

Strasbourg, 15 September 2006

4th Consult/ICC (2006) Concl.



FOURTH
CONSULTATION
ON
THE IMPLICATIONS FOR COUNCIL OF EUROPE MEMBER STATES OF THE
RATIFICATION OF THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL
COURT
CONCLUSIONS

Athens (Greece)
14-15 September 2006

1. Following the consultation meetings in May 2000, September 2001 and September 2003, which had been held at the joint initiative of the Committee of Legal Advisers on Public International Law (CAHDI) and the European Committee on Crime Problems (CDPC), the Council of Europe organised a Fourth 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 Athens (Greece), on 14 and 15 September 2006.
2. This meeting was facilitated by generous contributions from Finland, Greece and Switzerland and 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 to considering the role that the Council of Europe can play in this respect.
3. Experts from 37 member states, 4 observer states and observers from the ICRC, the ICTY, and NATO took part in the meeting, which was opened by the Greek Deputy Minister of Foreign Affairs, Mr Yannis Valinakis and the representative of the Secretary General of the Council of Europe, Mr Roberto Lamponi. Mr Rolf Einar Fife, Director General of the Department for Legal Affairs in the Norwegian Ministry for Foreign Affairs, was elected by participants to chair the meeting.
4. Participants first heard interventions from Mr Philippe Kirsch, President of the ICC and by Mr Luis Moreno-Ocampo, Chief Prosecutor at the ICC, who outlined recent developments and futures challenges for the Court.
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 references to developments elsewhere. Written national reports from a number of countries formed the basis for the meeting.
6. Three specific topics were addressed in the detailed discussions of the meeting, namely:
 - a. the principle of complementarity, examining the interaction between ICC jurisdiction and that of national courts, including the issues of jurisdiction at national level and co-operation with the ICC and the practical advantages of transferring cases to the ICC;
 - b. bilateral agreements on witnesses and on the execution of the Court's decisions, covering:
 - i. the challenges posed by the protection of witnesses who are a key to successful prosecution;
 - ii. the ways and means of ensuring the execution of the ICC's decisions and, thereby, its effectiveness; and
 - c. ways and means of co-ordinating efforts for the effective implementation of the Rome Statute with a view to achieving the best results through networking, including the preparation of supporting tools (model laws, guidelines, etc).

CONCLUSIONS

7. Bearing in mind the conclusions adopted at the three prior consultation meetings, participants welcomed the significant and encouraging developments in the ratification and implementation process since the holding of the third Consultation Meeting in September 2003, in particular in the field of co-operation, and the entry into force of the Agreement on Privileges and Immunities of the International Criminal Court on 22 July 2004.
8. Participants noted that since the third Consultation Meeting the number of member states of the Council of Europe which have ratified the Rome Statute remained unchanged at 38. Participants recognised that ratification requires thorough consideration by the competent national authorities and that exchanges of information and views among the member states, observer states and organisations mentioned can continue to benefit this process. They encouraged the remaining member states of the Council of Europe to take steps to become parties to the Statute as soon as possible and confirmed their support at all levels.
9. Participants recalled 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 of the Agreement on Privileges and Immunities of the International Criminal Court for the proper functioning of the ICC. In this respect, participants welcomed the ratification of the Agreement by 21 member states (20 had ratified it since the third Consultation Meeting) and called upon the other member states to become Parties to it and to adopt, where necessary, national implementing legislation at the earliest opportunity. Participants recalled that becoming a Party to the Agreement does not require prior ratification of the Statute and that the broadest possible adherence to the Agreement is crucial for the effective operation of the Court and the pursuance of criminal justice.
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 welcomed the Agreement between the European Union and the ICC (10 April 2006), defining the terms of co-operation and assistance between them, under which they have agreed that with a view to facilitating the effective discharge of their respective responsibilities, they shall co-operate closely, as appropriate, with each other and consult each other on matters of mutual interest.
13. Participants further welcomed the conclusion of the Negotiated Relationship Agreement between the ICC and the United Nations on 4 October 2004, noting that this Agreement provides for institutional relations, co-operation and judicial assistance between the Court and the United Nations while reaffirming the independence of the Court.
14. Participants reiterated 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.
15. 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 crimes under Articles 6-8 of the Statute lies with states. To this effect, national legislation, resources and practices should enable states to bring to justice the persons responsible for these crimes. Participants noted that national law already exists in several states, while other states are in the process of introducing legislation to this effect.

16. In this connection, participants further stressed that, as regards immunities provided for by national and international law, solutions should secure full compliance with the ICC Statute.
 17. Participants examined the current situation as regards the interaction between the ICC jurisdiction and that of national courts. They also considered the issue of jurisdiction at national level and co-operation with the ICC, including the transfer of cases to the ICC, where appropriate.
 18. Participants agreed that the protection of witnesses is a key to successful prosecution.
 19. Participants further agreed that the effectiveness of the ICC depends principally on ensuring the execution of its decisions.
 20. Participants also addressed the need to ensure co-ordinated efforts for the implementation of the Rome Statute with a view to achieving the best results through networking, including the preparation of supporting tools (model laws, guidelines, etc.).
 21. Participants recalled the important role that the 46 member states of the Council of Europe can play in supporting the ICC and welcomed 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.
 22. Participants thanked the Council of Europe for organising this fourth Multilateral Consultation and also expressed their gratitude to the Greek authorities for their generous offer to host the meeting and for the warm hospitality they extended to all.
 23. Participants called upon the Council of Europe to pursue its efforts in support of the ICC, in particular through its ICC website and by holding further consultations as appropriate. Participants called upon all member states and observer states to continue to provide information on national legislation and practice for inclusion on this website. They also considered that provision should continue to be made in the programme of activities of the Council of Europe to enable the participation of all member and observer states and relevant organisations in such activities. Furthermore, co-ordination of the Council of Europe's efforts with other organisations should be ensured, in particular with the European Union.
 24. Participants invited the Committee of Ministers to continue to lend support to the ICC and decided to submit these conclusions to the Committee of Ministers, requesting that it forward them to the CDPC and the CAHDI so that they can take them into account in their work.
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