

PARLIAMENTARIANS FOR GLOBAL ACTION (PGA)
MEMORANDUM - 16 OCTOBER 2003

ACP-EU JOINT PARLIAMENTARY ASSEMBLY AFFIRMS PRINCIPLE OF COMPENSATION
FOR DEVELOPING COUNTRIES SUFFERING CONSEQUENCES OF BILATERAL NON-
SURRENDER CAMPAIGN

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The ACP-EU Joint Parliamentary Assembly (JAP) met in Rome for its VI session from 11 to 15 October 2003 and reaffirmed the unacceptability of the Bilateral Non Surrender Agreements while establishing the principle that developing countries suffering negative measures should receive the support and assistance of the EU and other developed countries that are Parties to the ICC Statute.

Thanks to the leadership of MEP Dr. Maj Britt THEORIN (PSE, Sweden - Former President of the PGA Int. Council) and the commitment of several legislators from the global south and Europe, an urgent plenary debate on the ICC was secured and took place on 14 October and, in the course of the following day, two paragraphs were inserted in the urgent resolution on the situation in West Africa. The scope of application of the paragraphs is, however, targeted to all African, Caribbean and Pacific (ACP) developing countries affected by US pressure.

In particular, two things must be underscored:

(1) For the first time, a formal international institution established the principle that States rejecting the Bilateral Non Surrender Agreements should be compensated for the consequences imposed (e.g., cut offs in military assistance). This principle is contained in the "New York Declaration on Parliamentary action in support of the ICC", adopted on 13 September 03 by the II Consultative Assembly of Parliamentarians for the ICC & the Rule of Law convened by PGA.

(2) The debate and the paragraphs on Bilateral Non Surrender Agreements, coupled with the comprehensive pro-ICC resolution adopted on 3 April 2003 by the ACP-EU JAP held in Brazzaville, are definitive proof that the ICC is fully integrated in the North-South Development Agenda. Given that the ACP-EU Joint Parliamentary Assembly is the only intergovernmental parliamentary body designed to "democratise" international development cooperation, it is particularly important that the mainstreaming of the ICC in the development discourse took place at an institution of elected legislators such as the ACP-EU Joint Parliamentary Assembly.

LANGUAGE ON THE ICC IN THE URGENT RESOLUTION
ON THE SITUATION IN WEST AFRICA

The Political Affairs Committee of the ACP-EU JAP presented a urgent motion on this subject, which was unanimously adopted. Upon proposal of Dr. THEORIN, two paragraphs on the ICC were inserted in the text.

Preambular paragraph K found initial opposition from the ACP delegates, but was eventually supported once an agreement was found on the deletion of the names of ECOWAS countries that received a cut off from the US. In correspondence to this explanatory text (but the Brazzaville resolution on the ICC is more clear and give the correct terms of reference for ACP-EU engagement on the ICC), operative paragraph 20 was integrated by consensus in the resolution by the Political Affairs Committee of the ACP-EU JAP.

K. - whereas developing countries have been coerced into signing bilateral agreements with the US to grant US citizens immunity from trials before the International Criminal Court; and whereas refusal to sign these agreements would have resulted in the US cutting off military assistance funding to these countries;

The ACP-EU Joint Parliamentary Assembly,

- meeting in Rome (Italy) from 11 to 15 October 2003,

[...]

20 - Asks that ACP countries that are suffering financially because of their refusal to submit to pressure concerning the International Criminal Court receive compensation through extension of their cooperation programmes;

[...]

22 - Instructs its Co-Presidents to forward this resolution to the ACP-EU Council, the European Commission, the Secretaries-General of the United Nations, the African Union and ECOWAS, and the Governments of Cote d'Ivoire, Guinea, Guinea-Bissau, Liberia, Nigeria, Sierra Leone and Togo.

[internal doc. ref. ACP-EU 3627/03/COMP]

A follow up to give effect to this request of the ACP-EU JAP is to be urgently undertaken with relevant authorities of the Cotonou-Agreement ACP-EU institutions.

SUMMARY OF THE DEBATE ON THE ICC [14 October]

MP Rob DAVIES (Head of Delegation, South Africa) opened the discussion noting that since the adoption of the Brazzaville Resolution on the ICC by the ACP-EU JPA (3 April 03) there has been acceleration in the US campaign to obtain Bilateral Immunity Agreements (BIAs). For example, in light of South Africa's principled position in favour of the ICC and against the BIA, South Africa experienced a limited cut off in US military assistance. It was however assessed as a minor form of sanction vis-à-vis the pivotal role of the Court. But overwhelming pressure has been exerted also on more vulnerable countries. Thus, Mr. Davies called for "a joint voice to stop the global bullying of the sole global superpower and for the construction of a world order built on an equitable rule." He concluded commending the EU in its pro-ICC efforts, calling the EU to make an offer of alternative financial support for countries damaged by their refusal to enter into a BIA.

MEP Prof. Hans-Peter MAYER (EPP-ED, Germany) stressed that the basic functions of the ICC are twofold: (a) to sanction the most serious crimes after they are committed, and (b) to deter future crimes. Deterrence can be defined with the two categories of special prevention (to avoid the repetition of the crimes by the individual perpetrator) and general prevention (to avoid that crimes are committed by potential perpetrators). General prevention is the issue at stake here. "No immunity" is the fundamental principle of the ICC Statute, which states that everyone shall be held accountable for Rome Statute crimes, including Heads of States or Cabinet Ministers. Countries need to be free to decide whether or not to join the ICC, and negative pressure and blackmailing on such countries is not of help. Prof. Mayer stressed, therefore, that ICC States Parties should now support those countries that consistently decided to resist the pressure.

Hon. Nicolas TIANGAYE MP (Speaker of the "Conseil National de Transition", Central African Republic) stated that his country ratified the ICC Statute and rejected the US proposal of BIA. He noted that, even if Central African Republic lost "en ritorsion" the US military support, now National transition institutions fully support the communication of the FIDH to the ICC concerning the alleged crimes against humanity and war crimes committed by former President Patassé and others.

MEP Maj Britt THEORIN (PES, Sweden - PGA Member) expressed her vision of the ICC as an essential building block for an international Rule of Law. The ICC is so important because it is based on commonly shared values such as the "no impunity principle" and equality of all before the law. Only the US, in contemporary world politics, seems to pressure on the direction of impunity.

The ACP-EU JAP agreed in Brazzaville on a very strong resolution (annexed), which includes clear indication that membership in the EU-ACP is not compatible with the conclusion of Bilateral Non Surrender Agreements against the ICC Statute. A concrete follow up is now needed. 32 Law-abiding nations have been sanctioned and blackmailed by the United States. The EU and other pro-ICC donors such as Canada, New Zealand and Australia must now take positive measures to counterbalance these negative measures. Dr. Theorin clearly stated that such measures should not be designed to substitute military assistance programmes, but shall be an extension or expansion of cooperation programmes in any suitable area of development interest, such as political partnership, association agreements, education, health, trade, law & order, and so on. The European Commission can play an immediate positive role in these areas.

Hon. Louis STRAKER MP (Deputy Prime Minister and Minister of Foreign Affairs, St. Vincent & the Grenadines) made the case of small islands that ratified the Rome Statute and are now threatened by the US, which decided to cut off military assistance, including an amount of 300,000 \$ to St Lucia (a significant sum for a very small State). Regarding St. Vincent, however, there was no military assistance to be cancelled since the country abolished the army several years ago! Yet, the US decided to classify as 'military assistance' the aid programmes for the national police, particularly those for the Coastal Guard, tasked with fighting drug trafficking and other criminal activities in the vast archipelago of the Grenadines. The US assistance, which has been

beneficial to blocking illegal activities also affecting the US, has been cut off!

Hon. Straker continued stressing that the CARICOM position on the ICC always was and will be very strong. ANR Robinson, the former President of Trinidad & Tobago, was one of the prime proponents of the ICC, in which a Trinidadian judge is currently sitting.

The US is not picking up on the "bigger boys, such as NATO members", Hon. Straker said, "but only poor nations and islands." He concluded with a compelling appeal to the EU to assist St. Vincent and other CARICOM States and to compensate the damages to the National civilian police forces. Hon. Straker forcefully restated that "we can not get this type of exceptions [to the ICC regime] and we are ready to pay any prize."

[N.B. His intervention was the most applauded of the entire ACP-EU JAP session.]

MEP Nelly MAES (Greens, Belgium) endorsed the statement made by St. Vincent, and affirmed that the ACP-EU institutional framework "must entitle the countries resisting US pressure to compensation: these countries deserve the support of the International Community". While emphasising the need of a multi-polar world, Ms. Maes underscored that there shall be no immunity from trials before the ICC in respect to Rome Statute crimes.

MEP Harlem DESIR (PES, France - President of the PGA European Parliament Group) described the extraordinary cooperation among MPs from the North and the South in working together for the ratification of the ICC Statute and its entry into force in the course of the PGA ICC campaign. "Now - he remarked - the time has come to implement the ICC Statute, and defend its integrity". Mr. Desir underlined that adequately compensating those who resist unlawful attacks against the Court shall be part of the enterprise to give full effectiveness to the ICC system. He stressed that US opposition to the ICC is a paradox, given that the US persistent position for democracy and the Rule of Law. The "sanctions" amounting to over 7 million dollars against South Africa and in lower figures - but comparably even more severe - inflicted upon other poorer countries such as Benin, Central African Republic and Mali are a serious threat to the Rule of Law. Mr. Desir called for the EU to recognise and compensate these courageous countries in the framework of the ACP-EU Cotonou Agreements, where resources are immediately available [FN1].

MEP Miguel Angel MARTÍNEZ MARTÍNEZ (PES, Spain) stressed the need of success for the ICC, the task of which is of fundamental relevance to the current state of international relations. Evoking the international law violations occurring in Guantanamo Bay, the Vice-Chair of the ACP-EU JAP called for a joint effort to overcome the obstacles facing the ICC and Member States, including those individual EU States that not always responded with the same dignity and courage shown by some CARICOM countries. Solidarity is therefore urgently required in assisting the countries in greatest need, Mr. Martinez Martinez concluded.

The Co-Chair of the ACP-EU JAP, MEP Glennys KINNOCK (PES, United Kingdom - member of PGA) remarked with appreciation that the debate on the ICC had been included in the agenda in light of its urgency and relevance to the ACP-EU longstanding partnership.

FOOTNOTE 1: One hour before the ICC debate, European Commissioner for Development Mr. Paoul Nielsen stated that over one billion EUROS for ACP countries remained unspent in the last budgetary cycle. During the question time, Commissioner Nielsen called for "an overall review of the European Development Fund would be necessary given that €1 billion were not spent in the last EDF." (Cf. Press Release, ACP-EU JAP; 14/10/03, p. 2).

FOOTNOTE 2: the Brazzaville res. of the ACP-EU JAP on the ICC (3 April 2003) is available at <http://www.iccnw.org/documents/declarationsresolutions/intergovbodies/ACP-EURes BIAApril2003.pdf>