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

Council of Europe, Strasbourg
13-14 September 2001

1. Following a first Consultation Meeting in May of 2000, 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 at the initiative of the Principality of Liechtenstein, which holds the Chairmanship of the Committee of Ministers, organised a Second 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 13-14 September 2001.
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 significant role that the Council of Europe can play in this respect.
3. Experts from 39 member States, the European Commission, 6 observer States and observers from INTERPOL and the International Committee of the Red Cross took part in the meeting, which was opened by the Deputy Secretary-General of the Council of Europe, Mr Hans-Christian Krüger, the Chairman of the Ministers' Deputies, Ambassador Josef Wolf of Liechtenstein and the Belgian Minister of Justice, Mr Marc Verwilghen. Ambassador Árpád Prandler of Hungary chaired the Consultation Meeting.
4. Participants first heard an intervention from Mr Lucius Caflisch, Judge of the European Court of Human Rights, who addressed selected issues of the ICC Statute from the point of view of the European Convention of Human Rights. The meeting then turned to the presentation of several national reports on the status and process of ratification and implementation of the ICC Statute. Written national reports from a large number of countries formed the basis for preparation for the meeting and were made available to the participants via a website.
5. The specific topics addressed in the detailed discussions of the meeting included the topics of national and international immunities and the implementation of the ICC Statute, the surrender of persons to the future ICC and other issues of co-operation with the ICC, such as the transit of persons over the territory of a State, the enforcement of sentences, as well as the reform of national substantive criminal law.

C O N C L U S I O N S

6. Participants thanked the Principality of Liechtenstein for its important initiative to convene this second round of consultations.
7. Participants welcomed the significant and encouraging developments in the field of the ratification and implementation process since the holding of the first Consultation Meeting in May of the year 2000.
8. Participants noted that since the first Consultation Meeting the number of member States of the Council of Europe which had ratified the Rome Statute had grown from 3 to 16 and learned in the course of debates that a number of other member States were in a position to ratify soon. 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 may benefit this process.

9. In this connection participants welcomed the setting up of the website as well as the network of country co-ordinators which were both established in response to the first Consultation Meeting conclusions in which participants had called upon the Council of Europe to facilitate co-operation on the ICC among its member States and Observers. This co-operation should also include activities on a sub-regional level.
10. In the context of States' obligations with respect to the European Convention of Human Rights and Fundamental Freedoms, participants considered that deferral of jurisdiction to the ICC may not entirely free a State in a given case from its obligations arising from the Convention. The provisions of the Convention should, therefore, be borne in mind when undertaking the process of ratification and implementation of the ICC Statute.
11. 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.
12. On the subject of immunities the participants noted the Venice Commission report on constitutional issues of ratification of the Rome Statute which had been prepared on the basis of reports provided to the first Consultation Meeting. Participants considered that, as regards immunities provided for by national and international law, solutions must be found in order to secure full compliance with the ICC Statute. Constitutional amendments, where necessary, afford one solution to this end, but other legislative or interpretative means may also be appropriate.
13. Participants further discussed the subject of putting in place the necessary procedures for effective and swift co-operation with the ICC, in particular, the issue of compliance with requests from the ICC for the surrender of persons, and noted the growing acceptance of a distinction between this type of transfer procedure and traditional extradition procedures. Various issues were discussed with regard to situations in which a person, in the course of the compliance with a co-operation request from the ICC (Article 89, par. 3, of the Rome Statute), would be afforded transit over the territory of a State Party. Participants discussed the responsibilities of the State affording transit, the possibility of a competing request for extradition from a third State and the filing of a competing complaint against the person with the national judicial authorities of the State of transit.
14. Participants agreed that, in connection with co-operation, the experience of implementing the obligations resulting from United Nations Security Council Resolutions 827 (1993) and 955 (1994) establishing the International Criminal Tribunals for the former Yugoslavia and Rwanda may be useful, but that there are also differences to be borne in mind.
15. Participants noted the particular importance for the future work of the ICC of appropriate State support with regard to enforcement of sentences in accordance with Part 10 of the Rome Statute and were encouraged by the willingness of States to receive sentenced persons.

16. 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 the crimes under Articles 6-8 of the Statute. Participants noted that national law already exists in several States, while other States contemplate introducing legislation to this effect.
17. Participants reaffirmed the objective of the early establishment of the ICC and their commitment to the integrity of the Rome Statute, particularly in the context of the work in progress in the Preparatory Commission at the United Nations. In this connection, participants noted that it is very likely that the Rome Statute will enter into force in the near future. They also stressed the urgent need to negotiate the remaining instruments necessary for the functioning of the Court and expressed their willingness to support the practical measures required for the effective establishment of the Court.
18. In this context, participants recalled the important role that the 43 member States of the Council of Europe can play, considering that the number of ratifications and accessions world-wide had reached 38 and the number of ratifications necessary for the entry into force of the Rome Statute is 60. Participants agreed to contribute towards the achievement of this goal and welcomed national initiatives to hold seminars on the ratification and implementation process, involving the media and parliamentarians, so that awareness and confidence in the future Court may be fostered among the public.
19. They appreciated 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 with a view to an early establishment of the ICC and its effective functioning.
20. Participants called upon the Council of Europe to continue to provide this opportunity for mutual consultations, in particular by maintaining its useful ICC website, by providing support to the network of country liaison officers and by holding further consultations in an appropriate and regular form. For that purpose, appropriate 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, whose Council adopted an important Common Position in June of 2001.
21. Bearing in mind the Declaration of the Committee of Ministers of the Council of Europe of 10 December 1998, in particular, calling on States to sign and ratify the Rome Statute and facilitate the rapid establishment of the International Criminal Court, participants invite the Committee of Ministers to lend further support to this end 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.