

**COMPLEMENTARY PROGRESS REPORT ON THE ACTIVITIES TO
PROMOTE THE INTERNATIONAL CRIMINAL COURT AND
PRELIMINARY GUIDE OF MODEL TEXTS FOR CRIMES
INCLUDED IN THE ROME STATUTE**

(presented by Dr. Mauricio Herdocia Sacasa)

I. MANDATE AND REPORT

In its resolution AG/RES. 2577 (XL-O/10), the General Assembly of the OAS decided:

11. To request the Inter-American Juridical Committee, based on the OAS Guide of Principles concerning cooperation with the International Criminal Court, to continue to encourage adopting national legislation on the matter, as far as possible and with the support of civil society, among those States that lack such legislation; as well as to collaborate with the General Office and the Department of Legal Affairs in supporting and promoting among the Member States skill-building programs for administrative, legal and academic employees for that purpose; and to inform the Member States of the progress made as regards the next Working Session on the International Criminal Court and the General Assembly at its 41st regular session.

12. To request further that the Inter-American Juridical Committee continue its work drawing up model legislation on implementing the Rome Statute, particularly as regards typifying the crimes that fall under the jurisdiction of the International Criminal Court, and present a report on the progress made during the next Working Session on the International Criminal Court.

On 4 August 2010 the Rapporteur presented his document CJI/doc.360/10 rev.1 “Progress report on the activities to promote the International Criminal Court and Preliminary Guide of Model Texts for Crimes included in the Rome Statute”.

II. UPDATE

2.1 Status of the Instruments

Since the presentation of his last report at the 77th regular session of the Inter-American Juridical Committee held in Rio de Janeiro, Brazil, the number of the countries that have ratified the Rome Statute has risen with the depositing of Saint Lucia’s ratification.

The 26 countries of the Inter-American System that have already 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), Guyana (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), Saint Vincent and the Grenadines (3 December 2002), Trinidad and Tobago (6 April 1999), Uruguay (28 June 2002), Venezuela (7 June 2000), Suriname (15 July 2008), Chile (29 June 2009) and Saint Lucia (18 August 2010).

The 9 countries of the Inter-Americas System that have not ratified the Rome Statute are: the Bahamas, Cuba, Haiti, Jamaica, United States, Grenada, Guatemala, Nicaragua and El Salvador.

Ratifications of the APIC

The Agreement on Privileges and Immunities of the ICC has been ratified by 14 countries of the Inter-American System. These are: Argentina (1 February 2007), Belize (14 September 2005), Bolivia (20 January 2006), Canada (22 June 2004), Ecuador (19 April 2006), Guyana (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), Colombia (15 April 2009) and the Dominican Republic (10 September 2009).

2.2 Meetings

After the regular session of the Inter-American Juridical Committee held in Rio de Janeiro, three meetings on the theme of the International Criminal Court deserve special mention:

2.2.1 The Third World Meeting of National Committees of Humanitarian International Law

At this meeting, held in Geneva, Switzerland on 28 October 2010, the Rapporteur presented a report on “The work of the Inter-American Juridical Committee on the International Criminal Court: Towards a New Synthesis of HIL”.

2.2.2 Working Session on the International Criminal Court

This meeting was held in the headquarters of the OAS in Washington on 10 March 2011 in accordance with the mandate of resolution AG/RES. 2577 (XL-O/10), which requested the holding of a working session to include some high-level dialogue among the Permanent Representatives of all the Member States to discuss, among other matters, the results of the Review Conference held in Kampala. On this occasion the Rapporteur presented a report on the work of the Inter-American Juridical Committee on the last mandate received from the General Assembly. The meeting was presided by Ambassador Hugo De Zela, Permanent Representative of Peru at the OAS and President of the Committee on Legal and Political Affairs (CAJP), and participants included Dr. Felipe Michelini, National Representative of Uruguay in the organization “Parliamentarians for Global Action”, Christian Wenaweser, President of the Assembly of Member States of the Rome Statute of the International Criminal Court, Miriam Spittler, Advisor on International Legal Cooperation of the District Attorney’s Office of the ICC, Patrick Zahnd, Legal Advisor of the CICR for Latin America and the Caribbean, Karen Mosoti, Head of the Liaison Office of the Court before the United Nations, Luis Toro, of the Department of International Law of the OAS, and the Rapporteur.

During this meeting the countries referred in general to the progress made in their respective internal frameworks concerning cooperation with the ICP and typifying the crimes included in the Rome Statute. During the proceedings, acknowledgement was made of the work undertaken by the Inter-American Juridical Committee. During Mr. Michelini’s presentation, he expressed his appreciation for the work, in particular that done on the Preliminary Guide of model texts for typifying crimes included in the Rome Statute, and stressed the importance of including the theme of aggression and the framework of the principles governing its application.

2.2.3 Informal Meeting of Organizations in favor of the International Criminal Court

On 10 March 2011 a meeting was held in Washington of the organizations and bodies that promote the International Criminal Court on a regional and international level for the purpose of strengthening communication and interchange of experiences, as well as coordination and reciprocal support in the work they develop. This was the second meeting held, and it was attended by representatives of the Department of International Law of the OAS, the District Attorney’s Office of the International Criminal Court, the Presidency of the Member States of the Rome Statute of the International Criminal Court, the Liaison Office of

the Court before the United Nations, Parliamentarians for Global Action, the Coalition for the International Criminal Court and the Rapporteur of the Inter-American Juridical Committee. The CICR is part of this informal meeting.

2.3 Cooperation Project

As the Rapporteur mentioned in previous reports, the document “Strengthening Cooperation between the States and the International Criminal Court on Matters of Legislation”, was approved by the Committee for Evaluating Projects (CEP) on 17 December 2009. The Department of International Law of the Legal Office of the OAS informed the Inter-American Juridical Committee that there is no progress to report regarding the financing of the project, which makes it necessary to continue to intensify efforts to seek funds to allow the phases of the project to be completed (seminars or courses).

III. FRAMEWORK OF PRINCIPLES OF THE PRELIMINARY GUIDE OF MODEL TEXTS

With regard to the Preliminary Guide of model texts for crimes included in the Rome Statute – with the exception of the crime of aggression, which shall be considered at an immediate later stage, depending on the mandates of the General Assembly - the Rapporteur considers it necessary to underline the importance of bearing in mind, in addition to the proposed text, the so-called Guide of General Principles and Guidelines on Cooperation of the States with the International Criminal Court, contained in document OEA/Ser.Q CJI/doc.293/08 rev.1 dated 7 March 2008.

In effect, application of the typified crimes is indissolubly linked to complying with the contents of point 3.4 of the Guide of General Principles and Guidelines on Cooperation, which states that:

Adapting criminal types must be done by including those rules and principles relating, for example, to the Res Judicata (art. 20); Applicable Law (art. 21); the restrictive interpretation of crimes (art. 22.2); irretroactivity Ratione Personae (art. 24. 2); Individual Criminal Responsibility (art. 25); exclusion of those under the age of 18 from the jurisdiction of the Court (art. 26); the inadmissibility of the Official post (art. 27); the Responsibility of the Heads and other Superiors (art. 28); imprescriptibility (art. 29) and the Circumstances that Exempt one from Criminal Responsibility (art. 31), in order to avoid inconsistency between the criminal norm and how it is applied.

In this complementary report, the Rapporteur wishes to make it clear that he considers that such rules and principles must be understood as an indivisible part of the application of the body of model norms of crimes proposed in the 2010 Preliminary Guide of Model Texts.

Likewise, as indicated in the Guide of General Principles and Guidelines on Cooperation, crimes against the administration of justice should be applied as established in article 70 of the Rome Statute (3.2 of the Guide), and the universal obligation of meting out justice (4.2 of the Guide) should also be borne in mind.

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