



Parliamentarians for Global Action

FINAL DOCUMENT OF THE CONSULTATIVE ASSEMBLY OF PARLIAMENTARIANS FOR THE INTERNATIONAL CRIMINAL COURT (ICC) & THE RULE OF LAW – III SESSION

Wellington, Parliament of New Zealand
December 6-7, 2004

Wellington Resolution on the International Criminal Court (ICC), Multilateralism and International Cooperation

Whereas:

Justice and the Rule of Law are a necessary precondition for peace, democracy and human rights in each national society and in the international community.

The International Criminal Court (ICC) represents a milestone in the creation of a globalised and integrated system for the enforcement of fundamental human rights and the prevention of international crimes.

The principle of complementarity enshrined in the Rome Statute of the ICC reaffirms the international obligation for States to prevent and repress the most serious crimes under international law, including genocide, crimes against humanity and war crimes.

The ICC system, which consists of the jurisdictions of States Parties and the complementary jurisdiction of the ICC itself, shall be capable of investigating and prosecuting international crimes committed after 1 July 2002 in the territories of or by nationals of the 97 ICC Member States¹.

States Parties to the ICC Statute have a duty to fully cooperate with the Court and implement legislation aimed at empowering their national judicial system to investigate and bring to justice perpetrators of international crimes.

All States – including those that are not yet Parties to the Rome Statute – have a duty to prosecute or extradite suspected perpetrators of international crimes, so that the “no impunity” principle is given full and complete application in each judicial system.

The Prosecutor of the ICC has analyzed more than 1000 communications submitted to him by individuals and organisations, is conducting investigative analysis on 6 situations in 4 continents and has opened two formal investigations on the situations in the Democratic Republic of the Congo and Northern Uganda.

Impunity of perpetrators of international atrocities provides a fertile ground for the commission of new horrendous crimes and leads to the escalation of internal or international armed conflicts.

¹ The jurisdiction of the ICC is extended also to States Non Parties that accepted the jurisdiction of the Court under article 12.3 of the Statute, such as in the case of Cote d'Ivoire for acts committed after 19 February 2002.

The ICC institutional framework makes it possible to explore the possibility of inclusion in its Statute of other crimes, such as serious acts of international terrorism, during the Review Conference of 2009. However, it should be noted that widespread or systematic terrorist attacks against the civilian populations may qualify as crimes against humanity under article 7 of the Rome Statute.

Justice for victims, including compensation, restitution and rehabilitation, as well as effective protection and access to the justice process, must be implemented at the national level taking into account the basic standard of human rights envisioned in the ICC Statute.

The gender justice principles incorporated in the ICC Statute must be utilised not only in the implementation of substantive and procedural norms relating to international crimes, but should inspire the reform of the criminal code and the criminal procedure code, in order to ensure the highest possible level of protections for survivors and other victims of these crimes.

The Rome Statute does not prejudice the obligation to fully implement pre-existing binding treaties, such as the Torture Convention of 1984, and customary international law.

The principle of equality of all before the law is the only acceptable foundation of the ICC, and any bilateral or multilateral effort by States or by the UN Security Council to limit the effectiveness of the Court's jurisdiction undermines the integrity and credibility of the ICC.

Promoting the Rule of Law means to abide to its definition, which encompasses the respect of all human rights, as stated by the PGA Declaration on the Rule of Law of May 2004 and the United Nations Secretary General report to the Security Council on "Transitional Justice and the Rule of Law".

WE, MEMBERS OF THE CONSULTATIVE ASSEMBLY OF PARLIAMENTARIANS FOR THE INTERNATIONAL CRIMINAL COURT (ICC) & THE RULE OF LAW, FOLLOWING THE DELIBERATIONS HELD IN THE PARLIAMENT OF NEW ZEALAND, WELLINGTON, ON 6 AND 7 DECEMBER 2004 UNDER THE AUSPICES OF PARLIAMENTARIANS FOR GLOBAL ACTION (PGA), AGREE AS FOLLOWS:

1. On the Ratification of the Rome Statute of the ICC

- a) As Parliamentarians, we undertake to raise awareness and create wide-ranging understanding in national and regional parliaments and amongst political leaderships on the International Criminal Court (ICC), and to intensify our effort for the global ratification campaign in order to bring about the largest possible representation of all regions of the world into the "ICC system".
- b) As Parliamentarians from countries that are not yet parties to the ICC Statute, we will use our best efforts to elaborate country-specific strategies to overcome legal and political obstacles to the national ratification/accession process and - on such basis - undertake any appropriate legislative or political initiative that could contribute to the ratification or accession.
- c) As Parliamentarians, we undertake to promote ICC ratification within the work of regional organizations, especially those that include parliamentary fora or assemblies, and international inter-parliamentary institutions

2. On the Effective Implementation of the Rome Statute of the ICC, including the Principle of Complementarity

- a) As Parliamentarians from countries that are parties to the ICC Statute, we commit to intensify our efforts to ensure full cooperation with the ICC in our own countries and institutions. To that effect, we shall promote the drafting and enactment as early as possible of comprehensive national implementing legislation and/or any administrative or budgetary measures that would facilitate the effective and independent operations of the Court, including allocating adequate resources for the benefit of victims of crimes under the Rome Statute through budgetary appropriations in the ICC Trust Fund for Victims.

Adequate resources shall also be allocated to financing national efforts to strengthen the rule of law and investigate international crimes, such as the Justice Rapid Response Initiative.

- b) As Parliamentarians from countries that are parties to the ICC Statute, we commit to appeal to our Governments to ratify the *Agreement on Privileges and Immunities of the ICC (APIC)* adopted by the ICC Assembly of States Parties, and to transmit it with urgency to Parliament for consideration and approval, if required under the national legal order. The ratification/accession and implementation of the Agreement is an essential step towards the full effectiveness of the Court's operation.
- c) As Parliamentarians from countries that have implemented the ICC Statute in their domestic legal order, we shall use our best efforts to ensure that the application of the law will not lead to double standards and that the higher standards of protection of human rights, including the rights of victims, will apply. To that effect, *law reform processes* on crucial issues such as the rights of women and children and the domestic criminalisation of international offences shall be launched to reinforce the legitimate prerogatives of the State under *the rule of law*.
- d) In order to strengthen the preventive role of the ICC, Parliamentarians can play an essential role in explaining the implications of the ICC Statute to the general public, thus warning potential perpetrators of international crimes.

3. On the Integrity, Effectiveness and Independence of the International Criminal Court

WE, MEMBERS OF THE *CONSULTATIVE ASSEMBLY OF PARLIAMENTARIANS FOR THE ICC & THE RULE OF LAW* FURTHER AGREE THAT:

- a) As Parliamentarians, we shall use our best efforts to ensure that States respect, and protect the integrity of, the Rome Statute in the course of their bilateral and multilateral relations with Non States Parties.
- b) As Parliamentarians, we commit to foster dialogue with legislators and officials from other countries that have not yet joined the ICC system. Political dialogue shall also be pursued through existing avenues of parliamentary diplomacy, seeking appropriate partnerships and collaboration with civil society, the legal professions and the academia.
- c) Concerning the matter of **bilateral non-surrender agreements**:

I) In case of *countries that have not signed a bilateral non-surrender agreement*, we as Parliamentarians shall support the consolidation of the national position safeguarding the ICC Statute's integrity and the sovereign right of the State to exercise its criminal jurisdiction, either utilising its national Courts or the ICC, to bring to justice any perpetrator of crimes under international law, regardless of nationality or official status.

II) In case a *bilateral non-surrender agreement has been signed by the Executive*, we as Parliamentarians shall request that the legislature is given the opportunity to consider the agreement for ratification, without which the agreement² will not enter into force. Parliamentarians shall request to amend the agreement in compliance with the "no impunity principle" and other provisions of the Rome Statute or to oppose its ratification.

III) In case a *State suspends assistance programmes to States that refuse to sign or ratify a bilateral non-surrender agreement*, we as Parliamentarians undertake to promote mechanisms or strategies to recognize these law-abiding nations, and to promote the activation of "extended cooperation" within existing frameworks of multilateral cooperation.

² A bilateral non-surrender agreement, in its present form, is a treaty that modifies previous laws, including the law on territorial jurisdiction for penal matters and the ICC ratification bill.

- IV) In case *a bilateral non-surrender agreement has been signed and ratified*, we as Parliamentarians shall endeavour to enter into a constructive dialogue with all parties concerned and, if possible, facilitate a review of the agreement in compliance with the principle of “no-impunity”.
- d) As Parliamentarians, we shall avail ourselves of the opportunity to be informed about the agenda of the Assembly of States Parties.
 - e) As Parliamentarians, we shall actively communicate with citizens of our own countries in order to stimulate our awareness of international law in general, and the ICC in particular, as well as threats and negative measures imposed against States that refuse to compromise the integrity of the ICC Statute.

4. On the Convening of the Consultative Assembly of Parliamentarians for the ICC & the Rule of Law

- a) As Parliamentarians, we welcome the initiative of PGA to convene the *Consultative Assembly of Parliamentarians for the ICC & the Rule of Law* to facilitate discussion and action of parliamentarians from all regions of the world to promote and support a universal, independent, fair and effective functioning of the ICC.
- b) Parliamentarians for Global Action shall continue to update and make available on its website the “Parliamentary KIT on the ICC” for use by PGA members and other concerned MPs in their initiatives in support of the ICC in their respective countries. The kit is an education tool for Parliamentarians and citizens-at-large to foster acceptance and understanding of the ICC and promote its growth.
- c) As Members of PGA, we take note of the feasibility analysis paper entitled “*Developing the Consultative Assembly of Parliamentarians for the ICC & the Rule of Law*” and we welcome the decision of the PGA Executive Committee to hold the plenary session of the Consultative Assembly on a biannual basis.
- d) A *fourth* plenary session of the *Consultative Assembly of Parliamentarians for the ICC & the Rule of Law* shall take place in the year 2006 at a date and venue to be determined through consultations between PGA and interested Parliament(s). It is suggested that the venue is the Parliament of a country that is not yet a State Party to the Rome Statute at this date, so that the holding of such a session could generate and multiply political support for ratification and implementation by the Host country of the new Assembly.
- e) Three working groups of the Consultative Assembly are established to give continuity to the work of the Assembly towards its fourth session. The working group shall focus on 1) universality and integrity of the Rome Statute, with special focus on the ratification/accession in under-represented regions in the ICC system, namely, Asia, the Commonwealth of Independent States (CIS) and the Middle East and North Africa 2) implementing legislation and the principle of complementarity, also in States that are not yet parties to the Statute; 3) financing the “ICC system” and providing means and resources to promote the rule of law, protect the civilian population and victims’ rights, as well as combat impunity.

Done in Wellington on 7 December 2004.

Acknowledgement

The “Consultative Assembly of Parliamentarians for the ICC & the Rule of Law” has been made possible by the individual and collective mobilisation of Members of Parliaments who convened in Wellington, upon invitation of the Parliament of New Zealand, under the auspices of Parliamentarians for Global Action and with the indispensable support of the European Commission (EU), the Government of New Zealand, the Government of the Netherlands and the Government of Switzerland.