

17/09/03

Consult/ICC (2003) Concl.



## CONCLUSIONS

1. Following the Consultation Meetings in May of 2000 and September 2001, which had been the joint initiative of the European Committee on Crime Problems (CDPC) and the Committee of Legal Advisers on Public International Law (CAHDI), the Council of Europe organised a Third Consultation Meeting on the implications for Council of Europe member States of the ratification of the Rome Statute of the International Criminal Court (ICC) in Strasbourg, on 17 September 2003.
2. This meeting was held in the framework of the intergovernmental programme of activities of the Council of Europe with a view to facilitating an exchange of views and information among the member and observer States of the Council of Europe and considering the role that the Council of Europe can play in this respect.
3. Experts from 36 member States, 4 observer States and observers from EUROPOL, INTERPOL, ICRC, ICC and NATO took part in the meeting, which was opened by the representative of the Secretary General of the Council of Europe, Mr Roberto Lamponi, the representative of the Presidency of the Committee of Ministers, Ms Victoria Iftodi and the representative of the Presidency of the European Union, Mr Roberto Bellelli. Ambassador Juan-Antonio Yañez-Barnuevo of Spain was elected by participants to chair the Meeting.
4. Participants first heard an intervention from Mr Mauro Politi, Judge of the ICC, who addressed the Conditions for the application of the Statute of the ICC.
5. The meeting then turned to the presentation of developments in the ratification and implementation of the ICC Statute in the member and observer States of the Council of Europe, including to references to developments elsewhere. Written national reports from a number of countries formed the basis for preparation for the meeting and were made available to the participants via a website.
6. Two specific topics were addressed in the detailed discussions of the meeting, namely:
  - a. Universal jurisdiction and obligations under international law – the extension of jurisdiction to include the prosecution of genocide, war crimes and crimes against humanity, which was presented by Mr Pål Wrange (Sweden) and
  - b. the Interaction between universal jurisdiction at national level and co-operation with the ICC, in particular the scope of universal jurisdiction, the advantage of transferring cases to the ICC, transfer to the ICC in cases of immunity impeding criminal prosecution at national level, which was presented by Mr Josef Brink and Mr Eberhard Desch (Germany).

## **C O N C L U S I O N S**

7. Bearing in mind the conclusions adopted at the two prior consultation meetings, participants welcomed the significant and encouraging developments in the field of the ratification and implementation process since the holding of the second Consultation Meeting in September 2001, in particular the entry into force of the Rome Statute on 1 July 2002 and the setting up of the organs of the ICC in 2003.
8. Participants noted that since the second Consultation Meeting the number of member States of the Council of Europe which have ratified the Rome Statute has grown from 16 to 38. Participants recognised that this task requires thorough consideration by the competent national authorities and that exchanges of

information and views among member States, observer States and Organisations mentioned above have benefited this process and will continue to do so.

9. Participants noted that in order to ensure compliance with the obligations derived from the Rome Statute various approaches are possible for the Statute's implementation, taking into account different legal systems and traditions.
10. Participants stressed the importance for the proper functioning of the ICC of the Agreement on Privileges and Immunities of the International Criminal Court and called upon States to become Parties to it and to adopt, where necessary, national implementing legislation at the earliest opportunity.
11. Participants further stressed the importance of putting in place the necessary legislation and procedures for effective and swift co-operation with the ICC, in particular as regards compliance with requests from the ICC for the surrender of persons, and noted the broad acceptance of a distinction between this type of transfer procedure and traditional extradition procedures.
12. Participants bore in mind Council of Europe Parliamentary Assembly Resolution RES (2003) 1336 - *Threats to the International Criminal Court* and the reply of the Committee of Ministers to Parliamentary Assembly Recommendation REC 1581 (2002) - *Risks for the integrity of the Statute of the International Criminal Court*, according to which "any efforts to undermine the integrity of the ICC are not acceptable and [...] bilateral agreements under article 98 of the Statute may only be acceptable if they respect the letter, object and purpose of the Statute", while taking note of EU General Affairs Council Conclusions on the ICC of 30 September 2002.
13. Participants agreed that any bilateral agreement regarding a State's co-operation with the ICC must be in conformity with the Rome Statute and other relevant provisions of international law. In this context, participants agreed that States Parties to the Statute could exchange information and support and assist each other in their efforts to meet their treaty obligations emanating from the Statute, particularly where the integrity of the Statute is being challenged.
14. Participants acknowledged that the ICC is complementary to national criminal jurisdictions and that, taking into account the relevant rules of international humanitarian law, primary responsibility for prosecution of these crimes lies with States. To this effect, national legislation and practices should enable States to bring to justice the persons responsible for crimes under Articles 6-8 of the Statute. Participants noted that national law already exists in several States, while other States are in the process of introducing legislation to this effect.
15. In this connection, participants further stressed that, as regards immunities provided for by national and international law, solutions ought to be found in order to secure full compliance with the ICC Statute.
16. The development of universal jurisdiction in accordance with international conventions and other applicable norms was noted. Various aspects of universal jurisdiction were discussed, including legal, practical and other problems. In particular, participants noted the importance of the development of universal jurisdiction in the fight against impunity for grave crimes of international concern.
17. Participants addressed the issue of a reasonable division of labour between the national and international levels of jurisdiction. Whereas the ICC will have to develop criteria for the types of cases it takes on or leaves to national jurisdictions,

national judicial authorities must consider that the ICC may ultimately have to give priority to dealing with cases of international importance. It is to be hoped that, from this perspective, mutual cooperation and a division of labour between the ICC and national prosecutors and courts will develop. This will help alleviate such problems as simultaneous investigations at both international and national levels, and related evidentiary problems and delays.

18. Participants noted the entry into force on 27 June 2003 of the European Convention on the Non-Applicability of Statutory Limitation to Crimes against Humanity and War Crimes (ETS 082).
19. Participants noted the necessity to finalise the Relationship Agreement between the ICC and the United Nations.
20. Participants recalled the important role that the 45 member States of the Council of Europe can play in supporting the ICC and the efforts of the Council of Europe in facilitating the exchange of information and views among its member States and observers, thereby providing assistance to its member States in the ratification and implementation process, and supporting the universality and effective functioning of the ICC.
21. Participants thanked the Council of Europe for organising this third Multilateral Consultation and called upon it to pursue its efforts in support to the ICC, in particular through its ICC website, the network of country liaison officers and by holding further consultations as appropriate. For that purpose, provision should continue to be made in the programme of activities of the Council of Europe, in particular to enable the participation of all member and observer States in such activities. Furthermore, co-ordination of the Council of Europe's efforts with other organisations should also be ensured, in particular with the European Union, which has issued a revised Common Position on the ICC on 16 June 2003.
22. Bearing in mind the above-mentioned reply of the Committee of Ministers to Parliamentary Assembly REC 1581 (2002), participants invited the Committee of Ministers to lend further support to the ICC and decided to submit these conclusions to the Committee of Ministers asking it to forward them to the CDPC and CAHDI so that they can take them into account in their work.