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WORKING MEETING ON THE INTERNATIONAL CRIMINAL COURT

[AG/RES. 2728 (XLII-O/12)]

Friday, April 12, 2013 – 2:30 a 5:30 p.m.

Simón Bolívar Room

OAS Headquarters - Washington, D.C.

REPORT OF THE WORKING MEETING ON THE INTERNATIONAL CRIMINAL COURT

(Document prepared by the Department of International Law)



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The working meeting on the International Criminal Court was held on April 12, 2013, under the mandate issued in resolution AG/RES. 2728 (XLII-O/12), “Promotion of the International Criminal Court,” which requests the inclusion of a “high-level dialogue session among the permanent representatives of all member states to discuss, among other matters, measures that could strengthen cooperation with the International Criminal Court.”

Operative paragraph 14 of that resolution reads:

*14. To recall the request made to the Permanent Council to hold, prior to the forty-third regular session of the General Assembly, a working meeting with support from the Department of International Law, which should include a high-level dialogue session among the permanent representatives of all member states to discuss, among other matters, measures that could strengthen cooperation with the International Criminal Court. The International Criminal Court, international organizations and institutions, and civil society will be invited to cooperate and participate in this working meeting.*

Presiding over the working meeting was the Chair of the Committee on Juridical and Political Affairs (CAJP), Ambassador Andrés González Díaz, Permanent Representative of Colombia to the OAS, who noted the efforts of the Organization of American States to promote both universal adoption of the Rome Statute and the work of the International Criminal Court. He also noted that this event brought together for the first time at the Organization of American States the Presidents of the Court, Judge Sang-Hyun Song, and the Conference of States Parties to the Rome Statute, Ambassador Tiina Intelmann. He thanked them for attending and recognized the other panelists from international organizations, both governmental and nongovernmental, for the efforts involved in their participation in this new working meeting.

Next to speak was the Secretary General of the OAS, José Miguel Insulza, who explained that the prior meetings held at the OAS had provided information on the activities of the Court and its developments in terms of the investigation, prosecution, and punishment of persons responsible for war crimes, crimes against humanity, genocide, and crimes against the administration of justice, including discussions on the conclusions of the Rome Statute Review Conference.

Secretary General Insulza also mentioned the agreement concluded between the OAS General Secretariat and the International Criminal Court by way of an exchange of letters signed by President Song at OAS headquarters on April 18, 2011. He indicated that the General Secretariat wished to maintain an ongoing dialogue with the Court and the Office of the Prosecutor to foster increased awareness of the Rome Statute.

The Secretary General also mentioned the work conducted since 2005 by the Inter-American Juridical Committee, in particular the “Guide to General Principles and Guidelines on Cooperation between the States and the International Criminal Court,” which provides general guidelines for the states' implementation of the legal provisions in the light of their particular internal legal systems.

He recalled that the region unfortunately is not immune to the crimes identified in this instrument, and called upon all OAS member states that had not yet ratified it to do so. He also noted the importance of cooperation in the proper performance of the Court's functions and in ensuring that "the crimes with the severest repercussions for the community are effectively prosecuted."

This was followed by the presentation of Ambassador Tiina Intelmann, President of the Assembly of States Parties to the Rome Statute of the International Criminal Court. Ms. Intelmann thanked the CAJP for organizing this new Working Meeting on the International Criminal Court. She viewed this event as an opportunity to engage in an open and frank discussion with permanent representatives of all OAS member states and to strengthen the Rome Statute system. She also thanked the OAS for being a strong supporter of the Court and of the Rome Statute, recalling that it was an OAS member state, Trinidad and Tobago, that was the first proponent at the United Nations in favor of the establishment of an international and permanent criminal court in 1989. She noted that the ICC has established itself as an effective international judicial institution in the fight against impunity for the most serious crimes under international law, acting as a court of last resort in situations in which national judicial systems have been unwilling or unable to investigate and prosecute.

The President of the Assembly of States Parties highlighted some issues regarding the principle of universality and complementarity as well as the protection of victims. Regarding universality, Ms. Intelmann observed that currently 122 States are parties to the Statute, only a few short of 2/3 of the UN membership, and that this number is steadily increasing. She called all the signatory states to the Rome Statute in the Americas to comply with their earlier commitments made at high-level meetings, by promptly ratifying the Rome Statute. Regarding the principle of complementarity, she invited States to implement legislation in accordance with the Statute in order to facilitate the investigation and prosecution of the most serious international crimes. In this instance, she pointed to the report elaborated by the Inter-American Juridical Committee as a useful instrument to facilitate the implementation process. In her opinion, domestic implementation of the Rome Statute together with the steady rise in numbers of States Parties will serve as a strong deterrent and prevent atrocity crimes from happening in the future.

In matters regarding the protection of victims and their families, she underscored the importance of the States contributing to the Trust Fund for Victims created under the Statute.

Ms. Intelmann briefly mentioned the outcome of the Review Conference held in 2011 in Kampala, Uganda and the amendments adopted therein, including the one on the crime of aggression and on Article 8 on war crimes in non-international conflicts. She expressed her satisfaction with the fact that five states have already ratified the amendments to the Rome Statute on the crime of Aggression, including Trinidad and Tobago, and encouraged OAS member states to follow this example and ratify the Kampala amendments.

The President of the Assembly of States Parties concluded by speaking about the exchange of letters for the establishment of a cooperation agreement with the ICC, signed by Secretary General Insulza and President Song in 2011 and the adoption of a memorandum of understanding between the Office of the Prosecutor and the Inter-American Commission on Human Rights, on April 26, 2012.

Next to speak was the President of the International Criminal Court, Judge Sang-Hyun Song. Mr. Song stated that the ICC and the OAS share values of fundamental importance to humankind since one of the OAS' principal purposes is "to achieve an order of peace and justice". These very same goals are the *raison d'être* of the International Criminal Court. Impunity for the worst crimes known to humankind can only be ended with concerted international efforts, where regional organizations such as the OAS play an invaluable role. In this context, he expressed his satisfaction with the conclusion of the framework cooperation arrangement between the ICC and the General Secretariat of the OAS. He affirmed that "strengthening the collaboration can only bring the OAS and the ICC closer to our goals and objectives".

Before discussing some of the challenges that the ICC faces, and ways for OAS member states to help the Court, he gave a brief update on the judicial work of the ICC. He explained that the ICC is facing a more complex and demanding range of work than ever before and remembered that last year was a landmark for the ICC not only in terms of the Court's 10<sup>th</sup> anniversary, but also because of the issuance of the ICC's first two trial judgments. In one case, Mr. Thomas Lubanga was convicted for the use of child soldiers in the Democratic Republic of the Congo and sentenced to 14 years in prison; while in the other case, Mr. Matthieu Ngudjolo was acquitted of the charges against him. Both judgments are under appeal and therefore not final. In addition to the eight situations under investigation, the ICC Prosecutor is currently conducting preliminary examinations of allegations concerning events in Afghanistan, Colombia, Georgia, Guinea, Honduras, Korea, and Nigeria.

Mr. Song pointed out that the ICC has established its position among the permanent legal institutions of global significance and the Organization of American States has been one of the most fervent supporters of the ICC, for which the Court is deeply grateful. OAS member states' nationals have exercised key functions in the Rome Statute system, including the first Prosecutor of the ICC, the first President of the ICC, the second President of the Assembly of States Parties, and eight of the ICC's judges so far.

The President of the Court also affirmed that many challenges remain before the ICC, and there is still a long way to go to end impunity for the gravest crimes. He urged those 11 American States Parties to the Rome Statute that have not yet done so to ratify the Agreement on the Privileges and Immunities of the International Criminal Court, also known by its abbreviation APIC, which provides important legal clarity.

The President of the Court stated that the voluntary cooperation agreements that States have concluded with the ICC are particularly important for the relocation of witnesses, the enforcement of judgments and the interim release or acceptance of acquitted persons. Mr. Song also addressed the importance of financial resources, by recalling that the ICC represents a significant cost to its States Parties but that the investment is worth the outlay.

In addition, he said he would be honored to welcome any of the remaining seven OAS member states to the ICC family and that he had been encouraged by statements from officials of Haiti and El Salvador in that respect. He also stressed that American States Parties to the Rome Statute can also play an important role in encouraging other States in the region to join the ICC.

Mr. Song affirmed that the Rome Statute does not concern itself with ordinary crimes. Rather, the community of nations has designed it to put an end to unspeakable atrocities that tear

communities and societies apart and cause pain and destruction that linger on for generations. On behalf of the ICC's judges and staff, Mr. Song declared their full commitment to the noble values and goals of the Rome Statute, and pleaded for support and concrete assistance for those efforts.

Next was the high-level dialogue among member state representatives and the dignitaries in attendance. In view of time limitations, the delegations were asked to make their presentations through the representatives of their regional groups.

The Mexican delegation spoke on behalf of the delegations of the OAS ALADI group (Argentina, Brazil, Bolivia, Chile, Colombia, Ecuador, Paraguay, Peru, Uruguay, Venezuela, and Mexico). It said all the states in that regional group were parties to the Rome Statute and fully recognized the importance of the International Criminal Court. The delegation called upon OAS member states that had not yet ratified the Rome Statute to do so as soon as possible, so as to bring about the prompt universal adoption of the instrument. The delegation also noted the importance of the Agreement on Privileges and Immunities of the Court and urged that cooperation efforts between the OAS and the International Criminal Court be redoubled.

On the principle of complementarity, Mexico indicated that the delegations of the ALADI group had made significant progress in investigating the worst international criminal atrocities, but also were aware of the road that still lay ahead in this area. Lastly, Mexico reaffirmed that ongoing collaboration between the OAS, its member states, and the International Criminal Court must continue.

The Guatemalan delegation explained that it was the most recent OAS member to ratify the Rome Statute, reaffirmed the highly important role of the International Criminal Court, referred to its country's commitment to fight impunity and strengthen the rule of law, and emphasized its country's political support for the ICC's work.

The Costa Rican delegation spoke on behalf of the delegations of the SICA (Central American Integration System) group at the OAS. It welcomed Congresswoman Minerva Tavárez Mirabal of the Dominican Republic, President of the Foreign Affairs Committee of the Chamber of Deputies, who would speak later, in the second panel. Costa Rica spoke on the responsibility to protect against serious crimes and actions, adopted by the United Nations in 2005. It also noted the importance of strengthening cooperation between the International Criminal Court and the Organization of American States.

The delegation of the United States emphasized that it has consistently championed the cause of pursuing accountability for the world's worst crimes and preventing those crimes in the future. The delegation noted that although the United States is not a party to the Rome Statute, it is committed along with the ICC and States Parties to the Rome Statute to ending impunity for the worst crimes. The delegation highlighted a few examples of the ways in which the United States has engaged with the Court on a case-by-case basis and in accordance with its laws and policies. It also pointed out the importance of the principle of complementarity and building the capacity of states to ensure justice for victims of atrocities. In the view of the US delegation "the principle of complementarity is at the core of the ICC Statute; and beyond furthering accountability, a strong national justice system is essential to the achievement of peace, stability, the consolidation of democracy, and economic development".

The delegation of Argentina stressed the importance of prosecuting serious crimes, in light of its country's experience. It remarked that, in a context of “accountability,” the states have pledged to support international efforts through the International Criminal Court. It pointed to the Court as one of the most clearly notable achievements of multilateral diplomacy and, a little over 10 years since its establishment, the center of the criminal justice system of the international community as a whole. Argentina emphasized that the Court is the present and future of the fight against impunity and that cooperation by states parties is an obligation under the Statute; it further clarified that cooperation by non-states parties is necessary.

The delegation of Peru offered its thanks for the presentations and, quoting Pope Benedict XVI, reaffirmed that every state has the primary duty of protecting its people from serious and ongoing human rights violations and from the consequences of humanitarian crises. Peru noted that the international community has the duty to intervene, according to precepts established in international law, in cases in which a country is not in a position to do so, since indifference or inaction can become the true causes of harm. In this context, Peru affirmed that the essence of the International Criminal Court is defense of the fundamental rights of persons and rejection of impunity, in a context in which international law seeks to promote human well-being. It reaffirmed Peru's pledge to continue efforts to strengthen the International Criminal Court and noted the important role of the OAS in achieving universal adoption.

The delegation of Ecuador welcomed the invited guests. It affirmed that its country backs the principles of the Rome Statute and places high importance on the work of the International Criminal Court, with constant follow-up on its activities. It suggested creating a mechanism for building a road map to channel the total involvement of OAS member states in the work of the Court and in the Trust Fund for Victims.

The delegation of Colombia referred to cooperation on regulatory matters between the Colombian state and the International Criminal Court. It also underscored the constructive dialogue it has maintained with the Court and reported on ways to deal with the challenges in the face of crimes of an international nature. On the first point, it said Colombia has met all the requirements of the applicable standards. On constructive dialogue, it mentioned several visits by delegations of the Criminal Court to Colombia and the country's willingness to continue its cooperation. Lastly, with regard to challenges and experiences related to international crimes, it said the Attorney General of Colombia had recently created an *Analysis and Contexts Unit* to investigate the various forms of international crime, made up of experts in armed conflict who perform crime analysis. He also referred to the concept of positive complementarity.

In the next segment, “*Measures to strengthen cooperation with the Court*,” the CAJP Chair welcomed Ms. Antônia Pereira de Sousa, Associate Cooperation Officer at the Office of the Prosecutor of the International Criminal Court; Mr. Armando Meneses, Legal Advisor for the delegation of Mexico, Central America, and Cuba of the International Committee of the Red Cross; Ms. Anne-Aurore Bertrand, Cooperation Adviser in the Immediate Office of the Registrar of the International Criminal Court; Ms. Minerva Tavárez Mirabal, Congresswoman of the Dominican Republic and President of the Foreign Affairs Committee of the Chamber of Deputies, representing the organization, Parliamentarians for Global Action (PAG); and Ms. Michel E. Reyes Milk, Americas Coordinator at the Coalition for the International Criminal Court.

Ms. Antônia Pereira de Sousa, Associate Cooperation Officer at the Office of the Prosecutor of the International Criminal Court, pointed out that the principle of cooperation is a key principle for the system established by the Rome Statute. She explained the two pillars under the statute: on the one hand, an independent, permanent international criminal court as a judicial pillar, and on the other, its States Parties as the enforcement pillar. Ms. Pereira De Sousa also noted that cooperation is also intrinsically linked to the effectiveness and success of the Court and the Rome Statute system and that a general analysis of past experiences shows that cooperation with the Court is generally successful. She observed that over 70% of requests for assistance are met with a positive response. Nevertheless, the Office of the Prosecutor continues to face important challenges, which are intrinsic to the mandate. At the end of her presentation, she highlighted the following three challenges: execution of outstanding arrest warrants; public and diplomatic support for the Court and the Office of the Prosecutor in bilateral and multilateral forums; and the mainstreaming of ICC issues within and across government institutions.

Mr. Armando Meneses, Legal Advisor for the delegation of Mexico, Central America and Cuba of the International Committee of the Red Cross, explained the work of the ICRC to promote accession to or ratification of the Rome Statute and offered legal advisory support to the states in their development of enacting legislation and their cooperation with the International Criminal Court. He remarked on the role of national commissions and other bodies charged with integrating international humanitarian law into the implementation of national law. Mr. Meneses noted that implementation and cooperation with the Court contribute to better protection of victims of armed conflicts and make a strong statement against impunity in connection with war crimes. In conclusion, he described how the ICRC had provided legal advisory services concerning implementation of the Rome Statute in the Hemisphere.

Ms. Anne-Aurore Bertrand, Cooperation Adviser in the Immediate Office of the Registrar of the International Criminal Court, explained the role of the Registry in matters of cooperation. She indicated that the Registry is a neutral organ that provides services to the Office of the Prosecutor, the defense teams and the legal representatives of victims in the proceedings. As such, the Registry sends requests for assistance to States Parties and international or regional organizations. In the event of a referral by the United Nations Security Council, she added that Non States Parties are urged to cooperate with the Court as well. Therefore, the diplomatic support of the OAS and its member states is priceless in this regard. Mrs. Bertrand also addressed a few concrete issues concerning the cooperation with the Court such as the importance of the appointment within each country of a focal point, who follows up the requests for cooperation sent by the Prosecutor and by the Registry; the importance of agreements to allow the protection of witnesses and the rights of the defense (also known as voluntary agreements). Lastly, she emphasized the significance of the cooperation by Non States Parties on the basis of any arrangement. In this context, she noted that “although ratification of the Rome Statute is a priority for the Court, Non States Parties are encouraged to consider requests for assistance favorably”.

Congresswoman Minerva Tavarez Mirabal, President of the Foreign Affairs Committee of the Chamber of Deputies of the Dominican Republic and member of the board of directors of the organization Parliamentarians for Global Action (PAG), spoke on strengthening the Rome Statute system and explained the work of her organization. The PAG, considered a nongovernmental organization, is made up of legislators from over 130 countries who conduct campaigns to ensure that the system established by the Rome Statute is effective and universal. She emphasized that PAG network legislators have contributed motions, political leadership, and legislative action to 76 of the



122 ratifications submitted to date, noting in particular the leadership of inter-parliamentary dialogues to bring about ratifications such as those of Mexico, Suriname, and Chile. She also reported on the network of legislators in countries not parties to the Statute, and on cooperation activities carried out by the Governments of El Salvador, Jamaica, and Haiti. She called upon the United States to ratify the Rome Statute, considering the important role of that country in cooperation with the International Criminal Court.

Congresswoman Mirabal also said effective prevention of the most serious international crimes is an indicator of the states' capacity to respond. Therefore, she said, there must be no further delay in adopting legislation to enable each OAS member to prevent and punish the gravest crimes, as provided in the Rome Statute. She also suggested adopting an effective mechanism for cooperation with the International Criminal Court, including cooperation among states, to support the states. Lastly, she called upon states to ratify the Kampala amendments on crimes of aggression adopted by the Rome Statute Review Conference in June 2010.

Ms. Michelle Reyes Milk, Americas Coordinator at the Coalition for the International Criminal Court, affirmed that cooperation with the Court remains a topic of vital importance that requires the attention of the states of the region, but also of civil society organizations, who can make significant contributions to building diplomatic commitments to specific actions and tangible results, as well as monitoring progress and impasses in this area. She said her organization welcomed these working meetings on cooperation with the Court over the years. As for the role of regional organizations, she said the diplomatic commitment manifested in statements within the OAS was clearly an invaluable element and that states of the region have demonstrated their capacity to strengthen cooperation with the International Criminal Court, especially by executing arrest warrants. Ms. Reyes Milk also listed some initiatives set in motion by civil society organizations to promote the precepts established in the Statute of the Court: training of justice operators, promotional support through publications or manuals, and the organization of workshops on cooperation with the Court. In conclusion, she said the states continue to be the first called to strengthen cooperation with the Court to bring about its effective operation.

Next was the *Dialogue between the member state representatives and the participants*:

The delegation of the Dominican Republic said this working meeting represented fulfillment of the General Assembly mandate on measures to strengthen cooperation with the International Criminal Court. The delegation congratulated the panelists on their presentations, which had illustrated specific ways the OAS could cooperate with the Court. It praised the constructive efforts of Congresswoman Mirabal in her country and abroad. It described its government's efforts against impunity at the national and international levels and the importance it attaches to measures to bring about universal adoption of the Statute. In conclusion, the delegation spoke on measures to incorporate coverage of the most heinous crimes into the criminal code, in keeping with the Geneva Conventions and the Rome Statute.

The delegation of Peru asked about the efficacy of the measures provided in the Rome Statute in the case that a state party were to refuse a cooperation request.

Ms. Bertrand explained that the issues of non-cooperation in matters of arrest and surrender are the most well known because of their publicity, but also confidentiality issues imposed by the freezing of assets should be taken into account in this area. In a case of non-cooperation, the Court

may convene the State to be present in the hearing or request an explanation for the lack of cooperation. If a State finds it difficult to comply with a request for cooperation, the State has an obligation to go back to the Court and try to find a solution. Thus, States are always given an opportunity to explain their particular circumstances. If the Court decides to go forward despite the absence of cooperation, there are two avenues: the first one is to refer the case to the Assembly of States Parties in order to try to find a solution; the second avenue relates to the matters for which the UN Security Council is competent. Ms. Pereira de Sousa added that the Court also tries to mobilize civil society organizations when they know that a certain country will receive a suspect, as a way to promote the importance of cooperation within that country.

The delegation of Mexico thanked the presenters, reaffirmed its country's commitment to implementing the Rome Statute, and announced its interest in submitting a new resolution to the General Assembly to renew the Committee's mandate to hold these working meetings and continue to promote the work of the International Criminal Court.

In conclusion, the Chair of the CAJP, Ambassador Andrés González Díaz, thanked the presenters for their participation and contributions and called the meeting to a close.

**ANNEXES**

1. Agenda of the Working Meeting: [CP/CAJP-3106/12](#) rev. 4
2. Biographical notes on the panelists: [CP/CAJP-3106/12](#) rev. 4 add. 1
3. Informative documents to support the presentation by the President of the International Criminal Court, Judge Sang-Hyun Song: [CP/CAJP-3106/12](#) rev. 4 add. 2
4. Comments by member states:
  - a. Argentina: [CP/CAJP-3106/12](#) rev. 4 add. 3
  - b. United States: [CP/CAJP-3106/12](#) rev. 4 add. 4
5. Presentations: [CP/CAJP-3106/12](#) rev. 4 add. 5
6. Video transmitted via webcast:  
<http://www.youtube.com/watch?v=zIkEdu9a5N8&list=PLkh9EPEuEx2u0HCW5-MBekeAjeKj9DcCZ&index=2>