

**Government References to so-called Article 98 agreements
September-October 2002**

Australia

"Australia, while fully supporting the ICC, acknowledges that some States have chosen not to become Parties to the Statute. Australia believes States Parties should take what steps they can to ensure such States are able to accommodate the Court's existence. Like others, Australia has been approached by the United States to conclude a bilateral agreement, under Article 98(2) of the Statute, to prevent the surrender of certain U.S. citizens to the Court without consent.

Australia is carefully considering this request. While the approaches of Australia and the United States to the ICC differ, Australia understands the concerns of the United States to protect its citizens from politically-motivated prosecutions in the ICC. At the same time, should Australia conclude an Article 98(2) Agreement with the U.S., the Government of Australia would ensure that its scope and operation were consistent with the ICC Statute, mindful that the Statute itself allows States the primary opportunity to investigate and, if necessary, prosecute their own citizens."

- Mr. Richard Rowe, Advisor to the Australian Delegation to the UN, at the 6th Committee of the 57th session of the UN General Assembly (15 October 2002)

Canada

"The birth of the Court, unfortunately, has been marked by a series of challenges. The efforts to secure broad immunities from the potential jurisdiction of the Court are both unnecessary and unfortunate. The Rome Statute is a carefully balanced instrument which fully respects the sovereignty of law-abiding states willing and able to fulfil their existing legal obligations to investigate and, where necessary, prosecute those who commit the most heinous crimes. For Canada, we remain committed to a dialogue with any and all states on the International Criminal Court and we are willing to discuss any legitimate concerns these states may have. At the same time, Canada remains firmly committed to ensuring full respect for the Rome Statute."

-Ms. Deborah Chatsis, Representative of Canada to the 6th Committee of the 57th session of the UN General Assembly (15 October 2002)

Croatia

"Bringing the court to life was only the first step. We still have to face the challenge of actually making it operational, and capable of overcoming the criticism and hesitation that have come to the surface with the recent debate on the scope the Court's jurisdiction with regard to non-Parties. The ICC should not be perceived as a threat to any country willing to respect international humanitarian law and basic human rights. Its jurisdiction is strictly dependant on the built-in principle of complementarity, while additional checks and balances contained in the Rome Statute contain sufficient assurances against the skepticism expressed by some countries. In our view, the pragmatic reasoning might justify attempts to reach some kind of compromise on these questions at this early stage of the Court's existence. In the long-term, however, the widest possible participation in the Rome Statute remains the best answer to these concerns."

-H.E. Ambassador Ivan Simonovic, Permanent Representative of the Republic of Croatia to the 6th Committee of the 57th session of the UN General Assembly (15 October 2002)

Costa Rica, on behalf of the Rio Group

"We, the member states of the Rio Group, believe that the integrity and effectiveness of the Rome Statute is not negotiable. We are convinced that its full application and interpretation, in keeping with the principles of public international law and the law of treaties, are absolutely necessary to ensure the noble objectives which motivated the creation of the Court. We therefore, urgently plead to all States to respect both the letter and the spirit of the Rome Statute, and actively guarantee its effectiveness and legitimacy. The Rio Group will make the strongest efforts to this effect."

-- H.E. Mr. Bruno Stagno, Ambassador and Permanent Representative of Costa Rica to the United Nations, at the first meeting of the Assembly of States Parties (9-10 September 2002)

Denmark (on behalf of the European Union)

"At present, some States are still hesitant towards the International Criminal Court. They fear prosecution of their nationals for politically motivated purposes. The European Union is firmly convinced that the Rome Statute provides all the necessary safeguards against the misuse of the Court for such purposes. Nevertheless, the EU is ready to address these concerns through frank and constructive dialogue while preserving the integrity of the Rome Statute. The objective of individual accountability for the most serious crimes of concern to the international community must not be compromised.

In this spirit, the European Council of Ministers recently agreed upon a set of conclusions and guiding principles, which reaffirm the EU's commitment to full compliance with our treaty obligations towards the International Criminal Court, as well as with our commitment to ensure that there will be no impunity. These conclusions and guiding principles constitute a common EU response to the proposals of the United States for bilateral non-surrender agreements."

- Ms. Mette Nørgaard Dissing, First Secretary, Permanent Mission of Denmark to the 6th Committee of the 57th session of the UN General Assembly (14 October 2002)

Ghana

"We are aware certain states entertain some fears of impartiality of the Court and have sought various ways to address these fears. We are distressed that some of these methods may tend to detract from the very integrity and universality that the like-minded states have worked hard to achieve. We believe that if the highest standards of integrity and judicial wisdom are balanced with geographical spread and gender sensitivity, these fears will be addressed sufficiently to render those special bilateral agreements redundant. We should avoid taking measures that would kill the ICC at birth or make it ineffectual."

-Mr. Kwesi Quartey, Deputy Permanent Representative to the Permanent Mission of Ghana to the 6th Committee of the 57th session of the UN General Assembly (15 October 2002)

Lesotho

"The controversy that has emerged in the wake of the entry into force of the Statute, which threatens to hinder the progress made and to obstruct the institution even before it begins its work is indeed regrettable. ŠFor our part, we favor an approach that would take into consideration even the concerns of those who are still doubtful of the ICC, with a view to accomplishing the universality of the Court. In a similar vein, we believe that the rights of States to sovereignty cannot be allowed to justify impunity and to compromise humanity's best hope for justice."

-- *H.E. Mr. Percy Metsing Mangoaela, Permanent Representative of Lesotho to the United Nations, at the first meeting of the Assembly of States Parties (9-10 September 2002)*

Liechtenstein

"[T]here have been attempts over the past year to apply Article 98 of the Statute in a manner not provided for by the Statute. Article 98 was negotiated with a very limited application to Status of Mission and Status of Forces Agreements in mind, an understanding shared in Rome by all concerned parties. The purpose of article 98 was not to create a loophole of impunity for nationals of non-States Parties. The proposed non-surrender agreements would not only undermine the integrity of the Court, but also the very principle of territorial jurisdiction of States: Territorial jurisdiction of States is primary in criminal matters; the ICC is an extension of that jurisdiction, and secondarily of States' jurisdiction over their own nationals. No agreement concluded with States Parties should undermine this fundamental principle. In this context, as in the case of Security Council resolution 1422, it is important to emphasize that the International Criminal Court is the ultimate arbiter of its own jurisdiction, in line with the provisions of the Rome Statute."

-*Mr. Jonathon Huston, Advisor, Permanent Mission of the Principality of Liechtenstein to the UN (14 October 2002)*

Macedonia

"Various speeches during our debate pleaded for the ICC to become a truly universal Court. One cannot agree more. However we are still far from our objective of a truly universal Court. Therefore, we must intensify our efforts to promote the Court. In this context we should not afford to create situations where precedents will prevail, neither on the bilateral, nor on the international level."

-*Ms. Elizabeta Gjorgjieva, Counselor Permanent Mission of the Republic of Macedonia to the 6th Committee of the 57th session of the UN General Assembly (15 October 2002)*

Mexico

"Labementablemente, no sólo de aquellos que desdeñan a las instituciones internacionales, sino también de quienes en un pasado todavía reciente han colaborado en los esfuerzos para erradicar la impunidad sobre bases ad-hoc, pero que ahora paradójicamente, ven a la Corte como una amenaza a sus intereses.

Lamentamos en especial, profundamente, la posición adoptada por los Estados

Unidos de América y la serie de acciones que han venido promoviendo para desalentar la ratificación del Estatuto y para obtener la suscripción de acuerdos por los que se impida que sus nacionales puedan ser entregados a la Corte si llegan a cometer crímenes tan graves como los definidos por el Estatuto.

México está convencido de que la suscripción de acuerdos como los que propone Estados Unidos, que no pueden encontrar sustento ni en la letra ni en el espíritu del Estatuto, es contraria a la obligación de aquellos Estados que, como el mío, han suscrito el instrumento de abstenerse de actos que tengan como fin frustrar el objetivo y propósito del tratado. Ello atenta contra la integridad del Estatuto, erosionan el principio de la responsabilidad penal del individuo por la comisión de crímenes contra la humanidad y, por ende, resultaría contrario al derecho internacional."

- Representative of Mexico to the 6th Committee of the 57th session of the UN General Assembly (15 October 2002)

"In advancing the institutionalization of this instrument, my delegation is concerned that the Rome Statute is being partially interpreted and taken out of context. The possibility of States entering into agreements by which certain categories of persons can evade their international criminal responsibility is also of concern to our delegation. Mexico believes that any part of the Statute, including its Article 98, must be interpreted in the concrete context within which it was negotiated and in conformity with the Articles 31 and 32 of the Vienna Convention on the Law of Treaties. We ask the members of the United Nations, in particular the States Parties of the ICC, to abstain from any act which could counter the object and purpose of the ICC treaty."

-- H.E. Ambassador Adolfo Aguilar Zinser, Permanent Representative of Mexico to the United Nations, at the first meeting of the Assembly of States Parties (9-10 September 2002)

New Zealand

"[M]any States have received requests for "article 98" agreements which raise many difficult issues. In this formative period all States Parties have a particular responsibility to support the Court they have helped to create and to protect and maintain the integrity of the Rome Statute and the principles it contains. In that regard, New Zealand takes this opportunity to reassert its commitment to both the letter and the spirit of the Statute."

-Mr. Don Mackay, Permanent Representative of the New Zealand Mission to the UN (14 October 2002)

Philippines

"By its language and the way it was incorporated in the Statute, another result of the many trade-offs in Rome is Article 98, which is now a focus of so much to do and attention.

One may reasonably argue that the resolve to maintain the independence of the Court has been somewhat weakened by these articles. But these articles are now a reality that attends the existence of the Court. And it may be assumed for the moment, until otherwise proven later with experience, that

these articles have not crossed the boundary of the Court's judicial independence."

- Representative of the Philippines to the 6th Committee of the 57th session of the UN General Assembly (14 October 2002)

Sierra Leone

"Sierra Leone believes that the ICC Statute with its complex review and admissibility procedure provides multiple safeguards against frivolous and vexatious prosecutions. Thus, this should allay any apprehensions states may have in becoming parties to the Statute. Sierra Leone will seek together with our regional partners an advisory legal opinion from the ICJ on the so called Article 98 Agreements."

- H.E. Mr. Allieu I. Kanu, Ambassador and Deputy Permanent Representative of Sierra Leone to the UN

"I hasten to state that an independent and impartial opinion on the interpretation of section 98 of the Rome Treaty and Rule 195 of the Rules of Evidence and Procedure must be sought, for example from the International Court of Justice, to clarify whether bilateral agreements can be concluded between State Members and non-State Members without derogating from the object and purpose of the treaty."

- Hon. Eke Ahmed Halloway, Attorney General and Minister of Justice of the Republic of Sierra Leone at the first meeting of the Assembly of States Parties (10 September 2002)

[Please note: This is an unofficial record of the statements prepared by the NGO Coalition for the International Criminal Court.]