

Consequences for transatlantic relations of the law on the protection
of US personnel

July 3, 2002 Debate in European Parliament

- Statement by Europe Minister Bertel Haarder (Europe Minister Bertel Haarder, representing the EU Danish Presidency) regarding of the "American Service Members' Protection Act"

Mr/Madam President, Commissioner, honourable members, ladies and gentlemen,

Firstly, I would like to congratulate the international community and all of us on the entry into force on Monday of the Rome Statute of the International Criminal Court. This must be seen as one of the most historic events in the development of international law since the end of the Second World War.

To date 69 countries have ratified the Statute of the Court, and we can therefore note with pleasure that the Statute already has considerable support from the international community.

The many international and internal conflicts which the world witnessed in the last century highlight the need for the rapid establishment of a permanent international criminal court, to ensure respect for international humanitarian law and human rights. The EU firmly believes that the International Criminal Court will contribute to making the world a safer, more just and more peaceful place. We believe that by its mere existence the International Criminal Court will deter people from committing the most serious international crimes - war crimes, genocide and other offences against humanity. By enabling us to ensure that those who commit such crimes will not go unpunished, but can be held responsible for their actions, the International Criminal Court will be a central element in strengthening the international rule of law.

The European Union calls on all States to accede to the Rome Statute, since we believe that universal membership of the Statute is necessary for the Court to be able to function effectively. Last year, with a view to promoting universal support for the Court, we adopted a common position which has recently been updated. On the basis of the common position, using demarches and political dialogue, the EU has tried to achieve the widest possible support for the Court from all parts of the world.

As you can imagine, the International Criminal Court is a recurrent theme in our contacts with the USA, and indeed it is our debate with the USA which I want to address today.

Honourable members,

The European Union and the United States share the same basic values. Both the USA and the EU uphold freedom, democracy, human rights and the principles of the rule of law. We have therefore always regarded it as both natural and necessary for the USA to be amongst the parties to the Statute of the International Criminal Court. We do not doubt that the USA would be able to make a particularly positive contribution to the Court. During the diplomatic conference in Rome in 1998 we fully

understood the concerns the USA had about some provisions of the Statute. And we did our best to find ways and means of meeting those concerns - unfortunately without success. Regrettably we must note that on 6 May this year the USA informed the UN Secretary General that it did not intend to become a party to the Statute, which had in fact been signed by the previous US administration. We believe that the USA has made the wrong decision. As you know, the European Union deeply regrets the decision.

Very recently, on 17 June, the General Affairs Council adopted conclusions expressing our worries about the current American legislative proposal entitled "The American Service Members' Protection Act", which is known as the ASPA. The latest version of the Act restricts the USA's participation in UN peace-keeping operations, forbids the transfer of information to the International Criminal Court and prohibits US military support for the majority of the participants in

the Court. As we said in our conclusions, we believe that the ASPA might seriously undermine the work of the Court.

The Council conclusions also underline our concern about the provision which authorises the President to use all means to bring about the release of persons being detained at the request of the Court, including persons detained in the Member States of the EU. This provision has led to particular concern in the Netherlands, which will be the seat of the Court. Some journalists have even dubbed ASPA "The Hague Invasion Act".

Honourable members,

I shall not try to hide the fact that we are all concerned about ASPA. If ASPA is adopted, this will be a very unfortunate development for the international community. We have expressed our worries to the US administration at all levels. Our heads of mission in Washington have been involved with the problem for a long time. On the other hand - although we must recognise that this is a difficult situation - I would not describe the proposed Act as a threat to transatlantic relations. I would like to explain why.

Firstly, I see the International Court as a global issue, not a bilateral problem in the relationship between the USA and the EU. The EU believes that it is important not to adopt a confrontational approach to this issue. Other major partners of the EU - for example China and India - are also opponents of the Court. Turkey, which is an associated country, has not yet signed the Statute or even endorsed our common position or any of the EU's statements in support of the Court. As regards Japan and Russia, there is a political will to ratify the Statute but this has not yet been made a reality. Nevertheless, our bilateral relations with all these countries have not been harmed by their non-participation in the Court. We have been very careful to avoid confrontation on this issue, while at the same time attempting to keep the Court high on the agenda at our meetings.

By persistent lobbying in support of the Statute, we have already convinced a number of countries and we very much hope that others will follow suit.

Secondly, the International Court is not the only area in which the USA and EU do not agree. Friends have the right to disagree, but we will always maintain that the things uniting the EU and the USA are much stronger than those dividing them. We can all think of examples: steel (where we will hopefully soon find a solution), bananas (which was solved), the Kyoto Protocol (on which we are continuing our high level dialogue), and so on. Sometimes we find a solution, sometimes the disagreement continues. In the human rights field, our attitudes to the death penalty are also different. But through our long-term effort to combat the death penalty, we have succeeded in having an effect on American opinion. As an example I would like to mention the recent decision by the US Supreme Court in the Atkins case, which excludes the use of the death penalty for the mentally retarded. The EU contributed to this case with an amicus curiae brief, which the US Supreme Court took into consideration. We will continue with this policy.

Honourable members

The US administration has assured us that American intervention in the territory of an EU country would be - and I quote - "inconceivable". This has been said by both Secretary of State Powell and by Under Secretary Grossman. Many American soldiers gave their lives for freedom and democracy in Europe. I cannot imagine that their grandchildren would dream of invading one of our Member States. But the ASPA proposal is now on the table, and section 3008 on the use of force will constitute a dangerous precedent in international law. I can assure you that we will monitor this issue very closely.

Honourable members,

Soon the International Court will be able to prove its worth as an independent and effective international tribunal. We in the EU will spare no effort to ensure its success. I am sure that those who currently oppose the Court will come to see for themselves that the Rome Statute both ensures the highest standards of legal security and prevents the Court being used for political purposes. Universal membership of the Court probably lies a good way in the future. But I trust that eventually we will achieve this aim through constructive dialogue - and a certain degree of patience - with our friends.

Thank you, Mr/Madam President.

- Statement by David Byrne, European Commissioner for Health and Consumer Protection, Mr. David Byrne, on behalf of Chris Patten, European Commissioner for External Relations.

Mr President, two days ago the International Criminal Court entered into force. This is very much welcomed. Bringing to justice those individuals who commit the most serious crimes against humanity, including genocide, widespread murder of civilians, torture and mass rape, is one of the major objectives of the EU's human rights policy. The creation of an International Criminal Court is central to this

fight. By investigating and bringing to justice such individuals, the Court provides an essential means of promoting respect for international humanitarian law and human rights.

The European Union stands firm in its commitment to the ICC. Now that the Rome Statute has entered into force, the ICC is finally a reality. However, the hardest work still lies ahead of us. We need to give the ICC real teeth so that it stands as a genuine disincentive to those who imagine they can get away with committing the most heinous crimes against humanity.

In this context, the withdrawal by the United States of its signature from the Rome Statute came as a blow to the international community as it strives to prevent a repeat of the atrocities which have plagued recent conflicts. The fact that the world's greatest military power is not with us is a blow - there is no denying this.

This is not the first time in recent history that Europe has taken the lead and set the international agenda. Many wrote off the Kyoto Protocol after the withdrawal of the United States, but the EU pressed on and ratified Kyoto, setting an example which was followed by the global community to deliver a genuine prospect for tackling the problem of climate change. We intend to do the same to make the ICC a working institution for global justice.

As an independent nation, the United States has a sovereign right not to participate in the ICC if that is its wish. In telling the world on 6 May that it did not intend to ratify the Rome Statute, the United States also gave assurances that it would not actively seek to undermine the work of the International Criminal Court, nor dissuade others from ratifying the Rome Statute. Therefore the decision by the US Senate on 6 June to adopt its own version of the American Servicemembers' Protection Act (ASPA), previously adopted by the US House of Representatives, came as a great surprise and disappointment to many of America's allies and partners.

We are hopeful that modifications can still be made to the text in the House and Senate Conference that would help dilute the impact of this legislation. The ASPA's provisions, as currently drafted, are a grave cause for concern to supporters of the ICC for several reasons. By attempting to prohibit military assistance to nations which ratify the ICC, the ASPA could dissuade countries from participating in it. By seeking to remove US personnel operating under UN mandate from the jurisdiction of the ICC, the ASPA might restrict US participation in peace-keeping operations.

We are already seeing the dramatic effect that this could have on the work of the UN to maintain peace and stability in hot spots across the globe. The US move to oppose the renewal of the UN's mission to Bosnia-Herzegovina threatens to undo years of work by the international community to rebuild that fractured community.

The Commission's first analysis identifies several potentially negative effects on the political environment and rule of law in Bosnia-Herzegovina. Not least of these is the counter-terrorism work being carried out by the international police task force within Bosnian territory.

The EU is working around the clock with the UN and other partners, including the United States, to find a solution to this crisis. But on one thing we stand firm. We will not allow the ICC to be handicapped from birth by excluding the work of the United Nations from its jurisdiction. There must be equality under the law regardless of nationality.

There are further grounds for concern at the possible impact of the ASPA. By prohibiting cooperation between its own judicial and law enforcement authorities and the ICC, the ASPA could set back the cause of the international fight against terror.

Last, but not least, there is a particularly disturbing provision authorising the President to use any means necessary to bring about the release of US personnel being detained at the request of the ICC, including on the territory of EU Member States. In the light of these considerations, the European Union could not and did not remain silent. The EU reaction was discussed at the General Affairs Council of 17 June, where we adopted conclusions expressing our concerns at the ASPA's provisions. We also agreed upon a strategy for presenting our concerns to the United States in a coordinated fashion.

On 19 June the Spanish ambassador to the United States, together with the Commission's head of delegation in Washington, presented an agreed statement on behalf of the EU Member States to the US Department of State. At the same time, EU ambassadors wrote to senior figures in the US Administration, as well as to senior congressmen, conveying their grave concern at the contents of the ASPA. On 20 June US ambassadors in EU capitals, as well as the US ambassador to the EU, were summoned to be informed of the EU's position.

We sincerely hope that this series of interventions will persuade the US Administration to withhold its support from this piece of legislation and prevent it from becoming US law. I trust that the Council and the Commission can rely on the full support of the European Parliament in carrying through this strategy. I would therefore like to encourage you, as legislators, to take up this issue with your counterparts in the US Congress, whether through the legislators' dialogue, or any other contacts you may have with the Hill.

As the democratically elected representatives of the people of Europe, you are best placed to carry this message to the US Congress. I am looking forward to seeing Parliament make its views known this afternoon in no uncertain way as you debate and adopt a resolution on this issue.