

PERMANENT COUNCIL OF THE  
ORGANIZATION OF AMERICAN STATES  
COMMITTEE ON JURIDICAL AND POLITICAL AFFAIRS

OEA/Ser.G  
CP/CAJP-2327/06 corr. 1  
24 February 2006  
Original: French

WORKING MEETING ON THE INTERNATIONAL CRIMINAL COURT  
February 3, 2006  
Washington, D.C. – Padilha Vidal Room

RAPPORTEUR'S REPORT ON THE WORKING MEETING  
ON THE INTERNATIONAL CRIMINAL COURT



## RAPPORTEUR'S REPORT ON THE WORKING MEETING ON THE INTERNATIONAL CRIMINAL COURT

In keeping with the mandate issued by the OAS General Assembly in resolution AG/RES. 2072 (XXXV-O/05), adopted on June 7, 2005, in Fort Lauderdale, Florida, on the International Criminal Court, the Committee on Juridical and Political Affairs (CAJP) held a working meeting today, February 3, 2006, to promote cooperation among OAS member states and the International Criminal Court (ICC) and to increase familiarity with its activities.

Upon opening the meeting, the Committee Chair welcomed the participants and thanked the General Secretariat for preparing for the working meeting. He welcomed the participation of the distinguished panelists, including Silvia Fernández de Gurmendi, Director of the Jurisdiction and Judicial Cooperation Division of the Office of the Prosecutor of the International Criminal Court. The ICC President and the OAS Secretary General met at OAS headquarters, demonstrating the interest of the two organizations in enhancing their cooperation.

In addition, Ambassador Villagrán, Chair of the CAJP, suggested that the ICC designate a unit or official to handle liaison with the OAS. He indicated that the Department of International Legal Affairs could act as point of contact at the OAS.

After the Chair spoke, Mr. Jean Ricot Dorméus, Alternate Representative of the Permanent Mission of Haiti to the OAS, was elected by acclamation to serve as rapporteur for the working meeting.

Three speakers led the first panel discussion: Ms. Silvia Fernández de Gurmendi, Director of the Jurisdiction and Judicial Cooperation Division of the Office of the Prosecutor of the International Criminal Court, Ms. Paulina Vega, Coordinator for Latin America and the Caribbean, Coalition for the International Criminal Court, and Ms. María Clara Galvis, Attorney at the Center for Justice and International Law (CEJIL).

Ms. Fernández expressed the ICC's gratitude for having been invited to participate in this working meeting and said she would like to start an informal dialogue based not on a general description of the Court but on a specific exchange with the states. After a brief review of the Court's progress, she spoke about cases the Court was addressing in Rwanda, the Congo, the Sudan, and other countries, as examples of the most important cases brought before the Court. Ms. Fernández also described some of the problems involved in the handling of these cases.

The panel briefly reviewed measures that could be taken by member states to cooperate with the ICC in investigations, prosecutions, and sentencing in the case of crimes. The panelists' clear and informative presentations led to an intense discussion among the delegations.

Ms. Fernández, together with Ms. Paulina Vega, Coordinator for Latin America and the Caribbean, Coalition for the International Criminal Court, and Ms. María Clara Galvis, Attorney at the Center for Justice and International Law, reported on the following measures that could be adopted by member states to cooperate with the ICC:

1. Juridical cooperation: Ratification of the Rome Statute, if need be, and harmonization of the states' internal criminal law to incorporate the crimes addressed by the Statute, thus promoting complementarity in the law. In this regard, Ms. Fernández emphasized that the adoption and implementation of the instruments needed for the proper functioning of the Court represents only the first step; because the ICC can examine only the most serious of crimes and pursue only the most obvious criminals, it is extremely important to the ICC that states narrow the gap of impunity for the crimes and criminals not brought before the Court.

2. Circulation of information and documents: The states can help the ICC obtain information on crimes that come under its jurisdiction, circumstances under which they occur, and institutions that have participated in related investigations and prosecutions. Ms. Fernández explained that, although this measure is essential to the functioning of the Court, it often involves complex issues; because even those states that have close ties to the ICC have difficulties in establishing the necessary procedures for sharing confidential information with the Court. A possible solution would be for the Office of the Prosecutor of the ICC to conclude cooperation agreements with the states, the NGOs, and the international institutions for that purpose.

3. Provision of logistical assistance, for example, transportation and lodging for investigators: As for logistical cooperation, Ms. Fernández explained that the states can help the Court to secure transportation and lodging for witnesses and victims in cases lodged with the Court. These functions are especially important to cases involving mandates and authorizations pertaining to dangerous areas. Moreover, the states could help the ICC with the logistics of transporting suspects to The Hague—a task that often proves difficult, given the risks involved in transporting important defendants who are brought before the Court.

4. Assistance in the protection and relocation of witnesses, conclusion of cooperation agreements on the serving of sentences, promotion of cooperation with UN agencies: Ms. Fernández also explained that the member states can assist the Court in protecting victims and witnesses in their sectors. Darfour in the Sudan is an important example of this type of cooperation, given that several of the Court's functions are hindered by its inability to protect victims and potential witnesses. The states can help the ICC to protect witnesses and victims in neighboring areas, or to transport victims and witnesses to a secure location, until the high-risk areas have been investigated.

5. Compliance with decisions: Ms. Fernández has noted that the Court does not have its own detention center and relies on the good will of the parties to incarcerate persons convicted of crimes by the Court. This is another aspect in which the member states can cooperate with the Court in enforcing its decisions. Ms. Fernández mentioned that the Court Secretariat had already asked the OAS member states to consider taking in prisoners to allow them to serve their sentences under their own national criminal systems.

6. The OAS member states can also cooperate with the Court in the following areas:

- a) Training officials to understand the Court's procedures;
- b) Civil society participation in promoting and strengthening the Court;
- c) Adoption of resolutions by the OAS General Assembly and making the jurisprudence of the Inter-American Court of Human Rights available to the ICC;
- d) Conclusion of agreements on privileges and immunities;

- e) Seeking solutions to the problem of military jurisdictions;
- f) Contributions to the list of experts requested by the ICC;
- g) Adoption of instruments for fighting impunity;
- h) Suspending recourse to amnesty laws, a practice that promotes impunity and is inconsistent with the policies on which the Rome Statute and the Court's activities are based.

During the discussion, many delegations reported on their governments' efforts in cooperation with the ICC, in particular on ratification of the Rome Statute, the harmonization of criminal law, etc. The delegation of the Argentine Republic, acting as Chair pro tempore of MERCOSUR, conveyed to the Committee the text of the presidential statement on MERCOSUR's commitment to the Rome Statute and the International Criminal Court and stressed the importance and impact of that instrument. For its part, the United States delegation noted that it was up to the states to decide whether to ratify or accede to the Rome Statute.

The delegations thanked the panelists for their participation in the meeting and their concise, clear presentations on the ways in which OAS member states could cooperate with ICC activities.

Several delegations provided up-to-date information on the status of ratification and application of the Rome Statute and the agreement on privileges and immunities in their countries. The delegation of Panama offered updated information on criminal law reform in that country to allow proper application of the Rome Statute. The delegation of Chile stated that, although Chile had not yet done so, it intended to ratify the Rome Statute in the coming months. The delegation of Venezuela provided an update on all aspects of the functioning of its instruments relating to the ICC. The delegation of Peru gave an update on its recently adopted military criminal code, which provided sanctions for crimes in that country in accordance with the Rome Statute. The delegation of Canada renewed its support for the ratification of the Rome Statute by all OAS member states (the number was now 22); but it recalled also the importance of ratifying the agreement on privileges and immunities, which had been ratified by only six states so far. The delegation of Mexico stated that its country had been the 100th to ratify the Rome Statute and provided information on the ratification process; it added that the Mexican Executive had prepared legislation for specific cooperation enabling the ICC to conduct investigations according to its future needs and to the ways Mexico could best assist the Court.

Several states recognized the impact of the immunity agreements on strengthening that practice; they stated that they would not adopt internal law or become parties to international accords that were consistent with the Rome Statute.

Overall, the states expressed a great desire to cooperate with the ICC as proposed by Ms. Fernández and requested additional information in order to better prepare themselves to offer the best possible assistance and cooperation.

It was not possible to hold the second panel discussion, which was to provide a report on the Court's present activities and updated information on the fourth meeting of the Assembly of states parties.

The third panel discussion was led by Mr. Oscar López Goldaracena, Consultant at the Assistant Secretariat of the Ministry of Foreign Affairs of the Republic of Uruguay, and Mr. Anton Camen, legal counsel for Latin America and the Caribbean of the International Committee of the Red Cross. They addressed the report on the application of the Rome Statute and the agreement on privileges and immunities. This discussion included an important dialogue with the delegations.

During the presentations, the following questions were addressed, among others:

1. Adopting an integrated approach to applying the Rome Statute, which includes implementing internal legal instruments and ratifying international treaties;
2. Incorporating into domestic law the 24 crimes defined under the Geneva Conventions and the Rome Statute to broaden the scope of application of criminal law;
3. Incorporating into criminal law the principles of inalienability and of refusing asylum and amnesty for crimes tantamount to war crimes, crimes against humanity, and genocide;
4. Punishing not only the direct crimes but also the funding of criminal activities in the areas covered by the Rome Statute;
5. Conducting consultations with civil society in the context of drafting comprehensive criminal law;
6. Bringing about universal jurisdiction as regards victims, regardless of their nationality or place of residence;
7. Harmonizing the definitions of the crimes. Paying attention not only to the responsibility of superiors but to that of subordinates, except in the case of coercion or duress.

During the discussion, delegations described some of the most important problems in this area, specifically the lack of local law expressly dealing with war crimes and crimes against humanity. Delegates thanked the panelists for providing a comprehensive look at the disparities between the Geneva Conventions and the Rome Statute, and for providing guidance on the ways to treat differences in their local law and on how states define such crime.

The third panel dealt with the report on the questionnaire sent by the Inter-American Juridical Committee to the member states concerning the ICC. It was led by Mr. Dante Negro, Principal Legal Advisor at the Office of International Law of the Department of International Legal Affairs of the OAS General Secretariat. In keeping with the General Assembly mandate, the Inter-American Juridical Committee prepared a questionnaire on the subject, which was distributed to the member states on September 20, 2005. The deadline for replies was January 30, 2006. In March, the Committee will examine the replies. It will submit a report to the General Assembly at the upcoming regular session, to be held in June 2006 in the Dominican Republic.

The major conclusions to be taken from this important meeting are as follows:

1. Delegates expressed great interest in ways in which their states could cooperate with the ICC.
2. The ICC expressed great interest in lending cooperation to and establishing closer ties with the OAS and the member states.
3. Delegates recommended that member states that had not yet done so ratify the Rome Statute and the agreements on privileges and immunities and take the necessary measures to adapt their national law to make those instruments fully effective.
4. Delegates recommended increased cooperation between the ICC and the OAS General Secretariat.
5. Delegates expressed a strong desire to continue holding working meetings with the ICC and to secure the adoption of a General Assembly resolution supporting its activities.

I am gratified by the support received from the Chair of the CAJP, Ambassador Francisco Villagrán, from the Vice Chair, Ms. Catherine Vézina, from the Secretariat, especially Mr. John Wilson, Mr. Alejandro Aristizabal, and Ms. Gabriela Gutiérrez, and from all the delegations. The special meeting has given me a new opportunity to serve and contribute to promoting issues that are at the heart of the values so deeply held by the Organization of American States. For all that, and for honoring me with your confidence, I thank you.