Recommendation 1408 (1999)[1]

International Criminal Court

Parliamentary Assembly

1. In its Recommendation 1189 (1992), the Assembly called for the establishment of an international criminal court by means of a multilateral convention;

2. It considers that the impunity enjoyed by the perpetrators of the most serious crimes, such as genocide, crimes against humanity and war crimes, is an obstacle to reconciliation, fostering revisionism and depriving future generations of irrefutable evidence of such crimes.

3. It is therefore with great satisfaction that the Assembly welcomes the adoption, at the end of the diplomatic conference in Rome on 17 July 1998, of the statute of an International Criminal Court (ICC), which represents an historical landmark for humanity.

4. However, the statute adopted in Rome is the result of a difficult compromise. A preparatory commission has been instructed to resolve the questions which were left in abeyance before 30 June 2000. In particular, this commission is to draw up the court's rules of procedure and evidence.

5. The statute contains a number of shortcomings, such as the fact that there may be no judgments in abstentia, or that criminals who are nationals of a state which has not ratified the statute or recognised the competence of the court fall outside its jurisdiction, as well as the United Nations Security Council's power to give the court a mandate to investigate and prosecute crimes in certain cases, which would enable member states to exercise their veto.

6. Even more serious is the exemption clause provided for in Article 124 of the statute, according to which "a state, on becoming a party to [the] statute, may declare that, for a period of seven years after the entry into force of this statute for the state concerned, it does not accept the jurisdiction of the court".

7. The financing of the court by contributions made by states parties and funds provided by the United Nations places it in a precarious situation.

8. However, in spite of these weaknesses, the Assembly considers that this statute must enter into force as soon as possible. Sixty ratifications are necessary for this. The forty-one states which make up the Council of Europe – that is, two thirds of the necessary number – thus have a decisive role to play in the matter and can make an important contribution to its entry into force.

9. The re-opening of the negotiations on the statute which certain states would like to prompt at the meeting of the Preparatory Commission in July 1999 should not be permitted, as it would seriously compromise the entry into force of the statute.

10. The Assembly recommends, therefore, that the Committee of the Ministers invite the member states and the observer states:

10.1. to ratify as soon as possible the Statute of the International Criminal Court adopted in Rome on 17 July 1998;

10.2. to adopt domestic legislation enabling them to co-operate with the court;

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1. See Doc. 8401, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Marty. Text adopted by the Standing Committee, acting on behalf of the Assembly, on 26 May 1999.

10.3. to avoid the re-opening of negotiations on the statute of the court;

10.4. not to avail themselves of the clause in Article 124 which makes it possible to escape the court's jurisdiction for seven years;

10.5. to refuse to enter into agreements with states which are not parties to the statute in order to prevent nationals of their country who are accused of crimes against humanity from being handed over to the court;

10.6. to ensure that the Preparatory Commission fulfils the tasks assigned to it as rapidly as possible;

10.7. to make a financial contribution towards the functioning of the court:

10.8. to forward the present recommendation to the Preparatory Commission.