

## PROMOTION OF THE INTERNATIONAL CRIMINAL COURT

(presented by Dr. Mauricio Herdocia Sacasa)

### I. MANDATE AND ORIGIN OF THE REPORT

The General Assembly of the Organization of American States, through resolution AG/RES. 2072 (XXXV-O/05), “Promotion of the International Criminal Court”, of June 7, 2005<sup>19</sup>, resolved:

6. To request the Inter-American 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.

During its 67<sup>th</sup> regular session in August 2005, the Inter-American Juridical Committee approved the inclusion in its agenda of the subject “Promotion of the International Criminal Court”.

The final document of the Questionnaire on the International Criminal Court is CJI/doc.198/05 rev.1, approved by resolution CJI/RES.98 (LXVII-O/05), in accordance with the mandate issued by the General Assembly. This Questionnaire covered both States Parties and those that are not party of the Rome Statute.

The Questionnaire was answered by 17 countries<sup>20</sup>, 11 of which are Parties to the Rome Statute and 6 are not. Based on this information, the rapporteur presented document CJI/doc.211/06 of March 27, 2006, which was approved by resolution CJI/RES.105 (LXVIII-O/06) of March 28, 2006. The following was resolved in this resolution:

3. To request the Member States of the OAS through the General Secretariat that have not yet answered the questionnaire prepared by the Inter-American Juridical Committee to complete said questionnaire, and to those States Parties to the Statute of the International Criminal Court that undertook the law approval process to implement parts IX and X of the Statute, to send such information to the Inter-American Juridical Committee.

4. Also to request the States that completed the law approval process of including, modifying or adding the types of crime stated in the Rome Statute, to provide the Inter-American Juridical Committee with that updated information.

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<sup>19</sup> The United States of America made a reservation that expresses, among other issues that “...will continue to firmly defend the principle of responsibility for war crimes, genocide and crimes against humanity, but cannot endorse the International Criminal Court because it considers that it has serious deficiencies ...”

<sup>20</sup> Canada, Argentina, Ecuador, Bolivia, Colombia, Mexico, Uruguay, Dominican Republic, Costa Rica, Brazil, Paraguay, Surinam, El Salvador, Nicaragua, Chile, Guatemala and the United States of America.

6. To keep on their agenda among the topics under study the subject of the “Promotion of the International Criminal Court”, and to request the rapporteur of the topic, Dr. Mauricio Herdocia Sacasa, as new information is received by the OAS Member States in relation to points 3, 4 and 5 herein, to present an updated report at the next regular session of the Inter-American Juridical Committee.

Through resolution AG/RES. 2218 (XXXVI-O/06), Observations and Recommendations to the Annual Report of the Inter-American Juridical Committee, of June 6, 2006, note was taken with great satisfaction of the Report of the IAJC on the topic “International Criminal Court” (CJI/doc.211/06) which was sent in due time to the Permanent Council in compliance with resolution AG/RES. 2072 (XXXV-O/05), which in turn will present it at the Thirty-Sixth Regular Session of the General Assembly with a request to continue addressing the topic.

In the same manner, on June 6, 2006, the General Assembly of the OAS, through resolution AG/RES. 2176 (XXXVI-O/06), Promotion of the International Criminal Court<sup>21</sup>, resolved:

8. To request the Inter-American Juridical Committee to prepare, on the basis of the results of the report presented (CP/doc.4111/06), a document of recommendations to the OAS Member States on how to strengthen cooperation with the International Criminal Court, as well as on progress made in that regard, and to present it to the Permanent Council, so that it may in turn submit it to the General Assembly of the Organization at its thirty-seventh regular session.

## **II. GENERAL STATUS OF THE ROME STATUTE**

The Rome Statute that establishes the International Criminal Court came into force on July 1<sup>st</sup>, 2002. It is the international judicial court that complements the efforts of the national jurisdictions to prosecute those responsible for crimes such as genocide, crimes against humanity and war crimes.

The Statute of the Court in its “Part IX, International Cooperation and Judicial Assistance”, and “Part X, Enforcement”, contemplates several measures aimed at that States Parties shall, in accordance with the provisions of this Statute, cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court (art. 86), and ensure that there are procedures available under their national law for all of the forms of cooperation which are specified under this Part (art. 88).

As of January 2007, there are 104<sup>22</sup> States Parties to the Rome Statute; this number increased by four States since rapporteur's report CJI/doc.211/06 of March 27, 2006. Of the 139 States that signed the Rome Statute, 27 belong to the Organization of American States (OAS).

The Agreement on Privileges and Immunities of the International Criminal Court (APIC) has been ratified or accepted by 48 countries in the world.

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<sup>21</sup> With reserve of the United States of America.

<sup>22</sup> <http://www.icc-cpi.int/asp/statesparties.html#S>

### III. UPDATE TO THE RAPPORTEUR'S REPORT ON THE INTER-AMERICAN SYSTEM

After Rapporteur's report CJI/doc.211/06 of March 27, 2006, only the Permanent Mission of the Eastern Republic of Uruguay before the Organization of American States has presented information. It is an update of the material previously sent through note No. 010/06 of January 12, 2006. The new note includes copy of Law No. 18.026, Genocide, Crimes against Humanity, War Crimes and Cooperation with the International Criminal Court enacted on September 25, 2006, as well as copy of Law No. 18.013 enacted on September 11, 2006, approving the Agreement on Privileges and Immunities of the International Criminal Court.

In the same manner, in conformity with the contents of the referred Rapporteur's Report, Argentina -one of the countries that answered the questionnaire- has made progress in the approval of a Law for the Implementation of the Rome Statute of the International Criminal Court, according to publication of the Official Gazette of January 9, 2007.

According to document OEA/Sec.Gral. ODI/doc.02/07 of February 9, 2007, Peru has put into effect procedures that establish methods for cooperation and delivery.

Trinidad and Tobago on its part emitted the law International Criminal Court Act 2006.<sup>23</sup>

It should be pointed out as a significant update element the results of the work session of the Committee on Juridical and Political Affairs, with the support of the Office of International Law of the OAS, held at the headquarters of the Organization on February 2, 2007, which will be described below.

For the preparation of this report, the rapporteur has resorted to his previous report according to the mandate that he received by the General Assembly, to the information directly provided by the Governments, to the report derived from the meeting on February 2, 2007, and to the interventions carried out therein. Likewise, he resorted to the information contained on specialized web pages published by organizations devoted to the topic of the International Criminal Court.

It should be noted that the number of countries of the Inter-American system who already ratified the Rome Statute increased by one, making a total of 23 States Parties. St. Kitts and Nevis adhered to the Rome Statute on August 22, 2006, and the number of countries who have not ratified yet the Rome Statute is now 12.

The 23 countries of the Inter-American system that already ratified the Rome Statute are:

**Antigua and Barbuda** (June 18, 2001), **Argentina** (February 8, 2001), **Barbados** (December 10, 2002), **Belize** (April 5, 2000), **Bolivia** (June 27, 2002), **Brazil** (June 14, 2002), **Canada** (July 7, 2002), **Colombia** (August 5, 2002), **Costa Rica** (June 7, 2001), **Dominica** (February 12, 2001), **Dominican Republic** (May 12, 2005) **Ecuador** (February 5, 2002), **Guyana** (September 24, 2004), **Honduras** (July 1, 2002), **Mexico** (October 28, 2005), **Panama** (March 21, 2002), **Paraguay** (May 14, 2001), **Peru** (November 10, 2001), **Saint Kitts and Nevis** (August 22, 2006) **St. Vincent and The Grenadines** (December 3, 2002), **Trinidad and Tobago** (April 6, 1999), **Uruguay** (June 28, 2002), and **Venezuela** (June 7, 2000).

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<sup>23</sup> Legal Supplemental Part A to the Trinidad and Tobago Gazette, vol. 45, no. 32, 23<sup>rd</sup>. February, 2006.

The 12 countries of the Inter-American System that have not ratified the Rome Statute are: **Bahamas, Chile, Cuba, Haiti, Jamaica, St. Lucia, United States of America, Grenade, Guatemala, Nicaragua, El Salvador, and Surinam.**

The Agreement on Privileges and Immunities of the International Criminal Court (APIC) has been ratified by 10 countries of the Inter-American System. These are<sup>24</sup>: **Argentina** (February 1, 2007), **Belize** (September 14, 2005), **Bolivia** (January 20, 2006), **Canada** (June 22, 2004), **Ecuador** (April 19, 2006), **Guyana** (November 16, 2005), **Panama** (August 16, 2004), **Paraguay** (July 19, 2005), **Trinidad and Tobago** (February 6, 2003), **Uruguay** (November 1, 2006). With regard to report CJI/doc.211/06, there are four additional countries that have ratified or accepted it: **Bolivia, Argentina, Uruguay and Ecuador.**

There are 7 countries that have not ratified but already signed the APIC. These are: **Bahamas** (June 30, 2004), **Brazil** (May 17, 2004), **Colombia** (December 18, 2003), **Costa Rica** (September 16, 2002), **Jamaica** (June 30, 2004), **Peru** (September 10, 2002), and **Venezuela** (July 16, 2003).

#### **IV. CONTENT OF IAJC RAPPORTEUR'S REPORT CJI/doc.211/06**

Given that resolution AG/RES. 2176 (XXXVI-O/06) requested that the results of the report presented by the Inter-American Juridical Committee serve as the basis for the preparation of a document of recommendations on the way to strengthen the cooperation with the Court and record the progress made, the Rapporteur has considered the relevance of making a general summary of the contents of document CJI/doc.211/06.

Such report addressed in first place, the general status of the Rome Statute with respect to the Inter-American System countries, emphasizing the items that may become conflictual in the face of a ratification or acceptance of the same in their relation with the national legislation of the countries. Apparently, the more problematic items are: *Ne Bis In Idem*; Irrelevance of Official Capacity; Duties and Powers of the Prosecutor with Respect to Investigations; Arrest Proceedings and Surrender of Persons to the Court; Life Imprisonment; and Pardons and Amnesties.

The main cooperation measures contained in the Rome Statute in its Parts IX and X regarding cooperation were mentioned.

Reference was made also to other reports issued prior to the mandate of the Inter-American Juridical Committee such as the report of the Inter-American Commission on Human Rights (OEA/Ser.L/V/II.102/doc.6 rev., of April 16, 1999) and its resolution No. 1/03 of October 24, 2003, on Prosecution of International Crimes, documents which urge the countries to adopt measures in favor of the application of the Statute.

The final report of the Inter-American Juridical Committee, was mentioned as well: CJI/doc.199/05 rev.1, of August 15, 2005, which addressed the topic "Legal Aspects of Compliance within the States with the Decisions of International Courts or Tribunals or other International Organs with Jurisdictional Functions", which included a series of responses provided by the Statutes relative to the topic of the International Criminal Court.

Also, the report of the Work Meeting on the International Criminal Court (CP/CAJP-2327/06 corr.1) held at the OAS headquarters on February 3, 2006, where a

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<sup>24</sup> [http://www.iccnw.org/documents/CICC\\_APIClist\\_current\\_sp.pdf](http://www.iccnw.org/documents/CICC_APIClist_current_sp.pdf)

series of cooperation measures for consideration of the States are described, was also addressed, being among them:

- The exchange of information and documents between the States and the Court on the crimes falling under their jurisdiction.
- Logistical support such as transportation and lodging of investigators, witnesses or even victims of the cases presented to the Court.
- Possibility of providing detention facilities for persons convicted of international crime.
- Training to officials so that they manage ICC procedures accordingly, and support the participation of the civil society in the process for the promotion and consolidation of the ICC.
- Interruption of the amnesty law remedy for these crimes since they facilitate impunity and affect the policies of the Rome Statute and Court activities.

In the Conclusions of the IAJC rapporteur's report, the strong interest by the Member States of the Organization in the theme of cooperation with the International Criminal Court was emphasized, which is fully demonstrated by the fact the 17 States initially answered the IAJC questionnaire in a relatively short period of time, which showed certain tendencies and some valuable signs that are very useful for analyzing, albeit in general terms, the measuring of authorization of such national laws for cooperation with the Court, and arrive to some general considerations.

It was possible to see that most States have included in their legislation the crime of genocide and a smaller number of States have included war crimes. Crimes against humanity are the lowest number of provisions in the national legislation of the States that answered the questionnaire, which seems to indicate a more complex problem in the process of adapting the legislations in relation to the latter States.

It was indicated that in the case of war crimes and crimes against humanity, some of the definitions given by the States are often scattered in their laws and not necessarily cover the wide range of the Rome Statute.

It was emphasized that a large part of the States Parties to the Statute that answered the questionnaire said that they have regulations to implement the cooperation with the Court, since they have been specifically devised or because they consider that the prevailing law always permits them to cooperate with the Court. Emphasis was given to the fact that for some States Parties to the Statute, the lack of specific laws did not necessarily seem to prevent their capacity to attend the Court's requests for cooperation under the already existing legal system, while they undertake the corresponding reforms.

In the case of the States Parties to the Statute that did not yet have a specially created law to implement cooperation with the Court, they all said that they have processes underway to form the corresponding legislation at different states of progress.

To settle the problems that the Statute may cause relative to the Constitution and the internal legal framework, recourse was made to certain mechanisms worth considering for the case of the States that are not yet party to the Statute:

- a) Global constitutional reform;
- b) Report, declaration or opinion of the control agencies of constitutionality,
- c) Studies and inquiries that permitted direct ratification or adhesion.

It was also suggested to request the OAS Member States to consider the possibility of completing the questionnaire prepared by the Inter-American Juridical Committee in the case of the States that have not answered it yet. Likewise, to the States Parties to the Statute that have completed the process of approving laws for implementation of Parts IX and X of the Statute, to provide the Inter-American Juridical Committee with such updated information.

Also suggested was that all States that have completed the process of approving laws, include, modify or add the types of crime stated in the Rome Statute, to provide the Inter-American Juridical Committee with that updated information.

It was mentioned that it would be advisable that the Inter-American Juridical Committee keep on its agenda, among the topics under consideration, the subject relating to the "Promotion of the International Criminal Court" and that, with the updated information that includes the new information provided by the States that already answered the questionnaire, as well as the new information provided by the States that have not yet done so, prepare an updated report.

Given the complementary nature of the ICC jurisdiction in relation to the national criminal jurisdictions, the importance of strengthening the national jurisdiction itself was pointed out. It would imply to properly establish the crimes stated in the Statute, national criminal codes and the qualification of the national legal system for judging the crimes in a national court.

## **V. LAWS RELATING TO THE ROME STATUTE** <sup>25</sup>

As previously indicated, after the report by the IAJC Rapporteur on the topic, the Eastern Republic of Uruguay, through its Permanent Mission before the OAS, remitted a Law on Genocide, Crimes against Humanity, War Crimes and Cooperation with the International Criminal Court. Below are some aspects of interest.

It concerns a legislation that develops, at great length, the subjects of categorization and cooperation, and others.

It considers that "... Crimes are illegalities, under the jurisdiction of the International Criminal Court according to the dispositions in article 5 of the Rome Statute, and all which due to their seriousness are governed by special laws, by this Code and the regulations of international law, inasmuch as they may be applicable..." (Article 1 that replaces article 2<sup>nd</sup> of the Penal Code).

It also provides that "4.4. National jurisdiction be exercised whenever: A) it concerns crimes or offenses that, for trial purposes, fall under the jurisdiction of the International Criminal Court: 1) Remittance is requested by the International Criminal Court..."

It categorizes the Crime of Genocide (art. 16 in extenso); the Crimes Against Humanity (article 18 that refers to article 7 of the Rome Statute); War Crimes (article 26 in extenso) and the crimes against the Administration of Justice by the International Criminal Court (article 27 with reference to article 70 of the Rome Statute).

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<sup>25</sup> In "Report – Working Session of the Committee for Legal and Political Affairs on the International Criminal Court" contained in document OEA/Sec.Gral. ODI/doc.02/07 of 9 February 2007, one reads the following: "In the case of Peru, a report was made on the efforts carried out by the Criminal Code aimed at making the Statute of Rome more adequate. Reference is also made to the Criminal Procedural Code, which emphasizes the coming into effect of procedures that establish new methods of cooperation and delivery." Trinidad and Tobago emitted a detailed and very broad law of implementation (*International Criminal Court Act 2006*) in February 2006.

Part II is referred to the Cooperation and Relation with the International Criminal Court. Article 31.1 provides the following: “The Eastern Republic of Uruguay will fully cooperate with the International Criminal Court, and shall act in accordance with the cooperation and assistance requests that are made, in compliance with the provisions in the Rome Statute of the International Criminal Court...”. Following includes: “31.2. The existence of internal procedures may not be invoked to deny compliance with cooperation requests made by the International Criminal Court”, and as in “31.3, There may not be discussion regarding the fact that the International Criminal Court imputes a person, nor about the culpability of the defendant”.

Also established is that “The cooperation and assistance requests received from the Court be remitted to the Office of International Cooperation of the Ministry of Education and Culture, which shall act as the central authority” (article 32.3).

Chapter 3 of Heading III refers to Cooperation in the Execution of Judgments, and foresees that the "Uruguayan State accept, in compliance with the stipulations in article 103, paragraph 1, literal a) of the Rome Statute, the responsibility of executing a final sentence of imprisonment for a person condemned by the International Criminal Court, whenever:

- a) It concerns a Uruguayan citizen.
- b) The term of incarceration does not exceed the maximum prison sentence ordered by national jurisdiction.

Also, after the Rapporteur’s report, in the Official Bulletin of the Republic of Argentina, year CXV, Number 31.069, dated January 9, 2007, is the Rome Statute Implementation Law of the International Criminal Court, written in a very clear, concise and direct manner.

Article 1<sup>st</sup> of this law establishes as its object:

... to implement the disposition of the Rome Statute ... and regulate the relations of cooperation between the State of Argentina and the International Criminal Court in the exercise of the functions entrusted to that organization by the cited instrument and its complementary regulations, through the attribution of competencies to the state organs and the establishment of adequate internal procedures, in what is not provided by the Rome Statute and its complementary regulations, especially the Rules of Procedure and Evidence.

The second paragraph of article 2, establishes that:

The conduct described in articles 6<sup>th</sup>, 7<sup>th</sup>, 8<sup>th</sup> and 70<sup>th</sup> of the Rome Statute and all those crimes and offenses that will become competence of the International Criminal Court, for the Republic of Argentina shall be punishable in the manner provided in this law.

One characteristic of this law, partially shared with the law approve by the Eastern Republic of Uruguay, is that it remits all the categorizations of genocide crimes, crimes against humanity and war directly to articles 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> of the Rome Statute (as per articles 8, 9 and 10 of the Implementation Law). In the case of War Crimes, the Implementation Law categorizes them with remittance to the Rome Statute, and including the remittance to article 85, paragraph 3, sections c) and d) and paragraph 4, section b) of the Additional Protocol to the 1949 Geneva Conventions.

The law foresees that the action and penalty for such crimes do not prescribe, and is extended to those that will become competence of the Court (article 11 of the Law).

The crimes against the ICC Administration of Justice are itemized in the law as: False Testimony, Falsification of Evidence, Corruption of Witnesses, Reprisals against Witnesses, Destruction or Alteration of Evidence, Intimidation or Corruption of functionaries and Bribery (articles 14-21 of the law).

The relations with the International Criminal Law are regulated under Heading IV of the Law, and the competent authorities for application of the laws are designated as: a) The Executive Power, and b) The Organs of Federal Justice.

Under Chapter II of Heading IV, the law considers the processes of: Injunction of inhibition against the Court Prosecutor, Contesting the Competence of the Court or the Admissibility of the Cause and the Inhibition of the Argentinean Jurisdiction in favor of the International Criminal Court.

Chapter IV of the law treats the “International Cooperation and Judicial Assistance. Petition for arrest and provisional arrest, and surrender of persons to the Court”. It also treats “Other forms of cooperation with the International Criminal Court. Petitions for cooperation, Requirements, Remittance”, in Chapter V of the Law.

## **VI. SPECIAL CAJP WORK SESSION**

The General Assembly of the OAS, through resolution AG/RES. 2176 (XXXVI-O/06), Promotion of the International Criminal Court, requested the Permanent Council to, with the support of the General Secretariat, hold a working meeting on the appropriate measures that the States should take to cooperate with the International Criminal Court.

The work session of the Committee on Juridical and Political Affairs on the International Criminal Court – the third carried out – was held on February 2, 2007, and its results are contained in the document OEA/Sec.Gral.ODI/doc.02/07.

The report includes the main ideas presented during the working session. They are:

- The OAS Member States must work to promote the ratification or adoption of the Rome Statute in their Parliaments;
- The participation of the civil society and the inter-governmental organizations is fundamental regarding the promotion, diffusion and implementation of the Rome Statute;
- The proper implementation and overcoming of internal order technical difficulties require a committed political will;
- The concepts established in the Rome Statute constitute the minimum standard of reference for the States, nonetheless, every State is free to implement policies and legislations that can exceed the referred standards;
- The importance of valuing the full effectiveness of the International Criminal Court and respect for the principle of universality was emphasized;
- Cooperation with the International Criminal Court and the Office of the Attorney General in the varied phases of the process is fundamental to achieve full system efficacy. Political will is essential in this scope;
- The integral retribution of the victims constitute a great challenge that implicates the full participation of the States;



- The importance of the Organization of American States establishing cooperation agreements with the International Criminal Court, and that the Office of International Law be the intermediary with the Court, was emphasized;
- The holding of a new working session on the topic was requested, considering the positive aspects of the meeting that allowed us to have instruction on the proper implementation of national legislation, cooperation with the pertinent entities, and a report on the current activities of the International Criminal Court and the Office of the Attorney General, and others. The aforesaid work session will permit the continuation of the dialog initiated in the current session as well as the follow-up of the specific recommendations that the eventual resolution of the General Assembly may contain.

## VII. PRELIMINARY CONSIDERATIONS AND RECOMMENDATIONS<sup>26</sup>

Having indicated the advances registered on the topic of the International Criminal Court since its report of March 27, 2006, and taking into consideration the importance of offering eventual recommendations on the way to strengthen cooperation with the International Criminal Court for consideration by the Member States, the following approaches are presented:

### 7.1. Importance of the Member States responses to the Questionnaires

The rapporteur's Report indicated that, in an ample sense, the IAJC questionnaire was a way of strengthening cooperation and facilitation because it allows the exchange of information between the States and use of the face-to-face experiences with the ratification or adoption of the Rome Statute, to enable internal legislations for cooperation with the Court, and in general, to ensure an efficient application of the Statute.

Based on the latter, the rapporteur considers the convenience of respectfully reiterating the request made by the IAJC to the OAS Member States that still have not responded the questionnaire, to complete it, and to those States Parties to the International Criminal Court that have complied with the adoption process of the implementation laws for part IX and X of the aforesaid Statute, to remit such information to the Committee.

Likewise, to reiterate the request made by the IAJC to the States that have concluded the adoption process for the laws incorporating, modifying or including the criminal categorizations established in the Rome Statute, to give the referred updated information to the Committee.

### 7.2. For those OAS Member States that are still not Parties to the Rome Statute, to consider its ratification or adoption, as the case may be, of the Rome Statute, and for effects of the latter:

7.2.1 To take into account – if considered necessary – the mechanisms used by the States that currently form part of the Statute, to overcome eventual problems of clashes with the corresponding national laws, as the case may be, in light of the experience summarized in the rapporteur's Report, which could implicate encouraging the emission of favorable judgments and/or opinions by the Ministries, organs or dependencies in charge of their preparation.

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<sup>26</sup> Updating and eventual development of this Chapter VII of the Report of the Rapporteur will take into account any new information received from the OAS Member States.

In his previous Report, the rapporteur had already indicated that to resolve the possible problems of constitutional clashes that the Statute could cause, in the opinion of some States, there was recurrence to certain mechanisms that are useful to take into account for the case of States that are still not Parties to the Statute. Some of these mechanisms have been:

- a) One global constitutional amendment that overcomes all contradiction or opposition, accompanied or not by interpretative declarations.
- b) Request control organs a report, declaration or opinion of the corresponding constitutional that permitted, in some cases, a simple interpretation regarding the Statute and the Constitution, and in one case, the direct requirement of a previous Constitutional amendment.
- c) Studies and consultations that generally permitted the Chancelleries to propose direct ratification or adoption, without further inconveniences or legal reforms.

7.2.2 To consider the eventual formation of ample intersectorial commissions or working groups for the making of these reports or opinions, including the possible invitation of other State Powers and representatives of the civil society.

7.2.3 To consider the support the ample variety of document prepared by governments, academic institutions, civil society organizations, and/or experts<sup>27</sup> could give those consultative mechanisms and especially the works of the Inter-American Juridical Committee on the subject, and the resulting recommendations of the three meetings held by the CAJP of the Permanent Council in the Organization headquarters.

7.2.4 To consider the inclusion of clauses that treat eventual matters of concern, as may correspond to the legislative practice, in areas such as retroactiveness, so this matter contemplated in the Rome Statute may be dissipated with due certainty and confidence.<sup>28</sup>

7.3 For those Member States who are Parties to the Rome Statute, determine the measures –including those of legislative nature-, modalities and mechanisms to ensure the existence of procedures applicable to full cooperation with the Court regarding the investigation and prosecution of crimes under its competence, and in general, compliance with the obligations stated in the Rome Statute, and to this end:

7.3.1 To consider additional legislative actions to strengthen cooperation with the Court. Particularly, evaluate the convenience of emitting a special cooperation law such as the laws of Argentina, Uruguay and Trinidad and Tobago, or whether it is more convenient to incorporate specific provisions for already existing laws, either criminal codes or *criminal* procedural codes, as Peru has done.

7.3.2 To consider the possible conformation of Working Groups or Commissions at the level of the Executive Branch to analyze and define the best legislative implementing ways, also considering whether it is convenient the participation of representatives of other State Branches and representatives of the civil society.

7.3.3 To update the studies and provisions regarding the already existing forms of cooperation and international judicial cooperation practice –including treaties on the

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<sup>27</sup> See Annex.

<sup>28</sup> The *Rome Statute* in its article 11 considers that “1. The Court shall have competence only regarding crimes committed after the present *Statute* enters into force”.

matter as well as cooperation laws which are regularly used– or if they can be eventually activated to attend petitions for cooperation within the scope of the Rome Statute.

7.3.4 To consider, in the inclusion of the types of crimes of the Rome Statute, the experience of the States, either through the in extenso definition used by some States in their implementing laws or the simple reference to the provisions contained in articles 6, 7, 8 and 70 of the Rome Statute, complemented in the case of Argentina with references to other instruments, or a mixed technique.

7.3.5 The States should consider the premise that the Rome Statute establishes the minimum standard accepted by the international community for the definition and scope of crimes under the competence of the ICC, therefore, the States have the prerogative of extending them.

7.3.6 To consider the designation by the States Parties of links or points of contact for issues relating to cooperation with the Court.

7.3.7 Other aspects that could deserve special attention are the following:

- i. sufficient regulations for guarantees on the matter of surrender of nationals to the ICC, considering the regulations for guarantees of extradition;
- ii. regulations for broad dissemination on the matter of information delivery without detriment to the limited exceptions previously established by the law;
- iii. clauses for the protection of individuals –both victims and witnesses- who participate in the procedures before the ICC. The experience of the witness protection programs existing in the respective States, as the case may be, or the protection experiences of the Inter-American System of Human Rights could be evaluated with aims at deriving possible applications to Court cases.

7.3.8 Contemplate expeditious procedures to attend requests for cooperation on the matter of assistance and surrender, making sure that they are equivalent to those applicable to the assistance or extradition cases –as it may correspond– and not more complicated or burdensome<sup>29</sup>.

#### 7.4 Contemplating the ratification or adhesion, as it may correspond, to the Agreement on Privileges and Immunities (APIC) of the International Criminal Court

7.4.1 The States may consider that the APIC is based on the principle of functional immunity, and therefore, it collects the international standards on the matter of privileges and immunities for the realization of the Court's function.

7.4.2 For the States that are already Members, assure effective and integral execution on the national level

#### 7.5 It is recommended to all Member States of the OAS:

7.5.2 To intensify the exchange of information in the hemisphere. Added to the answers to the Questionnaire and the laws for implementing the Statute, the reports, declarations and opinions prepared for the ratification of the Statute by the States and any other legislative information that they may consider of interest with aims at their

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<sup>29</sup> It is interesting to point out that the Trinidad and Tobago *International Criminal Court Act law of 2006* establishes in articles 176 and 177 that *The Mutual Assistance in Criminal Matters Act law of 1997* applies in respect to request for assistance, whereas *The Extradition Act law of 1985* applies in respect to the delivery or temporary delivery of a person by the Court to Trinidad and Tobago, with the pertinent changes to be made in both cases. For these two effects, the Court is considered as if it were a foreign State, in one case, or an extradition country in the other.

incorporation into the Rapporteur's Report, could be put at the disposal of the Inter-American Juridical Committee.

7.5.3 To strengthen the participation in regional and universal forums for discussion of the ICC, including *–inter alia–* the work meetings of the Committee on Juridical and Political Affairs of the OAS and the Assembly of States Parties of the Rome Statute.

7.5.4 To continue addressing the issue of the ICC within the scope of the regular sessions of the General Assembly of the OAS. It would also be important to include the topic of the ICC within the scope of the subregional integration processes, so as to keep this topic active in the inter-American, subregional and national agenda.

7.5.5 To contribute to the Fiduciary Fund established by the United Nations for victims of crimes that fall under the competence of the Court, and their family members, as well as to the Fund set up to favor the participation of less developed countries.

7.6 To consider the OAS cooperation mechanisms in the topic of the ICC

7.6.1 Possibility of cooperation agreements between the OAS and the International Criminal Court with the designation of a focus point.

7.6.2 Building a web site with the relevant and pertinent information provided by the States, with aims at facilitating access to and exchange of documents and experiences, strengthening the reciprocal knowledge of the mechanisms used by the countries with continental civil juridical tradition and Anglo-Saxon law (common law), could be considered.

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## ANNEX<sup>12</sup>

### **Implementation:**

- 1) Informe de la 5<sup>a</sup> Asamblea de los Estados Partes del Estatuto de Roma  
[http://www.icc-cpi.int/library/asp/ICC-ASP-5-26\\_English.pdf](http://www.icc-cpi.int/library/asp/ICC-ASP-5-26_English.pdf)
- 2) AI: Cómo utilizar el derecho penal internacional para impulsar reformas legislativas que incorporen la perspectiva de género  
[http://www.iccnw.org/documents/AI\\_GuiaWR\\_May2005\\_Sp.pdf](http://www.iccnw.org/documents/AI_GuiaWR_May2005_Sp.pdf)
- 3) CCPI: ¿Que es la legislación de implementación de la CPI?  
[http://www.iccnw.org/documents/CICC\\_Factsheet\\_Implementation\\_sp.pdf](http://www.iccnw.org/documents/CICC_Factsheet_Implementation_sp.pdf)
- 4) AI: Corte Penal Internacional: los Estados no promulgan legislación para la aplicación efectiva del Estatuto de Roma  
<http://web.amnesty.org/library/index/esIIOR400192004?open&of=esl-385>
- 5) AI: Lista resumida de requisitos para la aplicación efectiva del Estatuto de Roma  
<http://web.amnesty.org/library/index/esIIOR400152000?Open&of=esl-385>
- 6) AI: Lista de requisitos para la aplicación efectiva del Estatuto de Roma  
<http://web.amnesty.org/library/index/esIIOR400112000?Open&of=esl-385>
- 7) AI: Directrices para la aplicación efectiva del Estatuto de Roma  
<http://web.amnesty.org/library/index/esIIOR400132004?open&of=esl-385>
- 8) AI: Guía para la Implementación del Estatuto de Roma de la CPI en la legislación interna de los Estados Partes  
[http://www.hrw.org/campaigns/icc/docs/handbook\\_s.pdf](http://www.hrw.org/campaigns/icc/docs/handbook_s.pdf)
- 9) HRW: Respuestas a las cuestiones planteadas por los servicios técnicos de la Asamblea Legislativa de Costa Rica en relación con el Estatuto de Roma de la Corte Penal Internacional  
[http://www.hrw.org/campaigns/icc/docs/costarica\\_final-sp.pdf](http://www.hrw.org/campaigns/icc/docs/costarica_final-sp.pdf)
- 10) Documentos contenidos en la página electrónica de la Coalición por la Corete Penal Internacional (CICC)  
[www.iccnw.org](http://www.iccnw.org)
- 11) Libro Blanco de la CPI elaborado por la Cancillería Mejicana  
<http://www.sre.gob.mx/transparencia/rendcuentas/cortepenaint/frames.htm>
- 12) Documento elaborado por el Comité Internacional de la Cruz Roja  
<http://www.icrc.org/web/spa/sitespa0.nsf/html/5TDQBB>

### **Ratification:**

- 1) Manual sobre la ratificación e implementación del Estatuto de Roma elaborada por Canadá  
[http://www.dfait-maeci-gc.ca/foreign\\_policy/icc/Man\\_2ed\\_fin\\_jy03-en.asp](http://www.dfait-maeci-gc.ca/foreign_policy/icc/Man_2ed_fin_jy03-en.asp)
- 2) AI: Razones para la ratificación  
<http://web.amnesty.org/library/index/esIIOR400032000?Open&of=esl-393>
- 3) CICR: Cuestiones planteadas por Tribunales Constitucionales y Consejos de Estado nacionales con respecto al Estatuto de Roma de 1998 de la Corte Penal Internacional  
<http://www.icrc.org/web/spa/sitespa0.nsf/html/5TDQBB>

4) Listado de la Corte Penal Internacional

<http://www.icc-cpi.int/region&rd=5.html>

**APIC:**

1) CCPI: Lista de ratificaciones al APIC

[http://www.iccnw.org/documents/CICC\\_APIClist\\_current\\_sp.pdf](http://www.iccnw.org/documents/CICC_APIClist_current_sp.pdf)

**Other documents only available in English:**

1) Rights and Democracy and ICCLR Manual for Ratification and Implementation

[http://iccnw.org/documents/RightsDem&ICCLR\\_Manual\\_Eng.pdf](http://iccnw.org/documents/RightsDem&ICCLR_Manual_Eng.pdf)

2) Council of Europe Venice Commission Report on Constitutional Issues raised by Ratification

[http://www.venice.coe.int/docs/2001/CDL-INF\(2001\)001-E.asp](http://www.venice.coe.int/docs/2001/CDL-INF(2001)001-E.asp)

3) University of Nottingham Human Rights Law Centre Implementation Database

<http://www.icrc.org/ihl-nat.nsf/WebLAW2!OpenView&Start=1&Count=300&Expand=14#14>

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