

**REPORT ON PREPARATIONS AND ADVANCES IN EFFORTS  
TOWARD ADOPTING NATIONAL LEGISLATION BASED  
ON GUIDELINES OF PRINCIPLES OF THE  
INTER-AMERICAN JURIDICAL COMMITTEE  
AND TRAINING EMPLOYEES FOR THE COOPERATION OF  
THE MEMBER STATES OF THE OAS WITH THE  
INTERNATIONAL CRIMINAL COURT**

(presented by Dr. Mauricio Herdocia Sacasa)

**I. INTRODUCTION**

The General Assembly of the OAS, in resolution AG/RES. 2505 (XXXIX-O/09), “Promotion of the International Criminal Court”, adopted at the fourth plenary session held on 4 June 2009, has decided:

To request the Inter-American Juridical Committee to promote, using as a basis the OAS Guide on Cooperation with the International Criminal Court and insofar as it is able, the adoption of national legislation in the area in States that do not yet have it, and, with collaboration from the General Secretariat and the Secretariat for Legal Affairs, to continue providing support for and promoting in Member States the training of administrative and judicial officials and academics for that purpose, and to report to the States Parties on progress thereon at its next working meeting of the International Criminal Court and to the General Assembly at its fortieth regular session.

Also to request the Inter-American Juridical Committee to prepare model legislation on implementation of the Rome Statute, in particular regarding the definition of crimes within the jurisdiction of the International Criminal Court, and to present a report, prior to the fortieth regular session of the General Assembly, on progress made.

This mandate of the General Assembly to the Inter-American Juridical Committee — whose antecedent was resolution AG/RES. 2364 (XXXVIII-O/08) of the General Assembly — has the very special characteristic of entrusting it to join efforts toward qualifying and promoting adoption of national legislation in the Member States of the OAS. This implies not only the traditional form of exercise of its functions through opinions, studies, preparing conventions and model laws, but also includes it directly in the preparation of efforts as to training and education, which enhance its activities in the area, while exposing the need to rely on human and financial resources to complete its work, with the full support of the General Secretariat and the Secretariat for Legal Affairs, especially including the Department of International Law.

**II. ORIGIN OF THE WORK OF THE INTER-AMERICAN JURIDICAL COMMITTEE**

The more recent work of the Inter-American Juridical Committee on the matter goes back to the mandate received by the General Assembly of the Organization of American States on 7 June 2005, when it was asked to prepare a questionnaire for

presentation to the member states of the OAS. This questionnaire aimed to obtain information on how the respective national legislations were able to cooperate with the International Criminal Court.

About two months later, in August 2005, the Inter-American Juridical Committee approved including the topic International Criminal Court in its agenda.

It should be stressed that the “Questionnaire on the International Criminal Court” covered both the member states of the Rome Statute and those that were not members at that time.

In a very short time, the “Questionnaire on the International Criminal Court” received answers from 17 countries, 11 of whom were Parties and 6 not Parties to the Rome Statute. Based on this information, the rapporteur presented the requested report.

On 6 June 2006, the General Assembly of the OAS resolved to ask the Inter-American Juridical Committee to consider the research of the report presented in drawing up a document of recommendations to the Member States of the OAS regarding how to strengthen cooperation with the International Criminal Court. This Report – CJI/doc.256/07 rev.1, “Promotion of the International Criminal Court” – was sent to the Permanent Council, which in turn forwarded it to the General Assembly.

Pursuant to a new request from the General Assembly contained in resolution AG/RES. 2279 (XXXVII-O/07), dated 10 March 2008, the rapporteur presented a “Report on Perspectives for a Model Law on State Cooperation with the International Criminal Court”, CJI/doc.290/08 rev.1. This Report came together with a “Guide to the General Principles and Agendas for the Cooperation of States with the International Criminal Court”, CJI/doc.293/08 rev.1.

The rapporteur’s Report and the “Guide to the General Principles” were sent to the Permanent Council on 24 March 2008.

This Report deals with the preparations and advances made toward adopting national legislation on cooperating with the ICC, based on the Guide to the General Principles of the Inter-American Juridical Committee of the OAS and support and promotion of training of administrative, judicial and academic employees in Member States, pursuant to the mandate contained in the above-mentioned resolution AG/RES. 2505 (XXXIX-O/09). It also deals with the beginning of the mandate in respect to drawing up a model legislation on implementing the Rome Statute, particularly as regards typifying the crimes within the remit of the International Criminal Court.

### **III. CONTENTS OF THE REPORT CJI/doc.290/08 rev.1 DATED 3 MARCH 2008**

Given that resolution AG/RES. 2505 (XXXIX-O/09), “Promotion of the International Criminal Court”, adopted at the fourth plenary session held on 4 June 2009, decided to base itself on the *OAS Guide on Cooperation with the International Criminal Court*, it is deemed pertinent to make a general summary of its contents and those of the general explanatory Report.

The Guide started out with the following two points:

1. The project should bring together – but not be limited to – the already existing experience in national legislations, which were briefly summarized.
2. Since the treatment of the topic of cooperation with the Court in each legislation will have certain modalities that are peculiar to the internal juridical system, on occasion it will be solely up to the Committee to indicate that determined fields

require development of the national procedures, notwithstanding that it is the domestic law proper that will be responsible for indicating them, based on its own democratic institutionality.

The diversity of and difference between organs and institutions that in each State may eventually be involved in enforcing provisions as regards cooperation with the Court, and the actual modalities of their actions, would advise in favor of a general perspective when drafting a model instrument, in order to avoid a proliferation of possibilities which moreover would not necessarily cover the whole gamut of options that exists in the States.

3. Still in this area, it must be remembered that a solution must be found that responds to the various common-law and civil-law systems that exist in the hemisphere, prevailing from the fact that there already exists a unifying element, namely the Rome Statute. Bearing in mind the different juridical systems that exist in the hemisphere, the bridge between one system and the other is then the normative of the International Criminal Court, as the uniform common regime.

4. It must not be forgotten that the inter-American system and the practice in the States contain mechanisms of cooperation, mutual assistance, execution of sentences and so on, which reflect a certain dynamic of cooperation that could facilitate the avenues of a law of implementation based – *mutatis mutandi* – on such experiences, without neglecting that cooperation with the Court often demands a special treatment that is not necessarily achieved by using the traditional figures and framework contained in other treaties, without the necessary adjustments.

5. The sense of a law of cooperation with the Court must be clearly understood. It does not substitute the Statute, nor does it replace what is already in place in an international treaty such as the Rome Statute. The idea is not to make restrictive changes, but rather to complement it, render it effective, endow it with internal procedures in those areas where national provisions are really needed. There where measures of national implementation are lacking and the norms of the Statute prove insufficient, that is where the true utility of the law is seen in all its splendor. Such procedures could not contradict, hinder or make the provisions of the Statute inoperative or futile.

6. From this perspective, it is not a question of laws of cooperation whose excessive regulations make it more troublesome or more difficult to attain the substantive objectives of the Statute. It is clearly a matter of instruments to facilitate, accelerate and render effective the norms of the actual Statute in terms of collaboration. On adopting a determined procedure, the first question to be asked should be whether it really facilitates and favors the established cooperation. An affirmative answer is the best test of efficacy.

7. To render cooperation effective, it must be borne in mind that this lies not only in mechanically established procedures but rather entails a consultation system to respond to quite specific national situations and is essential insofar as it allows, in a spirit of collaboration and creativity, adequate solutions to be found for specific problems and prevents procedures from being paralyzed in case of difficulties.<sup>37</sup>

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<sup>37</sup> See, for example, the case of other forms of assistance in the Rome Statute, art. 93, “Other forms of cooperation”, paragraph 3, and art. 72, “Protection of national security information”.

8. Another point of departure is that, given the complexity of the theme, it is important to simplify whenever possible. Some of the laws already emitted show a high degree of precision, austerity and certainty, while others demonstrate great development and have addressed the matter extensively, generously and with rigor. Perhaps it is for the better that the model legislation benefits from a balance that, without ignoring core themes, points to principles and agendas on matters that may need some reinforcement from the domestic institutional machine to make a determined norm of cooperation of the Statute effective, fill lacunas and complement the array of processes whenever they prove to be insufficient.

Any attempt to go further than this without taking into account the particularities of each national system risks offering solutions that might function in a certain juridical regime without necessarily working in others, or else reveal inconsistencies.

9. Identifying criminal norms, either by remission to the Statute or by their complete incorporation, is a very useful element for cooperation, but special care must be taken to complement them with the set of rules and principles relating, for example, to the *res judicata* (art. 20); applicable law (art. 21); exclusion of jurisdiction over persons under eighteen (art.26); irrelevance of official capacity (art. 27); responsibility of commanders and other superiors (art. 28); non-applicability of statute of limitations (art. 29) and the grounds for excluding criminal responsibility (art. 31), in order to avoid any inconsistency between the criminal norm and its form of application.

10. The measures as to cooperation, though basically concentrated in Part IX relating to international cooperation and judicial assistance, are in effect complemented by a large number of situations and provisions elsewhere in the Statute which also require collaboration of the States or norms of national implementation. The Rome Statute, an absolutely integral and indivisible text, cannot see only one of its parts without taking the others into account, and the interaction between them as links of a whole that is indissolubly united in its common objective and purpose.

11. Cooperation with the Court must be understood in a broad sense, where the efforts to adjust internal legislations to the Statute are also forms of cooperation with the objectives of international criminal justice. Likewise, it should be remembered that the States can be active subjects of cooperation with the Court in a two-way process. In this sense, according to Article 93 paragraph 10.a), the Court can cooperate and lend assistance on the request of a Party State carrying out an investigation or support a sentence on conduct that constitutes a serious crime through arrangement with the internal law of the requesting State.

12. On adjusting internal legislations, one must bear in mind the need to attend to the set of international obligations assumed by each State, which is particularly important in the ambit of International Humanitarian Law with the Geneva Conventions of 1949 and Additional Protocol I, taking into account that crimes do not necessarily coincide with infractions in all cases and that the Statute codifies war crimes that do not appear on the list of grave infractions, and especially that Additional Protocol I enumerates some crimes that do not appear in the Rome Statute or else contemplate broader elements.

13. The States which are not Party to the Statute are not excluded from cooperation with the Court. Article 87 paragraph 5.a) provides that the Court can invite any State that is not Party to this Statute to lend the assistance specified in Part IX based on a special arrangement, an agreement with that State or any other appropriate form. At

the discretion of the rapporteur, some of the so-called “other forms of cooperation” may be preferred, using – *mutatis mutandi* –conventional internal mechanisms pertaining to general international criminal cooperation.

14. Article 86 of the Statute establishes a general obligation for States Parties to “cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court”; but this is done “in accordance with the provisions of this Statute”. That is to say, in strict conformity with its provisions. Thus, national legislative developments must observe this same conformity, in keeping with the duty to cooperate.

Conformity does not mean that they cannot advance any further, but that they should respect at least the minimum standards set therein. It may even be desirable for the States to be allowed to cross these boundaries to the extent that they constitute real improvements and contributions to International Criminal Law, if that should be deemed convenient.

15. The worth of a model legislation lies in offering principles and agendas that make it possible for cooperation with the Court to function better on the national level, whenever possible, or else to indicate where and on which themes domestic development needs to be improved. Yet the idea is not necessarily limited to rendering the functioning of the Court more effective, but rather especially the fundamental superior exercise of domestic criminal jurisdiction concerning these crimes, in a broader concept of cooperation. Paragraph 6 of the Preamble of the Statute of the Court recalls that “it is the duty of every States to exercise its criminal jurisdiction over those responsible for international crimes”.

16. It has been said above that it is not the aim of the International Criminal Court to substitute the national administration of justice, but rather that this should be capable of safeguarding and controlling the investigation, trial and punishment of those guilty of crimes according to the Statute. As far as possible, to put it in other words, the national judge is also the judge qualified to apply his jurisdiction in the field of international criminal law.

17. The legislation of Argentina, following the line of Spanish legislation, for example, confirms this assertion by claiming that the law has its radius of action “as provided in the Rome Statute” and its complementary norm. The procedures that establish the laws thus have a fundamentally supplemental relation to the Statute, that is, they develop what is not provided in it; otherwise, the prevalent procedure is what is indicated in the original instrument of the International Criminal Court.

18. It is equally important to deduce from these norms that the non-existence of an internal law on cooperation should be no impediment or justification for not complying with the obligations of the Statute. The objective is to ensure that provisions in the international sphere are properly reflected in internal law.

19. It must also be pointed out that in the case of States known to have enacted some type of law, these have not followed a uniform procedure. While in some cases this is a matter of specific laws that are exclusively related to the theme, others involve inclusions in substantive and processual codes or else mixed techniques. There has been no single way to implement the forms of cooperation of the Statute, as shown by the various initiatives. In some cases, the solution has been to resort to the technique of remitting to what is set forth in the Statute, whereas in other cases the option has been for a single, special legislation, as well as the technique of systematic implementation in various bodies of law.

With varying degrees of development, the laws adopted coincide in the basic purpose of ensuring the existence of internal procedures that guarantee cooperation, in general maintaining conformity with the Statute, in recommendable and praiseworthy efforts.

20. In his last Report, the rapporteur considered it more convenient at this stage of the Committee's works to draft an instrument with general characteristics centered on large principles<sup>2</sup> and identifying some of the areas where there is a need for national legislative development and offering, when necessary, agendas and general guidelines so that the internal laws themselves – having a framework – can implement their respective norms in the light of the peculiarities of the internal systems.

This orientation is reinforced by the existence of different sorts of juridical systems in the hemisphere, such as the common-law and civil-law systems.

21. The Guide, as its name and contents indicate, is not an international treaty but rather a model instrument liable to constant revision and improvement, conceived to work as a parameter and framework that the States can adapt when necessary to their own legitimate particularities, always and whenever these do not affect the norm contained in the Rome Statute, the Elements of the Crimes and their Rules of Procedure and Evidence.

Attached to the rapporteur's Report was the instrument CJI/doc.293/08 rev.1 of 7 March 2008: "Guide to the General Principles and Agendas for the Cooperation of States with the International Criminal Court".

The Guide to the General Principles and Agendas for the Cooperation of States with the International Criminal<sup>3</sup> Court establishes the purpose of ensuring the existence of internal procedures with a view to full cooperation between the States and the International Criminal Court in the exercise of the jurisdiction, competence and functions assigned to said permanent institution in the Rome Statute adopted on 17 July 1998 and the complementary norms, including the Elements of the Crimes and the Rules of Procedure and Evidence.

- It assigns competences to organs of the States for such purposes and establishes procedures applicable to cooperation not provided in the Rome Statute and its complementary norms.
- Supplementary to the provisions of the Rome Statute and its complementary norms, it contemplates that the integrity of the procedures already provided in the Rome Statute and its complementary norms should be respected.
- In its scopes, the instrument is applicable to the following types of crimes within the competence of the International Criminal Court: the crime of genocide, crimes against humanity, war crimes and the crime of aggression, the latter when a provision defining it is adopted, together with the conditions for its application in accordance with the Rome Statute.
- It is also applicable to crimes against the administration of justice, as set forth in article 70 of the Rome Statute.

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<sup>2</sup> See, for example "Lineamientos en cooperación judicial con la Corte Penal Internacional" (Outlines of judicial cooperation with the International Criminal Court), of the Andean Commission of Jurists, dated February 2008.

<sup>3</sup> The agendas and principles contained in this instrument are simply for the purpose of indicating what have been considered to be core themes and are not intended to exhaust or limit the various forms of cooperation and legal assistance with the International Criminal Court and its principles.

- The types of crime defined in articles 6, 7, 8 and 70 of the Rome Statute comprise the minimum standards to which the respective national legislations must adapt.
- Adapting the types of crime should be complemented by including the rules and principles relating, for example, to ne bis in idem (art. 20); applicable law (art. 21); restrictive interpretation of crimes (art. 22, 2); non-retroactivity ratione personae (art. 24, 2); individual criminal responsibility (art. 25); exclusion of jurisdiction over persons under eighteen (art.26); irrelevance of official capacity (art. 27); responsibility of commanders and other superiors (art. 28); non-applicability of statute of limitations (art. 29) and the grounds for excluding criminal responsibility (art. 31), in order to avoid any inconsistency between the criminal norm and its form of application.
- Adapting the types of crime to the domestic law must be in keeping with the obligations springing from the Geneva Conventions of 1949 and the Additional Protocol I of 1977.

As for its sphere of application, it contemplates the Universal Obligation of Judging, according to which the States shall exercise their jurisdiction in respect to any person found within its territory associated with the crimes indicated in article 5 of the Rome Statute, regardless of their nationality or the place where the crime was committed, when those States does not determine extradition to a third State or surrender to the International Criminal Court.

It contains a general obligation of cooperation according to which the organs of the States that are designated as competent shall attend to the requests for cooperation made by the International Criminal Court, in accordance with the terms and conditions set out in the Rome Statute, its complementary norms and this instrument.

- Requests for cooperation shall be attended to expeditiously and in good faith.
- Total or partial absence of procedures in the internal system with regard to cooperation with the International Criminal Court may not use this as an excuse to deny the cooperation requested, which shall be attended to by implementing the necessary legal mechanisms so as to ensure the accused person's right to defense.
- Quick and effective procedures shall be used, ones that do not constitute unnecessary obstacles to full cooperation or that impose conditions that are incompatible with the Rome Statute.
- The consultation processes established in the Rome Statute shall be used with a view to reaching an understanding, in an attempt either to resolve the questions that motivated the consultation or to find other ways and mechanisms to lend or facilitate assistance.
- Upon providing cooperation, the States shall take into account possible arrangements for the protection of persons, including victims and witnesses.
- Consider a system of broad diffusion of information without affecting the limited exceptions previously set forth by law.

The States may request the Court (through the competent organ in accordance with the law and in the modality stipulated by same) for cooperation and assistance when it carries out an investigation or substantiates a decision on conduct that constitutes a crime

within the competence of the Court or that constitutes a grave crime according to its domestic law.

The Guide also considers the States' appointing competent bodies; remitting a situation to the Office of the Comptroller; the required waiver by the Comptroller; impugnation of the Court's competence or the admissibility of the cause; requests for detention and surrender of persons to the International Criminal Court; field investigation by agents of the International Criminal Court; serving sentence in the territory of a Party State to the Rome Statute; non-prescriptibility and the question of amnesties and pardons.

- It also contains agendas on responsibility of superior and hierarchical obedience; the system of immunities and the questions related to education and training.
- Part II of the Guide is dedicated to those States that are still not Party to the Rome Statute. Such States may engage in cooperation with the International Criminal Court as dictated by the provisions in the Rome Statute, either in the declaration provided in article 12, paragraph 3, or else based on a special arrangement, an agreement or in any other appropriate way provided in article 87, paragraph 5.a) of said Statute.
- It also contemplates that the States may adapt, with the changes deemed necessary and pertinent, and taking into account its condition as non-Party to the Rome Statute, the previous provisions of this Guide.
- The States may also designate an organ (in accordance with the law and the modalities provided therein) to attend to and foster cooperation with the International Criminal Court.
- It is suggested that the States under this condition shall undertake studies on the domestic legal basis and international instruments that bind them juridically to lend cooperation and assistance to the Court in the areas provided in Part 9 of the Rome Statute, and provide ratification of such.

#### **IV. SPECIAL WORKING SESSIONS OF THE CAJP**

Pursuant to the Report presented by the Department of International Law, the Working Session on the International Criminal Court (CP/CAJP-2700/09, 17 March 2009) was held on Monday 8 December 2008, organized by the Committee on Juridical and Political Affairs (CAJP) with the support of the Department of International Law of the Secretariat for Legal Affairs of the OAS.

This session took into consideration the following mandates:

10. Request the Permanent Council that, with the support of the Department of International Law, a working session be held on the adequate measures that the States should take to cooperate with the International Criminal Court, **to include a segment of high-level dialogue among the Member States....**

12. Request the Secretary General to promote in the headquarters of the Organization of the American States, with the sponsorship of the interested Member States and other bodies and organizations, activities to



commemorate the tenth anniversary of the adoption of **the Rome Statute of the International Criminal Court.**<sup>38/</sup>

Presentations were made for three working panels and for the segment dedicated to the celebration of ten years of adoption of the Rome Statute.

In the panel “Adequate measures that the States should take to cooperate with the International Criminal Court in investigating, suing and sanctioning those responsible for committing war crimes, crimes against humanity and genocide” the following ideas were given special attention:

- *To congratulate the government of Surinam on having ratified the Rome Statute.*
- *To urge respect for the independence of the Court, free from political interference.*
- *To stress the transcendence of the principle of complementarity and cooperation.*
- *To typify the crime of aggression in a clear and exhaustive manner.*
- *To adopt an agreement on cooperation between the OAS and the International Criminal Court to formalize the work and strengthen the existing links between both bodies. In this sense, several delegations exhorted both institutions to work on drafting this instrument.*
- *To lend support to any action on behalf of the standardization of the International Criminal Court.*<sup>39</sup>

It is also appropriate to mention some of the specific ideas summarized and presented by the delegations:<sup>40/</sup>

The delegation of Mexico expressed interest in sharing their experience on the adoption of the Agreement on Privileges and Immunities with those States which have not yet done so or are in the process of doing so. They emphasized the importance of sharing with other members the experiences of each State to join the Statute and standardize its national legislation. They also urged ratification of the Agreement on Privileges and Immunities of the International Criminal Court.

The delegation of Canada in turn encouraged universal ratification of the Rome Statute and informed the meeting of the country’s work to diffuse and in particular contribute to the financing of a Manual on the Rome Statute in several languages.

The delegation of the United States explained the country’s opinion in respect to the International Criminal Court.

The delegation of Costa Rica reiterated its firm and unconditional support of the Office of the Comptroller and underscored the substantial progress of the situation in the Democratic Republic of the Congo; it manifested its concern for Darfur and also its discontent at the scant collaboration received by the governmental authorities of the

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<sup>38</sup> ORGANIZATION OF AMERICAN STATES. PERMANENT COUNCIL. COMMITTEE ON JURIDICAL AND POLITICAL AFFAIRS. **Report: Working Meeting on the International Criminal Court [AG/RES. 2364 (XXXVIII-O/08)]**. CP/CAJP-2700/09, 17 March 2009, p. 1. This is a non-official translation.

<sup>39</sup> *Idem*, p. 3.

<sup>40</sup> *Idem*, p. 4-5.

Sudan in respect to surrendering people who *presumably had committed* violations and war crimes. On the other hand, Costa Rica underlined its firm support of the Court, in particular the Office of the Comptroller, besides expressing its concern about the position of the United Nations Security Council in respect to the Court.

The delegation of Ecuador emphasized the advances made in the Political Constitution recently approved in the country and recognized the need to typify the crime of aggression in a clear and exhaustive manner. Finally, it urged recognition of the right to legitimate defense within the principles and procedures clearly set out in International Law such as in the Charter of the United Nations, especially with regard to compliance with the requirements of necessity and proportionality.

The second Panel “Ratification and implementation of the Rome Statute and the Agreement on Privileges and Immunities” addressed the factors used to measure the level of fulfillment by the States as regards ratification or adhesion, as well as implementation of the Rome Statute in domestic legislation. Reference was also made of the principles of complementarity and cooperation with the International Criminal Court by means of concrete illustrations. Finally, mention was made of the relationship between the Court and compliance with international criminal law as it applies to the States. As for the Agreement on Privileges and Immunities, it is indispensable that those concerned should be afforded all the necessary guarantees to carry out their functions, and States are urged to execute this instrument and put it in place.

The third work panel “Action of international bodies /organizations in respect to cooperation with the International Criminal Court” ended by emphasizing the following ideas:

- *To request the States that have not yet done so, to become Party to the Rome Statute and the Agreement on Privileges and Immunities.*
- *To urge States to contribute to effective universality, protection and maintenance of international security.*
- *To congratulate the Court and the Office of the Comptroller on the work carried out.<sup>41/</sup>*

The report mentions individually some of the ideas presented by the delegations present:

The delegation of Argentina ratified its support for the efforts of the international community addressed to strengthening and standardizing the International Criminal Court. It also underlined the importance of cooperation with the International Criminal Court, and in this context suggested a possible agreement between itself and the OAS.

The delegation of Mexico urged providing for more space for delegations to participate at the next Working Meetings to allow them to take a stance on each theme.

The delegation of Venezuela thanked the panel members and asked for this type of working meeting to continue to be held with experts who present a broad and objective view in treating the themes. It ratified the commitment of the Bolivarian Republic of

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<sup>41</sup>. ORGANIZATION OF AMERICAN STATES. PERMANENT COUNCIL. COMMITTEE ON JURIDICAL AND POLITICAL AFFAIRS. **Report: Working Meeting on the International Criminal Court [AG/RES. 2364 (XXXVIII-O/08)]**. CP/CAJP-2700/09, 17 March 2009, p. 6. This is a non-official translation.

Venezuela against grave crimes that affect world security, and mentioned that its country will go on working to maintain the institutionality and independence of the Court.

The delegation of Uruguay stressed the positive aspects observed in the action of the States that contribute to repression of crimes against humanity. It also supported adopting an agreement on cooperation between the OAS and the Court.

The delegation of the Dominican Republic referred to the work undertaken by the Secretariat for Foreign Affairs to promote International Humanitarian Law, specifically the organization of meetings, with national and international employees, to facilitate typifying war crimes, genocide and crimes against humanity in the Criminal Code and to enable domestic legislation to adjust to international instruments. Likewise, the delegation announced that its country has submitted the Agreement on Privileges and Immunities of the Court to the appreciation of the National Congress.

The delegation of Colombia recognized and congratulated the progress made by the Court, in particular the fact that for the first time a head of State has been made responsible. It also commented on the importance of the principles of cooperation and complementarity of the States.

Finally, the delegation of Chile mentioned that its country subscribed to the Rome Statute in 1998, and at present is in the process of ratifying it (now accomplished<sup>42</sup>, which requires constitutional and legal reforms now underway, to which end it reiterated the political will to conclude this process as soon as possible. In this sense, it supported conclusion of an eventual agreement between the OAS and the International Criminal Court, which would reaffirm the cooperation of the organization with the work of the Court.<sup>43</sup>

## V. PREPARATIONS AND ADVANCES ON PROMOTING THE GUIDE OF PRINCIPLES

### 5.1 Ratifications of the Rome Statute in the Inter-American System

Based on the last report, two countries, Surinam and Chile have become Parties to the Rome Statute. The 25 countries of the Inter-American System that have now ratified the Rome Statute are:

**Antigua and Barbuda** (18 June 2001), **Argentina** (8 February 2001), **Barbados** (10 December 2002), **Belize** (5 April 2000), **Bolivia** (27 June 2002), **Brazil** (14 June 2002), **Canada** (7 July 2002), **Colombia** (5 August 2002), **Costa Rica** (7 June 2001), **Dominica** (12 February 2001), **the Dominican Republic** (12 May 2005) **Ecuador** (5 February 2002), **Guiana** (24 September 2004), **Honduras** (1 July 2002), **Mexico** (28 October 2005), **Panama** (21 March 2002), **Paraguay** (14 May 2001), **Peru** (10 November 2001), **Saint Kitts and Nevis** (22 August 2006) **San Vicente and The Grenadines** (3 December 2002), **Trinidad and Tobago** (6 April 1999), **Uruguay** (28 June 2002), **Venezuela** (7 June 2000), **Surinam** (15 July 2008) and **Chile** (29 June 2009).

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<sup>42</sup> Additional explanation, since the rapporteur's Report comes after this event.

<sup>43</sup> ORGANIZATION OF AMERICAN STATES. PERMANENT COUNCIL. COMMITTEE ON JURIDICAL AND POLITICAL AFFAIRS. **Report: Working Meeting on the International Criminal Court [AG/RES. 2364 (XXXVIII-O/08)]**. CP/CAJP-2700/09, 17 March 2009, p. 6-7. This is a non-official translation.

The 10 countries of the Inter-American System that have not ratified the Rome Statute are: **the Bahamas, Cuba, Haiti, Jamaica, Saint Lucia, United States of America, Grenada, Guatemala, Nicaragua and El Salvador.**

## **5.2 Ratifications of the APIC**

Two countries (Honduras and Colombia) have joined the Agreement on Privileges and Immunities of the International Criminal Court (APIC):

The Agreement on Privileges and Immunities of the ICC has been ratified by 13 countries of the Inter-American System, namely: **Argentina** (1 February 2007), **Belize** (14 September 2005), **Bolivia** (20 January 2006), **Canada** (22 June 2004), **Ecuador** (19 April 2006), **Guiana** (16 November 2005), **Panama** (16 August 2004), **Paraguay** (19 July 2005), **Trinidad and Tobago** (6 February 2003), **Uruguay** (1 November 2006), **Mexico** (27 September 2007), **Honduras** (1 April 2008) and **Colombia** (15 April 2009).

## **5.3 Working Session**

Also worth mentioning as a new element of great importance are the results already referred to in point IV of this Report of the Working Session on the International Criminal Court [AG/RES. 2364 (XXXVIII-O/08)] held on 8 December 2008 in the headquarters of the Organization.

Special mention should be made that such sessions have been occasions for updating the legislative advances on the part of the States in respect to implementation of the Rome Statute. At this session was reiterated the appeal to the States to send to the Inter-American Juridical Committee updated information on legislative progress and identification of authorities, as well as the themes especially requested concerning collaboration with the Committee.

## **5.4 List of Organizations**

An overall list was drawn up of the organizations and personalities who have taken part in the five working sessions on the International Criminal Court in order to request their cooperation in fulfilling the resolutions of the General Assembly to promote the adoption of cooperation laws and undertake qualification processes.

## **5.5 Letter of the Chairman of the IJC**

The Chairman of the IJC, Jaime Aparicio, wrote to all the Permanent Missions to the Organization of American States in order to express the following:

In its resolution AG/RES. 2364 (XXXVIII-O/08), the General Assembly of the OAS requested the Inter-American Juridical Committee, based on its proposal to draw up a model legislation on cooperation of the States with the International Criminal Court, to promote the adoption of this model legislation among the States that do not yet have a law on the matter, and to support and promote in member states the training of administrative, judicial and academic employees to this end.

In light of said mandate, in its Resolution CJI/RES. 157 (LXXIV-O/09) "International Criminal Court", the Inter-American Juridical Committee gathered in March 2009 in Bogotá, Colombia, resolved, among other things, to "commission its Chairman to address the Party States to the Rome Statute that have not adopted legislation on cooperation with the International Criminal Court in order to place at its disposition the work of the Committee on the matter, as well as any services of technical assistance that the Secretariat and the rapporteur and other members of the Committee can possibly offer". (...)

In addition, I very respectfully beg your assistance to “identify and establish relations of collaboration with the sectors of the government in each country involved in the theme of cooperation with the International Criminal Court, including the Ministries of Justice and Foreign Affairs, among others and as the case may be, aiming at fostering adoption of the corresponding laws of cooperation and the efforts to qualify personnel on the matter”. In this respect, we request that you send the necessary information to the Secretariat of the Inter-American Juridical Committee in Rio de Janeiro at [mtmcji@terra.com.br](mailto:mtmcji@terra.com.br).”

The works of the Committee were resent in the documents attached to this letter.

To date, only Belize has answered this communiqué.

### 5.6. Communiqués to organizations

A very similar communiqué – mutatis mutandis – was sent to the international organizations, as follows:

IN ENGLISH	IN SPANISH
Richard Dicker Director of the Universal Justice Program of the Human Rights Watch 350 Fifth Avenue, 34th Floor New York, NY 10118-3299	Jaime Villarroel Ferrer President of the Court of Justice of the Andean Community (CAN) Calle Augusto Egas No. 33-65 y Bosmediano Sector Bella-Vista - Quito, Ecuador
Cheryl Thompson-Barrow General Counsel, Legislative Drafting Facility Legal Services, CARICOM Secretariat, Turkeyen, Greater Georgetown, GUIANA	Paulina Vega González Coordinator for Latin America and the Caribbean of the Coalition of Non- Governmental Organizations for the International Criminal Court (CICC), PO Box 19519, 2500 CM, The Hague The Netherlands
Geoff P. Loane Head of the Regional Delegation of the United States and Canada, International Committee of the Red Cross (ICRC) 1100 Connecticut Avenue, NW Suite 500, Washington, District of Columbia 20036	Carlos Antonio Guerra Gallardo President of the Central-American Court of Justice, System of Central-American Integration (SICA), Bolonia #1804, Managua - Nicaragua
Deborah Ruiz Verduzco Senior Programme Officer, International Law and Human Rights Programme, Responsible Parliamentarians for Global Action (PGA) The Hague Office, Laan van Meerdervoort 70, 2517 AN The Hague, The Netherlands	Juan E. Méndez President, International Center for Transitional Justice (ICTJ) 5 Hanover Square, 24th Floor, New York, NY USA 10004
William R. Pace Convenor Coalition for the International Criminal Court c/o WFM, 708 3rd Avenue, 24 <sup>th</sup> Floor New York, NY 10017	Oscar López Goldaracena Human Rights Watch 21 de Septiembre 2508 Montevideo - Uruguay

	Luis Enrique Aguilar COMISION ANDINA DE JURISTAS Área de Derechos Humanos <b>Los Sauces 285, Lima 27 - Perú</b>
	Katya Salazar Executive Director DPLF 1779 Massachusetts Avenue, N.W, Suite 510A, Washington, D.C., 20036

### 5.7. Cooperation Project

A project was prepared on Strengthening Cooperation of the States with the International Criminal Court concerning legislation, to last an estimated 3 years beginning February 2010 and ending February 2013, for the purpose of strengthening the capacity of State bodies in respect to legislative cooperation of the States with the ICC. Two stages are planned:

a) Seminar or Course on the perspectives of the model legislation of the Inter-American Juridical Committee, addressed to a first group of Spanish-speaking countries that have ratified the Rome Statute. Convocation will be done in such a way that each country appoints 4 high-level employees connected to the Ministries of Justice, Foreign Affairs, the Judicial Sector and Parliament. The 15 countries initially selected will be: Venezuela, Costa Rica, Honduras, Argentina, Paraguay, Peru, Ecuador, Panama, Brazil, Bolivia, Uruguay, Colombia, Mexico, the Dominican Republic and Chile. The participants shall answer a questionnaire on the advances made in their countries at the moment the training comes to an end. The participation of those States that have not yet ratified the Statute may eventually be contemplated.

b) Seminar or Course on the perspectives of the model legislation of the Inter-American Juridical Committee, addressed to a second group of English-speaking countries that have ratified the Rome Statute. Convocation shall be done in such a way that each country appoints 4 high-level employees connected with the Ministries of Justice, Foreign Affairs, the Judicial Sector and Parliament. The 10 countries selected for this second activity will be: Trinidad and Tobago, Belize, Canada, Dominica, Antigua and Barbuda, San Vicente and The Grenadines, Barbados, Guiana, San Kitts and Nevis, and Surinam. The participants must answer a questionnaire on the progress made by their country at the moment they terminate training. The participation of those States that have not yet ratified the Statute may eventually be contemplated.

In principle, the expected results consist in:

- i) 96 high-level employees of the Ministries of Justice, Foreign Affairs, the Judicial Sector and Parliament qualified in the sphere of cooperation of the States with ICC, in order to enable national legislations to act in coherence with the Rome Statute and so that national employees can interpret and properly apply the juridical instruments so as to facilitate cooperation with the ICC.
- ii) Another desired result consists in “A follow-up mechanism implemented on the national development made on the legislative, administrative and judicial level in the countries whose employees received training”.

### **5.8 Offer of collaboration**

The members of the Inter-American Juridical Committee from Venezuela, Jamaica, Peru (host of the next regular session of the IJC), among others, offer the collaboration of their countries for immediate actions in qualifying and training in matters related to the International Criminal Court or to promote adoption of laws based on the Guide of Principles of the IJC.

### **5.9 Possible collaboration**

The rapporteur and the Department of International Law have contacted organizations such as the Coalition for the International Criminal Court and Parliamentarians for Global Action, among others, to advance possible forms of collaboration. Likewise, several organizations have been contacted during the Committee's regular sessions.

## **VI. MODEL LAWS FOR CRIMES**

The CJI proposes to work on drafting a model legislation on implementation of the Rome Statute, particularly in respect to typification of war crimes. To this end, it intends to consult the International Committee of the Red Cross and other organizations, following the orientation that it has been working on. Similarly, it intends to take advantage of the work already being carried out by the Committee in the area of International Humanitarian Law and the mandate of the General Assembly contained in Resolution AG/RES. 2507 (XXXIX-O/09), "Promotion of and Respect for International Humanitarian Law", as below:

To request the Inter-American Juridical Committee (CJI) to continue preparing and to propose, as soon as possible, model laws to support the efforts made by member states to fulfill obligations under international humanitarian law treaties, on the basis of priority topics determined in consultation with the member states and the International Committee of the Red Cross...

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