

AG/RES. 2039 (XXXIV-O/04)

PROMOTION OF THE INTERNATIONAL CRIMINAL COURT^{1/}

(Adopted at the fourth plenary session, held on June 8, 2004)

THE GENERAL ASSEMBLY,

RECALLING its resolutions AG/RES. 1619 (XXIX-O/99), AG/RES. 1706 (XXX-O/00), AG/RES. 1709 (XXX-O/00), AG/RES. 1770 (XXXI-O/01), AG/RES. 1771 (XXXI-O/01), AG/RES. 1900 (XXXII-O/02), and AG/RES. 1929 (XXXIII-O/03);

RECALLING ALSO the recommendation of the Inter-American Commission on Human Rights (OEA/Ser.L/V/II.102, Doc. 6 rev. April 16, 1999, Chapter VII, 21.3.B), as well as its resolution N° 1/03, "On Trial for International Crimes," and the document "Framework for OAS Action on the International Criminal Court" (AG/INF.248/00);

RECOGNIZING that the adoption of the Statute of the International Criminal Court on July 17, 1998, in Rome, is a milestone in efforts to combat impunity and that the Court is an effective instrument for consolidating international justice;

CONCERNED over the persistent violations of international humanitarian law and international human rights law;

AFFIRMING that states have the primary duty to prosecute and punish those violations so as to prevent their recurrence and avoid the impunity of the perpetrators of those crimes;

MINDFUL of the importance of preserving the effectiveness and integrity of the Rome Statute of the International Criminal Court;

WELCOMING the entry into force of the Rome Statute of the International Criminal Court on July 1, 2002, because as of that date the Court became a judicial body complementing the efforts of national jurisdictions to prosecute the perpetrators of the most serious international crimes, such as genocide, crimes against humanity, and war crimes;

TAKING NOTE that June 30, 2004, is the deadline for signing the Agreement on Privileges and Immunities of the International Criminal Court, and that only 11 countries in the American Hemisphere have signed it and one country has ratified it;

RECOGNIZING that 139 states, including 26 member states of the Organization of American States, have signed the Rome Statute and that 94 states, including 19 member states of the Organization, have ratified or acceded to it; and

EXPRESSING its satisfaction with the holding of the Special Meeting of the Committee on Juridical and Political Affairs on Promotion of and Respect for International Humanitarian Law, at

^{1.} The United States requests that its reservation to this resolution be placed on record. The text of its statement appears as an annex to this resolution.

OAS headquarters on March 25, 2004, with regard to which the Chair of the Committee prepared the report contained in document DIH/doc.24/04,

RESOLVES:

1. To urge those member states of the Organization that have not already done so to consider ratifying or acceding to, as the case may be, the Rome Statute of the International Criminal Court.

2. To urge all member states of the Organization to continue to participate constructively, even as observer states, in the Assembly of States Parties to the Rome Statute of the International Criminal Court in order to ensure the best possible operating environment for the Court, in a context of unconditional defense of the integrity of the Rome Statute.

3. To urge the member states of the Organization that are parties to the Rome Statute to adapt and amend their domestic law, as necessary, with a view to the effective application of the Statute.

4. To urge those member states that are not party to the Rome Statute to adapt their criminal legislation, in accordance with the treaties for the protection of human rights and humanitarian law to which they are party.

5. To urge the member states of the Organization that are not party to the Rome Statute to consider signing and ratifying the Agreement on Privileges and Immunities of the International Criminal Court, or acceding thereto, as the case may be, and in the case of those states that are already party to that Agreement to take the necessary measures for its effective implementation at the national level.

6. To request the Inter-American Juridical Committee to include on the agenda for the next joint meeting with legal advisers of the foreign ministries of the member states of the Organization a review of due implementation of the Rome Statute and the Agreement on Privileges and Immunities in national legislations.

7. To request the Permanent Council to hold, with the support of the General Secretariat and cooperation from the International Criminal Court, international organizations, and nongovernmental organizations, a working meeting on appropriate measures that states should take to cooperate with the International Criminal Court in the investigation, prosecution, and punishment of the perpetrators of war crimes, crimes against humanity, genocide, and crimes against the administration of justice of the International Criminal Court.

8. To request the Permanent Council to include the topic of the implementation of the Rome Statute and the Agreement on Privileges and Immunities on the agenda of the Committee on Juridical and Political Affairs.

9. To urge member states of the Organization to cooperate so as to avoid the impunity of the perpetrators of the most serious international crimes, such as war crimes, crimes against humanity, and genocide.^{2/}

^{2/} The delegation of Honduras requested that the following reservation be placed on record:

10. To request the Permanent Council to follow up on this resolution, which will be implemented within the resources allocated in the program-budget of the Organization and other resources, and to present a report on its implementation to the General Assembly at its thirty-fifth regular session.

The state of Honduras, aware that judicial cooperation with the International Criminal Court should take place within the framework of the internal legislation of states and international law and reaffirming the complementary nature of the jurisdiction of the International Criminal Court, considers it essential that the cooperation that member states are urged to engage in under operative paragraph 9 of this resolution take place within the framework of their internal legislation and international law.

STATEMENT BY THE DELEGATION OF THE UNITED STATES

The United States has long been concerned about the persistent violations of international humanitarian law and international human rights law throughout the world. We stand for justice and the promotion of the rule of law. The United States will continue to be a forceful advocate for the principle of accountability for war crimes, genocide and crimes against humanity, but we cannot support the seriously flawed International Criminal Court. Our position is that states are primarily responsible for ensuring justice in the international system. We believe that the best way to combat these serious offenses is to build and strengthen domestic judicial systems and political will and, in appropriate circumstances, work through the United Nations Security Council to establish ad hoc tribunals as in Yugoslavia and Rwanda. Our position is that international practice should promote domestic accountability. The United States has concluded that the International Criminal Court does not advance these principles.

The United States has not ratified the Rome Statute and has no intention of doing so. This is because we have strong objections to the International Criminal Court, which we believe is fundamentally flawed. The International Criminal Court claims jurisdiction over the nationals of states not party to the agreement. It has the potential to undermine the role of the United Nations Security Council in maintaining international peace and security. We also object to the Court because it is not subject to adequate checks and balances. We believe that an independent court with unchecked power is open to abuse and exploitation. Its structure lends itself to the great danger of politically-motivated prosecutions and decisions. The inclusion of the still-undefined crime of aggression within the statute of the Court creates the potential for conflict with the United Nations Charter, which provides that the Security Council determines when an act of aggression has occurred.

The United States notes that in past decades several member states have reached national consensus for addressing historic conflicts and controversies as part of their successful and peaceful transition from authoritarian rule to representative democracy. Indeed, some of those sovereign governments, in light of new events, evolved public opinion, or stronger democratic institutions, have decided on their own and at a time of their choosing to reopen past controversies. These experiences provide compelling support for the argument that member states—particularly those with functioning democratic institutions and independent functioning judicial systems—should retain the sovereign discretion to decide as a result of democratic and legal processes whether to prosecute or to seek national reconciliation by other peaceful and effective means. The United States is concerned that the International Criminal Court has the potential to undermine the legitimate efforts of member states to achieve national reconciliation and domestic accountability by democratic means.

Our policy on the ICC is consistent with the history of our policies on human rights, the rule of law and the validity of democratic institutions. For example, we have been a major proponent of the Special Court for Sierra Leone because it is grounded in sovereign consent, combines domestic and international participation in a manner that will generate a lasting benefit to the rule of law within Sierra Leone, and interfaces with the Truth and Reconciliation Commission to address accountability.

The United States has a unique role and responsibility to help preserve international peace and security. At any given time, U.S. forces are located in close to 100 nations around the

world, for example, conducting peacekeeping and humanitarian operations and fighting inhumanity. We must ensure that our soldiers and government officials are not exposed to the prospect of politicized prosecutions and investigations. Our country is committed to a robust engagement in the world to defend freedom and defeat terror; we cannot permit the ICC to disrupt that vital mission.

In light of this position, the United States cannot in good faith join in the consensus on an OAS resolution that promotes the Court.