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**ASIAN-AFRICAN LEGAL CONSULTATIVE ORGANIZATION**



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**THE INTERNATIONAL CRIMINAL COURT:  
RECENT DEVELOPMENTS**

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## **THE INTERNATIONAL CRIMINAL COURT: RECENT DEVELOPMENTS**

### **I. INTRODUCTION**

1. The International Criminal Court, established by the Rome Statute of the International Criminal Court, 1998 is now a fully functional judicial institution. The prospects of its jurisdiction coming into operation, in the near future are now imminent. There are currently two situations, which are under investigation by the Office of the Prosecutor of the ICC, namely the Situation in the Ituri province of the Democratic Republic of Congo and the referral by the Government of Uganda. Attempts are also being made by some countries to invoke the jurisdiction of the Court regarding the situation in the Darfur region of Sudan.

2. It may be recalled that the Secretariat Report submitted for the consideration of the Forty-Third Session of the Organization, held at Bali, Republic of Indonesia (21-25 June 2004) elucidated upon the following<sup>1</sup>: AALCO's work programme on the ICC; Second Session of the Assembly of States Parties (ASP-II); facts pertaining to the first possible cases, namely the situation in the Ituri province of the Democratic Republic of Congo and the reference of the Government of Uganda to the ICC; consideration of the item at the 42<sup>nd</sup> Session of the Organization, as well as at the United Nations (General Assembly and Security Council) in year 2003; bilateral immunity agreements entered into by the United States of America with several countries.

3. The present Secretariat Report seeks to report on the developments that have taken place after the Forty-Third Session of the Organization. The Third Session of the Assembly of States Parties (ASP-III) took place from 6-10 December 2004 at the seat of the Court in The Hague, the Netherlands, while an Informal Meeting of the Special Working Group on the Crime of Aggression took place from 21-24 June 2004 at Princeton University, New Jersey, United States of America. An important milestone in relation to the ICC was attained with the entry into force of the Agreement on the Privileges and Immunities of the International Criminal Court on 22 July 2004. Another important achievement was the signing and the simultaneous entry into force of the Relationship Agreement between the International Criminal Court and the United Nations on 4 October 2004. The present Secretariat Report seeks to summarize all these developments. In addition, it also refers to the consideration of matters pertaining to the ICC at the United Nations in the year 2004 and the consideration of the agenda item at the Forty-Third Session of the Organization.

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<sup>1</sup> AALCO/43/BALI/2004/SD/S 10.

## **II. AALCO'S WORK PROGRAMME ON THE INTERNATIONAL CRIMINAL COURT**

4. The AALCO has been following the developments relating to the establishment of the ICC since its Thirty-Fifth Session (Manila, 1996). The initial discussions in the AALCO relating to the establishment of the International Criminal Court were first held at two Special Meetings convened within the framework of the Thirty-Fifth (Manila, 1996) and Thirty-Sixth (Tehran, 1997) Sessions of the AALCO.

5. The Organization at its Thirty-Seventh Session (New Delhi, 1998) noting that a Conference of Plenipotentiaries was to be held in Rome from 15<sup>th</sup> June to 17<sup>th</sup> July, 1998 directed the Secretariat to participate at the Conference and report on its outcome at the next session. Accordingly, the then Deputy Secretary General, Ambassador Dr. Wafik Zaher Kamil represented the AALCO at the said conference. Two meetings were organized by the AALCO parallel to the Rome Conference with the aim to collate the views of the AALCO's Member States on the contentious issues before the Conference. The views expressed at those two meetings were then forwarded to the Chairman of the Committee of the Whole, Mr. Philippe Kirsch.

6. At the Thirty-Eighth Session (Accra, 1999) the outcome of the Rome Conference was duly reported and the Secretariat was directed to monitor and report on the developments in the Preparatory Commission established pursuant to Resolution F adopted in the Rome Conference.

7. At the Thirty-Ninth Session (Cairo, 2000) the Secretariat reported on the developments in the First and Second sessions of the Preparatory Commission held during the year 1999. After detailed discussions the Organization in its resolution 39/7 requested the Secretariat to continue monitoring the work of the Preparatory Commission and report to the Fortieth Session.

8. At the Fortieth Session (New Delhi, HQ, 2001) the Secretariat reported on the developments in the Sixth and Seventh Sessions of the Preparatory Commission held during the years 2000 and 2001. After detailed deliberations, the Secretariat was directed to monitor the work of the Preparatory Commission *vide* resolution 40/7 and present a substantive report to its 41<sup>st</sup> Session.

9. At the Forty-First Session (Abuja, 2002) Deputy Secretary-General Amb. Dr. Ali Reza Deihim reported on the developments in the Eighth, Ninth and Tenth sessions of the Preparatory Commission, held during the years 2001 and 2002. After intensive deliberations, the Secretariat was directed to monitor the deliberations of the First Assembly of States Parties and in the subsequent meetings and present a substantive report on the developments at its Forty-Second Session.

10. In the rationalization of agenda at the Forty-Second Session (Seoul, 2003), the item was considered as a deliberated item and the Deputy Secretary-General Amb. Dr. Ali Reza Deihim reported on the progress achieved on the item pertaining to the International Criminal Court after the entry into force of the Rome Statute. After intensive deliberations, the Secretariat *vide* Res/42/10 was directed to "follow-up the

deliberations in the Second Meeting of the Assembly of States Parties and its subsequent meetings, and in the Working Group on the Crime of Aggression, and present a report at its forty-third session”.

13. At the Forty-Third Session (Bali, 2004), the agenda item on “The International Criminal Court: Recent Developments” was considered as a deliberated item and the Deputy Secretary-General Amb. Dr. Ali Reza Deihim *inter alia* reported upon the work of the Second Session of the Assembly of States Parties, facts pertaining to the first possible cases before the ICC, the extension of UN peacekeepers immunity from the ICC’s jurisdiction by the Security Council, as well as the bilateral immunity agreements entered into by the United States of America with other states. He also suggested for an exchange of views on AALCO’s role in the context of the ICC, as he believed that exchange of information would definitely contribute to a better understanding of Rome Statute and its importance in the process of achieving international criminal justice against perpetrators of serious crimes against humanity, war crimes, genocide and in future crime of aggression.

14. The Forty-Third Session after serious deliberations mandated the Secretariat to “follow-up the deliberations in the Third Session of the Assembly of the States Parties” and in the “Special Working Group on the Crime of Aggression, and follow-up the developments regarding cases as and when they are taken up by the International Criminal Court.” It also requested the “Secretary-General to explore the feasibility of convening an inter-Sessional meeting, *inter alia*, for ... the implementation of the Rome Statute through national legislative mechanisms; and the ways and means through which the AALCO Member States can contribute to the process of elaboration of the definition of the crime of aggression, and the conditions under which the ICC can exercise its jurisdiction with regard to this crime.”<sup>2</sup>

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<sup>2</sup> RES/43/S 10.

### **III. INFORMAL INTER-SESSIONAL MEETING OF THE SPECIAL WORKING GROUP ON THE CRIME OF AGGRESSION, PRINCETON UNIVERSITY, NEW JERSEY, UNITED STATES OF AMERICA, 21 - 23 JUNE 2004**

15. In June 2004, at the invitation of Government of Liechtenstein, within the framework of the Assembly of States Parties, an inter-sessional meeting of the Special Working Group on the Crime of Aggression was held at the Liechtenstein Institute on Self-Determination, Woodrow Wilson School, at Princeton University, New Jersey, United States, from 21 to 23 June 2004.

16. Invitations to participate in the meeting had been sent to all States who have signed the Final Act of the Rome Conference as well as to some representatives of civil society. Ambassador Christian Wenaweser (Liechtenstein) chaired the meeting. It may be noted that 12 Member States from the Asian African region also participated in the meeting.<sup>3</sup>

17. The agenda for the meeting was based on the preliminary list of possible issues relating to the crime of aggression contained in document PCNICC/2001/L.1/Rev.1, as well as the revised list of the issues at pp. 12-13 of this Secretariat Report.

18. As it was noted, the conclusions and opinions regarding different issues on the crime of aggression presented at that meeting did not necessarily represent the views of the Governments of the participants. However, it sought to reflect conclusions and opinions regarding different issues on the crime of aggression which would be reassessed in light of further work on the crime of aggression.

19. There was a general feeling in the meeting that the Assembly of States Parties had not allocated enough time as would have been desirable for the discussion of the issue of aggression. It was also agreed that the inter-sessional meeting should seek to address technical aspects of aggression that had not been addressed previously without necessarily going into the core issues where significant progress was unlikely.

20. Following are the issues which were discussed in detail for which divergent views were expressed by the participants. For sake of clarity and precision only the issues discussed and the conclusions arrived at are extracted from the Report<sup>4</sup> herein below:

#### **1. Article 11 Jurisdiction *ratione temporis***

The discussion focused on whether the Court should exercise jurisdiction over the crimes of aggression committed after the Statute's entry into force but before the adoption of a provision regarding the definition of aggression and the means whereby the Court would exercise its jurisdiction (or after its adoption). Although article 11 did not deal

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<sup>3</sup> Republic of Korea, United Arab Emirates, Philippines, Nepal, India, Japan, Jordan, Uganda, Kenya, Arab Republic of Egypt, Turkey, Sierra Leone.

<sup>4</sup> ICC-ASP/3/SWGCA/INF.1

specifically with such a situation, it was noted that article 5, paragraph 2, (of the Rome Statute) did not exclude such a (or the first)<sup>5</sup> possibility.

## **Conclusions**

There was agreement that:

- The provision on aggression to be adopted would be prospective in nature and not have any retroactive effect;
- The points raised merited being reconsidered once agreement on the substantive items was reached;
- There was no objection to specifying that the provisions on aggression would not have retroactive effect;
- The placement of the clarification could be dealt with in the aggression provision itself and cross reference could be made to relevant articles, such as articles 11 and 20 (*Ne bis in idem*).

## **2 . The incorporation and placement of the provisions on aggression in the Statute**

At the outset, different views were expressed regarding the placement of the provision defining aggression and the provision setting out the conditions whereby the Court could exercise its jurisdiction. The following options were mentioned for such placement:

(a) Integrating the new provisions into the existing text by:

- Inserting as much as feasible into article 5 (Crimes within the jurisdiction of the Court), paragraph 2 (aggression), or other existing provisions; this would avoid complications arising from the need to renumber articles; in addition, the inter-relationship of the different elements of the provisions on aggression would best be preserved by maintaining them together;
- Inserting a new article 8 (War Crimes) *bis* containing the provisions on aggression; the provision on definition could also include some principles of criminal law;
- Merging articles 9 (Elements of Crimes) and 10 so as to allow for such an insertion with minimum disruption to the numbering of the rest of the articles; nonetheless, some opinions were made against such merger since the issues dealt with by those articles were of a different nature and therefore should remain as distinct provisions;
- Including a reference in article 9 to the elements of crimes for aggression; the conditions for exercising the jurisdiction could be contained in a new paragraph to be inserted in article 12 (Preconditions to the exercise of jurisdiction) or in article 5, paragraph 2;

(b) Inserting the new provisions as an annex to the Statute, though they would constitute an integral part of the Statute itself, along the lines of the

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<sup>5</sup> Words stated in bracket are not in the Report adopted by the Working Group, but are added herein for the sake of clarity.

Charter of the United Nations and the Statute of the International Court of Justice;

(c) Having the new provisions as a stand-alone protocol containing the new provisions. This option received limited support and it was pointed out that it raised problems regarding its entry into force.

### **Conclusions**

- A strong preference was voiced for integration in the Statute of the definition of aggression and the conditions for exercising the Court's jurisdiction over the crime, thus dispensing with the notion of having a separate instrument for that purpose.
- It was also agreed that only indispensable minimal modifications should be made to the Statute. Article 5, paragraph 2, (Article 5: Crimes within the jurisdiction of the Court) would ultimately be deleted once those changes were made.
- In connection with those modifications to the Statute, two distinct possibilities were suggested: the provisions could either stand on their own within the Statute or they could be split and integrated into different provisions of the existing text.

There was, however, no agreement as to whether a State could "opt out" of the Court's jurisdiction over the crime of aggression; the views on this point were contingent upon the applicability of either paragraph 4 or paragraph 5 of article 121 (Amendments) to any new provisions on aggression.

### **3 . Complementarity and admissibility with regard to the crime of aggression**

The question had been raised regarding the applicability of the provisions of the Statute on complementarity to the crime of aggression and the possible need to modify them or to add new provisions.

There was general agreement that no problems seemed to arise from the current provisions being applicable to the crime of aggression.

It was emphasized that the issue of complementarity and admissibility was closely related to the definition of aggression and the role of the Security Council. In this connection, it was noted that only some States had national legislation criminalizing aggression. With regard to the role of the Security Council, the point was raised as to whether a State could look into a case when the Council was dealing with it .

It was stated that the crime of aggression was different from the other crimes under the Court's jurisdiction since it might require a prior determination by the Security Council that aggression had taken place; such a decision however would not be needed for the application of



national legislation on aggression. Other delegations expressed the view that national legislation should be consistent with applicable international law.

## **Conclusions**

There was agreement that:

- Articles 17 (Issues of Admissibility), 18 (Preliminary rulings regarding admissibility) and 19 (Challenges to the jurisdiction of the Court or the admissibility of the case) were applicable in their current wording and the points raised merited being revisited once agreement had been reached on the definition of aggression and the conditions for exercise of the Court's jurisdiction.

### **4. Article 20, *Ne bis in idem* with regard to the crime of aggression**

In relation to article 20, the question was raised as to whether a person convicted or acquitted by the Court with regard to war crimes, crimes against humanity or genocide could subsequently be tried by the Court for the crime of aggression. Furthermore, a similar query was posed regarding the possibility of the Court convicting or acquitting a person for the crime of aggression and at a later point in time trying the same individual for war crimes, crimes against humanity or genocide. The issue of how to incorporate the crime of aggression into article 20, paragraph 3, was also raised, since it currently refers only to conduct proscribed under articles 6 (Genocide), 7 (Crimes against Humanity) and 8 (War Crimes).

## **Conclusions**

There was agreement that:

- The current provisions were adequate;
- Some of the points raised in discussion with regard to the interpretation of article 20 merited being revisited, but they were not specific to the crime of aggression;
- Once an agreement was reached on the provisions related to the crime of aggression, reference to the relevant provision should be incorporated in the chapeau of article 20, paragraph 3.

### **5. General principles of criminal law**

The general view was expressed that the general principles of criminal law should be applicable to all crimes unless there were specific reasons for not doing so.

### **Article 25 (Individual Criminal Responsibility), paragraph 3**

One of the arguments made for excluding article 25, paragraph 3, was that by doing so, the ordinary soldiers could not be held liable for aiding or

abetting the crime. It was noted that article 25, paragraph 3 deals with accomplice liability, a subject matter incompatible with the leadership role required by the preliminary definition of aggression which refers to ordering or participating actively in an act of aggression. In this regard, it was stated that article 25, paragraph 3(a) to (d), should be excluded from being applicable to the crime of aggression. The concern was expressed that application of article 25, paragraph 3, might thus dilute the character of the crime as a leadership crime.

Others felt that the application of article 25, paragraph 3, to the crime of aggression was important. Specific reference was made to subparagraph (f), which deals with the *concept of attempt*. In this connection, it was noted that the difference between the concept of attempt, as contained in article 25, paragraph 3(f), and the concept of initiation, found in the preliminary definition, justified retention of the former. Mention was also made of the need to analyse whether the act had not been fully executed voluntarily or whether external factors had impeded completion of the crime. Furthermore, it was noted that liability for attempts to commit the other crimes under the Court's jurisdiction was already contemplated in article 25, paragraph 3(b), (c) and (d), and that aggression was an even graver crime than the others.

It was noted that by excluding the applicability of article 25, paragraph 3 there was the ensuing risk of not covering cases of joint exercise of leadership, such as that covered in subparagraph (d). In this respect, attention was drawn to the fact that other crimes under the Statute also entailed leadership and yet the provision in question was deemed applicable to those crimes; hence there was no rationale for following a diverse approach only with regard to the crime of aggression.

Nonetheless, the point was made that the crime of aggression was different from the other crimes because the preliminary definition included elements such as the reference to "intentionally and knowingly" or the issue of participation, which were already covered in the general principles; another unique feature was its leadership trait, though it remained to be determined whether the leadership could be limited to one person or to the upper echelons of the chain of command.

In this connection, it was also suggested that all persons in a position to exert decisive influence over the policies of the State should be held criminally responsible, so that political, social, business and spiritual leaders could be included within the leadership group. The point was made that the preliminary definition had been crafted in a manner broad enough to encompass most influential leaders. However, another view held that responsibility for the crime of aggression should be understood to be rather restrictive, basically limited to political leaders, excluding for example advisers who clearly would lack any effective control over the actions of a State.

## **Conclusions**

(a) There was agreement:

- That aggression was a crime characterized by being committed by those in a position of leadership;
- That there was a broad overlap of article 25, paragraph 3, with the proposed definition of the coordinator, 2 Nonetheless, different conclusions were derived as to what should be done as a result:
- Exclude article 25, paragraph 3, from being applicable to the crime of aggression, or
- Retain article 25, paragraph 3, as applicable to the crime of aggression, either in its entirety or partially;

(b) There was disagreement on whether or not an attempt to commit the crime of aggression should be covered and was in fact possible.

(c) Alternatively, it was suggested that the issue should be clarified by incorporating new language in article 25 itself.

## **Article 28 (Responsibility of Commanders and other Superiors)**

The view was expressed that this article might be applicable to the crime of aggression because in some limited borderline situations a second-level commander might be the one assuming the leadership role not fully exercised by his/her hierarchical senior. In this connection, the importance of retaining the word “actively” in the definition was emphasized so as to exclude mere figureheads from taking all the responsibility, although some expressed a concern about the use of the word “actively” as it might be read to exclude situations similar to those envisaged in article 28 where a person in effective control allowed, by his/her omission, an act of aggression to be perpetrated. However, the prevailing view deemed article 28 to be inapplicable to the crime of aggression and that reference to it in paragraph 3 of the coordinator’s paper should thus be maintained.

## **Article 30 (Mental Element)**

It was stated that the use of the words “intentionally and knowingly” in the preliminary definition seemed to be a superfluous repetition of what was already contained in article 30 and that such wording might convey the erroneous impression that a specific intent was required for the crime of aggression. Although some favoured the deletion of the phrase, it was also noted that reference to intention was made several times in article 8 on war crimes. It was understood that the phrase could be deleted from the definition.

## **Conclusion**

The words “intentionally and knowingly” could be deleted from the preliminary definition once agreement thereon had been reached.

### **Article 31 (Grounds for excluding Criminal Responsibility)**

It was concluded that the discussion indicated that there was no particular difficulty posed by its application to the crime of aggression.

### **Article 33 (Superior Orders and Prescription of Law)**

It was noted that, with regard to the crime of aggression, different academic views existed as to whether this provision would permit relying on superior orders as a defence or whether it would actually exclude such a possibility. It was recalled that in many cases superiors were also simultaneously subordinated to other individuals and that this fact had to be borne in mind in the discussion. The point was also made that should a prior determination of an act of aggression by a third party such as the Security Council or the International Court of Justice be deemed necessary, it would not be feasible to foresee such a determination and consequently an act of aggression could not be “ordered”.

Some considered that article 33 was not suitable for the crime of aggression, particularly because its applicability could dilute the fundamental responsibility of the political leadership; according to this view, it was clear that military commanders could not be placed in a situation of casting doubt on the orders received from the political leadership since this could undermine the chain of command. A military commander in a position to effectively exercise control would, however, already be covered by the definition. On the other hand, it was also felt that high-ranking military commanders were indeed in a position to form their own opinions of a complex situation and that it was therefore preferable to allow the judges to analyse their responsibility in a given case; article 32 on mistake of fact or law would be relevant in some situations.

Nonetheless, the view was also expressed that article 33 merited retention in order to emphasize the individual responsibility of persons in leadership roles; by excluding its applicability an argument could be made that the individual was simply following superior orders.

### **Conclusion**

There was agreement that further consideration was required in light of the divergent views regarding the applicability of article 33 to the crime of aggression.

### **Overall conclusions on the general principles of criminal law**

There was agreement that article 25, paragraph 3, and articles 28, 30 and 33 needed to be revisited at a later stage, while the other provisions contained in Part 3 of the Statute warranted no further discussion.

### **List of issues relating to the crime of aggression**

The following is a checklist of issues to be addressed in developing proposals for a provision on aggression in accordance with article 5, paragraph 2, of the Rome Statute and resolution F, paragraph 7, adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court.

N.B. This non-exhaustive list is intended to facilitate a thematic discussion of possible issues, most of which are closely interrelated. The list is based on the preliminary list of issues contained in document PCNICC/2001/L.1/Rev.1, which was revised by the inter-sessional meeting held at the Liechtenstein Institute on Self-Determination at Princeton University from 21 to 23 June 2004.

### **I. Issues relating to the Rome Statute**

- **Definition**
- **Conditions under which the Court shall exercise jurisdiction**
- **Consistency with the relevant provisions of the Charter of the United Nations**
- **Complementarity and admissibility**
- ***Ne bis in idem***

The latter two issues were discussed and there was agreement that they posed no particular problems at this point. There was also an understanding that they should both be revisited in the light of an agreed definition of the crime of aggression and the conditions under which the Court would exercise its jurisdiction over the crime.

### **• General principles of criminal law**

The following articles from Part 3 of the Statute need to be looked at anew in the light of an agreed definition of the crime of aggression and the conditions under which the Court shall exercise jurisdiction over the crime of aggression:

- (i) Individual criminal responsibility (art. 25)
- (ii) Responsibility of commanders and other superiors (art. 28)
- (iii) Mental element (art. 30)
- (iv) Superior orders and prescription of law (art. 33)

### **• Investigation and prosecution**

Consider the provisions concerning the investigation and prosecution of crimes with respect to the crime of aggression (e.g. initiation of an investigation (art. 53)).

- **National security information**

Consider the provisions concerning the protection of national security information in relation to the crime of aggression (art. 57 (3) (c), art. 72, art. 93 (4) and art. 99 (5)).

- **International cooperation and judicial assistance**

These provisions may require further consideration depending upon the applicability of the principle of complementarity to the crime of aggression.

- **Final clauses**

Art. 121 in particular needs to be revisited.

## **II. Possible issues relating to the Elements of Crimes**

- The elements of the crime of aggression are provided for in resolution F rather than in article 9 of the Rome Statute.
- Consider the structure and general provisions of the elements of the other crimes prepared pursuant to article 9 of the Rome Statute to ensure consistency.
- Adoption of the Elements of Crimes by the Assembly of States Parties or by the Review Conference.

## **III. Possible issues relating to the Rules of Procedure and Evidence**

- Review the final text of the Rules of Procedure and Evidence prepared by the Preparatory Commission to determine whether there are provisions that require consideration in relation to the definition of the crime of aggression.

#### **IV. ASSEMBLY OF STATES PARTIES (ASP)**

21. Part 11 of the Rome Statute provides for the Assembly of States Parties (ASP). It is the management oversight and legislative body of the ICC and is composed of one representative per State Party. Each State Party has one vote and every effort has to be made to reach decisions by consensus. Other States, which have either signed the Statute or signed the Final Act of the Rome Diplomatic Conference, may sit in the Assembly as Observers. The Assembly is responsible for the adoption of the normative texts and of the budget, the election of the Judges and of the Prosecutor and the Deputy Prosecutor. It meets at least once a year. The Assembly has a Bureau, consisting of a President, two Vice-Presidents, and eighteen members.

##### **A. First Session of the Assembly of States Parties (ASP-I)**

22. ASP-I took place from 3-10 September 2002 at the UN Headquarters in New York.<sup>6</sup> Later its first and second resumed meetings took place respectively from 3 to 7 February 2003 and 21 to 23 April 2003 at New York.<sup>7</sup> It adopted a number of important instruments providing for practical arrangements and coming into operation of the Court.<sup>8</sup> Among the important matters addressed during the two resumptions<sup>9</sup> was the election of 18 judges of the International Criminal Court. The ASP also elected Mr. Luis Moreano Ocampo (Argentina) as the Prosecutor of the ICC and he gave his solemn undertaking at The Hague on 16 June 2003. It also elected 10 of the 12 members of the Committee on

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<sup>6</sup> See *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First Session, New York, 3-10 September 2002*. ICC-ASP/1/3 and Corr.1. Also see AALCO, *The International Criminal Court: Recent Developments*, AALCO/XLII/Seoul/2003/S 10 and Add. 1.

<sup>7</sup> See *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, First Session (First and Second Resumptions), New York, 3-7 February and 21-23 April 2003*. ICC-ASP/1/3/Add.1.

<sup>8</sup> Rules of Procedure and Evidence; Elements of Crimes; rules of procedure of the Assembly of States Parties; financial regulations and rules; Agreement on the Privileges and Immunities of the International Criminal Court; basic principles governing a headquarters agreement to be negotiated between the Court and the host country; a draft relationship agreement between the Court and the United Nations; budget for the first financial period of the Court; resolution on continuity of work in respect of the crime of aggression; resolution on the procedure for the nomination and election of judges, the Prosecutor and Deputy Prosecutors of the International Criminal Court; resolution on the procedure for election of the judges for the International Criminal Court; resolution on the establishment of the Committee on Budget and Finance; resolution on the procedure for the nomination and election of members of the Committee on Budget and finance; resolution on the establishment of a fund for the benefit of victims of crimes within the jurisdiction of the Court, and of the families of such victims; resolution on the procedure for the nomination and election of members of the Board of directors of the Trust Fund for the benefit of victims; resolution on provisional arrangements for the secretariat of the Assembly of States Parties; resolution on a permanent secretariat of the Assembly of States Parties; resolution on the selection of the staff of the International Criminal Court; resolution on relevant criteria for voluntary contributions to the International Criminal Court; resolution on budget appropriations for the first financial period and financing of appropriations for the first financial period; resolution on the Working Capital Fund for the first financial period; resolution on scales of assessments for the apportionment of the expenses of the International Criminal Court; resolution on crediting contributions to the United Nations Trust Fund to Support the Establishment of the International Criminal Court; decision on provision of funds for the Court; decision on interim arrangements for the exercise of authority pending the assumption of office by the Registrar; decision on the participation of the International Criminal Court in the United Nations Joint Staff Pension fund; and decision on seating arrangements for States Parties.

<sup>9</sup> Note 4.

Budget and Finance and decided that the Committee would commence functions as partially constituted. It also made recommendations concerning the election of the Registrar and fixed the nomination period for members of the Board of Directors of the Victims Trust Fund. The Assembly also considered the Bureau's proposal for the meetings of the Special Working Group on the Crime of Aggression.

## **B. Second Session of the Assembly of States Parties (ASP-II)**

23. ASP-II took place at the UN Headquarters in New York from 8-12 September 2003. Amongst the important decisions taken by the meeting were the election of Mr. Serge Brammertz<sup>10</sup> of Belgium as Deputy Prosecutor for Investigations and the election of five members of the Board of Directors of the Victims Trust Fund: Her Excellency Ms. Raina Al-Abdullah (Queen of Jordan); Mr. Oscar Arias Sanchez (former President of Costa Rica and Nobel Peace Prize Laureate); Tadeusz Mazowiecki (former Prime Minister of Poland and Chairman of that country's Robert Schuman Foundation); Desmond Tutu (South Africa, Archbishop Emeritus and Nobel Peace Prize Laureate); and Simone Veil (France, former Minister of State and former President of the European Parliament).

## **C. Third Session of the Assembly of States Parties (ASP-III)**

24. ASP-III took place at the seat of the Court at The Hague in the Netherlands from 6 to 10 September 2004.<sup>11</sup> This was the first Session of the Assembly to be held in The Hague.

25. **Agenda of ASP-III:** The agenda of the Meeting *inter alia* included: Report on the activities of the Court; Consideration and adoption of the budget for the third financial year;<sup>12</sup> Election of the Deputy Prosecutor;<sup>13</sup> Election of members of the Committee on Budget and Finance;<sup>14</sup> Report of the Registrar on the activities regarding defence counsel, including the legal representation of victims, and the process consultation followed;<sup>15</sup> Report of the Registrar on the participation of and reparations to victims; Report of the Board of Directors of Victims Trust Fund;<sup>16</sup> and the Report of the Special Working Group on the Crime of Aggression.<sup>17</sup>

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<sup>10</sup> Mr. Brammertz has earlier served as a Federal Prosecutor of Belgium and Deputy to the Prosecutor-General at the Liege Court of Appeal. He was also a Professor at the University of Liege, in Belgium.

<sup>11</sup> Details regarding ASP-III mentioned herein are drawn from the Press Releases relating to it available on the website of the Court: [www.icc-cpi/int](http://www.icc-cpi/int) and *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Third Session, The Hague, 6-10 September 2004*.

<sup>12</sup> For details see "Draft Programme Budget", ICC-ASP/3/2 and the "Report of the Committee on Budget and Finance", ICC-ASP/3/18.

<sup>13</sup> For details see "Election of the Deputy Prosecutor of the International Criminal Court", ICC-ASP/3/8.

<sup>14</sup> For details see "Election of members of the Committee on Budget and Finance", ICC-ASP/3/9.

<sup>15</sup> For details see "Overview of the activities of the Registrar in relation to the defence, the legal participation of victims, and the consultation process followed- report pursuant to paragraph 4 of the statement of the focal point on the establishment of an international criminal bar", contained in document ICC-ASP/3/7.

<sup>16</sup> For details see document "Report to the Assembly of States Parties on the activities and projects of the Board of Directors of the Trust Fund for Victims 2003-2004", ICC-ASP/3/14.

<sup>17</sup> Provisional Agenda of ASP-III contained in document ICC-ASP/3/1.



26. In his opening address, the President of the ASP Prince Zeid Raad Zeid Al Hussein observed "... we view the International Criminal Court as the only new institution which offers us hope for a twenty-first century more honourable than preceding centuries". Dr. Bernard Bot, Minister of Foreign Affairs of the Netherlands said that promoting the universality of the Court was a priority for his Government and the European Union and regretted that the United States, at that stage could not commit itself to the ICC and to its crucial role in fighting impunity.<sup>18</sup>

27. The Prosecutor in his address *inter alia* explained that his office had started to investigate the two gravest situations that could trigger further Court activity: the massive crimes committed in the Democratic Republic of Congo and Northern Uganda. In addition, his office was analyzing six situations (Article 15). He however, refrained from giving the details of these six situations saying that his office work in this phase was "strictly confidential". But he did mention that these six situations were located in four different continents.

28. Judge Philippe Kirsch, President of the Court, and the Registrar Mr. Bruno Cathala also addressed the Assembly.

29. **Organization of work of the Assembly:** The Assembly following consultations with its Bureau agreed and the President announced that Mr. Christian Wenaweser (Liechtenstein) would continue to chair the Special Working Group on the Crime of Aggression and that Mr. Patricio Ruedas (Spain) would chair the Working Group on the draft programme budget, Ms. Gaile Ramoutar (Trinidad and Tobago) the Working Group on Trust Fund for Victims, and Ms. Rossette Katungye (Uganda) the Working Group on the Procedure for the Election of Judges. It also appointed Mr. Rolf Fife (Norway) focal point for the Review Conference.<sup>19</sup>

30. **Report on the activities of the Court:**<sup>20</sup> The report provides a general overview of development at the ICC since ASP-II in September 2003 till July 2004. The report states that the overall focus of the Court has been on meeting the ICC's objective of being an independent and credible institution of international criminal justice. To this end, the Presidency, the Office of the Prosecutor and the Registry have continued to work together closely, with coordination between the organs of the Court occurring at all levels. It outlines the activities of the each of the organs of the Court as well as the coordination between them. Significant developments during this period being:

- The adoption by judges of the Regulations of the Court;
- The creation of an operational Office of the Prosecutor, which has included recruitment of staff, development of structures, priorities, policies and procedures and commencement of operations;
- The receipt by the Office of the Prosecutor of two referrals from State Parties (Uganda and the Democratic Republic of Congo) of situations within their territories;

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<sup>18</sup> ICC-ASP III Press Release, "International Criminal Court "Now fully functional judicial institution, Assembly of States Parties Told as it begins one-week Session", 6 September 2004.

<sup>19</sup> *Ibid.*

<sup>20</sup> ICC-ASP/3/10. Details are drawn from the Executive Summary of the Report, p.1.

- The opening of the first ICC investigation into grave crimes allegedly committed on the Democratic Republic of the Congo;
- The first meeting of the members of the Board of Directors of the Trust Fund for Victims;
- The recruitment of an appropriate level of staff for the institution as a whole;
- The development of policies and procedures pertaining to issues essential for the future functioning of the Court, including matters relating to the defence, detention, victims, witnesses, counsel, court management and information technology;
- The initialing of the Relationship Agreement between the Court and the United Nations.

31. ***Draft Relationship Agreement between the Court and the United Nations:*** The Assembly adopted a negotiated Draft Relationship Agreement between the Court and the United Nations. ICC's cooperation with the United Nations is of critical importance for its work. Key aspects of this cooperation are exchanges of information, judicial assistance and cooperation on infrastructural and technical matters.<sup>21</sup> It also decided to apply the Agreement provisionally pending its formal entry into force. It further called upon the General Assembly to adopt the Agreement as expeditiously as possible.

32. ***Election of Deputy Prosecutor (Prosecutions):*** ASP-III elected by an absolute majority (58 of the 78 votes cast) Ms. Fatou Bensouda of the Gambia to the office of Deputy Prosecutor (Prosecutions). It also decided that the term of office of the Deputy would be nine years, starting on 1 November 2004. She was selected from an initial group of three candidates submitted by the Prosecutor to the States Parties from a list of 198 candidates. Ms. Bensouda would be responsible for the management, supervision and direction of the Prosecution Division of the Office of the Prosecutor, which consists of a Prosecution Section and an Appeal section.<sup>22</sup> Ms. Bensouda made her solemn undertaking as Deputy Prosecutor (Prosecutions) of the International Criminal Court in an open session of the Court on 1 November 2004.

33. ***Election of Members of the Committee on Budget and Finance:*** The Committee on Budget and Finance is responsible for overseeing the financial, budgetary and administrative operations of the Court. ASP-III re-elected six members of the Committee. They are: Mr. John F. S. Muwanga (**Uganda**) from the African States group; Mr. Eduardo Gallardo Aparicio (Bolivia from the Latin American and Caribbean States Group); Dr. Inna Steinbuka (Latvia from the Eastern European States Group); and Mr. Michel Etienne Tilemans (Belgium), Mr. Karl Paschke (Germany) and Mr. Peter Lovell (United Kingdom of Great Britain and Northern Ireland) from the Western European and other States group. The term of office of the members of the Committee on Budget and Finance, who are experts of recognized standing and experience in international financial matters, runs for three calendar years.<sup>23</sup>

<sup>21</sup> ICC-ASP III Press Release, "Assembly Approves Negotiated Draft Relationship Agreement between the ICC and the United Nations", 7 September 2004. For details see "Report on the negotiated Draft Relationship Agreement between the International Criminal Court and the United Nations", ICC-ASP/3/15.

<sup>22</sup> ICC-ASP III Press Release, "States Parties to the International Criminal Court Elect Ms. Fatou Bensouda of The Gambia Deputy Prosecutor (Prosecutions)", 8 September 2004.

<sup>23</sup> ICC Press Release, "States Parties to International Criminal Court elect Budget Committee Members", 8 September 2004.

34. ***Report of the Chairperson of the Special Working Group on the Crime of Aggression to ASP-III:*** Mr. Christian Wenaweser recommended allocating more time to this issue in subsequent meetings of the Assembly. During ASP-III, the Group discussed the Court's jurisdiction on the crime of aggression; the incorporation and placement provisions on the crime of aggression in the Statute; complementarity and admissibility; and general principles of criminal law. The Assembly took note of the oral report and agreed to include the Chairperson's discussion paper in the report of the session. Report of the Informal inter-sessional meeting of the Special Working on the invitation of the Government of Liechtenstein was also circulated for the information of the Assembly.<sup>24</sup>

35. ***Entry into force of the Agreement on Privileges and Immunities of the ICC:*** The Assembly approved a resolution<sup>25</sup> welcoming the entry into force of the Agreement on the Privileges and Immunities of International Criminal Court and called upon States that have not yet become Parties to the Agreement to take the necessary legislative or other action, pending their ratification or accession, to exempt their national employed by the Court from national income taxation with respect to salaries, emoluments and allowances paid to them by the Court, or to grant relief in any other manner from income taxation in respect of such payments to their nationals. The resolution also requests the Registrar, in consultation with the Prosecutor, to take steps to conclude bilateral tax reimbursement agreements with States, where there is appropriate and in the operational interests of the Court.<sup>26</sup>

36. ***Approval of Budget:*** The Assembly approved appropriations totaling Euro 66, 784, 200 for the Court's expenses. It also approved the establishment of a Contingency Fund in the amount of Euro 10, 000, 000 amending regulation 6 of the Financial Regulations and Rules to that end. With these resources the Court can meet costs associated with any unforeseen situation following a decision by the Prosecutor; unavoidable expenses for developments in existing situations that could not be foreseen or could not be accurately estimated at the time of the adoption of the budget; or costs associated with an unforeseen meeting of the Assembly of States Parties.<sup>27</sup>

37. ***New Presidency of the Assembly:*** ASP-III elected Mr. Bruno Stagno Ugarte of Costa Rica President of the Assembly for the fourth to sixth sessions. The President was elected in advance by virtue of an amendment to rule 29 of the Rules of Procedure of Assembly adopted at the same meeting. Mr. Ugarte is a high-ranking Costa Rican diplomat and has served as Permanent Representative of Costa Rica to the United Nations since 2002.<sup>28</sup>

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<sup>24</sup> This meeting took place at the Liechtenstein Institute on Self-Determination, Woodrow Wilson School at Princeton University, New Jersey, United States from 21 to 23 June 2004. The outcome of the Meeting is contained in document ICC-ASP/3/SWGCA/INF.1. Extracts of this report are reproduced at pp. 4-12 of this Secretariat Report.

<sup>25</sup> ICC-ASP/3/L.4.

<sup>26</sup> ICC Press Release, "States Parties to International Criminal Court end Session by Approving 2005 Budget", 10 September 2004.

<sup>27</sup> *Ibid.*

<sup>28</sup> ICC Press Release, "Costa Rica to hold Presidency of the Assembly of States Parties to International Criminal Court", 9 September 2004.

38. ***Dates and venue of the next session:*** The Assembly decided to hold its next regular session for six days, in November 2005, in The Hague. The next meeting of the Committee on Budget and Finance will be held in The Hague, from the 4 to the 6 of April 2005.

## **V. FACTS PERTAINING TO THE FIRST POSSIBLE CASES BEFORE THE INTERNATIONAL CRIMINAL COURT**

39. The ICC has jurisdiction over the most serious crimes of concern to the international community as a whole committed after the 1 July 2002, genocide, crimes against humanity and war crimes, all of which are defined in the Rome Statute. States Parties as well as the Security Council can refer situations to the Prosecutor for investigation. The Prosecutor also has the power to initiate investigations on his or her own on the basis of information received from reliable sources with the authorization of the Pre-Trial Chamber. The Office of the Prosecutor of the International Criminal Court had till date not received any referral from the UN Security Council.

40. There are currently two cases under consideration of the Prosecutor of International Criminal Court, while there are demands from certain countries for referral as regards the situation in Darfur region of Sudan to the ICC by the Security Council. Significant developments with regard to these three cases are mentioned herein below.

### **A. Situation in the Ituri Province of the Democratic Republic of Congo**

41. In his address to ASP-II, the Prosecutor of the ICC Mr. Luis Moreno-Ocampo drew attention to the distressing situation in the Democratic Republic of Congo.<sup>29</sup> He said that detailed reports from several civil society organizations estimated that at least 5, 000 civilians had died as a direct consequence of violence in Ituri since 1 July 2002. The estimated total number of deaths since the beginning of the conflict ranged from 2.5 million to 3.3 million. He said that the crimes reportedly taking place there potentially constituted genocide, crimes against humanity, or war crimes- all of which fell within the Court's jurisdiction. He hoped that the national system could be reinvigorated, with the assistance of the international community, in order to enable the Congolese, themselves, to investigate and prosecute those responsible. In case, this was not possible he was ready to take authorization from a pre-trial chamber to start an investigation. In case, the latter happens then the Congolese case could become the first case before the International Criminal Court.

42. The Prosecutor also sought the assistance of African countries in finding African solutions for the problems of the region. He has sought cooperation of States parties, as well as the Government of the Democratic Republic of Congo in his on-going analysis of the situation in Ituri. The Deputy Prosecutor (Investigations) Mr. Serge Brammertz was in charge of the work of the office regarding the situation in Ituri.

43. At ASP-III, the Prosecutor informed that in March 2004, the Democratic Republic of Congo had referred to his Office the situation in its entire territory. After a rigorous analysis, on 21 June 2004 he announced the opening of investigation in the DRC.<sup>30</sup> This

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<sup>29</sup> The distressing situation in the Ituri Province is also highlighted in the "Special Report on the events in Ituri January 2002-December 2003", transmitted by letter dated 16 July 2003 of the UN Secretary-General to the President of the Security Council. The Secretary-General in his letter expressed "grave concern about the continuing human rights abuses in the Democratic Republic of Congo, in particular the impunity with regard to crimes committed against the citizens of that country." UN Doc. S/2004/573.

<sup>30</sup> "Office of Prosecutor of International Criminal Court Opens First Investigation", *UN Press Release* L/3071 dated 23 June 2004.

was the first investigation by the ICC. He said that the opening of the first investigation was a major step forward for international justice, against impunity and for the protection of victims. The Prosecutor underscored his intention to focus the investigation on the perpetrators most responsible for grave crimes under the jurisdiction of ICC now being committed in the DRC.

44. The Office of the Prosecutor and the Registry of the ICC organized a first official visit to the Democratic Republic of Congo from 26 to 30 July 2004. They held meetings with senior political and judicial Congolese authorities in order to discuss mechanisms of cooperation between the DRC and the organs of the Court.

45. A provisional memorandum of Understanding on the Privileges and Immunities of the Court was signed on 12 October 2004 between the ICC and the Democratic Republic of Congo. This agreement would facilitate the activities of the ICC on Congolese territory whilst awaiting the ratification by the Congolese authorities of the Agreement on the Privileges and Immunities of the International Criminal Court. It guarantees in particular that the Court would be able to carry out its activities in the field independently, safely and confidentially.

## **B. Reference of the Government of Uganda**

46. The President of Uganda Mr. Yoweri Museveni in December 2003 had referred the situation concerning the Lord's Resistance Army (LRA) in North Uganda to the Prosecutor of the International Criminal Court. The reference by the Government of Uganda is the first such referral by any State Party and could start a process that could lead to the first ever trial before the ICC.

47. According to different reports given to the Office of the Prosecutor, the situation has resulted in a pattern of serious human rights abuses against civilians in the region, including summary executions, torture and mutilation, recruitment of child soldiers, child social abuse, rape, forcible displacement, and looting and destruction of civilian property. The current conflict has persisted for seventeen years, during which time civilians in northern Uganda have been subjected to regular attacks.

48. On 28 July 2004, the Prosecutor announced the opening of the investigation in Northern Uganda after a rigorous analysis. Informing ASP-III about this, the Prosecutor stated that it was alleged that widespread and systemic attacks have been committed against the civilian population since July 2002, including the abduction of thousands of girls and boys. The Deputy Prosecutor Mr. Serge Brammertz had led the investigations missions in Kinshasa and Kampala.

49. Judge Philippe Kirsch, President of the ICC informed ASP-III that the Court was ready to begin proceedings in its first cases, which could start at any time as two situations were under investigations by the Office of the Prosecutor. The situation in the DRC was assigned to Pre-Trial Chamber I, while the situation in Northern Uganda has been assigned to Pre-Trial Chamber–II. The Appeals Judges were also permanently based at the Court, ready for any appeals, which could arise.

### C. Situation in the Darfur region of Sudan

50. The humanitarian situation in the Darfur region of Sudan is under the consideration of the United Nations Security Council. In his briefing to the Security Council on 4 November 2004, the Special Representative of the Secretary-General Mr. Jan Pronk confirmed that the situation in Darfur was fast deteriorating and there was a total collapse of law and order.<sup>31</sup> The Security Council condemned on-going violations of international human rights and humanitarian law such as attacks on civilians, sexual violence and hostage taking that were being perpetrated in Darfur by all parties including the Government of Sudan, rebel groups and the Janjaweed rebels.<sup>32</sup>

51. Earlier on 16 September 2004, the European Parliament adopted a resolution on Darfur, whereby Members of the European Parliament strongly condemned the Sudanese government for its support of the militia and the impunity accorded to them and urged the “Sudanese authorities to end impunity and bring to justice immediately the planners and perpetrators of crimes against humanity, war crimes and human rights violations, which can be construed as tantamount to genocide”. The Parliament “considers that, should the Sudan fail to exercise its sovereign jurisdiction, the international community will have to find another way of ensuring they are brought to justice, including those responsible in the present Sudanese regime.” In their claim for accountability, Parliamentarians also called on the Council and the Member States “request the United Nations Security Council to exercise its referral powers pursuant to art. 13 (b) of the Rome Statute of the Court”.<sup>33</sup>

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<sup>31</sup> For details see *UN Press Release* SC/8236, “Security Council is Told Darfur Situation Deteriorating, Tension at Highest level, Fighting More Widespread”, dated 4 November 2004.

<sup>32</sup> *UN Press Release* SC/8238, “Press Statement on Sudan by Security Council President”, dated 4 November 2004.

<sup>33</sup> “Humanitarian Situation in Sudan”, Text of the Resolution adopted by the European Parliament available at URL: <http://www2.europarl.eu.int/omk/sipade2?PUBREF=-//EP//TEXT+TA+P6-TA-2004-0012+0+DOC+XML+V0//EN&LEVEL=3&NAV=X>.

## **VI. CONSIDERATION OF ITEM DURING AALCO'S FORTY-THIRD SESSION (BALI, REPUBLIC OF INDONESIA, 2004)**

52. The delegations generally said that they attached importance to the Rome Statute of the International Criminal Court. The adoption of the Rome Statute on 17 July 1998 was perhaps one of the most significant events in the history of the 20<sup>th</sup> century international law. It was two years since the entry into force of the Rome Statute that the four organs of the Court had been successfully established. The ICC had become a reality and was no longer an aspiration. Most senior officials of the Court had been appointed and the Court was in the process of building its structures and devising its procedure.

53. A delegation stated that it attached great importance to the fundamental principles of the work of the ICC, namely independence, impartiality, the rule of law, and the professionalism. Just and effective operation of the Court which would facilitate general support and cooperation from the international community was of significance to the future of the ICC. Several delegations emphasized upon the importance of the principle of complementarity in the work of the ICC.

54. As regards, the on-going work on the crime of aggression in the Special Working Group on the Crime of Aggression a delegate suggested that the pending issue of the definition of crime of aggression required resolution based upon the UN General Assembly Resolution 3314 of 1974. Another delegation supported this proposal and observed that it could be a sound basis and point of departure for both general definition and for the selection of acts for inclusion in the definition. The definition should be specific so as not to give rise to contentious interpretation and for the selection of acts for inclusion in the definition. The delegate emphasized that the definition should be specific so as not to give rise to contentious interpretation and difficulties in proving the elements of the offence. He hoped that at a later stage, the Review Conference could incorporate within the jurisdiction of the Court serious crimes such as terrorism, drug trafficking and the use of nuclear weapons. Another delegate emphasized that the crime of aggression was one of the four crimes within jurisdiction of the Court. However, it was a complicated issue. Any solution to it should be in conformity with the Charter of the United Nations and hoped that the international society would settle this issue in a practical and cooperative way. Another delegation acknowledged the importance of coming up with an acceptable definition of crime of aggression.

55. A delegate stated that generally speaking, there were two basic reasons that a state chooses not to join the ICC.

*First*, a state may object to the idea of the ICC itself. For example, some governments and academics say that essential elements of criminal law or criminal due process are missing in the design of the ICC.

*Second*, some states seem to believe the ICC undermines the sovereign right to exercise jurisdiction over their own nationals. The idea of having its own citizen stand on international trial may not be that attractive. Although the principle of complementarity was clearly stated in the Statute of the ICC, it does not seem to be trusted by all States.

56. The Parties to the Rome Statute should respect the decisions of various governments not to join the ICC, and find ways and means to hear and heed to their



criticism. Such concern and criticism could be addressed by prudent and reasonable application and interpretation of the Rome Statute, as well as by further constructive consultations and discussions guided by the principles of justice and fairness. These consultations and discussions would contribute not only to the progress in the future jurisprudence of the ICC, but also to the overall development of international criminal law.

57. However, the delegate observed that it was still imperative that the ICC accomplishes the universality. In order for the ICC to be successful, it should receive more support and endorsement and said that a larger representation of the Asian and African countries in the ICC would ensure a legitimate and fair Court.

58. Another delegation drew attention to the so-called Article 98 bilateral agreements entered into by many States with the United States of America to exclude American nationals from the purview of ICC. He stated that most of these countries entered into these bilateral agreements purely because of national interest and not for the furtherance of international law. His country understood the position of these countries but viewed the bilateral agreements as watering down the letter and spirit of the Rome Statute. Another delegation was of the view that although it was legally permissible for the US to undertake such arrangement, States should not use Article 98 to undermine the integrity of the ICC or to weaken the spirit of the Rome Statute itself.

59. Some delegations reiterated their support to the Rome Statute, but said that they would only accede to it, once they were ready to do so, which included enacting the appropriate legislative provisions and putting in place administrative measures.

## **VII. CONSIDERATION OF THE ITEM DURING THE YEAR 2004 AT THE UNITED NATIONS**

### **A. Non-renewal of UN Peacekeeper's immunity resolution by the UN Security Council**

60. It may be recalled that on 12<sup>th</sup> July 2002, the UN Security Council unanimously adopted resolution 1422, consistent with Article 16 of the Rome Statute, which requested the International Criminal Court not to commence a case against any personnel in a United Nations Peacekeeping operations from a State not Party to the Statute for a twelve month period beginning 1<sup>st</sup> July 2002. The Council also expressed its intent to renew its requests for further twelve month periods for as long as might be necessary and decided that Member States should take no action inconsistent with the above mentioned provision and with their international obligations.

61. The United Nations Security Council, on 12 June 2003, vide Resolution 1487, approved a 12 month extension of immunity that effectively shields UN peacekeepers from potential prosecution by the International Criminal Court. The resolution, unless the Council decides otherwise, provides immunity from investigation or prosecution to members of UN peacekeeping missions from nations that have not ratified the Rome Statute of the ICC. The Resolution was adopted by vote of 12-0, with France, Syria and Germany abstaining.

62. Similarly, while authorizing the establishment of a Multinational Force for Liberia vide Resolution 1497 dated 1 August 2003, the Security Council included in it a provision that gives the peacekeepers and current or former officials from a contributing State immunity from prosecution by anyone- including the newly established ICC- but their own government. The resolution was adopted by a 12-0 vote with France, Germany and Mexico abstaining from voting as they viewed the provision granting immunity to peacekeepers as not being in conformity with international law and their national laws.

63. In June 2004, the USA wanted to further seek an extension of the resolution on UN Peacekeepers Immunity. However, after weeks of negotiations and faced with continued opposition, it had to withdraw its request. Even the last minute US proposed compromise text during informal consultations could not get the required support. Earlier, the UN Secretary-General Kofi Annan had raised serious doubts about the legality of an exemption and warned against dividing the Council. He is reported to have remarked that renewing US peacekeepers' immunity from international prosecution for war crimes would undermine international law and would be a very "unfortunate signal send at any time-but particularly at this time"

64. The mounting opposition to the renewal included the intention of two permanent members (namely China and France) to abstain from the vote. Many governments had also expressed their concerns about the illegality of the resolution.

### **B. Consideration of the item at the 59<sup>th</sup> Session of the General Assembly**

65. The item “International Criminal Court” was considered by the Sixth Committee during the 59<sup>th</sup> Session of the General Assembly on 14 October 2004.<sup>34</sup> Many speakers<sup>35</sup> expressed their firm support for the International Criminal Court, emphasizing its key role in furthering the cause of justice and the rule of law in the international system and in serving as a bulwark against impunity. Several speakers encouraged the Security Council to carry out the role envisaged for it under the Statute by referring situations to the Court. Many further spoke about the need to ensure that the Court has the necessary resources to undertake its historic mandate in an effective manner. It was noted, with satisfaction, that the number of Parties to the Court was approaching 100 (97 States are presently Parties to the Statute). Particular appreciation was also expressed to the Secretary-General for his repeated expressions of support for the Court, and reference was made, with approval, to the conclusion of the relationship agreement between the Court and the United Nations on 4 October 2004.

66. Some speakers referred to several other key events that had taken place over the last year including: the appointment of Ms. Fatou Bensouda (the Gambia) as the second Deputy Prosecutor; the entry into force of the Agreement on the Privileges and Immunities of the Court; the progress made in relation to the Victims' Trust Fund; the non-renewal of Security Council resolution 1487; and the announcement by the Prosecutor of the first two investigations into crimes allegedly committed (in the DRC and Uganda) and that his office was considering six other situations on four continents. Support was further expressed for periodically holding future sessions of the Assembly of States Parties in New York (as well as for the establishment of a liaison office in New York), and it was noted that the 2005 elections for six of the judges would be held at a session of the Assembly convened in New York for that purpose. Particular reference was also made to the need for the Special Working Group on the Crime of Aggression to be given sufficient time and resources to conclude its work on a definition of the crime of aggression by the time of the review conference in 2009. It was also suggested that representatives of the Court be invited to attend relevant meetings of the Organs of the United Nations, including those of the Security Council.

67. The United States again expressed its opposition to the Court citing concerns relating to the scope of its jurisdiction, due process rights, the question of accountability of the Prosecutor and the judges, the relationship between it and the Security Council and the possibility of politicization of the Court.

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<sup>34</sup> For details see *UN Press Release GA/L/3253* “Legal Committee Speakers Laud Start of Judicial Functioning of International Criminal Court; Growing Adherence Noted”, dated 14 October 2004.

<sup>35</sup> Statements were made by the representatives of Liechtenstein, Switzerland, Australia, the Netherlands (on behalf of the twenty-five Member States of the European Union, the Candidate countries Bulgaria, Croatia and Romania and Turkey, the countries of the Stabilisation and Association Process and potential Candidate countries Bosnia and Herzegovina, the Former Yugoslav Republic of Macedonia and Serbia and Montenegro, and the EFTA countries Iceland and Liechtenstein, and members of the European Economic Area), Congo, Brazil (also on behalf of the Rio Group), the Democratic Republic of the Congo, Norway, **Sierra Leone**, **United Republic of Tanzania**, **China**, the United States of America, Cuba, the Russian Federation, Ukraine, Uruguay, **Japan**, Costa Rica, Germany, the **Gambia**, Trinidad and Tobago (on behalf of CARICOM), Canada, the **Republic of Korea**, **South Africa**, New Zealand, **Uganda** and **Nigeria**. The observer delegation of the International Committee of the Red Cross also made a statement. The above Summary is drawn from the Summary of the Meeting available at URL: <http://www.un.org/law/cod/sixth/59/summary.htm>.

68. The Sixth Committee adopted the draft resolution, introduced by, the representative of the Netherlands, on behalf of the Bureau 19 November 2004. At the same meeting, the representative of the United States of America made statement in explanation of position before the Committee took action on the draft resolution and the representative of Canada made statement in explanation of position after the Committee took action on the draft resolution.

69. The Plenary considered for adoption the resolution on the “International Criminal Court” adopted by the Sixth Committee on 2 December 2004.<sup>36</sup> It was widely debated. Speaking in explanation of position, the representative of the United States said he dissociated himself from consensus on the resolution.

70. Speaking on behalf of the European Union and associated countries, the representative of Netherlands noted that the Assembly had adopted the resolution without a vote, just as the Committee had approved it. Now that the Relationship Agreement between the Court and the United Nations had been signed, and the Court had entered into force, it was vital for the Court to remain on the Assembly’s agenda and for the Agreement to be turned into practical cooperation. The resolution before the Assembly reaffirmed the Court’s observer status in the Assembly’s work, including through annual reports of the Court’s activities to the Assembly. He said the Union had relentlessly defended the Court’s integrity. The Court was the most significant recent development in advancing justice and the rule of law to end impunity. Concerns about the Court were unfounded. The Rome Statute was the most comprehensive list of due process protections ever promulgated. It provided all safeguards against using the Court for political purposes. The Court’s prosecutors and judges were selected by, and from among, countries committed to justice, human rights and democracy. The Rome Statute and the Elements of Crime defined the actions in the Court’s jurisdiction, which were genocide, war crimes and crimes against humanity. The clarity and precision of those documents was unmatched by any tribunal’s statute.

71. The Delegate observed that the Court’s jurisdiction was complementary to national legislation, and the Court would assume its jurisdiction only when a State did not do so. A set of guidelines had been developed for States to consider in relation to bilateral agreements dealing with conditions for surrendering persons to the Court, he continued. First, existing international agreements already covered legal cooperation on criminal matters such as extradition, and new agreements weren’t needed. Further, the agreements drafted by the United States were inconsistent with obligations of States Parties to the Court and possibly with other international agreements. Also, the scope of persons covered by the agreement was excessive since the Court’s jurisdiction was limited to persons acting on behalf of States and did not apply to tourists or business people. Bilateral agreements should also contain a sunset clause and most importantly should not result in impunity. The Union would assist States in preventing impunity and developing a broader dialogue about the Court.

72. The Assembly decided to consider directly in its plenary any report submitted by the Court under its Relationship Agreement with the United Nations in a manner similar

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<sup>36</sup> Details stated herein are drawn from *UN Press Release GA/10309* “General Assembly defers decision on Human Cloning, Adopts 24 Resolutions on Wide Range of Legal, Other Matters”, dated 2 December 2004.

to the plenary's consideration of reports by the International Court of Justice and the International Criminal Tribunal for the former Yugoslavia. The Assembly called on States to become parties to the Court's Rome Statute and its Agreement on Privileges and Immunities. It recalled that the Special Working Group on the Crime of Aggression was open to all States. The Assembly further took note of references to the Court's role in promoting justice and the rule of law, and it would welcome steps taken to functionalize the Court, including the closing of trust funds set up for its establishment. Recalling the Relationship Agreement that granted the Court observer status in the General Assembly with reporting privileges, the Assembly decided to include the item "Report by the International Criminal Court" on the agenda of its sixtieth session.<sup>37</sup>

### **C. The Signing of Relationship Agreement between the International Criminal Court and the United Nations**

73. The Relationship Agreement between the International Criminal Court and the United Nations defining the term by which both the institutions would be brought into relationship was signed in New York by Judge Philippe Kirsch, President of the ICC, and Kofi Annan, Secretary-General of the United Nations on 4 October 2004. The Agreement, which provides a basic framework for the relationship between the United Nations and Court, entered into force directly upon signature.

74. The Agreement recognizes the role and mandates of both institutions. It is critical to the work of the Court as it strengthens the cooperation of the two organizations on matters of mutual interest relating to the exchange of information, judicial assistance, cooperation on infrastructure and technical matters. These include the exchange of representatives; the participation of the Court in the General Assembly of the United Nations in the capacity of observer; administrative cooperation; the provision of conference services (on a reimbursable basis); and the use of the UN laissez-passer as a valid travel document by ICC staff and officials.

75. The ICC also undertook to cooperate on judicial issues, if the Court requests the testimony of an official of the United Nations or one of its programmes, funds or offices. In addition, the Agreement defines the mechanisms of cooperation between the Security Council of the United Nations and the Court concerning a referral by the Council of a situation in which one or more crimes under the jurisdiction of the Court appears to have been committed. Article 18 of the Agreement defines the terms of cooperation between the United Nations and the Prosecutor with respect to investigations, exchange of information, conditions of confidentiality of information, protection of persons and security of any operation or activity of the UN. It further addresses issues of privileges and immunities and protection of confidentiality.<sup>38</sup>

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<sup>37</sup> A/RES/59/43.

<sup>38</sup> Details of the Agreement mentioned herein are drawn from *ICC Newsletter* No. 2 (October 2004), p. 2. The Newsletter is brought out by the Registry of the ICC for information purposes and is available on the Court's website: <http://www.icc-cpi.int>.

76. In effect, the Agreement reinforces and institutionalizes the relationship between the ICC and the UN , ensuring that on both a philosophical and practical level these two important elements of international justice can work together.

77. The Relationship Agreement was earlier approved by the Assembly of States Parties on 7 September 2004<sup>39</sup> and by the General Assembly on 13 September 2004.<sup>40</sup>

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<sup>39</sup> ICC-ASP/3/Res.1

<sup>40</sup> A/RES/58/318.

## **VIII. Bilateral Agreements of United States of America granting Immunity to US Citizens from Prosecution before International Courts**

78. It may be recalled that after the assumption of the office of the President of the United States of America, President George Bush withdrew the American signature to the Rome Statute of the International Criminal Court. On 6 May 2002, Bush administration sent a notice to the United Nations Secretary-General (the depository) that the “United States does not intend to become a Party to the treaty. Accordingly, the United States has no legal obligations arising from its signature on December 31<sup>st</sup> 2000.”<sup>41</sup>

79. The United States of America, shortly before the entry into force of the Rome Statute in July 2002, embarked on a worldwide campaign to sign bilateral agreements with individual States ensuring immunity for American citizens and those who worked under contract for the US Government. These agreements prohibit the surrender to the ICC of a broad scope of persons including current or former government officials, military personnel, and US employees and nationals. These agreements, which are generally reciprocal, do not include an obligation by the US to subject those persons to investigation and/ or prosecution.

80. The concerns of United States of America, in relation to the Rome Statute, as stated by a senior US State Department Official are: (i) it undermined the role of the UN Security Council in maintaining international peace and security; (ii) it created a prosecutorial system that is an unchecked power; (iii) it purports to assert jurisdiction over nationals of states that have not ratified the treaty; and (iv) it is therefore built on a “flawed foundation”. He stated that “the United States respects the decision of those nations who have chosen to join the ICC, but they in turn must respect our decision not to join the ICC or place our citizens under the jurisdiction of the Court” The US Administration has taken the position that the Americans, including military personnel serving as peacekeepers could become pawns in the settling of political scores by the countries enemies.<sup>42</sup>

81. As of 1 December 2004, there were reported to be 90 such “bilateral immunity agreements”.

82. The United States Congress on 10 December 2004, approved the amendment to the 2005 Budget, proposed by Republican Congressman George Nethercutt. This amendment provides refusal of economic funds to those countries that refuse to guarantee immunity from the International Criminal Court to American citizens suspected of having

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<sup>41</sup> Sean D. Murphy (ed.), “Contemporary Practice of the United States Relating to International Law”, (section on International Criminal Law), *American Journal of International Law*, vol. 96 (2002), pp. 724-29 at p. 724.

<sup>42</sup> Statement by Mr. Marc Grossman, US Under Secretary of State for Political Affairs, American Foreign Policy and International Criminal Court, remarks to the Centre for Strategic and International Studies (6 May 2002); in Murphy, *ibid.* For an exposition of the US position see Jennifer Elsea, *US Policy Regarding the International Criminal Court* (Updated September 3, 2002), Report for the Congress, Congressional Research Service, The Library of US Congress. See for a critique of the US Policy C. Jayaraj, “The International Criminal Court and the United States: Recent Legal and Policy Issues”, *Indian Journal of International Law*, vol. 42 (2002), pp. 489-511.

committed crimes against humanity. Thus, the present action confirms the Bush Administration line of imposing economic sanctions on those countries that, as parties to the Rome Statute, are willing to reaffirm the supremacy of international justice, in the face of the most serious violations of human rights.<sup>43</sup>

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<sup>43</sup> Excerpted from the press release of the Coalition of International Criminal Court “No Peace Without Justice”, dated 10 December 2004 available at URL:  
[http://www.iccnw.org/documents/otherissues/impunityart98/2004/NPWJNethercutt\\_10DEC04.pdf](http://www.iccnw.org/documents/otherissues/impunityart98/2004/NPWJNethercutt_10DEC04.pdf)



## IX. GENERAL COMMENTS

83. More than two years have passed since the entry into force of the Rome Statute took place in a record time, yet the number of 97 State Parties to the Rome Statute of the International Criminal Court reflects that it is far from the desired goal of universal participation. Emphasizing the importance of universal participation the UN Secretary-General in his Report on the work of the Organization, submitted for the consideration of the Fifty-ninth Session of the General Assembly has observed:

Universal participation in the Rome Statute would be an indelible contribution to the cause of justice in a world where many still commit, without punishment, egregious crimes that numb the human conscience. It should remain the ultimate goal.

84. In this context, it may be recalled that presently 191 countries are members of the United Nations Organization. There were several reasons behind non-participation by the States, prominent among them being<sup>44</sup>:

- a. role of the Security Council, the principal organ of the UN entrusted with the responsibility of maintenance of international peace and security, in determining that aggression has been committed;
- b. subordination of the Court to the Security Council renders it ineffective;
- c. grant of *proprio motu* powers to the Prosecutor;
- d. non-acceptance of universal jurisdiction over core crimes;
- e. exclusion of weapons of mass destruction-nuclear, chemical and biological weapons, drug-trafficking and terrorism from the Rome Statute;
- f. disagreement on the definition of the crime of aggression;
- g. clearer definition of the principle of complementarity lacking;

85. It may be noted that certain important countries of the world, namely Arab Republic of Egypt, India, Indonesia, Islamic Republic of Iran, Japan, People's Republic of China, Malaysia, Russian Federation, Saudi Arabia and the United States of America are still not parties to the Rome Statute.

86. An unresolved issue so far is the definition of the crime of aggression. This is one of the most important unresolved issues for developing countries. Though the Rome Statute is supposed to have jurisdiction over the crime of aggression, it has not been defined yet. Work on elaborating an acceptable definition of the Crime of Aggression is in progress in the Special Working Group on the subject constituted by the Assembly of States Parties. The informal meeting of this group and later deliberations at ASP-III are important developments and further work of this requires a careful follow-up.

87. The non-renewal of UN Peacekeepers Immunity Agreement despite strong pressure of the United States represents a significant contribution to the efforts of the UN to promote justice and the rule of law in international affairs.

88. The on-going investigation by the Prosecutor in the Democratic Republic of Congo and Uganda and later trial by the Court would bring the performance of ICC under

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<sup>44</sup> For details see "UN Diplomatic Conference Concludes in Rome with Decision to Establish Permanent International Criminal Court: Statute of Court Adopted by Non-Recorded Vote of 120 in Favour, 7 Against, 21 Abstentions", *UN Press Release L/ROM/22* dated 17 July 1998.

intense scrutiny of international community. It is hoped that the ICC would make every effort to conduct the most fair, impartial, effective and efficient trials possible so that the Court gains legitimacy and credibility.

89. The entry into force of the Agreement on the Privileges and Immunities of the International Criminal Court and the Relationship Agreement between the International Criminal Court and the United Nations are noteworthy developments.

## **X. Annex**

**Table I**

**Status of the ratification of Rome Statute of the International Criminal Court by  
AALCO Member States\***

<b>S. No</b>	<b>Member State</b>	<b>Status</b>	
		<b>Signature</b>	<b>Ratification Acceptance (A) Approval (AA) Accession (a)</b>
1.	Arab Republic of Egypt	26 December 2000	—
2.	Bahrain	11 December 2000	—
3.	Bangladesh	16 September 1999	—
4.	Botswana	8 September 2000	8 September 2000
5.	Brunei Darussalam	—	—
6.	Cyprus	15 October 1998	7 March 2002
7.	Democratic Peoples' Republic of Korea	—	—
8.	Federal Republic of Nigeria	1 June 2000	27 September 2001
9.	Gambia	4 December 1998	28 June 2002
10.	Ghana	18 July 1998	15 May 2002
11.	Hashemite Kingdom of Jordan	7 October 1998	11 April 2002
12.	India	—	—
13.	Indonesia	—	—
14.	Islamic Republic of Iran	31 December 2000	—
15.	Japan	—	—
16.	Kenya	11 August 1999	—
17.	Lebanon	—	—
18.	Libyan Arab Jamahriya	—	—
19.	Malaysia	—	—
20.	Mauritius	11 November 1998	5 March 2002
21.	Mongolian Peoples' Republic	29 December 2000	11 April 2002
22.	Myanmar	—	—
23.	Nepal	—	—
24.	Pakistan	—	—

\* The information stated in the above table is compiled from the following website: <http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterXVIII/treaty10.asp> visited 17 December 2004. Also see States Parties at the website of the International Criminal Court: <http://www.icc-cpi.int>.

25.	Palestine	—	—
26.	Peoples' Republic of China	—	—
27.	Philippines	28 December 2000	—
28.	Republic of Iraq		
29.	Republic of Korea	8 March 2000	13 November 2002
30.	Republic of Singapore	—	—
31.	Republic of Uganda	17 March 1999	14 June 2002
32.	Republic of Yemen	28 December 2000	—
33.	Saudi Arabia		—
34.	Senegal	18 July 1998	2 February 1999
35.	Sierra Leone	17 October 1998	15 September 2000
36.	Somalia	—	—
37.	Sri Lanka	—	—
38.	State of Kuwait	8 September 2000	—
39.	State of Qatar	—	—
40.	Sudan	8 September 2000	—
41.	Sultanate of Oman	—	—
42.	Syrian Arab Republic	29 November 2000	—
43.	Thailand	2 October 2000	—
44.	Turkey	—	—
45.	United Arab Emirates	27 November 2000	—
46.	United Republic of Tanzania	29 December 2000	20 August 2002
47.	South Africa	17 July 1998	27 November 2000

**Inferences from the above table:** Following inferences as regards the participation of the AALCO Member States in the International Criminal Court may be drawn:

- ❖ Twenty-six AALCO Member States are Signatories to the Rome Statute.
- ❖ Fourteen Member States have ratified the Statute. Thus, less than one-third AALCO Member States have ratified the Rome Statute.
- ❖ Out of these fourteen Member States, ten Member States, namely Botswana, Federal Republic of Nigeria, Gambia, Ghana, Mauritius, Republic of Uganda, Senegal, Sierra Leone, South Africa and United Republic of Tanzania are from Africa. The four Member States from Asia are: Cyprus, Hashemite Kingdom of Jordan, Mongolian People's Republic and Republic of Yemen.
- ❖ Arab Republic of Egypt had made upon signature a Declaration.
- ❖ Blank column indicates that the concerned Member State has not taken the requisite treaty action (i.e. signature or ratification).

**Table II**

## Status of the ratification of the Rome Statute of the International Criminal Court\*

S. No.	Member State	Status	
		Signature	Ratification Acceptance (A) Approval (AA) Accession (a)
1	Afghanistan		10 Feb 2003 a
2	Albania	18 July 1998	31 Jan 2003
3	Algeria	28 Dec 2000	
4	Andorra	18 July 1998	30 Apr 2001
5	Angola	7 Oct 1998	
6	Antigua and Barbuda	23 Oct 1998	18 June 2001
7	Argentina	8 Jan 1999	8 Feb 2001
8	Armenia	1 Oct 1999	
9	Australia	9 Dec 1998	1 July 2002
10	Austria	7 Oct 1998	28 Dec 2000
11	Bahamas	29 Dec 2000	
12	Bahrain	11 Dec 2000	
13	Bangladesh	16 Sep 1999	
14	Barbados	8 sep 1999	10 Dec 2002
15	Belgium	10 Sep 1998	28 June 2000
16	Belize	5Apr 2000	5 Apr 2000
17	Benin	24 Sep 1999	22 Jan 2002
18	Bolivia	17 Jul 1998	27 Jun 2002
19	Bosnia and Herzegovina	17 Jul 2000	11 Apr 2002
20	Botswana	8 Sep 2000	8 Sep 2000
21	Brazil	7 Feb 2000	20 Jun 2002
22	Bulgaria	11 Feb 1999	11 Apr 2002
23	Burkina Faso	30 Nov 1998	
24	Burundi	13 Jan1999	21 September 2004
25	Cambodia	23 Oct 2000	11 Apr2002
26	Cameroon	17 Jul1998	
27	Canada	18 Dec 1998	7 Jul 2000
28	Cape Verde	28 Dec 2000	
29	Central African Republic	7 Dec 1999	3 Oct 2001
30	Chad	20 Oct 1999	
31	Chile	11 Sep 1998	
32	Colombia	10 Dec 1998	5 Aug 2002
33	Comoros	22 Sep 2000	
34	Congo	17 Jul 1998	3 May 2004

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\* Article 126 in para 13 of the Statute deals with Entry into force. It states that the Statute shall enter into force on the first day of the month after the 60<sup>th</sup> day following the deposit of the 60<sup>th</sup> instrument of ratifications, acceptance, approval or accession with the Secretary General of the United Nations. The Statute entered into force on 1 July 2002. As at 17 December 2004, the number of States Parties to the Rome Statute is 97.

35	Costa Rica	7 Oct 1998	7 Jun 2001
36	Cote d' Ivoire	30 Nov 1998	
37	Croatia	12 Oct1998	21 May 2001
38	Cyprus	15 Oct 1998	7 Mar 2002
39	Czech Republic	13 Apr 1999	
40	Democratic Republic of the Congo	8 Sep 2000	11 Apr 2002
41	Denmark	25 Sep 1998	21 Jun 2001
42	Djibouti	7 Oct 1998	5 Nov 2002
43	Dominica		12 Feb 2001 a
44	Dominican Republic	8 Sep 2000	
45	Ecuador	7 Oct 1998	5 Feb 2002
46	Egypt	26 Dec 2000	
47	Eritrea	7 Oct 1998	
48	Estonia	27 Dec 1999	30 Jan 2002
49	Fiji	29 Nov 1999	29 Nov 1999
50	Finland	7 Oct 1998	29 Dec 2000
51	France	18 Jul 1998	9 Jun 2000
52	Gabon	22 Dec 1998	20 Sep 2000
53	Gambia	4 Dec 1998	28 Jun 2002
54	Georgia	18 Jul 1998	5 Sep 2003
56	Germany	10 Dec 1998	11 Dec 2000
57	Ghana	18 Jul 1998	20 Dec 1999
58	Greece	18 Jul1998	15 May 2002
59	Guinea	7 Sep 2000	14 July 2003
60	Guinea-Bissau	12 Sep 2000	
61	Guyana	28 Dec 2000	24 September 2004
62	Haiti	26 Feb 1999	
63	Honduras	7 Oct 1998	1 Jul 2002
64	Hungary	15 Jan 1999	30 Nov 2001
65	Iceland	26 Aug 1998	25 May 2000
66	Iran (Islamic Republic of)	31 Dec 2000	
67	Ireland	7 Oct 1998	11 Apr 2002
68	Israel	31 Dec 2000	
69	Italy	18 Jul 1998	26 Jul1999
70	Jamaica	8 Sep 2000	
71	Jordan	7 Oct 1998	11 Apr 2002
72	Kenya	11 Aug 1999	
73	Kuwait	8 Sep 2000	
74	Kyrgyzstan	8 Dec 1998	
75	Latvia	22 Apr 1999	28 Jun 2002
76	Lesotho	30 Nov 1998	6 Sep 2000
77	Liberia	17 Jul 1998	22 September 2004
78	Liechtenstein	18 Jul1998	2 Oct 2001
79	Lithuania	10 Dec 1998	12 May 2003
80	Luxembourg	13 Oct 1998	8 Sep 2000
81	Madagascar	18 Jul 1998	
82	Malawi	2 Mar 1999	19 Sep 2002

83	Mali	17 Jul 1998	16 Aug 2000
84	Malta	17 Jul 1998	29 Nov 2002
85	Marshall Islands	6 Sep 2000	7 Dec 2000
86	Mauritius	11 Nov 1998	5 Mar 2002
87	Mexico	7 Sep 2000	
88	Monaco	18 Jul 1998	
89	Mongolia	29 Dec 2000	11 Apr 2002
90	Morocco	8 Sep 2000	
91	Mozambique	28 Dec 2000	
92	Namibia	27 Oct 1998	25 Jun 2002
93	Nauru	13 Dec 2000	12 Nov 2001
94	Netherlands	18 Jul 1998	17 Jul 2001 A
95	New Zealand	7 Oct 1998	7 Sep 2000
96	Niger	17 July 1998	11 Apr 2002
97	Nigeria	1 Jun 2000	27 Sep 2001
98	Norway	28 Aug 1998	16 Feb 2000
99	Oman	20 Dec 2000	
100	Panama	18 Jul 1998	21 Mar 2002
101	Paraguay	7 Oct 1998	14 May 2001
102	Peru	7 Dec 2000	10 Nov 2001
103	Philippines	28 Dec 2000	
104	Poland	9 Apr 1999	12 Nov 2001
105	Portugal	7 Oct 1998	5 Feb 2002
106	Republic of Korea	8 Mar 2000	13 Nov 2002
107	Republic of Moldova	8 Sep 2000	
108	Romania	7 Jul 1999	11 Apr 2002
109	Russian Federation	13 Sep 2000	
110	Saint Lucia	27 Aug 1999	
111	Saint Vincent and the Grenadines		3 Dec 2002 a
112	Samoa	17 Jul 1998	16 Sep 2002
113	San Marino	18 Jul 1998	13 May 1999
114	Sao Tome and Principe	28 Dec 2000	
115	Senegal	18 Jul 1998	2 Feb1999
116	Serbia and Montenegro	19 Dec 2000	6 Sep 2001
117	Seychelles	28 Dec 2000	
118	Sierra Leone	17 Oct 1998	15 Sep 2000
119	Slovakia	23 Dec 1998	11 Apr 2002
120	Slovenia	7 Oct 1998	31 Dec 2001
121	Solomon Islands	3 Dec 1998	
122	South Africa	17 Jul 1998	27 Nov 2002
123	Spain	18 Jul 1998	24 Oct 2000
124	Sudan	8 Sep 2000	
125	Sweden	7 Oct 1998	28 Jun 2001
126	Switzerland	18 Jul 1998	12 Oct 2001
127	Syrian Arab Republic	29 Nov 2000	
128	Tajikistan	30 Nov 1998	5 May 2000
129	Thailand	2 Oct 2000	

130	The Former Yugoslav Republic of Macedonia	7 Oct 1998	6 Mar 2002
131	Timor-Leste		6 Sep 2002 a
132	Trinidad and Tobago	23 Mar 1999	6 Apr 1999
133	Uganda	17 Mar 1999	14 Jun 2002
134	Ukraine	20 Jan 2000	
135	United Arab Emirates	27 Nov 2000	
136	United Kingdom of Great Britain and Northern Ireland	30 Nov 1998	4 Oct 2001
137	United Republic of Tanzania	29 Dec 2000	20 Aug 2002
138	United States of America	31 Dec 2000	
139	Uruguay	19 Dec 2000	28 Jun 2002
140	Uzbekistan	29 Dec 2000	
141	Venezuela	14 Oct 1998	7 Jun 2000
142	Yemen	28 Dec 2000	
143	Zambia	17 Jul 1998	13 Nov 2002
144	Zimbabwe	17 Jul 1998	



**Table III**  
Status of the signature/ratification of the Agreement on Privileges and Immunities of the  
International Criminal Court\*

S. No	Member State	Status	
		Signature	Ratification
1.	Andorra	21 June 2004	—
2.	Argentina	7 October 2002	—
3.	Austria	10 September 2002	17 December 2003
4.	Bahamas	30 June 2004	—
5.	Belgium	11 September 2002	—
6.	Belize	26 September 2003	—
7.	Benin	10 September 2002	—
8.	Bolivia	23 March 2004	—
9.	Brazil	17 May 2004	—
10.	Bulgaria	2 May 2003	—
11.	Burkina Faso	7 May 2004	—
12.	Canada	30 April 2004	22 June 2004
13.	Colombia	18 December 2003	—
14.	Costa Rica	16 September 2002	—
15.	Croatia	23 September 2003	—
16.	Cyprus	10 June 2003	—
17.	Denmark	13 September 2002	—
18.	Ecuador	26 September 2002	—
19.	Estonia	27 June 2003	13 September 2004
20.	Finland	10 September 2002	8 December 2004
21.	France	10 September 2002	17 February 2004
22.	Germany	14 July 2003	2 September 2004
23.	Ghana	12 September 2003	—
24.	Greece	25 September 2003	—
25.	Guinea	1 April 2004	—
26.	Hungary	10 September 2002	—
27.	Iceland	10 September 2002	1 December 2003
28.	Ireland	9 September 2003	—
29.	Italy	10 September 2002	—
30.	Jamaica	30 June 2004	—
31.	Jordan	28 June 2004	—
32.	Latvia	29 June 2004	—

\* The information stated in the above table is compiled from the following website:  
<http://untreaty.un.org/ENGLISH/bible/englishinternetbible/partI/chapterXVIII/treaty17.asp> visited on 17 December 2004. The Agreement entered into force on 22 July 2004. Article 35 (1) of the Agreement provides for its entry into force and reads as follows: “1. The present Agreement shall enter into force thirty days after the date of deposit with the Secretary-General of the tenth instrument of ratification, acceptance, approval or accession. 2. For each State ratifying, accepting, approving or acceding to the present Agreement after the deposit of the tenth instrument of ratification, acceptance, approval or accession, the Agreement shall enter into force on the thirtieth day following the deposit with the Secretary-General of its instrument of ratification, acceptance, approval or accession”.

33.	Liechtenstein	—	21 September 2004
34.	Lithuania	25 May 2004	—
35.	Luxembourg	10 September 2002	—
36.	Madagascar	12 September 2002	—
37.	Mali	20 September 2002	8 July 2004
38.	Mongolia	4 February 2003	—
39.	Namibia	10 September 2002	29 January 2004
40.	Netherlands	11 September 2003	—
41.	New Zealand	22 October 2002	14 April 2004
42.	Norway	10 September 2002	10 September 2002
43.	Panama	14 April 2003	16 August 2004
44.	Paraguay	11 February 2004	—
45.	Peru	10 September 2002	—
46.	Poland	30 June 2004	—
47.	Portugal	10 December 2003	—
48.	Republic of Korea	28 June 2004	—
49.	Romania	30 June 2004	—
50.	Senegal	19 September 2002	—
51.	Serbia and Montenegro	18 July 2003	7 May 2004
52.	Sierra Leone	26 September 2003	—
53.	Slovakia	19 December 2003	26 May 2004
54.	Slovenia	25 September 2003	23 September 2004
55.	Spain	21 April 2003	—
56.	Sweden	19 February 2004	—
57.	Switzerland	10 September 2002	—
58.	Trinidad and Tobago	10 September 2002	6 February 2003
59.	Uganda	7 April 2004	—
60.	United Kingdom of Great Britain and Northern Ireland	10 September 2002	—
61.	United Republic of Tanzania	27 January 2004	—
62.	Uruguay	30 June 2004	—
63.	Venezuela	16 July 2003	—

Inference: There were 63 signatories and 17 Parties to the Agreement on Privileges and Immunities of the International Criminal Court as of 17 December 2004.