

2000



COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 17 February 2000

CAHDI (00) 10

**AD HOC COMMITTEE OF LEGAL ADVISERS ON PUBLIC INTERNATIONAL LAW
(CAHDI)**

**19th meeting
Berlin, 13-14 March 2000**

**PREPARATION OF A CONSULTATION MEETING ON THE IMPLICATIONS OF
RATIFICATION OF THE ROME STATUTE OF THE
INTERNATIONAL CRIMINAL COURT**

PROGRESS REPORT

Secretariat memorandum
prepared by the Directorate-General of Legal Affairs

Introduction

1. At its 18th meeting (Strasbourg, 7-8 September 1999) the *Ad Hoc* Committee of Legal Advisers on Public International Law (CAHDI) agreed to support the Secretariat initiative to organise jointly with the European Committee on Crime Problems a consultation meeting in the year 2000 on the implications for Council of Europe member States of ratification of the Rome Statute of the International Criminal Court (ICC).

2. To date 94 States – of which 38 are members of the Council of Europe – have signed the Statute. San Marino, Italy and Norway are the three member States out of the 7 countries worldwide that have ratified thus far. Sixty ratifications are necessary for the ICC to come into existence.

3. The purpose of the consultation meeting is to facilitate an exchange of views among member states on ways to overcome difficulties encountered and envisaged both in the ratification and the implementation process. The measures taken at the national level will have a direct bearing on the effectiveness of this international institution, particularly with respect to the details of co-operation between states and the Court. Co-ordination of this discussion at the European regional level is likely to be beneficial to individual member States, which are at different stages of the ratification and implementation process. Due to the Council of Europe's experience as defender and enforcer of human rights in the form of the European Court of Human Rights, the only permanent jurisdiction of its kind, and the Organisation's wealth of experience in the area of international co-operation in criminal matters, the Council of Europe might be in a position to set an example for other regions of the world in the development of adequate mechanisms and procedures of co-operation with international jurisdictions such as the ICC.

Countries	Reply
Albania	
Andorra	
Austria	•
Belgium	•
Bulgaria	
Croatia	•
Cyprus	
Czech Republic	•
Denmark	•
Estonia	
Finland	•
France	•
Georgia	
Germany	•
Greece	•
Hungary	•
Iceland	
Ireland	•
Italy	
Latvia	•
Liechtenstein	•
Lithuania	
Luxembourg	•
Malta	•
Moldova	
Netherlands	•
Norway	•
Poland	•
Portugal	•
Romania	
Russian Federation	
San Marino	
Slovak Republic	•
Slovenia	•
Spain	•
Sweden	•
Switzerland	•
"F.Y.R.O.M."	•
Turkey	
Ukraine	
United Kingdom	•

Meeting preparation

4. This consultation meeting is to be prepared on the basis of the replies to the attached questionnaire, which was drafted by the Secretariat and approved by the Bureau of the CDPC at its meeting of 25 November 1999.

5. Members of the CAHDI and the CDPC were invited to consult with each other and with other competent authorities on the subject and submit a consolidated reply to the questionnaire by 15 January 2000 in writing (English or French, together with an electronic

version).

6. The questionnaire was subsequently addressed to observer States in the CAHDI and the CDPC. These were asked to provide a reply in writing (English or French, together with an electronic version) by 30 March 2000.

7. The above table contains the replies received to date. Replies to the questionnaire are presently being consolidated into a preparatory document.

Structure of the meeting

8. The meeting is scheduled to be held in Strasbourg on 16 and 17 May 2000. The working languages of the meeting will be English and French. Additional languages may be provided on request.

9. In the interest of ensuring the effectiveness of this consultation meeting, it is hoped that all member and observer States will be represented and that the relevant persons involved in the elaboration of ratification and implementing legislation will be able to attend, although travel and subsistence expenses will have to be borne by their own Governments.

10. The meeting should cover two main topics:

1. the ratification and implementation process

On the basis of replies and supporting documentation received from member States so far, the Secretariat will prepare for discussion at the meeting a set of draft guidelines including model solutions for incorporating the provisions of the ICC Statute into national legislation.

2. cooperation with the ICC

The issue of *sui generis* co-operation between States and the ICC should be discussed in detail. Consideration should be given to a possible role for the Council of Europe in facilitating the development of European standards of co-operation in the field of international criminal law.

11. In addition, guidelines for the practical implementation of the Rome Statute could be produced for publication and distribution following the consultation meeting. These guidelines could be presented during the 5th session of the UN Preparatory Commission for the International Criminal Court, to be held in June 2000.

Action required

12. Delegations not having done so are invited to reply to the attached questionnaire as soon as possible, so as to ensure a proper preparation of the consultation meeting.

13. Members of the CAHDI and of the Bureau of the CDPC, who are to meet on 13-14 March and 22 March respectively, are invited to comment on the aforementioned outline, with a view to providing guidance to the Secretariat on any further action which might need to be taken.

14. This document is also distributed to the Bureau of the CDPC and to the Committee of Experts on the Operation of European Conventions in the Penal Field (PC-OC) for their consideration at their next meeting on 6-8 March.

APPENDIX I**QUESTIONNAIRE ON THE IMPLICATIONS OF RATIFICATION AND IMPLEMENTATION
OF THE STATUTE OF THE INTERNATIONAL CRIMINAL COURT**

1. Please explain your country's present position with regard to signature or ratification of the Statute of the International Criminal Court. Has it signed/ratified the Statute? Does it intend to sign/ratify it? If so, according to what schedule?
2. If your country has ratified or is in the process of ratifying the Statute, please describe in detail and, where available, provide copies of any necessary legislative enactment/amendments.
3. Have you identified any legal obstacles to your country's ratification of the Statute? If so, please describe them and any possible solution(s) that has (have) been identified. The following are examples of questions relating to possible obstacles, but the list is by no means exhaustive:
 - a) Is there an obstacle to the transfer/surrender by your country of own nationals to the ICC?
 - b) Is your country's system of immunities in conflict with the Rome Statute?
 - c) Does the Statute's maximum penalty of life imprisonment constitute an obstacle to your country's ratification or implementation of the Statute?
4. Have you identified any practical obstacles to ratification, such as the translation of the Statute into the official language?
5. Has your country taken or does it intend to take any further legal steps in the area of international criminal law that are not required by the Statute, but that may be relevant to its application?
6. In the light, in particular, of Article 87 (6) of the Statute, which specifically mentions the co-operation of inter-governmental organisations with the ICC, would you have any comments or ideas on a possible role of the Council of Europe?
7. Please attach a copy (preferably by e-mail attachment) of any reports or studies that your Ministry has conducted on the compatibility between your country's legal system and the Rome Statute. If your country has already produced an official or unofficial translation of the Statute, please provide it, too. This material may be very useful for the preparation of the meeting. Please specify whether you agree that the material may be distributed to the other government officials participating in the meeting.