

## **Statement by Europe Minister Bertel Haarder regarding of the "American Service Members' Protection Act"**

03/07/2002

(Check against delivery)

Mr/Madam President, Commissioner, honourable members, ladies and gentlemen,

Firstly, I would like to congratulate the international community and all of us on the entry into force on Monday of the Rome Statute of the International Criminal Court. This must be seen as one of the most historic events in the development of international law since the end of the Second World War.

To date 69 countries have ratified the Statute of the Court, and we can therefore note with pleasure that the Statute already has considerable support from the international community.

The many international and internal conflicts which the world witnessed in the last century highlight the need for the rapid establishment of a permanent international criminal court, to ensure respect for international humanitarian law and human rights. The EU firmly believes that the International Criminal Court will contribute to making the world a safer, more just and more peaceful place. We believe that by its mere existence the International Criminal Court will deter people from committing the most serious international crimes – war crimes, genocide and other offences against humanity. By enabling us to ensure that those who commit such crimes will not go unpunished, but can be held responsible for their actions, the International Criminal Court will be a central element in strengthening the international rule of law.

The European Union calls on all States to accede to the Rome Statute, since we believe that universal membership of the Statute is necessary for the Court to be able to function effectively. Last year, with a view to promoting universal support for the Court, we adopted a common position which has recently been updated. On the basis of the common position, using demarches and political dialogue, the EU has tried to achieve the widest possible support for the Court from all parts of the world.

As you can imagine, the International Criminal Court is a recurrent theme in our contacts with the USA, and indeed it is our debate with the USA which I want to address today.

Honourable members,

The European Union and the United States share the same basic values. Both the USA and the EU uphold freedom, democracy, human rights and the principles of the rule of law. We have therefore always regarded it as both natural and necessary for the USA to be amongst the parties to the Statute of the International Criminal Court. We do not doubt that the USA would be able to make a particularly positive contribution to the Court. During the diplomatic conference in Rome in 1998 we fully understood the concerns the USA had about some provisions of the Statute. And we did our best to find ways and means of meeting those concerns – unfortunately without success. Regrettably we must note that on 6 May this year the USA informed the UN Secretary General that it did not intend to become a party to the Statute, which had in fact been signed by the previous US administration. We believe that the USA has made the wrong decision. As you know, the European Union deeply regrets the decision.

Very recently, on 17 June, the General Affairs Council adopted conclusions expressing our worries about the current American legislative proposal entitled "The American Service Members' Protection Act", which is known as the ASPA. The latest version of the Act restricts the USA's participation in UN peace-keeping operations, forbids the transfer of information to the International Criminal Court and prohibits US military support for the majority of the participants in

the Court. As we said in our conclusions, we believe that the ASPA might seriously undermine the work of the Court.

The Council conclusions also underline our concern about the provision which authorises the President to use all means to bring about the release of persons being detained at the request of the Court, including persons detained in the Member States of the EU. This provision has led to particular concern in the Netherlands, which will be the seat of the Court. Some journalists have even dubbed ASPA "The Hague Invasion Act".

Honourable members,

I shall not try to hide the fact that we are all concerned about ASPA. If ASPA is adopted, this will be a very unfortunate development for the international community. We have expressed our worries to the US administration at all levels. Our heads of mission in Washington have been involved with the problem for a long time. On the other hand – although we must recognise that this is a difficult situation – I would not describe the proposed Act as a threat to transatlantic relations. I would like to explain why.

Firstly, I see the International Court as a global issue, not a

bilateral problem in the relationship between the USA and the EU. The EU believes that it is important not to adopt a confrontational approach to this issue. Other major partners of the EU – for example China and India – are also opponents of the Court. Turkey, which is an associated country, has not yet signed the Statute or even endorsed our common position or any of the EU's statements in support of the Court. As regards Japan and Russia, there is a political will to ratify the Statute but this has not yet been made a reality. Nevertheless, our bilateral relations with all these countries have not been harmed by their non-participation in the Court. We have been very careful to avoid confrontation on this issue, while at the same time attempting to keep the Court high on the agenda at our meetings.

By persistent lobbying in support of the Statute, we have already convinced a number of countries and we very much hope that others will follow suit.

Secondly, the International Court is not the only area in which the USA and EU do not agree. Friends have the right to disagree, but we will always maintain that the things uniting the EU and the USA are much stronger than those dividing them. We can all think of examples: steel (where we will hopefully soon find a solution), bananas (which was solved), the Kyoto Protocol (on which we are continuing our high level dialogue), and so on. Sometimes we find a solution, sometimes the disagreement continues. In the human rights field, our attitudes to the death penalty are also different. But through our long-term effort to combat the death penalty, we have succeeded in having an effect on American opinion. As an example I would like to mention the recent decision by the US Supreme Court in the Atkins case, which excludes the use of the death penalty for the mentally retarded. The EU contributed to this case with an amicus curiae brief, which the US Supreme Court took into consideration. We will continue with this policy.

Honourable members

The US administration has assured us that American intervention in the territory of an EU country would be – and I quote – "inconceivable". This has been said by both Secretary of State Powell and by Under Secretary Grossman. Many American soldiers gave their lives for freedom and democracy in Europe. I cannot imagine that their grandchildren would dream of invading one of our Member States. But the ASPA proposal is now on the table, and section 3008 on the use of force will constitute a dangerous precedent in international law. I can assure you that we will monitor this issue very closely.

Honourable members,

Soon the International Court will be able to prove its worth as an independent and effective international tribunal. We in the EU will spare no effort to ensure its success. I am sure that those who currently oppose the Court will come to see for themselves that the Rome Statute both ensures the highest standards of legal security and prevents the Court being used for political purposes. Universal membership of the Court probably lies a good way in the future. But I trust that eventually we will achieve this aim through constructive dialogue – and a certain degree of patience – with our friends.

With its veto in the UN Security Council on Monday, the USA took a very far-reaching and regrettable step in its resistance to the International Criminal Court (ICC). I understand that the negotiations on a compromise solution in the UN Security Council will resume later today. It is important that a solution should be found which maintains the efforts of the USA in peacekeeping operations. The Danish EU Presidency will do everything in its power to support these efforts.

Thank you, Mr/Madam President.