



## **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.

The EU, through the Council Working Group devoted to the ICC, COJUR ICC<sup>1</sup>, agreed at its meeting on 5 September to provide a EU reply, where relevant, to the request of information expressed in paragraph 6, sub-paragraph h) of the Resolution.

### **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 ICC<sup>2</sup>, 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.

The European Union also finalised on 4 February 2004<sup>3</sup> 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.

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<sup>1</sup> International Criminal Court sub-area of the public international law working party

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

<sup>3</sup> Doc. 5921/04



## 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 had carried out over 275 demarches targeting more than 110 third countries and international organisations<sup>1</sup>, 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. Pending the finalisation of the implementing arrangements concerning exchange of classified information with the ICC, the EU cannot disclose the content of the demarches.

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

For example in 2006, language related to the ICC and to the end of impunity was included in the joint statements of the 9th China Summit (Helsinki, 9 September 2006) and India (Helsinki, 13 October 2006) or in the ASEM summit Chairman's statement (Helsinki, 10 November 2006) .

In 2007, the 16th EU Japan summit joint press statement welcomed Japan's ratification of the Rome Statute (Berlin, 5 June 2007). The Stabilisation and Association Council between the European Union and Croatia (Brussels, 6 March 2007), welcomed Croatia's support for the International Criminal Court and its commitment to preserving the integrity of the Rome statute, particularly the fact that it had not signed a bilateral agreement on non-surrender to the ICC.

### 2.2 Political support to the ICC

EU Statements and declarations are used to support the Court's work or to signal important landmarks (such as the 100th accession to the Rome Statute or the ratification of the Rome Statute by Japan), but the EU does not just make public statements and declarations, it also takes political initiatives to pursue the objectives set out in the Common Position.

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<sup>1</sup> See Annex 1.



The EU Strategy for Central Asia<sup>1</sup>, adopted by the European Council in June 2007, is a clear example of how the EU mainstreams the ICC in its external policies. The EU acknowledges that Central Asia remains significantly underrepresented at the Court's system, and thus includes the Rome Statute ratification among the objectives to be pursued in its new partnership with Kazakhstan, the Kyrgyz Republic, Tajikistan, Turkmenistan and Uzbekistan. In the strategy, the EU commits to share with the Central Asian States its experience in the adoption of the necessary legal adjustments required to accede to the Rome Statute of the International Criminal Court, to provide technical assistance and establish close cooperation aimed at making the legislative and constitutional amendments required for accession to and implementation of the Rome Statute.

Obviously, this strategy has to be implemented, and the EU will remain engaged in supporting the Central Asian partners to ratify the Rome Statute.

### 2.3 The European Union Special Representatives

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

Some of these EUSRs have a clear mandate related to the ICC such as the EU Special Representative for Sudan<sup>2</sup>, 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.

The EU plans to engage more intensively EUSRs in ICC promotion as to further mainstreaming the ICC into the EU's external action.

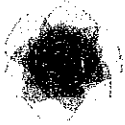
### 2.4 ICC Clauses

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.

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<sup>1</sup> Doc. 10113/07

<sup>2</sup> 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.



So far the revised Cotonou agreement<sup>1</sup> of 2005 is the only binding legal instrument including an ICC-related clause<sup>2</sup>, it applies to **79 African, Caribbean and Pacific countries**. This clause is the "standard clause" to be followed when negotiating other agreements, although it is necessary to adopt a case-by-case approach, taking into account the different position on the ICC of the countries with which the EU will enter into agreements.

At the moment, an ICC clause is being negotiated in the Partnership and Cooperation Agreements (PCAs) with Indonesia, Thailand, Singapore, Brunei Darussalam, Malaysia and The Philippines, and in the Trade, Development and Cooperation Agreement (TDCA) with South Africa. The negotiating mandates for Iraq, China, Russia, Ukraine, the Andean Community and Central America include an ICC clause.

In the framework of the European Neighbourhood Policy (ENP)<sup>3</sup>, the Commission has included ICC clauses in Action Plans with the following countries: Armenia, Azerbaijan, Georgia, Egypt Lebanon, Jordan, Moldova and Ukraine.

## **2.5 Support to the ICC in UN fora**

The EU support to the ICC is also expressed within the framework of the United Nations. Since the Presentation of First Report of the ICC to the UNGA on 8 November 2005, the 27 EU Member States co-sponsor the annual resolution in support of the ICC. 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 experts<sup>4</sup> 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

<sup>1</sup> The Cotonou agreement covers Relations between the European Union and the African, Caribbean and Pacific (ACP) states.

<sup>2</sup> Doc. 8851/05. Article 11.

<sup>3</sup> [http://ec.europa.eu/world/enp/documents\\_en.htm](http://ec.europa.eu/world/enp/documents_en.htm)

<sup>4</sup> Please address the EU focal point for further information on this point.



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 Funding<sup>1</sup>

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 2003, after the Rome Statute came into force, the Commission has provided further funding of more than **€17 million** to the global ratification campaigns undertaken by civil society coalitions such as the Coalition for the International Criminal Court and Parliamentarians for Global Action. The 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 2003 the Commission has also directly supported the Court's Internship and Visiting Professional's Programmes with grants totalling **€2,6 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.

## 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 2006<sup>2</sup>. 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 are currently finalising the implementing arrangements concerning exchange of classified information. This agreement is expected to lead to a further deepening of the EU's cooperation with the Court.

However, the EU has already assisted the Office of the Prosecutor in several occasions such as:

- **Democratic Republic of the Congo (DRC):** Support from the EC delegation, the EUSR for the Great lakes, the EU electoral mission, EUPOL and EUFOR in facilitating information and contacts locally. The EU has supported NGO's working on the fight against impunity,

<sup>1</sup> Currently being transformed, with an emphasis on the establishment of thematic programmes such as the Stability Instrument, under the new Financial Perspectives.

<sup>2</sup> JO L 115 of 28.04.2006 p. 49-56.



good governance and justice.

- **Darfur:** Assistance from the EUSR and the EU Member States seconded Military observers. The EU Satellite Center provided the OTP with a number of products on requested location of interest, including imagery and analyst reports.

Other area of cooperation is the hosting by the European Institutions of ICC diplomatic debriefings in Brussels. The Council of the EU has hosted twice in 2006 and 2007 the 9th and 10th ICC debriefings.

#### **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 Decision<sup>1</sup> 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 four times. The 4th meeting took place on 7 and 8 May 2007 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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<sup>1</sup> Decision 2002/494/JHA of 13.06.2002. OJ L 167 of 26.06.2002



EU focal point for the ICC  
Council of the European Union  
175 rue de la Loi  
B-1048 Brussels

Phone: (+32 2) 281 51 90/ 74 18  
Fax: (+32 2) 281 57 10  
e-mail: [icc@consilium.europa.eu](mailto:icc@consilium.europa.eu)  
Contact persons: Morten Knudsen and Rafael de Bustamante

## 6. MORE INFORMATION

The referred documents and other information can be found in

- <http://consilium.europa.eu/> (Policies/ Foreign policies/ ICC)
- [http://ec.europa.eu/external\\_relations/human\\_rights/icc/index.htm](http://ec.europa.eu/external_relations/human_rights/icc/index.htm)



**LIST OF EU DEMARCHES (2002-2007<sup>1</sup>): COUNTRIES AND INTERNATIONAL ORGANISATIONS**

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

<sup>1</sup> Until July 2007