



**Coalition for the  
International  
Criminal Court**

**For more information, contact:**  
Adele Waugaman  
Media Liaison  
tel: 212.687.2176  
fax: 212.599.1332  
email: ciccmedia@iccnw.org

## **Questions & Answers**

*Last updated January 24, 2003*

# **The PRIVILEGES and IMMUNITIES AGREEMENT of the INTERNATIONAL CRIMINAL COURT**

## **What is the Privileges and Immunities Agreement?**

Under the Rome Statute, which serves as the “constitution” of the International Criminal Court (“ICC” or “Court”), State Parties to the Statute are required to provide certain privileges and immunities to officials and staff of the Court. Without such privileges and immunities, it may be difficult, or even impossible, for the ICC to function effectively. In particular, the ability of Court personnel, investigators, and witnesses to travel and transport evidence across and within national borders may be severely compromised.

Like the United Nations and other independent international institutions, the ICC relies on a separate agreement providing for the privileges and immunities provided for in the Rome Statute. Article 48 of the Rome Statute addresses the general privileges and immunities granted to ICC officials and staff, as well as to other individuals involved in the work of the Court. The Privileges and Immunities Agreement defines these protections and related obligations on States Parties in greater detail.

## **When was this Agreement opened for signature and what happens next?**

The Agreement on Privileges and Immunities (‘the Agreement’) was drafted by the Preparatory Commission of the ICC and adopted by the Assembly of States Parties (ASP) on 9 September 2002. On 10 September 2002, the Agreement was opened for signature and, since then, 24 states<sup>1</sup> have signed it.<sup>2</sup> Of these 24 States, 14 signed on the day of its adoption and 7 additional States signed during the month of September 2002. During the month of October 2002, only two more signatures were added.

The Agreement will enter into force after it has been ratified by 10 countries. As of 10 September 2002, Norway became the first State to have ratified the Agreement. It is currently the only country to have done so.

## **Why is this Agreement necessary?**

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<sup>1</sup> Argentina, Austria, Belgium, Benin, Costa Rica, Denmark, Ecuador, Finland, France, Hungary, Iceland, Italy, Luxembourg, Madagascar, Mali, Namibia, New Zealand, Norway, Peru, Portugal, Senegal, Switzerland and Trinidad and Tobago, United Kingdom of Great Britain and Northern Ireland

<sup>2</sup> As of 1/1/03.

Unlike the ad hoc tribunals (ICTY and ICTR), the ICC is not a UN body, and can therefore not rely upon States' privileges and immunities obligations provided by the UN.

The Court's mandate – to prosecute individuals who have committed the most serious of international crimes – ensures that its cases will involve investigations, statements and evidence extremely sensitive both to individuals and State actors. Without a Privileges and Immunities Agreement, such sensitivities could invite State-sponsored retaliatory action against those associated with the Court. Widespread signature and ratification of the Privileges and Immunities Agreement will enable the ICC to function within a strong and reliable framework protecting officials, staff, victims, witnesses and other persons involved in the work of the Court, as well as its buildings and other resources.

While operating within the Netherlands, its current host country, the ICC will be protected in many of these respects by the Headquarters Agreement<sup>3</sup>. However, it may be assumed that no case will be dealt with strictly inside Dutch borders and without any communications, transfers, or trips to and from other States.

#### **Why are States asked to ratify the Agreement if it has already been adopted by the ASP?**

Although the Agreement was adopted by the Assembly of States Parties, the Agreement is an international treaty open to signatures by all States, not only those a party to the Rome Statute. While States Parties are expected to ratify the Agreement to facilitate the work of the Court on their respective territories, the Agreement should ideally be signed and ratified by other States that may be involved in ICC-related investigations and prosecutions should Court officials, staff, witnesses, victims, or evidence ever need transport through their borders. Widespread recognition of the Privileges and Immunities Agreement will therefore be particularly important in States that play a role in international transportation, be it by air, sea or land.

#### **Why is the Headquarters Agreement not sufficient for the protection of the Court?**

The inherently international nature of the work of the Court will demand guarantees of privileges and immunities both inside and outside of the Netherlands. The experience of the ad hoc tribunals has shown the importance of being able to set up decentralised establishments for the purpose of securing evidence, archiving, liaising with local authorities, outreach and public information. For reasons of independence and integrity, such establishments would not be feasible in an environment where the buildings, documents and communication could not be guaranteed the level of protection envisioned in the Privileges and Immunities Agreement.

#### **Aren't Privileges and Immunities sufficiently guaranteed through obligations under Article 48 of the Rome Statute of the ICC?**

Although States Parties are already bound to respect the Court's privileges and immunities under Article 48 of the Rome Statute, it is clear that this Article will not provide States with sufficiently extensive and detailed instruction.. Thus, for actual implementation, the privileges and immunities as outlined in the Agreement are essential for the correct and speedy understanding of obligations. Moreover, States' obligations under Article 48 may not be sufficiently concrete to

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<sup>3</sup> This is bilateral agreement regulating the relationship between the Dutch Government and the Court, in particular with regards to privileges, immunities and facilities of the Court and its officials in the Netherlands. This agreement will be agreed upon by the two parties to the agreement and approved by the Assembly of States Parties.

convince victims and witnesses, who are often extremely vulnerable, that their privileges and immunities will be respected.

Article 48 leaves out details regarding States' obligations regarding immunities and privileges of counsel, experts, witnesses or any other persons required to be present at the seat of the Court, referring instead to the Agreement. International privileges and immunities of counsel constitute a new concept to most legal systems and will need to be further addressed as States Parties prepare legislation to enable cooperation with the Court.

Consequently, committed States Parties, even those with already established safeguards, should not rely solely upon their obligations under Article 48, but they should make it a priority to sign and ratify the Agreement.

### **Why is it important that States sign the Agreement now?**

From the day that it begins investigation of its first case, the Court must be able to rely on States Parties to respect immunity and privileges as foreseen in the Rome Statute.

Furthermore, many States Parties remain under the government which dealt with the ratification (and possible implementation) of the Rome Statute. With change in political regime will often come a loss of awareness and will to ratify agreements related to the Court.

Finally, once there is a concrete case, it may be difficult to get the national approval for ratification of the Agreement due to political sensitivity and personal implications for individuals in positions of power.

### **About the Coalition for the International Criminal Court**

The Coalition for the International Criminal Court (CICC) is a network of over 1,000 civil society organizations that support the creation of a permanent, fair and independent International Criminal Court (ICC). Established in 1995, the CICC is the leading source of information regarding the ICC and the regional organizations that support its formation. For more information about the mission of the CICC and its member organizations, please visit [www.iccnw.org](http://www.iccnw.org).