

International Criminal Court

Reports and Resolutions:

CJI/RES.98 (LXVII-O/05)	<i>Promotion of the International Criminal Court</i>
CJI/doc.198/05 rev.1	Questionnaire on the International Criminal Court (presented by Drs. Mauricio Herdocia Sacasa, Luis Herrera Marcano, Antonio Fidel Pérez, Stephen C. Vasciannie and Ana Elizabeth Villalta Vizcarra)
CJI/RES.105 (LXVIII-O/96) -	<i>Promotion of the International Criminal Court</i>
CJI/doc.211/06 corr.1 -	<i>International Criminal Court</i> (presented by Dr. Mauricio Herdocia Sacasa)
CJI/RES.125 (LXX-O/07)	Promotion of the International Criminal Court
CJI/doc.256/07 rev.1	Promotion of the International Criminal Court (presented by Dr. Mauricio Herdocia Sacasa)

During its 67th regular session (Rio de Janeiro, August 2005), the Inter-American Juridical Committee approved the inclusion of the theme "Promotion of the International Criminal Court" in the agenda, by mandate of the General Assembly of the OAS. Resolution AG/RES.2072 (XXXV-O/05) requested the Juridical Committee to draw up a questionnaire, to be presented to the OAS member States, on how their laws allow for cooperation with the International Criminal Court and, on the basis of the findings of the questionnaire, to present a report to the Permanent Council, which, in turn, will transmit it to the General Assembly at its thirty-sixth regular session.

The Chairman of the Inter-American Juridical Committee opened considerations on the theme recalling that 27 members of the OAS subscribed the *Rome Statute* and 20 ratified it. He indicated that many States have found difficulties in their internal legislation to incorporate or accept some of the norms contained in the *Statute*, so they needed or need to make constitutional amendments or interpretations to these statutory amendments. He quoted as examples the length of sentences, the theme of extradition of nationals and the immunity of certain functionaries. He also recalled that some countries had signed bilateral agreements with the United States in order not to hand over their nationals to the International Criminal Court. This, he added, has also been the subject of several manifestations on the part some States.

Dr. Luis Herrera Marcano suggested that before dealing with the drafting of a questionnaire, he would have to make an inventory of the obstacles faced by the States in order to ratify the *Statute*. He said that a more practical sense could thus be given to the questionnaire.

Dr. Stephen C. Vasciannie indicated that in general the countries of the Caribbean found no difficulties in ratifying the *Statute*, but that there was some difficulty in implementing it due to the variety of themes covered in the norms contained therein. He gave the examples of the constitutional norms that prohibit double jeopardy, compatibility of signing bilateral agreements such as those signed with the United States with article 98 of the *Statute*, the immunities of Heads of State, and so on. Dr.

Vasciannie informed that the Secretariat of the Commonwealth had already prepared a guide on the norms to be adopted to implement the *Rome Statute* in the countries of the Caribbean.

Dr. Ana Elizabeth Villalta Vizcarra indicated that in the internal legislation of El Salvador, although the Constitution had been amended to permit extradition of nationals when a mediating treaty was applicable, the possibility of extraditing nationals to International Courts was not included. She stated that there also existed the problem of lifetime imprisonment contained in the *Statute*, an item not considered in the legislation of El Salvador.

Dr. Galo Leoro Franco expressed his doubts about some States being able to answer a questionnaire of this nature since in the case of Ecuador the constitutionality or unconstitutionality of a norm can only be declared by the Supreme Court at the moment the norm is applied.

Following this initial exchange, it was decided that the questionnaire would be as general as possible and that the Committee should have as many antecedents as possible with regard to the internal legislation of countries to enable it to orient the questions to be included. It was therefore decided that the questionnaire would be drafted at this regular session in order to comply with the mandate of the General Assembly and that it be addressed to all the member States of the OAS. Accordingly, a working group was set up to prepare the draft questionnaire.

In the course of the regular session, the Inter-American Juridical Committee examined document CJI/doc.198/05, *Questionnaire on the International Criminal Court*, presented by Drs. Mauricio Herdocia Sacasa, Luis Herrera Marcano, Antonio Fidel Pérez, Stephen C. Vasciannie and Ana Elizabeth Villalta Vizcarra. Dr. Mauricio Herdocia made an oral presentation of the document.

The members of the Inter-American Juridical Committee proposed some changes that were incorporated into the text and immediately afterwards the document was adopted.

The Inter-American Juridical Committee also adopted resolution CJI/RES.98 (LXVII-O/05), *Promotion of the International Criminal Court*, by which document CJI/doc.198/05 rev.1 is approved, containing the "Questionnaire on the International Criminal Court" in compliance with the mandate assigned by the General Assembly. It was also decided to send this document to the member States of the OAS via the General Secretariat so that the Juridical Committee can present a report on the results of the questionnaire to the Permanent Council of the OAS prior to the XXXVIth regular session of the General Assembly. Accordingly, the deadline date for receiving answers was set at January 30, 2006. Finally, Dr. Mauricio Herdocia Sacasa was appointed rapporteur and he was requested to present a progress report during the 68th regular session of the Inter-American Juridical Committee.

During its 68th regular session (Washington, D.C., March 2006), with the support of the Office of International Law and the American Society of International Law, the Inter-American Juridical Committee conducted a workshop entitled "Democracy in the Americas and the International Criminal Court." The second meeting of that workshop addressed Topic II on the International Criminal Court. The moderator for that meeting was Professor José Álvarez of Columbia University and President-elect of the American Society of International Law.

Two members of the Inter-American Juridical Committee took part as panelists: Dr. Ana Elizabeth Villalta Vizcarra, who spoke about the broad background to the topic and Dr. Mauricio Herdocia Sacasa, who spoke about OAS member States and the International Criminal Court. The other two guest speakers were Professor Allison Danner of the Vanderbilt University School of Law and the University of California, who spoke about implementation of the *Rome Statute*, and Dr. Silvia Fernández of Gurmendi, Chief of Staff and Special Advisor to the Prosecutor of the International Criminal Court, who spoke about the structure and *modus operandi* of the International Criminal Court.

During its 68th regular session (Washington, D.C., March 2006), the Inter-American Juridical Committee examined document CJI/doc.211/06, *International Criminal Court*, presented by Dr. Mauricio Herdocia Sacasa, pursuant to operative paragraph 6 of General Assembly resolution AG/RES.2072 (XXXV-O/05).

Dr. Herdocia stated that the report contains a background section with statistics and an analysis of certain relevant provisions of the *Rome Statute*, such as *ne bis in idem*, the irrelevance of official capacity, the functions and powers of the Prosecutor of the International Criminal Court, detention procedure, life imprisonment, and pardons and amnesties. He said it also refers to studies by the Inter-American Commission on Human Rights, the Inter-American Juridical Committee, and the International Criminal Court's Working Group. At the end of the report, the rapporteur summarizes the answers to the questionnaire of the member States who replied and the conclusions of the report. Eleven of the 17 countries that replied to the questionnaire are parties to the *Rome Statute*: Argentina, Bolivia, Brazil, Canada, Colombia, Costa Rica, the Dominican Republic, Ecuador, Mexico, Uruguay, and Paraguay. The countries that replied to the questionnaire, but which are not parties to the *Rome Statute*, are: Chile, El Salvador, Guatemala, Nicaragua, Suriname, and United States.

Finally, the Inter-American Juridical Committee adopted resolution CJI/RES.105 (LXVIII-O/06), *International Criminal Court*, which approves document CJI/doc.211/06 corr.1, presented by the rapporteur, and asks the General Secretariat to forward said document to the OAS Permanent Council in order for it to submit it in turn to the OAS General Assembly at its thirty-sixth regular session. Via the General Secretariat, it also requests member States that have not yet replied to the questionnaire drawn up by the Committee to fill it in, while asking States Parties to the *Statute of the International Criminal Court* that have completed the process of adopting laws and implementing Parts IX and X of that *Statute* to notify the Inter-American Juridical Committee of that fact. The resolution also requests States that have completed the process of adopting laws that incorporate, modify, or add the criminal offenses addressed in the *Rome Statute* to provide updated information thereon to the Inter-American Juridical Committee. States Parties to the *Rome Statute* are also requested to report any other amendment that facilitates cooperation with the International Criminal Court. Finally, the Inter-American Juridical Committee decided to retain among the agenda items under consideration that which refers to "Promotion of the International Criminal Court" and to request the rapporteurs on this subject to submit an updated report to the Committee at its next regular session, based on fresh information from OAS member States on the aforementioned issues.

On April 29, 2006, the Chairman of the Inter-American Juridical Committee wrote a note to the OAS Secretary General, forwarding resolution CJI/RES.105 (LXVIII-O/06) for the attention of the OAS Permanent Council and attaching report CJI/doc.211/06 corr.1.

For its part, the Office of International Law notified the Permanent Missions to the OAS on May 18, 2006 of the contents of said resolution. Both documents are included at the end of the present sub-chapter.

At its thirty-sixth regular session (Santo Domingo, June 2006), the OAS General Assembly adopted resolutions AG/RES.2218 (XXXVI-O/06) and AG/RES.2176 (XXXVI-O/06), in which it asked the Inter-American Juridical Committee to continue addressing the issue. Furthermore, it asked the Committee to prepare a set of recommendations to OAS member States, based on the findings of the report submitted (CP/doc. 4111/06), regarding ways to strengthen cooperation with the International Criminal Court and any progress made, and to submit them to the Permanent Council for forwarding to the General Assembly at its thirty-seventh regular session.

At its 69th regular session (Rio de Janeiro, August 2006), and in compliance with General Assembly resolutions AG/RES.2218 and AG/RES.2176, the Inter-American Juridical Committee discussed this topic. The rapporteur gave an overview of the contributions received at the working session that the OAS Committee on Juridical and Political Affairs held with the representative of the International Criminal Court on February 3, 2006, and explained that with the results of that session he would proceed to study and draw up the documents necessary to fulfill the applicable mandates.

At the 70th regular session of the Inter-American Juridical Committee (San Salvador, February-March 2007), Dr. Herdocia Sacasa presented report CJI/doc.256/07 rev.1, "Promotion of the International Criminal Court", which updates his previous report. His overview of the report offered a detailed view of how it is organized and what it contains. In conclusion he underscored the significance of responses to the questionnaire as they provide information on how countries have adopted norms on cooperation with the ICC and how they have implemented the Statute. He emphasized that countries that have not answered the questionnaire should be urged to do so, and that countries that have enacted new law or modified existing law should submit updated information.

The rapporteur ended his presentation by recommending that Member States and the OAS increase cooperation with the and be more active in discussion forums and the General Assembly of States Parties of the Court.

The Inter-American Juridical Committee approved resolution CJI/RES.125 (LXX-O/07), "Promotion of the International Criminal Court", which highlights the preliminary recommendations put forward in the report. The resolution also states the IAJCI's decision to submit the report to the Permanent Council, and reiterates the request that all Member States that have not yet responded to the questionnaire do so, and that States Parties to the "Statute of the International Criminal Court" having passed enacting legislation submit the pertinent information to the Inter-American Juridical Committee. The resolution once again asks States that have passed legislation incorporating, modifying or adding criminal offenses defined by the Rome Statute to submit up-to-date information to the Inter-American Juridical Committee. Lastly, the resolution requests the rapporteur to use all new information received from States to draft a report outlining progress made in this area, bringing the situation up to date, and if appropriate, further developing the ideas and preliminary recommendations put forward in earlier reports.

On 21 March 2007, the Office of International Law sent the Permanent Council the Inter-American Juridical Committee resolution along with the rapporteur's report, which were classified as document CP/doc.4194/07, "Note from the Inter-American Juridical Committee transmitting resolution CJI/RES.125 (LXX-O/07), Promotion of the International Criminal Court", attaching report CJI/doc.256/07 rev.1.

At its 37th regular session (Panama, June 2007), the OAS General Assembly approved resolution AG/RES. 2279 (XXXVII-O/07), "Promotion of the International Criminal Court", wherein it requested the Inter-American Juridical Committee, on the basis of the information received from and updated by the Member States, the recommendations contained in report CP/doc.4194/07, and existing cooperation law, to prepare a model law on cooperation between States and the International Criminal Court, taking into account the hemisphere's different legal systems, and to submit it to the General Assembly at its 38th regular session.

During the Inter-American Juridical Committee's 71st session (Rio de Janeiro, August 2007), the General Secretariat was asked to compile the existing laws in the hemisphere so that the Committee might present a draft model law that is responsive to civil law and common law countries.