widens the sense of **ownership to the ICC**. These concerns demonstrate the need to have participation (from NGO and States) from all regions of the world at the next Prep Com sessions and at the ASP in order to achieve integration of most governments and experts, even those not represented at the ICC.

According to *Mr. Yañez-Barnuevo*, there is a clear risk that no UN funding will be available for the first meeting of the ASP, thus creative financial solutions must be found to ensure the feasibility of the meeting. According to *Mr. Verweij*, the first ASP costs' will amount to around 2,8 million dollars. Regarding the composition of the ICC, *Mr. Pace* expressed his concerns for a transparent process in the elections procedures. Accordingly, half the judges from ICTR and ICTY were not qualified enough and there was no gender balance. In March 2001, the UN Security Council nominated 28 candidates, only one of them being a woman. He recalled that it is a known practice that governments trade votes according to their interests and that there is no consideration for the real qualification of the candidates in the vote. The ICC must prove from its inception that it is an efficient international judicial organ, the composition and qualification of judges being crucial for it to succeed. Several questions remain open : Will there be a universal and uniform procedure for nominations? Will the candidates be interviewed, and if so, by whom? Will States Parties be able to change nominees? How will the geographical representation at the ASP affect the election of the judges? All these questions clearly indicate the need to monitor the elections process. *Mr. Dive*, who called for qualified judges, considered that NGOs have proceeded in the best way by pushing for and presenting a clear procedure for nominations.

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<sup>41</sup> This is extremely important, because the Court will not have its own police for example, and will need to rely on states parties, and therefore their officials, to arrest and surrender those indicted by the Court, to help with the collection and transmission of evidence, to help impose the sentences of the Court, etc.

<sup>42</sup> See Article 112 of the Rome Statute.



As regards the crime of aggression, *Mr. Pace* evoked the Final Act of the Rome Conference that called the Prep Com to present a definition of aggression and the conditions under which the ICC should have jurisdiction. If this will not be finalised by the time the first ASP meets, in which terms will the governments continue negotiating the definition of the crime of aggression? Governments need to be encouraged to tackle the definition of aggression by July the 12<sup>th</sup> and hopefully there could be a proposal by April. Most of the countries interested in the definition of aggression are actually countries without a vote at the future ASP. *Mr. Politi* from the University of Trento, added that the crime of aggression is a very delicate issue that has the ability to bring on board important players. Since the 11<sup>th</sup> September, there is motivation to discuss the inclusion of the crime of terrorism in the Rome Statute. It is essential to state that the CICC, as well as the Like Minded States, are against any reopening of the Statute based on the illegality of such procedure.

*Mr. de Angelis* raised the eventual dubious situation of those countries that will ratify in August 2002 : if the ASP is to take place in September those countries will not be able to vote since the Treaty will not be in force for them by then. Rules must be foreseen for those cases in order not to restrict countries from participating in ASP's first decisions.

Finally, the particular situation of the United States currently trying to adopt anti-ICC legislation was raised. In that context, will the ASP be able to take place in New York? That would probably raise different problems, as practical as visa procedures for participants.

The participants pointed out the following activities as of primordial need in the first phase of the Court :

- **Monitoring the nomination and elections process in order to assure transparency and gender balance;**
- **Funding available for a worldwide participation in the next Prep Com sessions and ASP.**
- **Financial support to the settlement of the first ASP.**

#### **8. Support the prompt and effective establishment of the ICC, ensuring its credibility and monitor the future work of the Court**

According to *Mr. Verweij* who referred to the content of his intervention in point 2, the ICTR and ICTY had the major advantage of having clear procedural rules from the moment of inception. This is not the case with the ICC that will likely spend two years deciding on such rules. The Prep Com will therefore need to finalise those rules before the ASP takes place, with a very tight time-frame. The Road Map has been a major and significant step forward in this regard. However, concerning e.g. the Professional Internal Rules of the Court, the Prep Com mandate is very limited and ways must be found to make sure that rules will be strong and hardly untied. One must note, for instance, that the Chief Administrator's Office will only be available after the judge's elections take place. *Mr. Verweij* believes that the inter-sessional experts meeting in March should be a negotiation forum to exchange views and facilitate the work of the Prep Com in April.

About the management of expectations, a public information campaign must get started very soon. From the moment the 60<sup>th</sup> ratification occurs, it will take one year only for the Court to start operating. Participants raised the need to consider how to store information and transmit it to the Court in a non-contaminated form According to *Mr. Pace*, the public relations of the Court during its first year will be critically important. The same is valid for the first cases to come up before the Court even before it is effectively established, and how to proceed in such circumstances. The Advanced team, devoted to take into consideration the risks for the ICC's credibility mentioned in the introduction, should start working by the 1<sup>st</sup> of May and its functions should be the following :

- Court Manager with a legal background and an in-depth knowledge of the Statute. He/she will be responsible for setting up the Court;
- Chief Administrative Officer that will prepare the structure for the rules( still, in order to hirer staff a procedure must be set up);
- Legal Officer who must know the Statute and the legal documents in deep;

- Public Information Officer;
- Security Expert Officer;
- Data Expert Officer.

The host country, as a matter of principle, should not finance the advanced team. This Team will represent the interests of the international community, and thus must be independent from the Dutch Task Force. Since contributions have not yet been made, there are not many options envisaged to set it up. *Mr. Kaul* called for decisions to define its financing, taking into account that its legitimacy depends on the representation of different and numerous States Parties. In this respect, *Mrs. Napoli* outlined the necessity to identify a legal basis and a clear mandate that could justify a EC support to the Advanced team, otherwise it would not be clear how to provide such support. This support shall not affect the main objective of EIDHR, mainly to assist NGOs in their struggle against impunity.

### **Different subjects in the agenda require specific attention :**

- *Creation of an International Bar* : *Ms. Deray*, from the Paris Bar, called for the support from the European Commission for the creation of an International Lawyers Bar. This should not only involve financial but also political support. The European Commission (intervention by *Mr. Franck-Olivier Roux*, EuropeAid Human Rights and Democracy Unit), the CICC, the Netherlands and Canada have co-sponsored the first Conference on the International Bar Association<sup>43</sup> organised by the Paris Bar in December 2001 in Paris. The Conference, avoiding previous mistakes, aimed at creating ways for a more efficient justice with a stronger lawyer's organisation, in order to achieve better protection for defendants and victims. The setting up of an International Bar will be legitimate only if composed by lawyers from all geographical regions and from all legal systems (mainly from civil and common law systems). A conference is scheduled for June 2002 in order to present concrete mentions and contents to the Prep Com in July.

- *Defence issues* : *Mr. Walley*n, representing *Avocats sans Frontieres*, and *Mr. Beauchier* lawyer, defined and described the main assets and characteristics of the ICC in 'Defence issues'. For *Mr. Walley*n the ICC allows more possibilities to the defence than the ad hoc tribunals, since it is up to the Court to decide how the defence should be organised. There is now the basis for a more independent defence structure and for a Code of Conduct. During the first years of the Prep Com the defence issue was not seen as a priority. Now, two possible alternatives must be debated : on the one hand leaving the defence issue to National Bar Associations, (does not assure any geographical diversity); on the other hand creating an independent body as mentioned above. This International Bar would have an advisory function and would be of independent nature. *Ms. d'Urso*, French representative, urged to continue the works of the Paris Conference aiming at the promptest establishment of a Bar Association on the ICC. She thanked the EC for its support.

*Mr. Beauchier* counterbalanced *Mr. Walley*n's optimistic views and claimed that the Rome Statute is not fully protective of the rights of victims. He further called for expert doctors, psychologists and psychiatrists able to provide victims with the required expert support.

- *Logistical issues* : According to *Mr. Pace*, the role of NGOs in supporting the new system of the ICC shall be to provide advise e.g. on the victims unit, on mechanisms that governments would not finance and that would be provided by NGOs, the investigation of crimes, assisting the prosecution, ensuring training, providing translations, supporting the library, and many concrete and unexpected actions for which very close actors could better contribute than institutional bodies.

In addition, and see points already mentioned, NGOs are in a essential position to assure the monitoring of the Court due mainly to their past experience.

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<sup>43</sup>"Creation of an International Criminal Bar for the International Criminal Court", held in Paris on the 6<sup>th</sup> and 7<sup>th</sup> of December 2001. The conference has been organised by the Ordre des Avocats a la Cour de Paris and the A.I.A.D. (Association International des Avocats de la Defense).

After various issues were dealt with, *Mr. de Angelis* tried to summarise topics as follows taking only into consideration primordial needs :

- **Public information campaign** on the ICC in order to manage expectations;
- **Need for solutions on how to store information and transmit it to the Court** in a non-contaminated form, and consider how to proceed in the first cases to be submitted to the Court, before it is effectively established, as soon as the Treaty enters into force;
- **Public relations of the Court** during its first year;
- **Support for the Advanced team;**
- **Monitor the future work of the Court;**
- **Support for the creation of an International Lawyers Bar;**
- **Provide specialised staff for the Victims Unit**, such as expert doctors, psychologists and psychiatrists able to support to victims.

## **9. EC Plan of activities for 2002-2004 : how to ensure Complementarity and Co-ordination by all actors involved**

- *About the future role of NGOs in the new context :*

Some NGOs were asked about their comments regarding the future role of NGOs in the context described in previous items. *Mr. O'Donohue*, from AI, underlined the necessary continuation of a range of past activities such as : support for the completion of the Prep Com (AI will continue its role and will submit papers on the two remaining issues to be dealt at the next Prep Com), call on its membership to move forward and push their governments to ratification and implementation efforts especially in areas where the concretisation is very low (AI lawyers are submitting proposals on implementing legislation), raising public awareness by organising a media strategy campaign for the 60<sup>th</sup> ratification, the entry into force of the Treaty and the ASP, planning a lobbying strategy on nominations issues. He pointed out the need for a Trust Fund for Victims and mechanisms to provide the prosecutor with information on crimes.

According to *Mr. Donat-Cattin*, PGA will continue to bring to national legislators the expertise they require to implement the necessary legislation. PGA wishes to continue showing parliamentarians all over the world why the ICC is a way to fight for Human Rights.

Continuing on the NGOs role, *Mr. Figa-Talamanca* added that NGOs should take a new result-oriented approach by focusing for example on promoting constituencies in national parliaments and networks. Ms. Sulzer from FIDH insisted on raising the crucial question related to the Trust Fund for Victims, which still requires in-depth discussions. The inter-sessional meeting would be an excellent opportunity to address the question by launching a comprehensive debate amongst states.

On this issue, *Mr. de Angelis* noted that there was a consensus between all participants about the remaining and essential role NGOs still have to play in the coming years.

- *About the coordination between EU Institutions :*

Much has been said in the previous points on the necessary implementation of the Council Common Position, and on the combined role of the Council and the Commission in that respect. The implementation and ways to be found (in the light of these debates, for example) to improve the cooperation between Institutional actors are key aspects for the next 2 years. Besides, the representative of the Council, *Ms. Ramirez Fueyo*, recalled that the Council has been putting forward several actions and démarches on the ICC next to third countries. Meetings have been conducted with e.g. the US, Russia, the Rio Group and the Non Aligned Movement. Different démarches took place pushing for signature, ratification and implementation of the Rome Statute. Under the Belgium Presidency, démarches took place in Asia. The Spanish Presidency is planning to undertake démarches in Latin America, Africa and Asia. Finally a link on the ICC from the European Council's website has been created, including actions of the Member States especially in the framework of bilateral actions.<sup>44</sup>

## 10. Conclusions

*Mr. Yañez-Barnuevo* seized the momentum to announce that the Presidency was issuing a declaration stating that Central and Eastern European Countries and EFTA countries (Island, Liechtenstein and Norway) formally adhered to the Common Position and would try to enforce it in their national legislations<sup>45</sup>. In his view, the conference clearly showed the need for a full partnership among all the actors involved in order to move forward. The Council will also consider the mentioned idea of the Plan of Action, while not excluding the adoption of concrete actions in the meantime. Further complementarity between Member States and the EC and joint efforts should foster progress on inter-sessional meetings, the Prep Com, the advanced team and diplomatic démarches with third countries.

When closing the meeting, *Mr. de Angelis* thanked participants for their constructive contributions to the debates. It was clear that 2002 and 2003 would be critical years for the long-term success of the ICC, and that the coming months would determine the degree of this success. He emphasised the importance of the partnership that the Commission had forged with the NGO community during recent years in the campaign for the ICC. Indeed, it would be fair to give much of the credit for the speedy ratification of the Treaty to the work of NGOs, which the Commission had been delighted to support. It is important that this momentum is not lost.

At the same time, *Mr. de Angelis* acknowledged the importance of the co-operation that had been developed with Member States and other international organisations like the Council of Europe. This two-pronged approach had proved highly beneficial. He was determined that the continuing Commission's support, through the EuropeAid Co-operation Office, should be both effective and timely. For this reason, the Commission would be a major donor to the Advance Team being set up in the Netherlands which would prepare the ground for the Court, and in so doing avoid some of the mistakes that had occurred in the establishment of the Rwanda and former Yugoslav Tribunals.

At the same time, the forthcoming launch of a new call for proposals for NGOs activities, particularly in favour of the ICC, would provide NGOs – through a fair and open procedure – with continuing high levels of support for their key work in all areas.

The timetable for the next steps – the April and July Prep Com, the first meeting of the ASP and first nominations to the Court – was extremely tight. It presented a challenge to all those participating in the meeting. *Mr. de Angelis* is confident that the Commission, for its part, will live up to the expectations, which others legitimately have of it. He looks forward to continuing to work with the Conference participants in that spirit of solid co-operation so vital to achieving the historic goal of international justice, which so many now hope to see realised through the ICC.

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<sup>44</sup> In <http://ue.eu.int/pesc/ICC/default.asp?lang=en>

<sup>45</sup> Declaration by the Presidency on behalf of the European Union, the Central and Eastern European countries associated with the European Union, the associated countries Cyprus and Malta and the EFTA countries, members of the European Economic Area, concerning the adoption of the Common Position on the International Criminal Court, 29 January, 2002



## IV. EXECUTIVE SUMMARY AND RECOMMENDATIONS<sup>46</sup>

The International Criminal Court will represent a landmark development in the enforcement of International Humanitarian Law and the advancement of Human Rights. First of all, it creates a new permanent judicial institution to try individuals for crimes of genocide, war crimes and crimes against humanity. Secondly, and even most importantly, through the principle of complementarity it will stimulate the development of national legislation and the exercise of jurisdiction over those crimes by national courts.

Throughout the Twentieth century, perpetrators of the most egregious crimes against Humankind have rarely been brought to justice. Ever since the end of World War II and the Tokyo and Nuremberg Tribunals, the United Nations has debated the feasibility of establishing a permanent, fair and independent International Criminal Court that would put an end to impunity. The cold war suspended the project but it was revived once, on the one hand, the Soviet Empire had collapsed while, on the other, a new instability was giving raise to the resurgence of new conflicts, many of which were of a national nature. The International Law Commission was requested in 1989 to resume the work on the draft Statute. The Security Council created two Ad Hoc Tribunals in 1993 and 1994 for the Former Yugoslavia and Rwanda, respectively. In 1995, the General Assembly created a Preparatory Committee for the establishment of the Court to shape the draft statute. At the Diplomatic Conference of Plenipotentiaries in Rome, around one hundred sixty delegations worldwide, under the auspices of the United Nations, negotiated and finally adopted the Statute to Establish the International Criminal Court by a vote of 120 to 7 and with 21 abstentions.

Since the adoption of the Rome Statute, ten sessions of the Prep Com have been convened at the UN Headquarters with the mandate to negotiate the necessary technical arrangements for bringing the Court into operation, including the preparation of draft texts of the additional instruments needed for the well functioning of the Court.

The Court can only enter into operation once the Statute has entered into force, for which sixty ratifications are required. On 11<sup>th</sup> of April, at a special event during the ninth session of the Prep Com, ten more instruments of ratification were deposited, reaching the number of 66, while 139 states had signed. Later, Greece, Uganda and Brazil also deposited its instrument of ratification, therefore, bringing the total number of States Parties to 69, at the time of writing this report. With Greece, the 15 EU Member States have ratified.

The European Union is a strong supporter of the establishment of the Court. Through a budget line created at the initiative of the European Parliament in 1995, the European Commission has been able to provide funding to the Ad Hoc Tribunals and to numerous activities carried out in partnership with NGOs to prepare the work of the setting up of the ICC. The 2001 Commission Communication on "the EU role in promoting Human rights and Democratisation in third countries" includes as one of the four thematic priorities 'support for the fight against torture and impunity and for international tribunals and criminal courts'. Moreover, the Council adopted a Common Position on the ICC on 11<sup>th</sup> June 2001 (see annexe the June 2002 reviewed Common Position), followed by an Action Plan on 15<sup>th</sup> of May 2002, to widespread values and principles worldwide of the Rome Statute and promote its entry into force and to ensure the well functioning of the Court.

As the entry into force of the Statute was approaching, the European Commission (EuropeAid Office Cooperation, Directorate for Horizontal Operations and Innovation) held a Seminar in 2002. The conference "*The European Commission support for the establishment of the International Criminal Court*", held in Brussels, during the 28<sup>th</sup> and 29<sup>th</sup> of January 2002, was aimed at identifying the major issues at stake in the new phase of the Court. Around seventy experts on the ICC were gathered to debate on the basis of the Discussion Paper and to provide EuropeAid with constructive input for the implementation of projects in the period of 2002-04,

with a view to avoiding duplication, coordinating and complementing actions undertaken by different actors (Member States, EU institutions, International Organisations and NGOs) and re orientating the EU financial support from a demand-driven process to an agreed-driven one.

The next years will be critically important. After the entry into force of the Rome Statute, a number of steps must be taken before the ICC can function effectively. These will have to be taken in a situation where the formal structures of the ICC will not yet be in place, since there will be a time gap between the entry into force of the Statute and the election and installation of all ICC organs. Therefore, the process now enters into a new 'institutional building phase', which concentrates on the needs of the ICC as an international judicial institution and on practical arrangements relating to its setting up (e.g. budget, staff, communications, security, etc.).

The ASP shall meet from 3<sup>rd</sup> to 10<sup>th</sup> September 2002 and will consider and, if appropriate, adopt the documents from the Prep Com. The deadline for states to ratify will be the 31<sup>st</sup> of October if they want to be full members at the second ASP and submit a candidate for judge. The second ASP meeting will normally take place in January 2003 and shall hold elections for the Judges and Prosecutor. In February-March 2003 The Netherlands could hold an inaugurating ceremony. Around March-April 2003 a Registrar shall be appointed. By June-July 2003 the Court shall be in operation.

The role of the EU will be extremely relevant as it carries an enormous amount of responsibilities (host country, budget support, Common Position). It is a common understanding that the European Union should play a leading role in promoting the universal acceptance of the Court and in facilitating the establishment of the future Court.

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<sup>46</sup> Please, note that the Executive summary and recommendations have been finalised on the 21<sup>st</sup> of June 2002 and, therefore, incorporate recent developments that took place after the seminar was conducted.

<sup>47</sup> See annexe reviewed Common Position as adopted by the ECOFIN on 20<sup>th</sup> June 2002.

## RECOMMENDATIONS

### To the European Union and to individual Member States :

1. **Implement the Action Plan** adopted on 15<sup>th</sup> of May 2002 following the Council Common Position on the ICC of 11<sup>th</sup> June 2001 (last reviewed<sup>47</sup> on June 2002), focusing on the period leading up to the time when the ICC will be fully operational. The plan includes the co-ordination of EU activities in this field, ensuring a worldwide ratification and implementation of the Rome Statute (through a variety of instruments such as political dialogue, démarches or other bilateral means, statements in the UN and other multilateral bodies and support for the dissemination of the ICC principles and rules) and the effective establishment of the ICC.
2. Contribute with **technical and financial assistance** to the legislative work that may be needed for the ratification and implementation of the Statute in third countries.
3. Member States should consider contributing in a generous and equitable manner to the **Trust Fund** to support the establishment of the ICC and providing assistance for the participation of delegates from the least developed countries.
4. Member States should co-operate to **ensure that the first meetings of the Assembly of States Parties function smoothly** and set good precedents for the future. The Member States should also **encourage nomination procedures for judges and prosecutors which are transparent**, as well as make every effort to ensure that highly qualified candidates are nominated and that the overall composition of the Court with regard to qualifications, background, geographic origin, legal systems and gender is in conformity with the criteria set forth in the Statute.
5. Continue to approach the USA in a constructive way while defending the ICC from hostile measures (e.g. anti-ICC legislation contained in the ASPA, Security Council resolutions seeking for any exemption for peacekeepers from ICC jurisdiction, bilateral agreements based on art. 98.2 of the Rome Statute attempting against the core significance of the Rome Statute).

### To the European Commission :

1. **Implement the Action Plan**, accordingly with Article 5 of the Common Position, which states that 'the Commission intends to direct its action towards achieving the objectives and priorities of this Common Position, where appropriate by pertinent Community measures'. In this regard, co-ordination amongst different EU bodies is recommended, including through posting developments or events on the Council's ICC web site or holding special co-ordination meetings of ICC experts of EU Member States with the Commission and with the assistance of the Secretariat. Also, as regards to promoting ratification and implementation, the ICC should also be brought up as a human rights (and a UN) issue in political and economic dialogues with third States, including in the context of development co-operation, such as the Cotonou framework. The ICC should also be considered, where appropriate, as a topic for summits and other high-level meetings with third States or groups of States. The Commission Delegations should be fully engage in these actions.  
The Commission should continue its practice of consulting with Member States and other relevant parties, as was the case in the conference held in Brussels on 28 and 29 January 2002. Europe Aid launched a Call for Proposals for NGO activities in support of the fight against impunity and torture and in favour of the international tribunals and criminal courts for the period of 2002-04'. Information related to this can be found in webpage : [http://europa.eu.int/comm/europeaid/projects/eidhr/index\\_en.htm](http://europa.eu.int/comm/europeaid/projects/eidhr/index_en.htm).
2. Support the dissemination of the values and principles contained in the Rome Statute, contributing to broaden the scope of understanding and the basis of support of the ICC through **awareness building and education campaigns**. Support the production and dissemination of information materials including legislation -in print, video and through electronic resources- in

as many languages as possible, the constant updating of ICC web sites and dissemination of information on events and activities.

3. **Support the worldwide ratification campaign undertaken by NGOs.** In particular, a focus should be given to areas under represented, namely Asia, North Africa and Middle East and the Former Soviet Republics. For such endeavour the following activities seem necessary : missions to targeted countries, legal assistance to overcome constitutional issues, advocacy work to include the ICC topic on the agenda of intergovernmental meetings, ensure participation of NGO representatives to the ASP, support local NGOs campaigns, develop country by country strategies and analysing possible negative effects of the USA anti-ICC position.
4. **Support the establishment and the work of an expert advance team in The Hague** in order to prepare for the smooth functioning of the ICC. The team should be composed of a well-structured, equipped and financed staff able to work and assist the judges. It should be objective, representative and impartial.
5. **Support the NGOs campaign to ensure the adoption of national implementing legislation.** For such endeavour the following activities seem necessary : promote the development of expertise and provide technical and legal assistance on a bilateral basis, organising regional and national conferences offering an informal space for exchanging information on technical issues related to criminal matters and to cooperation and judicial assistance, supporting local NGOs campaigns and inviting local NGOs to conferences on implementation in order to follow the process, support advocacy work to ensure effective implementing legislation is adopted worldwide and producing and distributing substantive materials and legislation translated into different languages.
6. **Support targeted education and training needs developing expertise on the ICC of those who will be involved in the work of the Court,** such as judges, prosecutors, other law enforcement officials, NGOs, and international organisations. This could involve education campaigns and seminars on issues such as complementarity, sovereignty, immunities, death penalty, extradition/surrender, etc., but also training further capacities in research and documentation of cases of possible crimes that may be covered in the future by the ICC.
7. **Support the work of the Assembly of States Parties,** through means such as : supporting the monitoring role –as observers- of the NGOs in the same way as the Commission supported the NGOs at the Prep Com, ensuring the involvement of NGOs worldwide, supporting the campaign to ensure a transparent nomination procedure and later a fair election for the judges and the prosecutor according to the criteria set out in the Statute, supporting the creation of an international criminal bar and supporting the research and monitoring role of NGOs in the setting up of the Court.
8. **Support the Member States and NGOs towards an effective ‘management of expectations’,** by trying to ensure that the media and the general public understand the precise parameters of the ICC and the time framework for the coming into effective operation of the Court. This could include support for the setting up of a communication policy, including the creation of a communication office with a spokesperson competent to speak on behalf of the Court as well as support the NGO campaigns with media.
9. **Continue supporting the ICTR and ICTY** to make a success from the existing ad hoc tribunals and to continue to provide assistance to them even after entry into force of the Statute of Rome in order to ensure cooperation with and judicial assistance to the future Court.
10. **Continue cooperation and coordination with international organisations,** in particular, the Council of Europe, OSCE, the Ad Hoc Tribunals and the ICRC.





# ANNEX I

## - AGENDA -

**MONDAY 28 JANUARY - CENTRE BORSCHETTE** (36, rue Froissart - 1040 Bruxelles)

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- 09:15** Arrival and Inscription
- 09.45** Opening address by Mr. de Angelis, Director EuropeAid Horizontal Operations and Innovation
- 10.00** Introduction :  
1- Overview of current situation & perspective on needs for 2002-4  
Mr. Yañez-Barnuevo, Spain - Mrs. Napoli, DG Relex - Mr. Pace, NGO Coalition
- DEBATE
- 11.15** Coffee
- 11.30** 2- Experience learned from the Tribunals, including both of the current ad hoc tribunals (ICTY-ICTR) and state of play for the Sierra Leone Special Court :  
Mr. Fomete, ICTR - Mrs. Smith, No Peace Without Justice
- DEBATE AND END OF INTRODUCTION
- 12.15** 3- Support for the successful completion of the UN Preparatory Commission :  
Mr. Mochochoko, Lesotho
- DEBATE
- 13.00** Buffet Lunch
- 14.30** 4- Ratification campaign: obtaining maximum and geographically- balanced adherence to the ICC : Mr. Donat-Cattin, Parliamentarians for Global Action - Mrs. Rosenthal, Human Rights Watch - Mrs. Balais-Serrano, Forum Asia - Mrs. Colitti, No Peace Without Justice, Mr. Belelli, Italy
- DEBATE
- 16.00** 5- Ensuring the adoption of national implementing legislation to fully cooperate with the Court and to exercise national criminal jurisdiction over the ICC crimes :  
Mr. Bernard, Federation Internationale des Droits de l'Homme  
Mrs. Kuntzinger, International Committee for Red Cross  
Mrs. Bolognese, Council of Europe
- DEBATE
- 17.15** Coffee
- 17.30** 6- Generating public awareness of, and support for, the Court and providing training for target groups : Mrs. Stoyles, NGO Coalition
- DEBATE
- Closing Remarks - Mr. de Angelis
- 20.00** Conference Dinner – Hotel Metropole, Place de Brouckere

## TUESDAY 29 JANUARY 2002 - CENTRE MOSELLE

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- 10.00** 7- Monitoring and supporting the work of the Assembly of State Parties (e.g. Elections of judges, prosecutor and registrar) :  
Mrs. Oosterveld, Canada - Mr. Pace, NGO Coalition
- DEBATE
- 11.15** Coffee
- 11.30** 8- Support for the prompt and effective establishment of the ICC, ensuring its credibility and monitoring the future work of the Court.  
issues at stake : E.g. Code of conduct, Training law enforcement actors, Creation of a Bar, Defence issues, Logistical problems.  
Mr. Verweij, Netherlands - Mr. Pace, NGO Coalition, Mrs. Deray, Paris Bar -  
Mr. Beauchier, lawyer- Mr. Walley, lawyer (Avocats sans Frontières)
- DEBATE
- 13.00** Buffet Lunch
- 14.30** EC Plan of activities for 2002-2004: how to ensure Complementarity and Co-ordination by all actors involved.
- Commission and MS instruments, means at ICC disposal (1st and 2nd pillar).  
Mrs Napoli, DG Relex - Mrs. Ramirez Fueyo, Council  
NGO campaigns: what is the future role of NGOs ?  
Mr. O' Donohue, Amnesty International - Mr. Donat-Cattin, Parliamentarians for Global Action - Mr. Figa Talamanca, NPWJ
- DEBATE
- 17.00** Concluding remarks by F. de Angelis

## ANNEX II

### - LIST OF PARTICIPANTS -

Mr. Michael Agbeko  
Parliaments For Global  
Action  
USA

Ms. Irune Aguirrezabal  
NGO Coalition for the ICC  
European Coordinator  
Belgium

Mr. Peter Ashman  
European Commission,  
EuropeAid Office  
Cooperation Human Rights  
& Democracy Unit  
Administrator  
Belgium

Prof. Enrique Bacigalupo  
Spanish Supreme Court  
Judge  
Spain

Ms. Evelyn Balais-Serrano  
Asian Forum for  
Human Rights  
Consultant  
Philippine

Ms. Maria Balta  
Lawyer  
Greece

Mr. Georges-Henri Beauthier  
Lawyer  
Belgium

Ms. Kristina Beckvard  
Ministry of Foreign Affairs  
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**ANNEX III**  
**COUNCIL COMMON POSITION OF 11<sup>TH</sup> JUNE 2001**  
**ON THE INTERNATIONAL CRIMINAL COURT<sup>48</sup>**

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THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 15 thereof, Whereas:

- a. The consolidation of the rule of law and respect for human rights, as well as the preservation of peace and the strengthening of international security, in conformity with the Charter of the United Nations and as provided for in Article 11 of the EU Treaty, are of fundamental importance to, and a priority for, the Union.
- (2) The Statute of the International Criminal Court, adopted by the Rome Conference of Plenipotentiaries, has been signed by 139 and ratified or acceded to by 32 States and will enter into force after the sixtieth instrument of ratification, acceptance, approval or accession is deposited.
- 3) The principles of the Rome Statute of the International Criminal Court, as well as those governing its functioning, are fully in line with the principles and objectives of the Union.
- 4) The serious crimes within the jurisdiction of the Court are of concern for all Member States, which are determined to cooperate for the prevention of those crimes and for putting an end to the impunity of the perpetrators thereof.
- (5) The Union is convinced that compliance with the rules of international humanitarian law and human rights is necessary for the preservation of peace and the consolidation of the rule of law.
- (6) The early entry into force of the Statute is therefore desirable and the Union is committed to making every effort to achieve the required number of instruments of ratification, acceptance, approval or accession, as well as contributing to the full implementation of the Rome Statute.
- (7) On 19 November 1998, 6 May 1999 and 18 January 2001, the European Parliament adopted Resolutions on the ratification of the Rome Treaty to establish the permanent International Criminal Court; and on 8 May 2001, the Commission submitted to the European Parliament and the Council its Communication on the European Union's role in promoting human rights and democratisation in third countries.
- (8) The Final Act of the Rome Conference has established a Prep Com mandated to elaborate proposals for adoption by the Assembly of States Parties, including instruments needed for the practical functioning of the Court.
- (9) The agreement reached on the Rome Statute represents a delicate balance between different legal systems and interests, and the successful finalisation of the first draft instruments on Elements of Crime and on Rules of Procedure and Evidence completed by 30 June 2000 by the Prep Com was achieved with full respect for the integrity of the Statute, to which all Member States are committed.
- (10) The Union recognises that the principles and rules of international criminal law embodied in the Rome Statute should be taken into account in other international legal instruments.

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<sup>48</sup> 2001/443/CFSP, *Official Journal L 155*, 12/06/2001 P. 0019 – 0020.

- (11) The Union is convinced that universal adherence to the Rome Statute is desirable for the full effectiveness of the International Criminal Court and, to this end, considers that initiatives to enhance the acceptance of the Statute are to be encouraged, provided they are consistent with the letter and spirit of the Statute.
- (12) The effective establishment of the Court and the implementation of the Statute requires practical measures that the European Union and its Member States should fully support,

## HAS ADOPTED THIS COMMON POSITION :

### Article 1

1. The establishment of the International Criminal Court, for the purpose of preventing and curbing the commission of the serious crimes falling within its jurisdiction, is an essential means of promoting respect for international humanitarian law and human rights, thus contributing to freedom, security, justice and the rule of law as well as contributing to the preservation of peace and the strengthening of international security, in accordance with the purposes and principles of the Charter of the United Nations.
- b. The objective of this Common Position is to pursue and support an early entry into force of the Rome Statute and the establishment of the Court.

### Article 2

1. In order to contribute to the objective of an early entry into force of the Statute, the European Union and its Member States shall make every effort to further this process by raising the issue of the widest possible ratification, acceptance, approval or accession to the Rome Statute and the implementation of the Statute in negotiations or political dialogues with third States, groups of States or relevant regional organisations, whenever appropriate.
2. The Union and its Member States shall contribute to an early entry into force and implementation of the Statute also by other means, such as by adopting initiatives to promote the dissemination of the values, principles and provisions of the Rome Statute and related instruments.
3. The Member States shall share with all interested States their own experiences on the issues related to the implementation of the Statute and, when appropriate, provide other forms of support to that objective.

### Article 3

The Union and its Member States shall give support, including practical support, to the early establishment and good functioning of the Court. They shall support the early creation of an appropriate planning mechanism in order to prepare the effective establishment of the Court.

### Article 4

The Council shall, where appropriate, coordinate measures by the European Union and Member States for the implementation of Articles 2 and 3.

### Article 5

The Council notes that the Commission intends to direct its action towards achieving the objectives and priorities of this Common Position, where appropriate by pertinent Community measures.



**Article 6**

During negotiations of the instruments of, and in carrying out the work provided for in Resolution F of the Final Act of the Rome Diplomatic Conference of Plenipotentiaries, Member States shall contribute to the early finalisation of these instruments and shall support solutions that are consistent with the letter and the spirit of the Rome Statute, taking into account the need for ensuring the widest possible participation thereto.

**Article 7**

The Council shall review this Common Position every six months.

**Article 8**

This Common Position shall take effect from the date of its adoption.

**Article 9**

This Common Position shall be published in the Official Journal.

Done at Luxembourg, 11 June 2001.

For the Council  
The President  
c. Lindh

# ANNEX IV

## COUNCIL COMMON POSITION 2002/CFSP AMENDING COMMON POSITION 2001/443/CFSP ON THE INTERNATIONAL CRIMINAL COURT

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article 15 thereof, Whereas:

- (1) Article 7 of Council Common Position 2001/443/CFSP of 11 June 2001, on the International Criminal Court ("the Court") , states that the Council shall review the Common Position every six months.
- (2) On 16 April 2002 the Council took note of a resolution on the Court approved by the European Parliament on 28 February 2002 which, inter alia, called for the adoption of an action plan to follow-up Common Position 2001/443/CFSP.
- (3) The said Action Plan was finalised on 15 May 2002 and may be adapted as appropriate.
- (4) The Statute of the International Criminal Court, hereinafter "the Statute", adopted by the Rome Conference of Plenipotentiaries, has been signed by 139 and ratified or acceded to by 67 States and will enter into force on 1 July 2002.
- (5) All Member States of the European Union have ratified the Statute.
- (6) In view of the forthcoming entry into force of the Statute, a number of steps have to be taken before the Court can function effectively, a period during which the European Union should do its utmost to promote the early establishment of the Court, in accordance with the relevant decisions of the Preparatory Commission and the Assembly of States Parties ("the Assembly").
- (7) Common Position 2001/443/CFSP should therefore be amended,

HAS ADOPTED THIS COMMON POSITION :

### Article 1

Common Position 2001/443/CFSP is hereby amended as follows:

1. Article 1(2) shall be replaced by the following:  
"2. The objective of this Common Position is to support the early establishment and effective functioning of the Court and to advance universal support for the Court by promoting the widest possible participation in the Statute."
2. Article 2 shall be replaced by the following:

### Article 2

1. In order to contribute to the objective of the widest possible participation in the Statute, the European Union and its Member States shall make every effort to further this process by raising the issue of the widest possible ratification, acceptance, approval of or accession to the Rome Statute and the implementation of the Statute in negotiations or political dialogues with third States, groups of States or relevant regional organisations, whenever appropriate.

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<sup>49</sup> OJ L 155, 12.6.2001, p. 19.

2. The Union and its Member States shall contribute to the world-wide ratification and implementation of the Statute also by other means, such as by adopting initiatives to promote the dissemination of the values, principles and provisions of the Statute and related instruments. In furtherance of the objectives of this Common Position, the Union shall co-operate as necessary with other interested States, international institutions, non-governmental organisations and other representatives of civil society.
3. The Member States shall share with all interested States their own experiences on the issues related to the implementation of the Statute and, when appropriate, provide other forms of support to that objective. They shall contribute, when requested, with technical and, where appropriate, financial assistance to the legislative work needed for the ratification and implementation of the Statute in third countries. States considering to ratify the Statute or to cooperate with the Court shall be encouraged to inform the Union of difficulties encountered on that path.
4. In implementing this Article, the Union and its Member States shall coordinate political and technical support for the Court with regard to various States or groups of States. To that end, country-specific or region-specific strategies shall be developed and used where appropriate."

3. Article 3 shall be replaced by the following:

#### **Article 3**

1. The Union and its Member States shall give support, including practical support, to the early establishment and good functioning of the Court. In particular, they shall support the early creation and operation of an appropriate planning mechanism, including an advance team of experts, in order to prepare the effective establishment of the Court.
2. Member States shall co-operate to ensure the smooth functioning of the Assembly in all respects, including the adoption of documents recommended by the Preparatory Commission. In particular, Member States shall make every effort to ensure that highly qualified candidates are nominated, inter alia by encouraging transparent nomination procedures for judges and prosecutors in accordance with the Statute. They shall also endeavour to achieve that the composition of the Court as a whole reflects the criteria set forth in the Statute.
3. The Union and its Member States shall consider contributing in an appropriate and equitable manner to the costs for measures needed before the first period's budget of the Court becomes effective and the Court is fully operational. The Union, after adoption of a budget of the Court by the Assembly of States Parties, shall encourage States Parties to promptly transfer their assessed contributions in accordance with the decisions taken by the Assembly.
4. The Union and its Member States shall endeavour to support as appropriate the development of training and assistance for judges, prosecutors, officials and counsel in work related to the Court."

#### **Article 2**

This Common Position shall take effect on the date of its adoption.

#### **Article 5**

This Common Position shall be published in the Official Journal.

Done at Luxembourg, 20 June 2002

For the Council  
The President

# ANNEX V

## ACTION PLAN TO FOLLOW-UP ON THE COMMON POSITION ON THE INTERNATIONAL CRIMINAL COURT<sup>50</sup>

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On 11 June 2001, the European Union adopted a Common Position on the International Criminal Court (ICC). In the course of the preparation of the Common Position and during the time which has passed since then, the Member States and EU institutions have pursued its implementation in various fora.

On 28 February 2002, the European Parliament approved a resolution on the ICC which, *inter alia*, called for the adoption of an EU action plan in furtherance of the Common Position.

This action plan focuses on the period leading up to the time when the ICC will be fully operational. The plan is divided in four sections. The first one deals with the co-ordination of EU activities in this field and is relevant to the two following ones, which cover ratification and implementation of the Rome Statute in third countries and the effective establishment of the ICC, respectively; the fourth section deals with the implementation of the action plan.

### A. COORDINATION OF EU ACTIVITIES

Article 4 of the Common Position entrusts the Council (through the Presidency) with the task to “where appropriate, co-ordinate measures by the European Union and Member States for the implementation of Articles 2 and 3”. Further, according to Article 5, the Council “notes that the Commission intends to direct its action towards achieving the objectives and priorities of this Common Position, where appropriate by pertinent Community measures”.

These articles touch upon a number of issues, such as: (i) how to ensure that various EU bodies are informed of activities in the field; (ii) how to exchange views and ideas between EU bodies; (iii) how to avoid unnecessary duplication; (iv) how to maximise impact by coordinating various EU initiatives; and (v) how to “mainstream” the ICC within the EU activity in related fields.

EU bodies have different mandates, and informal co-ordination seems to be advisable in many cases. Furthermore, the EU actors involved should be kept informed of each other’s activities. Useful knowledge and expertise from non-governmental organisations and independent experts is often available and should continue to be availed of.

1. All involved should disseminate relevant information, including information on relevant meetings and other events, which have taken place or will take place. Such information could, if appropriate, be posted on the Council’s ICC web site, transmitted via coreu or by other means, including the e-mail network. Information should be filed in an accessible manner by the Council Secretariat, which should act as the main focal point for this purpose.
2. Special co-ordination meetings of ICC experts of EU Member States with the Commission and with the assistance of the Secretariat should be convened by the Presidency at least once every term and whenever the need so arises.
3. Furthermore, the Presidency should meet periodically with the Commission and the Secretariat in order to co-ordinate informally and generate ideas to further the EU support for the ICC.

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<sup>50</sup> As agreed by the COJUR Working Party on 15 May 2002, St 9019/02 PESC 186 COJUR 3 COHOM 3.



4. The Commission should continue its practice of consulting with Member States and other relevant parties, as was the case in the conference held in Brussels on 28 and 29 January 2002.
5. Adequate and timely information should be provided to the European Parliament.

## **B. RATIFICATION AND IMPLEMENTATION OF THE ROME STATUTE IN THIRD COUNTRIES**

Article 2 of the Common Position deals with this matter in this way:

- "1) In order to contribute to the objective of an early entry into force of the Statute, the European Union and its Member States shall make every effort to further this process by raising the issue of the widest possible ratification, acceptance, approval or accession to the Rome Statute and the implementation of the Statute in negotiations or political dialogues with third States, groups of States or relevant political organisations, whenever appropriate.
- 2) The Union and its Member States shall contribute to an early entry into force and implementation of the Statute also by other means, such as adopting initiatives to promote the dissemination of the values, principles and provisions of the Rome Statute and related instruments.
- 3) The Member States shall share with all interested States their own experiences on the issues related to the implementation of the Statute and, when appropriate, provide other forms of support to that objective".

These objectives will continue to be relevant even after the entry into force of the Statute. In some cases, the crucial object with regard to third States is to maximise the political will for the ratification and implementation of the Statute in order to achieve the desired universality. This involves a variety of instruments such as political dialogue, démarches or other bilateral means, statements in the UN and other multilateral bodies and support for the dissemination of the ICC principles and rules. In other cases, it will be important to assist countries which are willing but may encounter difficulties in order to ratify or implement the Statute. This could involve, inter alia, concrete expert assistance, financial support or access to data compiled by others.

Various initiatives have been taken and continue to be taken, ranging from political dialogues and bilateral démarches to the dissemination of the principles and rules of the ICC Statute through awareness-raising campaigns led by NGOs and to expert assistance in drafting relevant legislation. The EU and others have been involved, directly or indirectly, as providers of funds or technical assistance for these activities. This practice should continue.

1. Political and technical support for the ICC should be co-ordinated with regard to various States or groups of States. To that end, country-specific or region-specific strategies should be developed and applied where appropriate. They should take into account, inter alia, the degree of political will of the country or countries concerned, the existence of any legal difficulties, the stage of preparations, the level of local support, the availability of local or regional partners and the kind of impact that the EU action might have.
2. The factual basis for such evaluation and decision may be provided by the Presidency, an EU body or a Member State. EU heads of mission in the country or countries concerned may be instructed to provide further information and assessment. External knowledge and expertise, including by other interested States and international organisations and NGOs, could also be put to use.

All relevant information selected through those sources should be forwarded to the Presidency or the Council Secretariat and collected in a country-by-country ratification status, to be regularly updated and made available to EU bodies and Member States. The assessment of the available information should be reviewed on the occasion of expert co-ordination meetings.

3. Each particular strategy should include directions regarding what action to take vis-à-vis the country or countries concerned (*démarches*, offer of technical assistance, support for local or international NGOs, as the case may be), by which body and at which level. Decisions to adopt strategies may be adopted via coreu or by other means, as appropriate.

These strategies should guide the EU's work in this field, taking into account the various mandates of EU bodies. The absence of a specific strategy regarding a certain country or region should not be a bar to action in that area.

4. The ratification and implementation of the Rome Statute should be brought up as a human rights issue in the negotiation of EU agreements (association, accession) with third States. This issue should also be brought up as a human rights (and a UN) issue in political dialogues with third States, including in the context of development co-operation, such as the Cotonou framework. The ICC should also be considered, where appropriate, as a topic for summits and other high-level meetings with third States or groups of States.

Consequently, the ICC should be included on the draft list of issues elaborated by the Secretariat, under the guidance of the Presidency, for human rights and UN dialogues and, as appropriate, for other meetings.

5. Whenever appropriate, the EU should continue to use other diplomatic means, including bilateral *démarches*, to encourage the ratification and implementation of the Rome Statute.
6. The EU's support for the participation in and implementation of the Rome Statute should be highlighted in relevant EU statements in UN and other multilateral fora.
7. Member States should bring up the ICC in bilateral (State-to-State) contacts with third countries, whenever appropriate, and should inform each other and EU bodies of any such contacts.
8. The EU and its Member States should contribute with technical and financial assistance to the legislative work which may be needed for the ratification and implementation of the Statute in third countries. A list of experts available for seminars and short and long-term technical assistance should be drawn up, possibly in collaboration with other interested States or international organisations.
9. Whenever appropriate, the EU should co-operate with interested States and with regional and global governmental and non-governmental organisations in order to further the goal of the universality of the Rome Statute.

### **C. THE EFFECTIVE ESTABLISHMENT OF THE ICC**

According to Article 3 of the Common Position, "(t)he Union and its Member States shall give support, including practical support, to the early establishment and good functioning of the Court. They shall support the early creation of an appropriate planning mechanism in order to prepare the effective establishment of the Court."

After the entry into force of the Rome Statute, a number of steps must be taken before the ICC can function effectively. These will have to be taken in a situation where the formal structures of the ICC will not yet be in place, since there will be a time gap between the entry into force of the Statute and the election and installation of all ICC organs. In this respect, the EU will be guided by the relevant decisions of the Prep Com and then of the Assembly of States Parties.

1. The EU and its Member States should contribute their experiences and help ensure that the experiences of other newly created institutions, such as the ad hoc International Criminal Tribunals and the International Tribunal for the Law of the Sea, are put to use. On that basis, they should support the establishment and the work of an expert advance team in The Hague in order to prepare for the smooth functioning of the ICC.

2. The EU and its Member States should contribute to the successful completion of the tasks of the Prep Com, including, if necessary, support for any intersectional meeting.
3. The EU Member States should co-operate to ensure that the first meetings of the Assembly of States Parties function smoothly and set good precedents for the future. The Member States should also encourage nomination procedures for judges and prosecutors which are transparent, as well as make every effort to ensure that highly qualified candidates are nominated and that the overall composition of the Court with regard to qualifications, background, geographic origin, legal systems and gender is in conformity with the criteria set forth in the Statute.
4. The EU and its Member States should continue to consult with a view to facilitating early steps towards the effective establishment of the ICC. In particular, Member States should consider contributing in a generous and equitable manner to the trust fund to support the establishment of the ICC and providing assistance for the participation of delegates from the least developed countries. The EU should contribute to the operation of the advance team in The Hague as part of the planning mechanism referred to in Article 5 of the Common Position.
5. The EU and its Member States should support as appropriate the development of training and assistance for judges, prosecutors, officials and counsel in ICC-related work.
6. The EU and its Member States should also support the establishment of an independent representative body of counsel and legal associations in relationship with the ICC.
7. The EU and its Member States should work, together with other interested States and international organisations and NGOs, towards an effective “management of expectations”, by trying to ensure that the media and the general public understand the precise parameters of the ICC and the time framework for the coming into effective operation of the Court.

#### **D. IMPLEMENTATION**

1. In implementing this action plan, the EU and its Member States should develop target-oriented strategies and specific projects.
2. Upon appropriate co-ordination, the EU and its Member States should endeavour to take charge, individually or collectively, of the implementation of the said strategies or projects.

# ANNEX VI

## - INFORMATION RESOURCES -

### OFFICIAL DOCUMENTS

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The Rome Statute of the International Criminal Court, PCNICC/1999/Inf/3

Council Regulations 975/1999 and 976/1999 on the development and consolidation of democracy and the rule of law and respect for human rights and fundamental freedoms, OJ 120/1 of 8 May 1999

European Commission Communication on the European Union's role in promoting Human Rights and Democratisation in third countries' COM (2001) 252 final, 8 May 2001

Council Common Position on the International Criminal Court of 11 June, 2001/2001/443/CFSP, Official Journal L 155, 12/06/2001 P. 0019 – 0020

Declaration on the International Criminal Court adopted by the Council of Europe Committee of Ministers on 10 October 2001

Declaration by the Presidency on behalf of the European Union, the Central and Eastern European countries associated with the European Union, the associated countries Cyprus and Malta and the EFTA countries, members of the European Economic Area, concerning the adoption of the Common Position on the International Criminal Court, 29 January 2002

2002-4 EIDHR Draft Programming Document, European Commission

Action Plan to follow-up on the Common Position on the International Criminal Court, agreed by the COJUR Working Party on 15 May 2002, St 9019/02 PESC 186 COJUR 3 COHOM 3

### OTHER DOCUMENTS AND REPORTS

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Report of the Comité des Sages "Leading by example – a Human Rights Agenda for the European Union for the year 2000", European University Institute, October 1998

EC financed projects from 1996 to 1998 in Report by Jorge Cabaço, European Human Rights Foundation, September 1999

European Initiative for Democracy and Human Rights, Compendium 2000 European Human Rights Foundation, Brussels

PICT (The Project on the International Courts and Tribunals) Discussion Paper on the Financing of the International Criminal Court. Annexe III, 2000

EIDHR, Macro Projects, Compendium 2001" May 2001, European Human Rights Foundation, Brussels

Punishing Violations of International Humanitarian Law at the National Level. A guide for Common Law States", Advisory Service on International Humanitarian Law, ICRC, Geneva, September 2001

Report on the implementation of the EIDHR in 2000, Commission Staff Working Document, Brussels, 22 May 2001, SEC (2001) 801



The ICC: a short introduction. Prepared by LCHR for a meeting held at the Constitutional and Legal Policy Institute, Budapest, October 2001

CICC Secretariat information resources

## RELEVANT WEBSITES

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### EU

EIDHR : [http://europa.eu.int/comm/europeaid/projects/eidhr/index\\_en.htm](http://europa.eu.int/comm/europeaid/projects/eidhr/index_en.htm)

Council of the European Union : <http://ue.eu.int/pesc/icc/en/Index.htm>

### INTERNATIONAL ORGANISATION

United Nations : <http://www.un.org/law/icc/statute/status.htm>

Council of Europe : <http://www.legal.coe.int/criminal/icc/>

International Committee for the Red Cross : <http://www.icrc.org/icrceng.nsf/>

### NGO

Amnesty International : <http://www.qn.apc.org>

Committee for an effective International Criminal Law (CoEICL) : <http://www.coeicl.de/>

ELSA International : <http://www.elsa.org>

Fédération Internationale des Ligues des Droits de l'Homme : [www.fidh.org](http://www.fidh.org)

Human Rights Watch : <http://www.hrw.org>

Asociacion Pro Derechos Humanos (Aprodeh) : <http://aprodeh.org.pe>

International Centre for Human Rights and democratic development : <http://www.icj.org/>

International Commission of Jurist : [www.icj.org/~icj](http://www.icj.org/~icj)

Lawyers Committee for Human Rights : <http://www.lchr.org>

No Peace Without Justice : [www.npwj.org](http://www.npwj.org)

NGO Coalition for an ICC : <http://www.iccnw.org>

Women's Caucus : <http://www.iccwomen.org>

## ANNEX VII

### - LIST OF TERMS AND ABBREVIATIONS -

AI	- Amnesty International
ASP	- Assembly of States Parties
ASPA	- American Servicemember's Protection Act
CIS	- Community of Independent States
CoE	- Council of Europe
CAHDI	- Committee of Legal Advisers on Public International Law
CDPC	- European Committee on Crime Problems
CESDU	- Centro Euromediterraneo per gli studi giuridici e i Diritti Umani
CICC	- NGO Coalition for the International Criminal Court
DKK	- Danish Kroner
DG Relex	- Directorate General for External Relations
DG Dev	- Directorate General for Development
DG Elarg	- Directorate General for Enlargement
EC	- European Commission
ECHR	- European Court for Human Rights
EIDHR	- European Initiative for Democracy and Human Rights
EP	- European Parliament
EU	- European Union
EuropeAid	- (The European Commission) EuropeAid Cooperation Office
FIDH	- Fédération Internationale des Ligues des Droits de l'Homme
ICC	- International Criminal Court
ICRC	- International Committee for the Red Cross
ICTY	- International Criminal Tribunal for the former Yugoslavia
ICTR	- International Criminal Tribunals for Rwanda
ISHR	- International Society for Human Rights
LCHR	- The Lawyer's Committee for Human Rights
MERCOSUR	- Mercado Común del Sur
NGO(s)	- Non Governmental Organisation(s)
NPW	- No Peace Without Justice
OSCE	- Organisation for Security and Co-operation in Europe
PGA	- Parliamentarians for Global Action
PREP COM	- (UN) Prep Com on the International Criminal Court
SADC	- Southern African Development Community
TEU	- Treaty on the European Union
UN	- United Nations
WFM	- World Federalist Movement
ODIHR	- Office of Democrat Institutions and Human Rights





[http://europa.eu.int/comm/europeaid/projects/eidhr/index\\_en.htm](http://europa.eu.int/comm/europeaid/projects/eidhr/index_en.htm)