Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 1300 (2002)[1]

Risks for the integrity of the Statute of the International Criminal Court

Parliamentary Assembly

1. The Parliamentary Assembly recalls its Recommendation 1408 (1999) on the International Criminal Court adopted on 26 May 1999.

2. The Assembly warmly welcomes the entry into force on 1 July 2002 of the Rome Statute of the International Criminal Court (ICC), which represents a decisive step towards achieving justice and ending impunity for the most serious crimes known to mankind – war crimes, crimes against humanity and genocide.

3. The ICC Statute has so far been signed by 139 countries and ratified by 81 countries. The Assembly notes with satisfaction that 42 Council of Europe member states have signed it and 33 have ratified it.

4. The Assembly welcomes the outcome of the Assembly of States Parties to the Rome Statute of the International Criminal Court held from 3 to 10 September 2002 in New York, which laid the foundations of the effective establishment of the court.

5. The Assembly considers that universal adherence to the ICC Statute is of crucial importance in order to enable the court to become a truly efficient international instrument to prevent impunity and to ensure equal justice for all.

6. Democratic states must be the most ardent supporters of the court, which represents the expression of their commitment to promote the universal values of human rights, international humanitarian law and the rule of law.

7. The court is, and must remain, a supreme body of international justice and must not be subject to political pressures or be used for political purposes. The Assembly underlines the importance of the safeguards incorporated in the ICC treaty in this respect.

8. The Assembly regrets that some states have not yet acceded to the ICC Statute or have declared that they do not intend to become party to it. The Assembly is of the opinion that such attitudes may weaken the integrity of the statute of the court as well as respect for international law in general.

9. Moreover, the Assembly is greatly concerned by the efforts of some states to undermine the integrity of the ICC treaty and especially to conclude bilateral agreements aimed at exempting their officials, military personnel and nationals from the jurisdiction of the court (exemption agreements).

10. The Assembly considers that these exemption agreements are not admissible under the international law governing treaties, in particular the Vienna Conventions on the Law of Treaties, according to which states must refrain from any action which would not be consistent with the object and the purpose of a treaty.

11. The Assembly recalls that states parties to the ICC treaty have the general obligation to co-operate fully with the court in its investigation and prosecution of crimes within its jurisdiction (Article 86) and that the treaty applies equally to all persons without any distinction based on official capacity (Article 27). It considers that the exemption agreements are not consistent with these provisions.

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1. Assembly debate on 25 September 2002 (29th Sitting) (see Doc. 9567, report of the Committee on Legal Affairs and Human Rights, rapporteur: Mr Marty). Text adopted by the Assembly on 25 September 2002 (29th Sitting).

12. The Assembly also recalls that in Recommendation 1408 (1999), it asked the Committee of Ministers of the Council of Europe, inter alia, to invite member and observer states 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".

13. The Assembly is also concerned that the link made by some countries between the jurisdiction of the court and the renewal of the United Nations Security Council mandates for peacekeeping operations could put at risk the whole system of United Nations peace-keeping.

14. Accordingly, the Assembly calls:

as regards the Council of Europe member states:

a. on Azerbaijan and Turkey to adhere to the Rome Statute of the ICC;

b. on Albania, Armenia, the Czech Republic, Georgia, Lithuania, Malta, Moldova, the Russian Federation and Ukraine to ratify the Rome Statute of the ICC;

c. on Romania not to ratify the bilateral exemption agreement signed with the United States of America, given that it was one of the first countries to ratify the Rome Statute of the ICC;

as regards the Council of Europe observer states:

a. on Japan to adhere to and on the United States to ratify the Rome Statute of the ICC;

b. on Mexico to ratify the Rome Statute of the ICC;

c. on Israel, having Observer status with the Parliamentary Assembly, to ratify the Rome Statute of the ICC and not to ratify the bilateral exemption agreement signed with the United States:

on all member and Observer states of the Council of Europe:

a. to establish a joint and united position with a view to ensuring the efficient functioning of the ICC;

b. to refrain from any action which might compromise the integrity of the ICC treaty and efficient work of the court;

c. not to enter into any bilateral exemption agreements which would compromise or limit in any manner their cooperation with the court in the investigation and prosecution of crimes within its jurisdiction;

d. to provide all necessary co-operation and assistance with a view to ensuring the earliest possible effective functioning of the court;

e. not to avail themselves of the provision in the ICC treaty which makes it possible to escape the court's jurisdiction on war crimes for seven years.

15. The Assembly welcomes that all members of the European Union have signed and ratified the ICC treaty and encourages the European Union to adopt a joint position on the issue of the exemption agreements as soon as possible along the lines of the present resolution.

16. The Assembly sincerely hopes that the United States of America will join the majority of democratic states in their support for the ICC.