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Swedish Presidency
of the European Union

EU's reply to the information request of paragraph 6, sub-paragraph h) of the Plan of Action for achieving universality and full implementation of the Rome Statute

In the Resolution ICC-ASP/5/Res.3, the ASP decided, inter alia, to adopt and implement a Plan of Action for achieving universality and full implementation of the Rome Statute, paragraph 6, sub-paragraph (h), of the Plan of action, called upon States Parties to provide to the Secretariat information relevant to promotion of the ratification and full implementation of the Rome Statute

Assembly resolution ICC-ASP/6/Res.2 of 14 December 2007 and resolution ICC-ASP/7/Res.3 of 21 November 2008, recalled the invitation to State Parties to submit the information requested by paragraph 6h) of the Action Plan.

The EU, through the Council Working Party devoted to the ICC, COJUR ICC¹, agreed at its meeting on 5 June 2009 to provide an EU reply, where relevant, to the ASP Secretariat (ICC-ASP/8/S/PA/19) to the request of information expressed contained in the Secretariat note.

1. THE EU'S COMMITMENT TO ACHIEVE UNIVERSALITY AND FULL IMPLEMENTATION OF THE ROME STATUTE

The European Union is a staunch supporter the International Criminal Court (ICC). The principles of the Rome Statute of the ICC, as well as those governing its functioning, are fully in line with the principles and objectives of the Union. 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 Treaty of the EU, are of fundamental importance to, and a priority for, the Union.

The serious crimes within the jurisdiction of the ICC are of concern for the European Union, which is determined to co-operate for the prevention of those crimes and for putting an end to the impunity of the perpetrators thereof.

On 16 June 2003, the European Union replaced its 2001 Common Position on the ICC², as updated in 2002. The objective of the Common Position is to support the effective functioning of the Court and to advance universal support for the Court by promoting the widest possible participation in the Statute.



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The European Union also finalised on 4 February 2004³ an Action Plan to follow-up the Common Position.

The Action Plan is divided in three sections:

1. Co-ordination of EU activities
2. Universality and integrity of the Rome Statute
3. Independence and effective functioning of the ICC.

2 UNIVERSALITY OF THE ROME STATUTE

The realisation of this objective requires the use of a variety of instruments such as political dialogue, demarches or other bilateral means, statements in the UN and other multilateral bodies and support for the dissemination of the ICC principles and rules. It may also be important to assist countries, which have the necessary political will but may encounter difficulties with ratification, accession or implementation of the Statute. This could involve, inter alia, concrete expert assistance, financial support or access to relevant information.

2.1 Demarches & Political dialogue

Since 2002, the EU Presidencies has carried out over 320 demarches targeting more than 100 third countries and international organisations⁴, approximately 60 per year, to encourage the ratification and implementation of the Rome Statute, as well as ratification of the Agreement on Privileges and Immunities, and to highlight the EU guidelines on bilateral non-surrender agreements.

The importance of supporting the ICC is also raised with third countries as appropriate at **political dialogue meetings and Summits**.

For example, in 2008, during the **EU-South Africa** summit, both partners agreed to putting an end to impunity in Darfur by means of the ICC (Bordeaux, 25 July 2008). In the **EU-Canada** summit press declaration, both sides reaffirmed their commitment to the fight against impunity and called on Sudan to cooperate with the ICC (Quebec City, 17 October 2008). At the **EU-Republic of Korea** Summit, leaders reiterated their full support for the ICC and its key role in ensuring accountability for the most serious international crimes (Seoul, 23 May 2009).

2.2 Political support to the ICC

EU Statements and Declarations are used to support the Court's work or to signal important landmarks.

The **declaration made by the EU on the 10th anniversary of the ICC** underlined its full support to the Court in fighting impunity, for the rule of law, its commitment to promote universality and to protect the integrity of the Rome Statute (Brussels, 16 July 2008). Following the important landmark of the Prosecutor's applications for an arrest warrant to prosecute the President of **Sudan** and the rebel leaders, the EU issued statements where it recalled that the ICC plays a fundamental role in the promotion of international justice (15 July and 24 November 2008 and

again on 6 March 2009). In its Declaration on the situation in the **DRC**, the EU called on all stakeholders to cooperate with the ICC (20 February 2009). The EU also welcomed the ratification of the Rome Statute by Chile on 29 June 2009.

The EU does not just make public statements and declarations, however, it also takes political initiatives to pursue the objectives set out in the Common Position.

In a geographical context, Africa is a key priority for the EU and the EU-Africa summit in Lisbon (8 and 9 December 2007) was an historical landmark in that respect. The EU is committed to mainstreaming the support to the Court in all its policies and the **Africa-EU strategic partnership**: A joint Africa-EU Strategy adopted at the summit is a clear example where both parties commit themselves to fight impunity and support the establishment and the effective functioning of the ICC.

2.3 The European Union Special Representatives

The EU currently has eleven Special Representatives (EUSRs) in different regions of the world. The EUSRs promote EU policies and interests in troubled regions and countries and play an active role in efforts to consolidate peace, stability and the rule of law.

The eleven EUSRs currently in office cover the following regions: Afghanistan, the African Great Lakes Region, Bosnia and Herzegovina, Kosovo, Central Asia, the former Yugoslav Republic of Macedonia, the Middle East, Moldova, the South Caucasus, Sudan and the African Union.

Some of these EUSRs have a clear mandate related to the ICC such as the EU Special Representative for Sudan⁵, who has to follow the situation and maintain regular contacts with, among others, the Office of the Prosecutor of the ICC. Other EUSRs play also an important role in cooperating and promoting the ICC in their respective areas, namely the EUSR for the Great Lakes or the EUSR for Moldova.

It has to be highlighted the intense cooperation between the EUSRs for Sudan and the Great Lakes with the Court. These EUSRs together with the EUSR to the AU are engaged in promoting the ICC as part of their work, therefore further mainstreaming the ICC into the EU's external action.

2.4 ICC Clauses

Furthermore, as part of its action plan, the EU pursues systematically the inclusion of an ICC clause in the negotiating mandates and agreements with third countries.

So far the revised Cotonou agreement⁶ of 2005 is the only binding legal instrument including an ICC-related clause⁷, it applies to **76 African, Caribbean and Pacific countries**. This clause is a good starting point to be followed when negotiating other agreements, although it is necessary to adopt a case-by-case approach.

To date, an ICC clause has been agreed in the Partnership and Cooperation Agreements (PCAs), Trade Cooperation and Development Agreements (TDCAs) and Association Agreements (AAs) with Indonesia, South Korea, South Africa, the Andean Community, Ukraine and Iraq. ICC clauses are currently being negotiated in the PCAs and AAs with Singapore, Thailand, Malaysia, The Philippines, Brunei Darussalam, Vietnam, China, Libya, Russia and Central America.

In the framework of the European Neighbourhood Policy (ENP)⁸, ICC clauses are included in the Action Plans with the following countries: Armenia, Azerbaijan, Egypt, Georgia, Jordan, Lebanon, Moldova and Ukraine.

2.5 Support to the ICC in UN fora

EU support to the ICC is also expressed within the framework of the United Nations. After the presentation of the Fourth Report of the ICC to the UNGA in late October 2008, all 27 EU Member States rallied behind the annual resolution in support of the ICC and issued a statement on that occasion (30 October 2008). The EU played an active role in the adoption of UNSCR 1593 (2005) authorising the Security Council— for the first time - to refer a case (Darfur) to the ICC.

2.6 Technical and financial assistance

The relevant framework for the provision of technical assistance to interested states is set out under the EU Action Plan. Diverse forms of assistance are envisaged, much of which is directed at the deployment of experts from and by Member States.

The EU also has elaborated a list of experts⁹ to provide countries with technical assistance. The EU experts may be mandated to provide technical assistance on behalf of the EU, including the following tasks such as:

- Co-operating with requesting third states in any technical issue related to the participation in and implementation of the Rome Statute and its instruments, and with any form of co-operation with the ICC
- Participating in seminars, symposiums, conferences or any other national or international event, either of academic or of official character, as well as to relevant civil society events, as may be necessary for the widest dissemination of the values, principles and provisions of the Statute and related instruments, as well as for the implementation of the Common Position, and for the co-operation of the EU with the ICC

2.6.1 EC Funding¹⁰

Since 1995, the European Commission has funded civil society organisations working to promote the adoption of the Rome Statute and its subsequent entry into force under the European Initiative for Democracy and Human Rights. Since 2000 the Commission has provided further funding of € 29 million to the global ratification campaigns undertaken by civil society organizations. The European Commission has been the principal financial supporter of many of these organizations whose work has gone along way in increasing the ratification rate of the Rome Statute and awareness of the mandate of the Court. Since 2004 the European Commission has also directly

supported the Court's Internship and Visiting Professional's Programmes with grants totalling more than € 5 million (included in the 29 million) to date, and will continue to do so in the future. This has strengthened awareness of the Court's mandate and proceedings among key personnel from national ministries and legal communities and enhanced the practical implementation of the principle of complementarity. A number of participants in previous programmes are reported by the Court to have already contributed substantially to stimulating ratification processes in their respective countries.

2.7 Cooperation with other partners

In the framework of its bilateral relations with Japan, Brazil, Canada and Australia, expressed in different instruments (*Action Plan for E.U.-Japan Cooperation 2001, joint statement by the EU and Canada at the conclusion of the 2002 Summit, EU-Australia Partnership Framework 2008 and EU – Brazil Action Plan 2008*) the EU and these partners seek co-operation to strengthen its action in support of the universality of the Rome Statute. At the last ASP, the EU and these partners agreed in promoting universality and implementation of the Rome Statute through increased cooperation.

3. EU-ICC AGREEMENT ON COOPERATION AND ASSISTANCE

The EU was the first Regional Organisation to sign with the ICC an agreement on cooperation and assistance on 10 April 2006¹¹. The agreement places a general obligation of cooperation and assistance between the EU and the ICC and foresees, inter alia, the regular exchange of information and documentation of mutual interest. The agreement does not apply to ICC requests for information from individual Member States, which are governed by bilateral arrangements, nor does it affect the competence of the European Community to achieve the objectives of the agreement through separate measures.

The EU and the ICC finalised in April 2008 the implementing arrangements concerning exchange of classified information. This agreement will undoubtedly lead to a further deepening of the EU's cooperation with the Court.¹²

In this context, provisions were agreed between the EU and the ICC so on of the EU ESDP operations -EUFOR Chad/RCA- could provide support, if requested, to the Court in Chad in logistic and security issues.

Other area of cooperation is the hosting by the European Institutions of ICC **diplomatic debriefings** in Brussels. The Council of the EU has hosted ICC debriefings to the diplomatic corps four times between 2006 and 2009.

4. NETWORK OF CONTACT POINTS IN RESPECT OF PERSONS RESPONSIBLE FOR GENOCIDE AND CRIMES AGAINST HUMANITY

The ICC remains complementary to national systems of criminal law. In the Council common position on the ICC, the EU Member States expressed their determination to work together to

combat certain forms of crime, that's the reason why the Council adopted a Decision¹³ in 2002 setting up a European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes. The purpose of this Decision is to make cooperation between the Member States in combating genocide and crimes against humanity more efficient and to designate a contact point for war crimes within the police and justice systems of each Member State.

Each Member State has designated a national contact point for the investigation of genocide, crimes against humanity and war crimes. The contact points will provide information on request or "motu proprio". The investigation and prosecution of genocide, crimes against humanity and war crimes continue to be the responsibility of national authorities.

The network has met six times. The 6th meeting took place on 23 and 24 April 2009 in the Hague. Representatives of the ICC participate in these meetings.

5. EU FOCAL POINT

In order to assist in ensuring effective co-ordination and consistency of information, and in adequately preparing programmes and activities of the Union in the implementation of the Common Position, an EU Focal Point has been established in the General Secretariat of the Council.

The EU Focal Point will make available the information flowing in from all relevant sources and in particular information concerning relevant meetings and other events, seeking to identify synergies or risks of overlap.

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6. MORE INFORMATION

The referred documents and other information can be found in

- <http://consilium.europa.eu/ICC>
- http://ec.europa.eu/external_relations/human_rights/icc/index.htm

ANNEX 1

LIST OF EU DEMARCHES (2002-2009¹⁴): COUNTRIES AND INTERNATIONAL ORGANISATIONS

AFRICA	NORTH AFRICA MIDDLE EAST	EUROPE/ CIS	ASIA	OCEANIA	AMERICAS	INTERNATIONAL ORGANISATIONS
Angola	Algeria	Albania	Afghanistan	Papua New Guinea	Bahamas	African Union
Benin	Bahrain	Armenia	Bangladesh	Samoa	Bolivia	ASEM
	Egypt	Azerbaijan	China	Solomon Islands	Chile	
Botswana						
Burkina Faso	Iran	Bosnia and Herzegovina	Indonesia	Vanuatu	Dominican Republic	
Burundi						
	Iraq	Bulgaria	India		Guatemala	
Cameroon	Israel	Croatia	Japan		Haiti	
Cape Verde	Jordan	FYROM	Laos		Honduras	
Chad	Kuwait	Georgia	Malaysia		Jamaica	
Comoros	Libya	Kazakhstan	Nepal		Mexico	
Congo Brazzaville	Lebanon	Kyrgyzstan	Pakistan		Nicaragua	
Congo DR	Morocco	Moldova	Philippines		Peru	
Eritrea	Oman	Monaco	Singapore		San Salvador	
Ethiopia	Qatar	Russian Federation	Sri Lanka		St Lucia	
Ghana	Saudi Arabia	Turkey	Thailand		Surinam	
Guinea-Bissau	Syria	Turkmenistan	Vietnam		United States	
Côte d'Ivoire	Tunisia	Ukraine	Singapore			
Kenya	United Arab Emirates (UAE)	Uzbekistan				
Lesotho	Yemen					
Madagascar						
Malawi						
Mali						
Mozambique						
Namibia						
Nigeria						
Rwanda						
Sao Tome and Principe						
Senegal						
Seychelles						
Somalia						
South Africa						
Tanzania						
Togo						
Uganda						
Zambia						
Zimbabwe						

¹ International Criminal Court sub-area of the public international law working party

² Council Common Position of 16 June 2003, OJ L 150 of 18.06.2003, page 67.

³ Doc. 5921/04

⁴ See Annex 1.

⁵ Article 3 f) of Council Joint Action 2007/108/CFSP of 15 February 2007 extending the mandate of the European Union Special Representative for Sudan JO L 46 of 16.02.2007.

⁶ The Cotonou agreement covers Relations between the European Union and the African, Caribbean and Pacific (ACP) states.

⁷ Doc. 8851/05. Article 11.

⁸ http://ec.europa.eu/world/enp/documents_en.htm

⁹ Please address the EU focal point for further information on this point.

¹⁰ Currently being transformed, with an emphasis on the establishment of thematic programmes such as the Stability Instrument, under the new Financial Perspectives.

¹¹ JO L 115 of 28.04.2006 p. 49-56.

¹² docs 8349/1/08 REV 1 and 8410/08.

¹³ Decision 2002/494/JHA of 13.06.2002. OJ L 167 of 26.06.2002

¹⁴ Until July 2009