

The European Union's View of the International Criminal Court

SUMMARY

1. Since the US Administration is conducting a policy review of the International Criminal Court (ICC), the European Union would like to convey its views and its strong wish to see the US as a partner in the work towards an effective establishment of the Court.
2. The rapid establishment of the International Criminal Court is a fundamental element in enhancing the respect for international humanitarian law and human rights. The Court will be a powerful instrument in the fight against impunity for those who have committed or instigated atrocities. It will strengthen the primacy of law and contribute to global peace and security.
3. Based on grim historic experience, the European Union has consistently supported and continues to strongly support the earliest establishment of the ICC. Eight of its fifteen Member States have already ratified the Rome Statute, while the rest are in the process of doing so. All Member States are working on the implementation of the Statute to ensure full co-operation with the future Court.
4. The Rome Statute reflects a delicate balance between different legal systems and interests. Throughout the negotiation of the Statute, and subsequently at the sessions of the Preparatory Commission, the European Union has consistently endeavoured to find mutually acceptable solutions to issues, which have caused concern. The European Union remains committed to continuing these efforts in the spirit of co-operation, while respecting the letter and spirit of the Statute.
5. The European Union remains firmly committed to the Statute. The European Union also believes the ICC, when it becomes operational and delivers effective and impartial administration of justice, will convince other States not yet parties to join the Rome Statute. In the view of the European Union and many other countries, the ICC will make the costly and cumbersome process of creating new ad hoc tribunals unnecessary.
6. The objections which have been expressed against the Statute are, in our view, unfounded. The ICC is based on very high standards of justice and respect for national jurisdiction. The principle of complementarity provides that the Court may not exercise its jurisdiction if the case has been genuinely investigated or prosecuted by a state, which has jurisdiction over it. The Statute further ensures that the Prosecutor cannot begin an investigation without the approval of the Pre-trial Chamber, which also has to confirm all charges. The Rome Statute contains a high standard of due-process protection, surpassed by no other legal system. The Court will consist of judges and other lawyers of very high standing. The Rome Statute does not impinge on the rights of States not party to it. The Court will not be able to proceed with a request for the surrender of a person, where that request would run counter to an obligation of the requested state with regard to the sending state.
7. The Statute is widely supported by countries of all geographical regions, and is expected to enter into force in the near future. The European Union looks forward to continuing dialogue and co-operation with the US. The Union hopes that the US will remain engaged in the work of the Preparatory Commission, and that it will not foreclose any options as to its future relationship with the Court.

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AIDE-MÉMOIRE

A. The European Union is a strong supporter of the International Criminal Court

The Rome Statute of the International Criminal Court is possibly the most **significant achievement** of international law since the founding of the UN. The rapid establishment of the International Criminal Court is **necessary** in order to enhance the application of and the respect for international humanitarian law and human rights. By ending impunity for those who have committed or instigated atrocities, the Court will strengthen the primacy of law and contribute to global peace and security.

The Rome Statute represents a **delicate balance** between different systems and interests. It has received a **high degree of commitment** from a large number of states from all regions of the world. 139 states have signed the Statute and 30 have ratified it or acceded to it. The Union expects the Statute will enter into force in the near future.

Member States of the **European Union** have consistently championed the ICC, and the European Union continues to **strongly support** the ICC. The commitment is based on grim historic experiences.

The Member States of the European Union presently have more than 40,000 military personnel in peace-support missions in some 15 countries around the globe. It is the view of the Union that the Court will not only contribute to international justice around the globe, but also **contribute to the safety** of these men and women, by deterring crimes.

Eight of the fifteen Member States of the European Union have already **ratified** the Rome Statute, and the seven others are in the process of doing so. All Member States are working on the implementation of the Statute in order to ensure full co-operation with the future Court.

In pursuit of the objective of the earliest establishment of the Court, the Union took the lead in international efforts to persuade as many States as possible to sign the Rome Statute before the 31 December 2000 deadline for signature. The European Union has undertaken to assist countries associated with the Union to sign or ratify the Statute, and it is offering its expertise in this area to all interested States. The European Union, its Member States and its institutions are also deeply engaged in all aspects of the process of the effective establishment of the Court, and are working to develop and maximize their efforts for this purpose.

The European Union **welcomes** the decision by a significant number of States who chose to **sign** before the expiration of the deadline, including the US. The European Union recognizes, that for a number of States, this was not an easy decision. It is aware in particular of the various opinions held in the United States about the Rome Statute and the reservations that have been expressed about the ICC.

Throughout the negotiation of the Statute, and subsequently at the sessions of the Preparatory Commission, the European Union has worked to find **mutually acceptable solutions** to issues which have caused concern. The European Union remains committed to continuing these efforts in a spirit of co-operation, while respecting the letter and spirit of the Statute.

B. The International Criminal Court is based on very high standards of justice and will serve our common interests

Not least due to the very significant contributions of the US negotiating team in partnership with other delegations, the Rome Statute contains adequate safeguards against political abuse and a high level of due process rights for defendants, most probably the most extensive list of such protections ever promulgated.

- The principles of **complementarity** provides that the Court may not exercise its jurisdiction if the case is or has been genuinely investigated or prosecuted by a state which has jurisdiction over it. This principle is set out clearly and in great strength in the Statute. It is in fact very unlikely that a national of a State governed by the rule of law will face the ICC.
- The Statute also ensures that the Prosecutor cannot begin an investigation without the **approval of the Pre-Trial Chamber**, and the Pre-Trial Chamber has to confirm all charges.
- The Rome Statute protects the rights of an accused fully. The Statute has a very high **standard of due-process** protections, which compare well with any domestic law, including the presumption of innocence (art 66), the right to assistance of counsel (arts 67.1.b & d), the right to have exculpatory evidence disclosed (art 67.2), the right to have compulsory process to obtain witnesses (art 67.1.e), the right to cross-examine witnesses (art 67.1.e), privileges against self-incrimination (art 54.1.a and 67.1.g), the right to remain silent (art 67.1.g), the exclusion of illegally obtained evidence (art 69.7), the right to be tried without undue delay (art 67.1.c), the right to a written statement of charges (art 61.3), a prohibition against ex post facto crimes (art 22), protection from double jeopardy (art 20), freedom from warrantless arrest and search (art 57 bis.3, art 58) and the right to be present at the trial (art 63 and art 67.1.d).
- The Court will consist of **judges** and other lawyers of very **high standing** with knowledge both of criminal law and of international law, including international humanitarian law. The judges and the prosecutor will be elected by the Assembly of States Parties, i.e., by States which have a high commitment to the values and principles on which the Statute is based.
- The Statute grants guarantees to the States in order to protect national security information (art 72 and 93.4). The Court may not proceed with a request for surrender when such a surrender would be contrary to the obligations of a State with regard to a sending state (art 98).

The Rome Statute does not impinge on the rights of **States not party to it**. The state where a crime has been committed has jurisdiction over that crime. There is nothing in international law, which prohibits a state from surrendering a suspected criminal to an international court, provided appropriate safeguards (such as the rights of the accused, etc) are in place, as they are in the case of the ICC. For many of the Statute's core crimes, there is already a duty to prosecute or extradite.

When established, the international community will find the ICC to be an **efficient** institution, which is more cost-effective than ad hoc tribunals. This might be taken into account by the **Security Council** in its task of maintaining international peace and security. In the view of the European Union and many other countries, the ICC will make the costly and cumbersome process of creating new ad hoc tribunals unnecessary.

The legitimacy and effectiveness of international criminal justice depends on it **applying equally** to everyone. In investigations and trials of future Pol Pots or Slobodan Milosevics, it is crucial that the Court receives maximum co-operation from **all countries**, parties and non-parties alike.

C. The European Union would like to see the United States as a partner in the ICC

The US has been a leader in the battle against impunity and has consistently championed human rights, freedom and respect for international humanitarian law, and has also been a **leader** in the development of international criminal justice, from Nuremberg and onwards, not least through the important functions of its War Crimes Office.

Once the Statute has entered into force, a number of important **decisions** will be taken by the **States Parties**, such as the elections of judges and the Prosecutor, the recommendation of a Registrar and the adoption of a number of agreements and other instruments. Furthermore, the States Parties will eventually have to take a decision on the outstanding issue of the crime of aggression. The European Union would warmly welcome the US as a partner in these decisions. The Court will play a crucial role in the **development** of international criminal law. It is therefore important that representatives of all major legal systems participate in this process.

The European Union remains **firmly attached** to the Statute. The International Criminal Court will serve our common interest in the establishment and respect for human rights and democracy. The European Union also believes that, when operational, the ICC, through its effective and impartial administration of justice will convince other States not yet parties to join the Rome Statute.

The European Union looks forward to continuing **dialogue and co-operation** with the US, at the forefront in the fight for justice. The Union hopes that the US will remain engaged in the work of the Preparatory Commission, that it will not disown its signature of the Rome Statute and not foreclose any options as to its future relationship with the Court.

Text ends.