



Informational Release

**Parliamentary Assembly of the Council of Europe adopts innovative pro-ICC Resolution**

*Strasbourg, 28 January 2008:* The Parliamentary Assembly of the Council of Europe (PACE) adopted yesterday an innovative resolution through which it engaged all 47 Member States of the Council of Europe to fully cooperate with the International Criminal Court (ICC) and it called for the ratification of the Rome Statute by its 8 Member States that are still outside the “ICC system” (Russia, Turkey, Ukraine, the Czech Republic, Armenia, Azerbaijan, Moldova and Monaco) and by its 2 observer States, the United States and Israel.

The Chairperson of the Legal and Human Rights Committee of PACE, **Dr. Herta Daubler-Gmelin, MP (Germany)**, former Justice Minister and longstanding member of Parliamentarians for Global Action - PGA -) introduced the Resolution, which she had tabled since 2006 along with a Report that comprehensively addresses the status of the “Rome Statute system”. Dr. Daubler-Gmelin welcomed the progress on the ICC dossier made in several Council of Europe countries, particularly in Turkey and the Czech Republic, recalling however in Prague Parliament approved the Rome Statute in October 2008 with the required constitutional majority, but the President of the Republic has not yet signed the ICC ratification into law, thus impeding the completion of the ratification process.

The debate was opened by an enlightening Statement of **ICC President Judge Philippe Kirsch**, who underscored the role played by the Parliamentary Assembly in promoting the establishment of the ICC, which now requires increased support in terms of cooperation from States and International Organisations and to reach the universality of its membership.

**Dr. Pieter Omtzigt, MP (The Netherlands)**, PGA Member) tabled two amendments designed to introduce new operational paragraphs 7 and 8 of the “*Resolution on Cooperation with the International Criminal Court (ICC) and its Universality*”, which - for the first time in a parliamentary Resolution of this nature - call for the UN Security Council to fulfil its responsibilities in cooperating fully with the Court (including in the enforcement of arrest warrants to be carried out by UN peacekeepers and/or other authorised military contingents) and to provide funding to the ICC investigations and prosecutions that are based on a mandate by the Council (e.g. Darfur), as prescribed in the Rome Statute. Through the text proposed by the Dutch Lawmaker, the Parliamentary Assembly “urges the Secretary General of the Council of Europe to take up a mediation role with the two permanent members of the Security Council of the United Nations, the United States and Russia, to foster co-operation with the International Criminal Court”. According to Dr. Omtzigt, the new Administration of President Obama should profoundly review the US policies towards the ICC and initiate a new phase of active cooperation with the Court, which should pass through the repeal of the 2002 American Servicemembers Protection Act (ASPA), also known as “The Hague Invasion Act”.

Another significant novelty of the Resolution regards the inclusion of a clear provision on **victims' rights** to be respected by States Parties, at a minimum, in the same way as they are respected by the ICC under the binding provisions of the Rome Statute on victims' protection, participation in the proceedings and reparations. This clause, relating to a vital area of implementing legislation of the Rome Statute, had been adopted at several sessions of the PGA's *Consultative Assembly of Parliamentarians for the ICC and the Rule of Law* (e.g. in Tokyo, December 2006, and in Santo Domingo, October 2008), but it enters for the first time in a regional organisation's Parliamentary Resolution that can be used as a tool to promote law reform in National Parliaments of Europe and other regions of the world.

The voting record of the Resolution shows that leading MPs from States Non Parties, such as **the Russian Federation and Turkey**, casted their positive vote in favour of its adoption, thus signalling once again the sensitivity and support of Lawmakers towards the new system of international criminal justice based on the Rome Statute.

MPs from all political groups and various countries united their voice in support of the universality and effectiveness of the Rome Statute, at times with specific commitments to achieve tangible legislative results, as **Mrs. Milica Markovic, MP (Bosnia and Herzegovina)** did with respect to the prompt ratification of the Agreement of Privileges and Immunities of the Court (APIC) by her country's Government and Parliament.

Parliamentarians for Global Action (PGA), along with other members of the Coalition for the ICC (CICC), will continue to be engaged in the **follow-up** to the Resolution, which should trigger a more effective monitoring action by all organs of the Council of Europe vis-a-vis the ratification and implementation of the Rome Statute by its Member States as well as the level of cooperation that these States will be giving to the Court.

*For further information, please contact:*

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### **(A) ENCLOSURES AND USEFUL LINKS:**

- 1) Text of Resolution 1644, PACE, 26 Jan. 2008 (also reproduced below)  
<http://assembly.coe.int/Main.asp?link=/Documents/AdoptedText/ta09/ERES1644.htm>
- 2) Voting record on the Resolution on the ICC and on the amendments of Dr. Omtzigt, MP, regarding the role of the UN Security Council permanent members Russia and the US  
[http://assembly.coe.int/ASP/Votes/DBVotesResults\\_EN.asp?VoteID=1158&DocID=12544&SessionID=320](http://assembly.coe.int/ASP/Votes/DBVotesResults_EN.asp?VoteID=1158&DocID=12544&SessionID=320)
- 3) Verbatim summary of the debate on the ICC, PACE, 26 January 2009  
<http://assembly.coe.int/Main.asp?link=/Documents/Records/2009/E/0901271500E.htm>
- 4) Report of on Cooperation with the ICC and its Universality: Rapporteur, Dr. Herta Daubler-Gmelin (N.B. it includes responses to a questionnaire on ratification from Armenia, Azerbaijan, Czech Republic, Monaco and Ukraine, as well as Japan and the US)  
<http://assembly.coe.int/Mainf.asp?link=/Documents/WorkingDocs/Doc08/EDOC11722.htm>
- 5) Selected media coverage:  
[http://www.elconfidencial.com/cache/2009/01/27/51\\_asamblea\\_mediacion\\_entre\\_rusia\\_ratificar\\_estatuto.html](http://www.elconfidencial.com/cache/2009/01/27/51_asamblea_mediacion_entre_rusia_ratificar_estatuto.html)

### **(B) BACKGROUND:**

- **UN Security Council resolution 1593 (2005)** refers the situation in Darfur to the jurisdiction of the ICC, but it fails to provide the financial contributions from the UN to the ICC, as prescribed by the Rome Statute, and it does not spell out in detail the modalities of cooperation of UN-authorized or –mandated forces with the ICC.
- The **American Servicemembers Protection Act (2002)** prohibits the United States Government to utilise tax-payers money in bilateral or multilateral activities (e.g. via the UN) aimed at cooperating with, and providing support to, the ICC. This legislation, under certain circumstances, appears to allow the use of all available means, including the use of force, to free individuals of a certain nationality if they would be detained in The Hague on basis of an order of the ICC (hence, the nickname given to this legislation “The Hague Invasion Act”).

### **(C) TEXT OF THE RESOLUTION (**Provisional edition**)**

**“Co-operation with the International Criminal Court (ICC) and its universality”**  
Resolution 1644 (2009)<sup>1</sup>

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1. Recalling its [Resolutions 1300](#) (2002) and 1336 (2003), the Parliamentary Assembly reiterates its firm commitment to the International Criminal Court (ICC). The ICC is the first ever permanent independent judicial institution with jurisdiction over individuals accused of genocide, crimes against

humanity and war crimes. The ICC is based on complementarity, seeking to empower national states to investigate and prosecute such crimes, assuming jurisdiction only as a last resort.

2. Recalling [Recommendation 1408](#) (1999), the Assembly reiterates its belief that the universal ratification of the Rome Statute and its effective implementation into domestic systems, as well as close co-operation by states and non-States Parties in providing practical and judicial assistance to the ICC, are of key importance for the fight against impunity.

3. The Assembly welcomes the fact that since its adoption in 1998, the Rome Statute of the ICC has been ratified by 108 states across the world. Regrettably, eight Council of Europe member states (Armenia, Azerbaijan, the Czech Republic, Moldova, Monaco, Russia, Turkey and Ukraine), one Council of Europe observer state (the United States) and one state with observer status with the Parliamentary Assembly (Israel) have not yet ratified the Rome Statute.

4. The Assembly also recalls the importance of the Agreement on the Privileges and Immunities of the International Criminal Court, which is indispensable for the ICC's independent operation. Regrettably, to date, fourteen Council of Europe member states have not ratified the Agreement, including seven countries which are States Parties to the Rome Statute (Bosnia and Herzegovina, Georgia, Malta, Poland, San Marino, Spain and Switzerland).

5. The Assembly therefore urges those Council of Europe member and observer states and Parliamentary Assembly observer states which have not yet done so to:

5.1. sign and ratify without further delay the Rome Statute and the Agreement on the Privileges and Immunities of the ICC;

5.2. adopt effective national implementing legislation at the earliest opportunity and encourage third states to do so;

5.3. protect the integrity of the Rome Statute as recommended in [Resolutions 1300](#) (2002) and 1336 (2003).

6. In addition, the Assembly recommends that Council of Europe member and observer states and the Parliamentary Assembly observer states:

6.1. fully co-operate with the ICC in the fight against impunity for the most serious crimes of international concern;

6.2. empower their judicial and law enforcement authorities in order to exercise the states' primary jurisdiction over crimes within the purview of the ICC;

6.3. make meaningful financial contributions to the ICC's Trust Fund for Victims;

6.4. incorporate in their legal orders relevant standards on victims' rights, without prejudice to existing higher standards in some Council of Europe member and observer states and Parliamentary Assembly observer states.

7. Furthermore, the Assembly urges the Secretary General of the Council of Europe to take up a mediation role with the two permanent members of the Security Council of the United Nations, the United States and Russia, to foster co-operation with the International Criminal Court and to take away obstacles in domestic laws for such co-operation, such as the 2002 "American Servicemen Protection Act" and international agreements such as bilateral immunity agreements, to ultimately be able to ratify the Rome statute.

8. The Assembly welcomes the referral of situations, such as the situation in Darfur, by the UN Security Council to the ICC. It calls upon the UN Security Council to fulfil its responsibilities to implement the decisions and orders of the court and to provide financial contributions as contemplated in the Rome Statute.

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<sup>1</sup> *Assembly debate* on 27 January 2009 (4<sup>th</sup> Sitting) (see [Doc. 11722](#), report of the Committee on Legal Affairs and Human Rights, rapporteur: Mrs Däubler-Gmelin). *Text adopted by the Assembly* on 27 January 2009 (4<sup>th</sup> Sitting).

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PARLIAMENTARIANS FOR GLOBAL ACTION (PGA) is a network of approximately 1300 members from more than 125 Parliaments around the globe who, in their individual capacity and using their prerogatives as law-makers, undertake initiatives to support the ICC and the rule of law. As of *January 2009*, the different initiatives and activities of these MPs have contributed directly to 63 of the 108 ratifications/accessions to the Rome Statute of the ICC to date, including the most recent ones of Suriname and the Cook Islands.

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THE PGA ICC CAMPAIGN (2008-09) RECEIVES SUPPORT FROM THE EUROPEAN COMMISSION  
AND THE GOVERNMENTS OF BELGIUM, THE NETHERLANDS AND SWITZERLAND,  
AS WELL AS THE NATIONAL CONGRESS OF THE DOMINICAN REPUBLIC

PGA RECEIVES CORE SUPPORT FROM THE GOVERNMENTS OF SWEDEN AND DENMARK

THE PGA FOUNDATION RECEIVES SUPPORT FROM THE CITY OF THE HAGUE

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