



EUROPEAN PARLIAMENT

2009 - 2014

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*Plenary sitting*

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**A7-0368/2011**

20.10.2011

# REPORT

on EU support for the ICC: facing challenges and overcoming difficulties  
(2011/2109(INI))

Committee on Foreign Affairs

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PE467.296v03-00

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*United in diversity*

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## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### on EU support for the ICC: facing challenges and overcoming difficulties (2011/2109(INI))

*The European Parliament,*

- having regard to the Rome Statute of the International Criminal Court (ICC), which entered into force on 1 July 2002,
- having regard to the Convention on the Prevention and Punishment of the Crime of Genocide, which entered into force on 12 January 1951,
- having regard to its previous resolutions on the International Criminal Court, in particular those of 19 November 1998<sup>1</sup>, 18 January 2001<sup>2</sup>, 28 February 2002<sup>3</sup>, 26 September 2002<sup>4</sup> and 19 May 2010<sup>5</sup>,
- having regard to its previous resolutions on Annual Reports on Human Rights in the World, the most recent being that of 16 December 2010<sup>6</sup>,
- having regard to Council Common Position 2003/444/CFSP of 16 June 2003 on the International Criminal Court<sup>7</sup>,
- having regard to Council Decision 2011/168/CFSP of 21 March 2011 on the International Criminal Court<sup>8</sup>,
- having regard to the Action Plan of 4 February 2004 and to the Action Plan to follow up on the Decision on the International Criminal Court of 12 July 2011,
- having regard to the Agreement between the International Criminal Court and the European Union on cooperation and assistance<sup>9</sup>,
- having regard to the European Security Strategy (ESS) of 2003 entitled ‘A Secure Europe in a Better World’, which was adopted by the European Council on 12 December 2003,
- having regard to the Stockholm Programme 2010-2014 entitled ‘An Open and Secure Europe Serving and Protecting Citizens’ (December 2009)<sup>10</sup> and the Action Plan

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<sup>1</sup> OJ C 379, 7.12.1998, p. 265.

<sup>2</sup> OJ C 262, 18.9.2001, p. 262.

<sup>3</sup> OJ C 293 E, 28.11.2002, p. 88.

<sup>4</sup> OJ C 273 E, 14.11.2003, p. 291.

<sup>5</sup> OJ C 161 E, 31.5.2011, p. 78.

<sup>6</sup> Texts adopted, P7\_TA(2010)0489.

<sup>7</sup> OJ L 150, 18.6.2003, p. 67.

<sup>8</sup> OJ L 76, 22.3.2011, p. 56.

<sup>9</sup> OJ L 115, 28.4.2006, p. 50.

<sup>10</sup> OJ C 115, 4.5.2010, p. 4.

implementing the Stockholm Programme (April 2010, COM (2010)0171 final),

- having regard to Council Decision 2002/494/JHA of 13 June 2002 setting up a European network of contact points in respect of persons responsible for genocide, crimes against humanity and war crimes<sup>1</sup>, and Council Decision 2003/335/JHA of 8 May 2003 on the investigation and prosecution of genocide, crimes against humanity and war crimes<sup>2</sup>,
  - having regard to UN Security Council Resolutions 1593 (2005) on Sudan/Darfur and 1970 (2011) on Libya,
  - having regard to Rule 48 of its Rules of Procedure,
  - having regard to the report of the Committee on Foreign Affairs and the opinions of the Committee on Development and the Committee on Women's Rights and Gender Equality (A7-0368/2011),
- A. whereas justice, the rule of law and the fight against impunity are the pillars of sustainable peace in that they guarantee human rights and fundamental freedoms;
- B. whereas as of September 2011, 117 states have ratified the Rome Statute; whereas achieving its universal ratification should nevertheless remain a primary objective;
- C. whereas the universal nature of justice implies its even application, free of exceptions and double standards; whereas nowhere should be a safe haven for those who have committed genocide, crimes against humanity, extrajudicial executions, war crimes, torture, mass rape or forced disappearances;
- D. whereas justice should be seen as an indispensable element underpinning peace and conflict resolution efforts;
- E. whereas maintaining the independence of the ICC is crucial not only to ensuring that it is fully effective, but also to promoting the universality of the Rome Statute;
- F. whereas the ICC is the first permanent international judicial body capable of trying individuals for genocide, crimes against humanity and war crimes, thus making a decisive contribution to the upholding of human rights and to international law by combating impunity, playing a crucial deterrent role and sending a clear signal that impunity for these crimes will not be tolerated;
- G. whereas pursuing the 'interests of justice' regardless of political considerations (Article 53 of the Rome Statute) is the founding principle of the Court; whereas the ICC plays a key role in promoting international justice and thus contributing to security, justice and the rule of law, as well as to the preservation of peace and the strengthening of international security;

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<sup>1</sup> OJ L 167 of 26.6.2002, p. 1.

<sup>2</sup> OJ L 118 of 14.5.2003, p.12.

- H. whereas the ICC has jurisdiction over crimes committed after the entry into force of the Rome Statute on 1 July 2002;
- I. whereas, in accordance with the Preamble of the Statute, as well as with the principle of complementarity, the ICC only acts in instances where national courts are unable or unwilling to hold credible trials at home, so that States Parties retain the primary responsibility for prosecuting war crimes, crimes against humanity and genocide; whereas cooperation among States Parties to the Rome Statute and with regional organisations is of the utmost importance, particularly in situations where the jurisdiction of the Court is being challenged;
- J. whereas the ICC's policy of 'positive complementarity' supports the capacity of national courts to investigate and prosecute war crimes;
- K. whereas the ICC is currently conducting investigations in seven countries (Uganda, the Democratic Republic of the Congo, the Darfur region of Sudan, the Central African Republic, Kenya, Libya and Côte d'Ivoire) and has publicly announced that it is analysing information regarding alleged crimes committed in several other situations; whereas two cases (Darfur and Libya) have been referred by the United Nations Security Council, three cases (Uganda, the Democratic Republic of the Congo, and the Central African Republic) have been referred to the Court by the States Parties themselves, and two (Kenya and Côte d'Ivoire) have been started *proprio motu* by the Prosecutor;
- L. whereas the majority of the 18 arrest warrants issued by the ICC have not yet been implemented, including those against Joseph Kony and other leaders of the Lord's Resistance Army in respect of the situation in Northern Uganda, Bosco Ntaganda of the Democratic Republic of the Congo, Ahmad Muhammad Harun, Ali Muhammad Ali Abd-Al-Rahman and President Omar Hassan Ahmad Al Bashir of Sudan, and Muammar Mohammed Abu Minyar Gaddafi, Saif al-Islam Gaddafi and Abdullah Al-Senussi of Libya;
- M. whereas fair trial, due process and victims' rights are the fundamental principles of the Rome Statute system;
- N. whereas the Court's aim is to deliver justice for victims and affected communities in a comprehensive and reparative manner, including through participation, protection, legal representation and outreach activities;
- O. whereas the Court offers victims a right of participation supported by structures of witness protection;
- P. whereas the system of reparations for the victims of the crimes within the competences of the Court makes the ICC a unique judicial institution on the international level;

- Q. whereas the success of the reparation proceedings starting in 2011 depends on voluntary contributions by donors, as well as on the collection of fines and forfeitures from the convicted persons;
- R. whereas the Court is currently being called upon to deal with a rapidly increasing number of investigations, cases and preliminary examinations, while some States Parties of the Rome Statute are seeking to hold the Court to the same or even a decreased budget;
- S. whereas the EU and its Member States have been staunch allies of the Court from its inception, offering continued political, diplomatic, financial and logistical support, including the promotion of universality and defending the integrity of the Rome Statute, with a view to protecting and enhancing the independence of the Court;
- T. whereas the fight against impunity can only succeed when all States Parties cooperate fully with the ICC, and when non-parties also provide assistance to the judicial institution;

**The need to enhance support for the Court through political and diplomatic action**

1. Reiterates its full support for the ICC, the Rome Statute and the international criminal justice system, whose primary objective is the fight against impunity for genocide, war crimes and crimes against humanity;
2. Reiterates its full support for the Office of Prosecutor, the Prosecutor's *proprio motu* powers and the progress in initiating new investigations;
3. Urges Parties and non-parties to the Rome Statute to refrain from exercising political pressure on the Court in order to preserve and guarantee its impartiality and to allow for justice based on law, rather than on political considerations, to be dispensed;
4. Underlines the importance of the principle of universality, and calls on the EEAS, the EU Member States and the Commission to continue their vigorous efforts to promote universal ratification of the Rome Statute and the Agreement on Privileges and Immunities of the International Criminal Court (APIC) and national implementing legislation;
5. Welcomes the fact that the EU and most Member States made specific pledges at the Kampala conference, and recommends that the fulfilment of these pledges should take place in a timely manner and be reported back at the next Assembly of States Parties, scheduled to take place on 12-21 December 2011 in New York;
6. Welcomes the adoption of amendments to the Rome Statute, including on the crime of aggression, and calls on all EU Member States to ratify them and incorporate them into their national legislation;

7. Welcomes the review of the EU Common Position on the ICC through the adoption of a Decision on 21 March 2011, notes that the new decision takes into consideration the challenges faced by the Court and stresses that the decision provides a good basis for the EU and its Member States to assist the Court in tackling them;
8. Welcomes the revised EU Action Plan agreed on 12 July 2011 to follow up the Decision on the ICC, which outlines effective, concrete measures to be taken by the EU to deepen its future support for the Court, and encourages the Council Presidency together with the Commission, the EEAS and the Member States to make implementation of the Action Plan a priority;
9. Stresses that full and prompt cooperation between States Parties, including EU Member States, and the Court remains essential to the effectiveness and success of the international criminal justice system;
10. Calls on the EU and its Member States to comply with all requests by the Court to provide assistance and cooperation in a timely manner to ensure, *inter alia*, the execution of pending arrest warrants and the provision of information, including requests aimed at helping to identify, freeze and seize the financial assets of suspects;
11. Urges all the EU Member States that have not yet done so to enact national legislation on cooperation and to conclude framework agreements with the ICC for the enforcement of the Court's sentences and on matters of investigation, collecting evidence, finding, protecting and relocating witnesses, arresting, extraditing, holding in custody and hosting indicted persons when released on bail and imprisoning sentenced persons; calls on the Member States to mutually cooperate through their police, judicial and other relevant mechanisms to ensure adequate support for the ICC;
12. Encourages the EU Member States to amend Article 83 of the Treaty of the Functioning of the European Union to add the crimes under the jurisdiction of the ICC to the list of crimes for which the EU has competences; more specifically, urges the EU Member States to transfer competences to the EU in the area of identification and confiscation of assets of persons indicted by the ICC, notwithstanding the fact that judicial proceedings are initiated by the ICC; calls on the EU Member States to cooperate in exchanging relevant information through the existing Asset Recovery Offices as well as through the Camden Asset Recovery Inter-Agency Network (CARIN);
13. Urges the EU Member States to incorporate fully the provisions of the Rome Statute and the Agreement on Privileges and Immunities of the Court (APIC) into their national legislation;
14. Welcomes the adoption at the Kampala Review Conference of amendments to the Rome Statute relating to the crime of aggression and calls on all the EU Member States to ratify them and integrate them into their national legislation; recommends that, in the interests of strengthening the universality of the Rome Statute, efforts should be made by joint

- agreement to achieve a more precise definition of the relevant offences establishing an act of aggression in breach of international law;
15. Notes that the Court, according to the results of the Kampala Conference, would not be able to exercise its jurisdiction over the crime of aggression until after January 2017, when a decision is to be made by States Parties to activate this jurisdiction;
  16. Welcomes the contribution of some EU Member States to the fight against impunity for the worst crimes known to humanity through the application of universal jurisdiction; encourages all the EU Member States to do the same; recommends that the role of the EU Network of Contact Points for War Crimes, Crimes against Humanity and Genocide in facilitating cooperation between EU law enforcement authorities in the prosecution of serious crimes should continue to be strengthened;
  17. Underlines the fundamental role of international criminal jurisdictions in fighting impunity and addressing the relevant violations of international law concerning the illegal use and recruitment of child soldiers; is firmly opposed to children under the age of 18 years being conscripted or recruited into the armed forces or used in any way in military action; points out the importance of safeguarding their rights to a peaceful childhood, education, physical integrity, safety and sexual autonomy;
  18. Calls for the establishment of effective policies and enhancing mechanisms to ensure that victims' participation at the ICC has substantive impact, including more accessible psychological, medical and legal counselling and easy access to witness protection programmes; highlights the importance of promoting awareness of sexual violence in conflict zones by means of law programmes, the documentation of gender-based crimes in armed conflicts, and the training of lawyers, judges and activists on the Rome Statute and on international jurisprudence in relation to gender-based crimes against women and children;
  19. Urges the European Union and its Member States to ensure that there are training programmes for, but not limited to, police investigators, prosecutors, judges and army officials that focus, first, on the provisions of the Rome Statute and the relevant international law and, second, on the prevention, detection, investigation and prosecution of violations of these principles;
  20. Takes note of the Cooperation and Assistance Agreement between the EU and the ICC; calls on the EU Member States to apply the principle of universal jurisdiction in tackling impunity and crimes against humanity, and highlights its importance for the effectiveness and success of the international criminal justice system;
  21. Strongly encourages the EU and its Member States to use every diplomatic opportunity and diplomatic instrument to press for effective cooperation with the ICC, in particular with regard to the execution of pending arrest warrants;
  22. Strongly encourages the EU and its Member States, with the help of the EEAS, to put in place a set of stringent internal guidelines, modelled on existing UN and ICC guidelines that are followed by the Office of the Prosecutor, outlining a code of conduct for contact



between EU and Member State officials and persons wanted by the ICC, in particular when the latter still occupy official posts, regardless of their status and whether they are nationals of States Parties or non-parties to the Rome Statute;

23. Asks the EU and its Member States, in the event of a partner country issuing an invitation to, or expressing a willingness to allow, visits on its territory by an individual who is the subject of an ICC arrest warrant, to exert strong pressure on that country without delay, with a view to either arresting or supporting an arrest operation or, as a minimum, to preventing the travel of such an individual; notes that recently such invitations have been issued to Sudan's president Omar al-Bashir by Chad, China, Djibouti, Kenya and Malaysia among others;
24. Recognises the recent decision by the ICC Prosecutor to issue arrest warrants for Colonel Gaddafi, his son Saif al-Islam and intelligence chief Abdullah al-Sanoussi, in relation to the alleged crimes against humanity since the beginning of the country's uprising; stresses that their successful capture, and subsequent trial by the ICC, will serve as a crucial contribution to the fight against impunity in the region;
25. Expresses its deep concern that ICC States Parties such as Chad, Djibouti and Kenya have recently welcomed Sudan's President al-Bashir on their territories without arresting him and surrendering him to the Court, despite their clear legal obligation under the Rome Statute to arrest and surrender him;
26. Stresses the importance of strong EU action to anticipate and avoid or condemn such instances of non-cooperation; reiterates the need for the EU (and Member States) to set up an internal protocol with concrete, standard actions enabling them to respond in a timely and consistent way to instances of non-cooperation with the Court, when appropriate in coordination with mechanisms of other relevant institutions, including the Assembly of States Parties;
27. Notes that African States had a major role in creating the ICC and regards their support and close cooperation as indispensable to the Court's effective functioning and independence;
28. Calls on the African States Parties to the Rome Statute of the ICC to fulfil their obligations under the ICC Rome Statute and, in accordance with the African Union Constitutive Act, actively to support the task of holding the world's worst offenders to account by showing strong support for the Court during African Union (AU) meetings, and urges the AU to break the cycle of impunity for the gravest crimes and assist the victims of atrocities; expresses support for the Court's request to open a liaison office with the African Union in Addis Ababa;
29. Urges the EU and its Member States to mainstream the work of the ICC and the provisions of the Rome Statute in its development programmes aimed at strengthening the rule of law; calls on the EU and its Member States to provide the necessary technical, logistical and financial assistance and expertise to developing countries which have only limited resources with which to adapt their national legislation to the principles of the

Rome Statute and to cooperate with the ICC, no matter whether these countries have ratified the Statute or not; further encourages the EU and its Member States to support training programmes for the police, judicial, military and administrative authorities of developing countries to introduce them to the provisions of the Rome Statute;

30. Encourages the next ACP-EU Joint Parliamentary Assembly to discuss the fight against impunity in international development cooperation and relevant political dialogue, as advocated in several resolutions and in Article 11.6 of the revised Cotonou Agreement, with a view to mainstreaming the fight against impunity and the strengthening of the rule of law within existing development cooperation programmes and actions;
31. Encourages the EEAS and the diplomatic services of the EU Member States to apply in a systematic and targeted manner the diplomatic tools used by them both to raise support for the ICC and to promote wider ratification and implementation of the Rome Statute; notes that these tools include *démarches*, political declarations, statements, and ICC clauses in agreements with third countries, as well as political and human rights dialogues; advises that appropriate action should be taken based on the evaluation of results;
32. Stresses the need for the ICC to expand its focus beyond situations of armed conflict and, more proactively, to investigate human rights emergencies that escalate to the level of crimes against humanity, and situations where domestic authorities are demonstrably unwilling to investigate, prosecute and punish alleged offenders;
33. Urges that the High Representative/Vice-President and the EU Member States launch diplomatic efforts to encourage UN Security Council members to pursue referrals to the ICC to open investigations into cases in which officials from States which are not a party to the Statute and which have allegedly engaged in crimes against humanity continue to enjoy ongoing impunity, including the recent situations in Iran, Syria, Bahrain, and Yemen;
34. Recognises the role of the EU in promoting the worldwide ratification of the Rome Statute and of the Agreement on Privileges and Immunities of the Court (APIC) and welcomes the recent accessions to/ratifications of the Rome Statute by Tunisia, the Philippines, the Maldives, Grenada, Moldova, St Lucia and the Seychelles, which brought the total number of States Parties to 118; calls for more Asian, North African, Middle Eastern and Sub-Saharan countries to become parties to the Rome Statute;
35. Urges the EU, and particularly the EEAS, to continue to promote the universality of the Rome Statute and of the APIC and the fight against impunity, as well as respect for, cooperation with and assistance to the Court in the context of EU relations with third countries, including within the framework of the Cotonou Agreement and of dialogues between the EU and regional organisations, such as the African Union, the Arab League, the Organisation for Security and Cooperation in Europe (OSCE), and the Association of Southeast Asian Nations (ASEAN); emphasises the importance of promoting the ratification and application of the Rome Statute for the Court in the EU's bilateral

dialogues on human rights with third countries;

36. Calls on the Commission and the EEAS to pursue more systematically the inclusion of an ICC clause in negotiating mandates and agreements with third countries;
37. Calls on the EU leaders to motivate all States that have not yet become party to the Rome Statute to become States Parties; in so doing the emphasis should be particularly on the permanent members and the non-permanent members of the UN Security Council;
38. Welcomes the participation of the United States as an observer at the Assembly of States Parties of the ICC and expresses the hope that it will soon become a State Party;
39. Welcomes Tunisia's recent accession to the Rome Statute and hopes that this will send a positive signal to other North African and Middle Eastern countries, so that they may follow suit; further welcomes the recent ratification of the Rome Statute by the Philippines, which increases the number of Asian States in the Court's system and gives an important signal that Asian membership in the ICC is growing, as well as the recent ratification of the Rome Statute by the Maldives and the recent bill by the National Assembly of Cape Verde authorising ratification of the Rome Statute, and hopes that its government will proceed accordingly without delay; expresses its hope that all Latin American countries will join the ICC;
40. Calls on Turkey, the only official EU candidate that has not yet done so, to become a State Party to the Rome Statute and to the Agreement on Privileges and Immunities (APIC) as soon as possible, stressing the need for any future candidate countries and potential candidate countries, as well as the partner countries covered by the European Neighbourhood Policy (ENP), to do the same;
41. Calls on the EU and the EU Member States to support the capacity and the political willingness of third countries – in particular ICC situation countries and countries under preliminary analysis by the ICC – to undertake national proceedings on genocide, war crimes and crimes against humanity; in that framework, calls on the EU and its Member States to support reform processes and national capacity-building efforts aimed at strengthening the independent judiciary, the law-enforcement sector and the penitentiary system in all countries directly affected by the alleged commission of serious international crimes;
42. Stresses that the effectiveness of the principle of complementarity of the Court lies in the primary obligation of its States Parties to investigate and prosecute war crimes, genocide and crimes against humanity; expresses concern that not all of the EU Member States have legislation defining these crimes under national law over which their courts can exercise jurisdiction;
43. Urges those States that have not yet done so to enact full and effective implementing legislation in transparent consultation with civil society, and to endow their national

judiciaries with the necessary tools to investigate and prosecute these crimes;

44. Reaffirms the need for the EU and its Member States to enhance their diplomatic efforts among non-parties to the Rome Statute and regional organisations (e.g. the AU, ASEAN, and the Arab League) to promote a better understanding of the mandate of the ICC, i.e. its pursuit of perpetrators of war crimes, crimes against humanity and genocide, including through the development of a special communication strategy on that issue, and to foster greater support for the Court and its mandate, in particular in UN fora such as the UN Security Council;
45. Affirms the crucial role of the EU Member States' diplomatic support for the ICC's mandate and for its activities in UN fora, including the UN General Assembly and the UN Security Council;
46. Stresses the need for continued diplomatic efforts to encourage UN Security Council members to ensure the timely referral of cases, as postulated in Article 13 (b) of the Rome Statute and as most recently illustrated by the unanimous referral of the situation in Libya to the ICC by the UN Security Council; also expresses its hope that the UN Security Council will refrain from deferring investigations or prosecutions of the Court as postulated in Article 16 of the Rome Statute;
47. Calls on the UN Security Council members and the UN General Assembly members to find appropriate ways and means for the UN to provide the Court with financial resources to cover the costs related to the opening of investigations and prosecutions into situations referred by the UN Security Council in accordance with Article 115 of the Rome Statute;
48. Calls on the EU Member States to ensure that coordination and cooperation with the ICC is included in the mandate of relevant regional EU Special Representatives (EUSRs); calls on the High Representative to appoint an EUSR on International Justice with the mandate to promote, mainstream and represent the EU's commitment to the fight against impunity and the ICC across EU foreign policies;
49. Calls on the EEAS to ensure that the ICC is mainstreamed across the EU's foreign policy priorities, by systematically taking into account the fight against impunity and the principle of complementarity in the broader context of development and rule of law assistance, and in particular to encourage transition states in the Southern Mediterranean to sign and ratify the Rome Statute;
50. Affirms that the EU should ensure that the EEAS has the necessary expertise and high-level capacity to make the ICC a real priority; recommends that the EEAS ensure adequate staffing levels both in Brussels and within delegations of officials tasked with handling international justice issues, and that the EEAS and the European Commission further develop staff training on international justice and ICC issues, establishing a staff

exchange programme with the ICC in order to promote mutual institutional knowledge and facilitate further cooperation;

51. Urges all the States Parties to the ICC, the EU and the ICC itself, including the Office of the Prosecutor, to make every effort to prosecute and punish the perpetrators of sex crimes against humanity, which are a specific category of the crimes against humanity falling within the jurisdiction of the ICC (Article 7 of the Rome Statute) and include rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation and any other form of sexual violence of comparable gravity, along with persecution on gender grounds; notes that such sex crimes are particularly despicable insofar as they are often perpetrated on a large scale and constitute war crimes as well as crimes against humanity (Article 8 of the Rome Statute) targeting the most vulnerable groups – women, children and civilians – in countries already weakened by conflicts and/or food shortages or famine;
52. In the context of the upcoming election of six new Judges and a new Prosecutor, to take place at the December 2011 session of the Assembly of States Parties, urges EU Member States to elect the most highly qualified candidates through a fair, transparent and merit-based process, ensuring both geographic and gender balance, and to encourage States from regions that benefit from Minimum Voting Requirements (such as the Group of Latin America and Caribbean Countries (GRULAC)) to take advantage of this and nominate sufficient candidates, thus ensuring balanced regional representation on the bench; notes that the election of a new Prosecutor is of the utmost importance for the effectiveness and legitimacy of the Court, and expresses appreciation for the work of the Search Committee established by the Bureau of the Assembly of States Parties;
53. Welcomes proposals for establishing an advisory committee to receive and review all nominations of new judges as postulated in Art. 36(4c) of the Rome Statute as well as the establishment of a search committee for the ICC Prosecutor, and expresses its opinion that the work of the search committee should not be influenced by political considerations;

#### **The need to ensure further financial and logistical assistance for the Court**

54. Welcomes the EU's and individual Member States' financial and logistical support for the ICC thus far and recommends that current forms of support, either through the regular budget of the ICC funded by States Parties' contributions or through EU funding such as the European Instrument for Democracy and Human Rights (EIDHR), are continued, especially in the following fields: outreach activities aimed at helping victims and affected communities; legal representation; witness relocation; the participation and protection of victims/witnesses, with special consideration for the needs of women and juvenile/child victims; the provision of support enabling the Court to cover urgent operational needs stemming from new investigations; calls on the EU and its Member States to support the Court's efforts to enhance its field presence, recognising the importance of the ICC field presence for promoting understanding and support for its mandate, as well as involving and assisting communities victimised by crimes falling under the Court's jurisdiction; expresses its concern that the lack of resources remains an impediment to the optimal functioning of the Court;;
55. Stresses the significant impact of the Rome Statute system on victims, individuals and communities affected by the crimes under the Court's jurisdiction; considers the Court's

outreach efforts crucial to promoting understanding and support for its mandate of managing expectations and enabling victims and affected communities to follow and understand the international criminal justice process and the work of the Court;

56. Recommends that the EU Member States continue to provide adequate funding for the ICC Trust Fund for Victims (in order to complement potential upcoming reparation awards while continuing to carry out current assistance activities) and to contribute to the newly established ICC Special Fund for Relocations, to the Fund for family visits of detainees at the seat of the Court in The Hague, to the Legal Aid Programme and to the costs associated with maintaining and expanding the ICC field presence;
57. Strongly supports the ICC's efforts to expand and strengthen its field presence as this is key to improving its ability to carry out its functions, including investigations, outreach to victims and affected communities, witness protection and facilitating victims' rights to participation and reparations and which, in addition, is a crucial factor in enhancing the Court's impact and its ability to leave a strong and positive legacy;
58. Encourages the EU to secure adequate and stable funding for civil society actors working on ICC-related issues within the European Instrument for Democracy and Human Rights (EIDHR), and encourages the EU Member States and existing European foundations to continue their support for such actors;
59. Encourages the EU Member States and the EEAS to start discussions relating to the review of current EU financial instruments, in particular the European Development Fund (EDF) with a view to examining how they could further contribute to supporting complementarity activities in beneficiary countries in order to boost the fight against impunity within these countries;
60. Recognises the current efforts by the Commission to establish an 'EU Complementarity Toolkit' aimed at developing national capacities for the investigation and prosecution of alleged international crimes, and encourages the Commission to ensure its implementation, with a view to integrating complementarity-related activities into aid programmes and achieving better coherence among the various EU instruments;
61. Calls on all the ICC States Parties to promote joint efforts to improve trials at national level of the most serious crimes, such as war crimes, crimes against humanity, and genocide;
62. Welcomes the initiative of the Commission of organising a seminar for European and African civil society to discuss international justice in Pretoria in April 2011, takes notes of the recommendations from that meeting and calls on the Commission to continue to support such opportunities;
63. Recalls that the European Parliament was one of the earliest vocal supporters of the Court and notes its essential role in monitoring EU action in this matter; calls for the insertion of a section on the fight against impunity and the ICC in the EP Annual Report on Human Rights in the world and further suggests that the European Parliament play a more

proactive role by promoting and mainstreaming the fight against impunity and the ICC in all EU policies and institutions, including in the work of all the committees, groups and delegations with third countries;

64. Instructs its President to forward this resolution to the Council and the Commission, and to the governments and parliaments of the Member States.

## EXPLANATORY STATEMENT

The International Criminal Court (ICC), since its inception on 1 July 2002, the day when the Rome Statute entered into force, has been successfully implementing its unique global mandate of pursuing perpetrators of war crimes, crimes against humanity, and genocide. Using the principle of ‘complementarity’ which stipulates that the Court would act only if the national courts in question are unable or unwilling to do so, the Court opened investigations into the situations in Uganda, the Democratic Republic of the Congo (DRC), Darfur (Sudan) and the Central African Republic (CAR), Kenya, and Libya, and Côte d’Ivoire.

Despite its efforts, professionalism and commitment, ICC currently finds itself in a critical time juncture, due to political and financial circumstances beyond its control. It increasingly comes under unfair, politically-motivated attacks, its arrest warrants are frequently disregarded, and its current budget is not adequate to its needs. As the EU has been a staunch supporter of the ICC, the purpose of this report is to evaluate how it could further assist the Court in facing the challenges and overcome the difficulties of both political and financial nature it faces.

From its inception, the EU has supported the ICC through various political, diplomatic, financial and logistical actions whilst helping to promote the universality and integrity of the Rome Statute, and contributing to the independence and effective functioning of the Court.

From its side, the Court has thus far opened investigations in DRC, CAR and Uganda, doing so upon the specific request (State’s referral) from these very countries. In addition, the UN Security Council has referred to the Court the situations in both Sudan/Darfur and in Libya. In both situations, arrest warrants against the sitting heads of states and high officials have been issued, i.e. Sudanese president Omar Hassan Ahmad Al Bashir and the Libyan leader Muammar Gaddafi. In addition, the Pre-Trial Chamber II authorised the ICC Prosecutor to open an investigation in Kenya (It was the first time that the Prosecutor used his *proprio motu* powers to initiate an investigation without first having received a referral from governments or by the UNSC) and recently also in Côte d’Ivoire. It has indicted government officials and rebel leaders alike, demonstrated the even-handed reach of justice. The ICC Prosecutor has also made public that he is examining at least nine situations on four continents, including Afghanistan, Colombia, Georgia, Guinea, Honduras, Republic of Korea, Nigeria, and Palestine.

While the Court’s reach and deterring impact keeps increasing, it also increasingly faces various challenges and difficulties of both political and financial nature. Politically, it comes under a fire of unfair attacks from hostile states and leaders. While such criticisms do not acknowledge the reality of the Court having a vast majority of cases referred to it either by the interested States Parties themselves, or else referred by the UN Security Council, they do damage to the Court standing, negatively influencing public perceptions and the overall level of cooperation.

Financially, the Court struggles to cover its urgent operational needs as its budget does not increase proportionally to its workload. The new referrals are not accompanied by additional funding, and the overall impact of the financial crisis has negatively impacted on the key ICC donors, resulting in stagnation of its budgetary resources.



The EU has traditionally been very active in galvanising support for the Court using various instruments from its political *repertoire*, including statements, declarations, *démarches*, political and human rights dialogues, relations with the partner countries within the Cotonou framework, or other regional initiatives (including ENP) as well on the regional fora (particularly through its relations with the African Union) the multilateral forums (particularly the United Nations). It has been actively helping to ensure new ratifications and implementation of the Rome Statute through diplomatic outreach and technical assistance to the partner countries, and responded using its political and diplomatic instruments.

Despite this strong level of support provided by the EU and its Member States to the Court, much remains to be done on the political and diplomatic level, as well as practical level to help the Court overcome the current challenges and difficulties it currently faces. Closer monitoring of the constant implementation of ICC clauses in agreements with third countries, as well as impact of its political statements and declarations, would undoubtedly strengthen the EU's messages and standpoints on the ICC issues *vis-à-vis* the EU partner countries and organisations, notably the African Union. The EU's political and human rights dialogues have to consequently raise the ICC and international justice issues in general whenever appropriate. The EU and its Member States should have timely and well coordinated joint responses to react to instances of non-cooperation with the Court, possibly through agreeing on an internal code of conduct in such cases.

Equally important is the EU outreach to the key non-parties, particularly the permanent members of the UN Security Council (such as Russia, China and the United States) to ensure adequate cooperation and timely Court referrals. This has recently been done successfully in case of the Libya referral, unanimously referred also due to the strong political lobbying and outreach efforts of the EU Member States.

In order to adequately assist the Court, the EU and its Member States must ensure that their structures in charge of the ICC are able to respond to the Court's requests in a timely and effective manner. This could be achieved by ensuring adequate staffing and training levels within the European External Action Service (EEAS), both in Brussels as well as on the ground in the Delegations, particularly those located in the ICC situations<sup>1</sup> and countries under preliminary examination. One way to ensure the adequate training of its staff, the EEAS could consider putting in place a temporary staff exchange with the Court, in order to allow its staff to 'learn by doing'.

In terms of their direct support for the Court, the EU Member States could do more in order to facilitate the sensitive issue of witness relocation. One way of doing so is to actively participate in and contribute to the ICC Special Fund for Relocations, recently created by the ICC. Moreover, over half of the EU Member States are still due to fully adopt the ICC implementing legislation. The full integration of the Rome Statute into national legislations of the EU Member States should be considered as a priority action.

As the EU CSDP operations continue to make an important contribution to global peace, justice and security, it would be appropriate to ensure that the CSDP missions could help

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<sup>1</sup> The ICC uses the term "situations" to refer to countries or locations where it has opened investigations. In case of the countries under preliminary examination, it proactively follows on the relevant developments there, without opening a formal investigation into.

through facilitating the Court's requests in a timely and effective manner<sup>1</sup>.

In order to adequately support the Court politically, the EU has to ensure the high level political and diplomatic presence in the regions and countries in question. One way to enhance the EU profile in the field of international justice would be to create a 'thematic EUSR' for transitional justice, and mandate the EUSRs in the relevant countries and regions should include the ICC-related issues.

The EU Member States, in their capacity of the members of the Assembly of the States Parties<sup>2</sup>, have an important role to play in nomination and selection of the key officials of the Court, especially now with the imminent replacement of six Judges and the Prosecutor in December of 2011. The EU Member States must ensure that the nominations are merit-based and that the selected candidates represent the highest professional standard, as well as maintain both geographic and gender balance.

As the Court fully relies on the cooperation from the States Parties in order to successfully pursue the investigations, protect and relocate witnesses and apprehend the suspects, enforce sentences, it is of crucial importance that the EU Member States reply timely and adequate to its various cooperation requests, including on providing information, executing the arrest warrants or tracking, freezing and seizing assets of the suspects.

In addition to the political and diplomatic challenges the Court currently experiences, inadequate funding continues to be a key impediment to its effectiveness. While it deals with new cases, their opening is not accompanied by an increase of funding. Even the UN Security Council referrals are not accompanied by an additional funding for the Court, which creates a serious funding gap. As a result, very important areas remain under funded, including the outreach, victims' services, and the ICC field presence (offices it keeps on the ground in the situation countries.)

The EU financial support to the Court made it an important donor. Under EIDHR, since 2007<sup>3</sup>, over 4 million EUR has been allocated to the ICC itself, while around 11 million EUR have been allocated to civil society organisations working on the ratification of other Court-related issues. This instrument has helped to fund various activities of the Court itself specifically the Internship and Visiting Professionals Programme, training activities for lawyers on the ICC List of Counsel, as well as the ICC Legal Tools Project.

Moreover, the EU Member States as States Parties are the main direct contributors to the Court and contributed over half of the current expenditures of the ICC Trust Fund for the Victims. It is essential that EU Member States continue to provide the Court with sufficient resources to effectively fulfil its mandate, and honour their Kampala pledges to provide the additional funding to the Fund.

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<sup>1</sup> Similarly to the UN peacekeeping operations, which have been requested to cooperate through furnishing information to the Court.

<sup>2</sup> The Assembly of States Parties is the management oversight and legislative body of the ICC, and composed of representatives of all states that have ratified and acceded to the Rome Statute.

<sup>3</sup> 2007 is the starting date of the most recent cycle of the European Instrument for Democracy and Human Rights (EIDHR), under which certain specific activities of the ICC and some NGO campaigns in support of the Rome Statute system are being funded.

Nevertheless, current forms of financial and logistical support could be further reinforced in order to ensure that the current funding gap the Court experiences is successfully bridged. The EU and its Member States should ensure an adequate financial support for the Court's budget during the upcoming December meeting of the Assembly of States Parties in New York. On the occasion of the past such meetings, the Court's budget has not been increased.

Moreover, the EIDHR remains to be the sole EU instrument currently able to fund civil society organisations working on traditional justice issues, including those pertaining to the ICC. It is also important to discuss a potential role of the new financial instruments currently under discussion or those already existing currently under revision in supporting the 'complementarity' activities in partner countries. It is also important that no new instruments replace or eclipse EIDHR.

As the EU and its Member States are spending millions on supporting the justice and security sector reforms in the countries, it would be very beneficial to better map and coordinate these efforts in order to avoid funding gaps and better ensure the 'complementarity' impact of its activities. The European Commission's current efforts to develop the so-called 'Complementarity Toolkit' i.e. a set of donor guidelines to be disseminated and applied within the EU with a view to attain better coherence and effectiveness, appears both timely and useful.

As the world we live in is unfortunately characterised by a proliferation of serious threats to human life and security, the Court's jurisdiction should adequately reflect it. A very important step on this path has been taken on the occasion of the ICC Review Conference in Kampala, which took place on 11 June 2010. On this occasion, the States Parties agreed on the definition of a crime of aggression<sup>1</sup> as well as the conditions, under which the Court would be able, from 2017 onwards, to include the crime of aggression in its jurisdiction. In order for that to happen, at least 30 States Parties must ratify the necessary amendments to the Rome Statute by 2017, and at least two-thirds of the States Parties have to confirm this amendment through voting. The EU Member States support in this context remains invaluable.

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<sup>1</sup> Resolution RC/Res.6 "The Crime of Aggression" [http://www.icc-cpi.int/iccdocs/asp\\_docs/Resolutions/RC-Res.6-ENG.pdf](http://www.icc-cpi.int/iccdocs/asp_docs/Resolutions/RC-Res.6-ENG.pdf).

22.9.2011

## **OPINION OF THE COMMITTEE ON DEVELOPMENT**

for the Committee on Foreign Affairs

on EU support for the ICC: facing challenges and overcoming difficulties  
(2011/2109(INI))

Rapporteur: Eva Joly

### **SUGGESTIONS**

The Committee on Development calls on the Committee on Foreign Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Strongly encourages the European Union, including the EEAS, and the diplomatic services of the EU Member States systematically to use the tools of diplomacy available to them in order to promote the ICC and remind third countries – in particular developing countries – of the need for them to support it and to sign or ratify its constituent act if they have not yet done so, and to include in agreements with third countries binding clauses that require them to cooperate with the ICC, or, indeed to impose restrictions on persons against whom proceedings have been initiated in the ICC; notes that suitable structures for this purpose include the EU's political and human rights dialogues with third countries – in particular developing countries and, among them, the ACP countries – and summits with those countries;
2. Emphasises the key role that the EU must play in strengthening the rule of law, promoting its universal application and maintaining the integrity of the Rome Statute – Europe itself having experienced violations of international humanitarian law, including crimes against humanity, war crimes and genocide; asks the EU, therefore, to pursue its awareness-raising and information work at local level and to educate young people about international criminal law and the role of the ICC;
3. Encourages the ICC and the EU to prioritise support for the strengthening of independent and impartial national judicial systems; points out that justice is one of the fundamental rights, that it must be exercised firstly at national level, the judicial system permitting, and that cases should be referred to the ICC only as a last resort;

4. Acknowledges the crucial role of the ICC in the context of EU foreign policy, and emphasises also the importance of international law for the peace, security, stability, trust, respect and reconciliation that are necessary foundations for sustainable development; emphasises nonetheless that, in implementing policies which may affect developing countries, the EU is obliged under the Treaty to take account of development cooperation objectives, the primary one being the reduction and eventual eradication of poverty (Article 208(1) TFEU, second indent);
5. Stresses that the ICC must receive the funding it needs to perform its increasingly numerous tasks; points out in this regard that all funding instruments for external action which affect the ICC's work in developing countries will have to receive new, additional resources;
6. Urges both EU Member States and developing countries to step up cooperation with the Court, by concluding agreements on the enforcement of sentences, as well as on the protection of witnesses and victims;
7. Draws attention to the principle of EU external policy coherence, under which the Union has a duty in its external activities to promote democracy, independent and impartial justice and basic human rights;
8. Urges all the States Parties to the ICC, the EU and the ICC itself, including the Office of the Prosecutor, to make every effort to prosecute and punish the perpetrators of sex crimes against humanity, which are a specific category of the crimes against humanity falling within the jurisdiction of the ICC (Article 7 of the Rome Statute) and include rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation and any other form of sexual violence of comparable gravity, along with persecution on gender grounds; notes that such sex crimes are particularly despicable insofar as they are often perpetrated on a large scale and constitute war crimes as well as crimes against humanity (Article 8 of the Rome Statute), targeting the most vulnerable groups – women, children and civilians – in countries already weakened by conflicts and/or food shortages or famine;
9. Expresses its deep concern that state-parties to the ICC have repeatedly failed to arrest the President of Sudan Omar al-Bashir.



## RESULT OF FINAL VOTE IN COMMITTEE

<b>Date adopted</b>	22.9.2011
<b>Result of final vote</b>	+ : 21 - : 0 0 : 0
<b>Members present for the final vote</b>	Thijs Berman, Michael Cashman, Corina Crețu, Véronique De Keyser, Charles Goerens, Catherine Grèze, András Gyürk, Filip Kaczmarek, Michał Tomasz Kamiński, Franziska Keller, Maurice Ponga, Birgit Schnieber-Jastram, Michèle Striffler, Alf Svensson, Eleni Theocharous
<b>Substitute(s) present for the final vote</b>	Santiago Fisas Ayxela, Martin Kastler, Cristian Dan Preda, Judith Sargentini
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	María Irigoyen Pérez, Wolfgang Kreissl-Dörfler

19.9.2011

## **OPINION OF THE COMMITTEE ON WOMEN'S RIGHTS AND GENDER EQUALITY**

for the Committee on Foreign Affairs

on EU support for the ICC: facing challenges and overcoming difficulties  
(2011/2109(INI))

Rapporteur: Tadeusz Cymański

### **SUGGESTIONS**

The Committee on Women's Rights and Gender Equality calls on the Committee on Foreign Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

- A. whereas the Rome Statute of the International Criminal Court (ICC) classifies crimes committed as part of a widespread or systematic attack directed against any civilian population, in particular women and children, among the most serious of crimes;
  - B. whereas the UN Declaration on the Protection of Women and Children in Emergency and Armed Conflict, of 14 December 1974, calls for effective measures against the persecution, torture and violent and degrading treatment of women;
  - C. whereas the 2010 State of World Population report shows that violence against women in crisis areas has increased worldwide; whereas sexual violence is increasingly used as a weapon of war and a great number of women and children are raped and persecuted during and after armed conflicts;
  - D. whereas, largely as a result of its very limited resources and the lack of input from the States Parties to the Rome Statute, the ICC faces difficulties in prosecuting those responsible for large-scale crimes against women and children, and this often results in impunity for the perpetrators of such crimes;
1. Strongly condemns the use of sexual violence against women as a tactic of war, including crimes such as mass rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilisation, gender-based forms of persecution including female genital mutilation, trafficking and all other forms of sexual violence of comparable gravity;



2. Urges the EU Member States parties to the Rome Statute to support the ICC in its work, and calls for active international support for the ICC so as to end the ongoing de facto impunity of persons responsible for such acts of violence and finally bring them to justice;
3. Emphasises the importance of including gender-based crimes in the ICC's remit for investigation and prosecution;
4. Emphasises how important it is for the ICC to fight against impunity for sexual violence against women in conflict zones and in the context of war crimes;
5. Calls for the impunity issue to be considered as a key factor in securing justice and to be non-negotiable; emphasises that perpetrators must be brought to justice and face the penal consequences of their actions;
6. Is firmly opposed to children under the age of 18 years being conscripted or recruited into the armed forces or used in any way in military action; points out the importance of safeguarding their rights to a peaceful childhood, education, physical integrity, safety and sexual autonomy;
7. Calls for the establishment of effective policies and enhancing mechanisms to ensure that victims' participation at the ICC has substantive impact, including more accessible psychological, medical and legal counselling and easy access to witness protection programmes; highlights the importance of promoting awareness of sexual violence in conflict zones by means of law programmes, the documentation of gender-based crimes in armed conflicts, and the training of lawyers, judges and activists on the Rome Statute and on international jurisprudence in relation to gender-based crimes against women and children;
8. Calls on the Council and the Commission to continue their efforts to broaden the membership of the Rome Statute of the ICC and to promote its universal ratification;
9. Calls on the Presidency of the EU Council and on the Vice-President of the Commission/ High Representative of the Union for Foreign Affairs and Security Policy to cooperate closely with the ICC and to bring their political influence to bear in international forums to induce the States Parties to the Rome Statute of the ICC to fulfil their obligations, since there are repeated instances of States Parties undermining the ICC's work through their actions or omissions;
10. Expects the issue of violence against women and children in international conflict situations to be addressed in UN resolutions and actions, as well as peace processes and peace agreements in compliance with international law and UN Security Council resolutions on women, peace and security, so that gender-based crimes may feature more prominently in the work of the ICC; emphasises that particular attention must be paid to post-conflict situations, in order that immediate, stronger and more consistent sanctions can be taken against aggressors, and expects the UN to continue to provide facts and figures on this issue;
11. Calls on the European External Action Service to exchange good practice and to cooperate closely with the UN Special Representative on Sexual Violence in Conflict, in order to

strengthen the ICC's work in this area.

## RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	15.9.2011
Result of final vote	+: 28 -: 0 0: 1
Members present for the final vote	Edit Bauer, Tadeusz Cymański, Ilda Figueiredo, Iratxe García Pérez, Zita Gurmai, Mary Honeyball, Lívia Járóka, Teresa Jiménez-Becerril Barrio, Nicole Kiil-Nielsen, Rodi Kratsa-Tsagaropoulou, Constance Le Grip, Elisabeth Morin-Chartier, Siiri Oviir, Antonia Parvanova, Raül Romeva i Rueda, Nicole Sinclair, Joanna Katarzyna Skrzydlewska, Marc Tarabella, Britta Thomsen, Marina Yannakoudakis, Anna Záborská
Substitute(s) present for the final vote	Izaskun Bilbao Barandica, Jill Evans, Christa Kläuf, Kartika Tamara Liotard, Mariya Nedelcheva, Katarína Neveďalová, Antigoni Papadopoulou, Joanna Senyszyn

## RESULT OF FINAL VOTE IN COMMITTEE

<b>Date adopted</b>	11.10.2011
<b>Result of final vote</b>	+: 61 -: 1 0: 0
<b>Members present for the final vote</b>	Gabriele Albertini, Sir Robert Atkins, Bastiaan Belder, Elmar Brok, Arnaud Danjean, Michael Gahler, Marietta Giannakou, Ana Gomes, Richard Howitt, Anna Ibrisagic, Jelko Kacin, Ioannis Kasoulides, Evgeni Kirilov, Maria Eleni Koppa, Andrey Kovatchev, Paweł Robert Kowal, Wolfgang Kreissl-Dörfler, Eduard Kukan, Vytautas Landsbergis, Ryszard Antoni Legutko, Krzysztof Lisek, Sabine Lösing, Ulrike Lunacek, Barry Madlener, Mario Mauro, Kyriakos Mavronikolas, Willy Meyer, Francisco José Millán Mon, Alexander Mirsky, Norica Nicolai, Raimon Obiols, Kristiina Ojuland, Ioan Mircea Pașcu, Bernd Posselt, Hans-Gert Pöttering, Cristian Dan Preda, Libor Rouček, Tokia Saïfi, José Ignacio Salafranca Sánchez-Neyra, Jacek Saryusz-Wolski, Werner Schulz, Marek Siwiec, Inese Vaidere, Geoffrey Van Orden, Sir Graham Watson
<b>Substitute(s) present for the final vote</b>	Laima Liucija Andrikiienė, John Attard-Montalto, Tanja Fajon, Roberto Gualtieri, Liisa Jaakonsaari, Jaromír Kohlíček, Monica Luisa Macovei, Jacek Protasiewicz, Marietje Schaake, Helmut Scholz, György Schöpflin, Alf Svensson, Indrek Tarand, Traian Ungureanu, Renate Weber, Luis Yáñez-Barnuevo García
<b>Substitute(s) under Rule 187(2) present for the final vote</b>	Jolanta Emilia Hibner