

Foreign Minister's statement in the European Parliament
on the International Criminal Court
following the informal meeting of Foreign Ministers

Date: 25/09/2002

Minister's statement, on behalf of the Council, at the European Parliament's plenary sitting on 25 September 2002 on the state of play regarding the International Criminal Court following the informal meeting of Foreign Ministers in Elsinore on 29 and 30 August 2002

President, Commissioner, Honourable Members, Ladies and Gentlemen,

As may be seen from the agenda, I have been asked to make a statement today on "The state of play regarding the International Criminal Court following the informal Foreign Ministers' meeting in Elsinore on 29 and 30 August 2002". I realise that this item is in response to your desire to be kept informed of the state of reflection in the EU over American requests to Member States for bilateral agreements aimed at preventing the surrender of US nationals to the Court. It is understandable that you should be concerned about that issue, just as you were concerned by the ASPA (American Service Members' Protection Act) legislation, since the preservation of the Court's integrity and effectiveness is a matter of central importance to us all.

But allow me to begin, if I may, by recalling that other developments concerning the ICC have occurred since Elsinore, which will, I hope, have a more positive and longer-term effect than our current preoccupations with our friends across the Atlantic. I am referring, of course, to the first session of the Assembly of States Parties to the ICC, which took place in New York from 3 to 10 September.

Honourable Members,

I am pleased to report that that session went off well. The ground had been prepared by the Preparatory Commission (PrepCom) in New York, which had successfully finished its tasks. The draft instruments had been completed through remarkable and focused efforts by all delegations during the Preparatory Commission's 10 sessions. Happily, during the first session of the ICC's General Assembly, the participants showed the same productivity and spirit of compromise necessary to adopt these documents, resisting the temptation to reopen discussions on compromises already agreed upon by consensus.

Now it is time to focus on the operation of the Criminal Court in The Hague. The diplomats and politicians must now leave it to the Court to successfully complete what was started in Rome and continued in New York. The ICC must establish itself as an effective and independent institution, capable of responding adequately to the demands of today's international society. It must exercise its jurisdiction effectively

and independently in the same way as we have come to expect from national judicial systems. Of course, the ICC's ability to function properly will depend upon there being no serious impediment to its doing so, which leads me on to the matter I mentioned at the outset, that of the US requests for bilateral agreements on non-surrender.

Honourable Members,

As the Presidency has told you on previous occasions, the European Union and the United States share the same fundamental values. We are both attached to freedom, democracy, the defence of human rights, and the rule of law. For this reason, we have always believed that the United States should be amongst the States Parties to the Rome Statute. The US could contribute in a highly positive way to the smooth functioning of the Court. We have been trying since 1998 to accommodate US concerns about particular provisions in the Statute, but those efforts have unfortunately been to no avail. You know the recent history: that, unfortunately, through a declaration on 6 May 2002, the US decided not to become a Party to the Statute it had actually signed under the Clinton administration. We believe that the United States took the wrong decision, and the European Union has publicly regretted its disengagement.

Honourable Members,

I do not wish to bore you with excessive detail, but I think it might be useful if I briefly set the discussion on these bilateral agreements at Elsinore in its context.

The matter of the US requests for bilateral agreements was first discussed in the Council by the Political and Security Committee (PSC) on 26 July. The PSC agreed that a common interim response should be made to the US in the context of bilateral contacts with Member States. That common response was, essentially, to tell the Americans that the EU stood firmly by its commitment to its Common Position to support the ICC and to preserve the integrity of the Rome Statute; that we noted that the far-reaching implications of the US proposals required in-depth analysis, in which the candidate countries are also invited to participate, and that we would respond once the process of analysis had been completed. The PSC agreed to revert to the matter early in September, after the Council's Public International Law Working Group (COJUR) had discussed it on 4 September.

In the interim, it was decided that it would be useful to have a brief discussion of the issue at the meeting in Elsinore at the end of August. There, we agreed that the EU should not accept anything which might undermine the International Criminal Court. At the same time, we also agreed that the EU should not escalate the difficulties with the United States and should work to see whether it could accommodate US concerns. We confirmed that the legal experts should look at the situation with a view to making a common assessment which could lead to

agreement on a common and constructive EU approach at the Council meeting on 30 September.

Honourable Members,

We are still in the process of reflecting, but already some outlines of a common approach are emerging on our side, following COJUR's meeting earlier this month.

On the basis of these interim discussions, Member States are agreed that the US proposal as it stands at present would be inconsistent with our obligations with regard to the Criminal Court. Having regard to transatlantic relations, flatly rejecting the US proposal is absolutely no solution.

There is unanimity within the EU that any solution must take account of relevant agreements already entered into with the US and must be based on three fundamental principles which have to be respected if the integrity of the Rome Statute is to be preserved.

These principles concern the issues of impunity for the most serious international crimes, of reciprocity and of the scope of persons covered.

- As regards the question of impunity: a solution might incorporate appropriate provisions excluding impunity for persons who have committed crimes falling within the Court's jurisdiction;
- as regards the question of reciprocity: it would be unacceptable to arrive at a result which ruled out surrender of nationals of States Parties to the ICC;
- as regards personal scope: the US wants a rule excluding all persons from surrender to the ICC. There is agreement within the EU that a solution can only cover specific categories of persons from non-participant countries.

We are continuing discussions on more detailed personal scope.

I should stress that our process of analysis and deliberation is by no means over. Indeed, as late as yesterday the Presidency's legal experts were meeting with their US counterparts with a view to exchanging viewpoints and information. As I have already mentioned, a common EU approach on the matter will not be taken until the Council meeting at the end of this month.

At the EU-US meeting in New York during the General Assembly we agreed to examine ways and means of arriving at a solution. We shall be working hard to find a solution which will meet US concerns while doing nothing to undermine the Court. The EU has made it very clear, both in bilateral contacts and also at the meeting with US SoS Powell earlier this month, how important it is to us that both the letter and the spirit of the Rome Statute are respected.

I mentioned in my introduction that the time has now come for the Criminal Court to act as an effective and independent institution. It is to be hoped that once the Court has had the opportunity to demonstrate that in practice it observes the highest standards of due process and is not vulnerable to abuse for political purposes, the US can be persuaded to take a more positive approach.

Thank you, Mr President