

## INTERNATIONAL CRIMINAL COURT \*

(presented by Dr. Mauricio Herdocia Sacasa)

### I. MANDATE AND ORIGIN OF THE REPORT<sup>1</sup>

The General Assembly of the Organization of American States (OAS), under resolution AG/RES. 2072 (XXXV-O/05) of 7<sup>th</sup> June 2005, in its resolute paragraph 6 decided "To urge the Inter-American Juridical Committee to prepare a questionnaire to be presented to the member states of the OAS concerning the manner in which their legislation is able to cooperate with the International Criminal Court and to present a report on the results of this questionnaire to the Permanent Council, which in turn will present it at the 36<sup>th</sup> Regular Session of the General Assembly of the Organization".

On this basis, 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* corresponds to resolution 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 covers both States Parties and those that are not party of the Rome Statute.

The questionnaire was answered by 17 countries, 11 of which are Parties to the Rome Statute, namely: Canada, Argentina, Ecuador, Bolivia, Colombia, Mexico, Uruguay, Dominican Republic, Costa Rica, Brazil y Paraguay; and six are not party to the Rome Statute, namely: Surinam, El Salvador, Nicaragua, Chile, Guatemala and the United States of America<sup>2</sup>.

### II. GENERAL STATUS OF THE ROME STATUTE<sup>3</sup>

The Rome Statute created the International Criminal Court in Rome on July 17, 1998 and came into effect on July 1, 2002.

The Statute currently has 139 signatories, 25 of which belong to the inter-American system. Almost 25 percent of the 100 ratifications or adhesions worldwide correspond to OAS member states.

There are 22 countries in the inter-American system that ratified or adhered to the Rome Statute, as follows:

**Antigua & 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, 2000), **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), **St**

\* A corrigendum of this document was issued in order for the English version, which had misplaced a member State in Annexes I to III, to comply with the correct Spanish original.

<sup>1</sup> This report does not intend nor was able to include all answers given by the States but provides what seems to be an indicative for the established purposes.

<sup>2</sup> The United States of America made a reservation to resolution AG/RES. 2072 (XXXV-O/05). It states, among other issues, that "...it 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>3</sup> Data on November 14, 2005. [www.icc.cpi.int](http://www.icc.cpi.int).

**Vincent & the Grenadines** (December 3, 2002), **Trinidad & Tobago** (April 6, 1999), **Uruguay** (June 28, 2002), **Venezuela** (June 7, 2000).

Thirteen member states of the Organization did not ratify or adhere to the Rome Statute. They are: **Bahamas, Chile, Haiti, Jamaica, St. Lucia, USA, Grenada, Guatemala, Nicaragua, El Salvador, St. Kitts & Nevis, Cuba and Surinam.**

The *Agreement on the Privileges and Immunities of the International Criminal Court* was ratified or accepted by the following countries: **Belize** (September 14, 2005), **Canada** (June 22, 2004), **Guyana** (November 16, 2005), **Panama** (August 16, 2004), **Paraguay** (July 19, 2005) and **Trinidad & Tobago** (February 6, 2003).

### III. SOME OF THE MAIN WORKING MEASURES PROVIDED FOR IN THE STATUTE

#### Part IX. International Cooperation and Judicial Assistance

- ◆ The States shall cooperate fully with the Court in its investigation and prosecution of crimes within the jurisdiction of the Court.
- ◆ The States must assure that the national law contains procedures to apply the forms of cooperation that the Statute specifies.
- ◆ The States shall meet requests for arrest and surrender of people, pursuant to the Statute and procedure of national law.
- ◆ In a case of *ne bis in idem*, the Court will determine whether it should accept the case. If it is admissible, the State shall proceed to perform the request.
- ◆ A State Party shall authorize transit through its territory of a person being surrendered to the Court by another State.
- ◆ If, besides the Court, another party requests a certain person, then priority will be given to the Court, unless in specific cases.
- ◆ The Court may request the arrest of a person in case of urgency, immediately collecting the necessary formalities.
- ◆ The States shall proceed to perform requests made by the Court in relation to criminal investigations or trials whenever they are not contrary to the requesting party's legislation and help facilitate investigations and trials.
- ◆ The Court may also cooperate with the States Parties or non-parties (at their request) on matters constituting a crime submitted to the competence of the Court, or a serious crime in accordance with the national law of the requesting State.

#### Part X. Enforcement

- ◆ A prison sentence will be served in a State appointed by the Court based on a list of States that have informed the Court of their willingness to receive convicts.
- ◆ Fines or orders of seizure decreed by the Court will be made effective by the States Parties, and should the State fail to do so, it will take measures to charge the value of the product, goods or proceeds whose forfeit is decreed by the Court. The goods or their proceeds will be transferred to the Court.

### IV. POINTS THAT MAY BECOME CONFLICTUAL

From precedents, it is important to comment briefly on some points that have arisen as possible sources of conflict deriving from the Statute for national legislations, in order to facilitate the understanding of the answers to the questionnaire.

#### **Art. 20 - NE BIS IN IDEM**

As a general rule, the Statute does not permit a double trial, but in some particular cases if, for example, when a proceeding is judged by another court, it fulfills the intent to remove the defendant from his criminal responsibility for crimes under the Court's

competence, or when the court was not constituted independently or impartially, with the due procedural guaranties recognized by International Law.

Acceptance of the exceptions to a double trial is one of the problems commonly found in the application of the Statute. Many countries have succeeded in overcoming it but not others.

In the case of El Salvador, it indicates that its Constitution does not permit the re-opening of the *ne bis in idem*.

#### **Art. 27 - IRRELEVANCE OF OFFICIAL CAPACITY**

Many constitutions also regulate a special process for judging people who hold a certain office, acting sometimes as immunity for the person, as in the case of heads of State or government of certain States.

The Statute makes no distinction of an official capacity and judges everyone as an equal. Immunities and special rules of procedure included in a person's official capacity will not prevent the Court from exercising its competence.

Mexico and El Salvador establish a special procedure for certain persons as a result of their position. Costa Rica poses constitutional questions in relation to this article 27 of the Statute.

#### **Art. 54 Item 2 - DUTIES AND POWERS OF THE PROSECUTOR WITH RESPECT TO INVESTIGATIONS**

The Rome Statute gives major legal authority to the prosecutor, who is permitted to conduct investigations in the territory of a State. Chile comments on the problems in fulfilling certain duties between the national Prosecutor and that of the ICC.

#### **Art. 59 - ARREST PROCEEDINGS IN THE CUSTODIAL STATE and Art. 89 SURRENDER OF PERSONS TO THE COURT**

This is one of the points that has raised most problems for ratification or adhesion to and application of the Statute by the States.

In fact, the Statute makes a clear distinction between "extradition" and "surrender". Extradition refers to an inter-State relationship, while surrender refers to the relationship between a State and the Court. Constitutions normally do not make this kind of distinction but the adopting of this criterion would seem to have enabled some States that do not permit extradition of nationals the possibility to accept their surrender solely to the Court. Various opinions of the courts that exercise different forms of Constitutional control (Ecuador, Guatemala, Colombia and Costa Rica) accepted a harmonious interpretation between the Constitution and Statute, considering also the Criminal Court in its complementary dimension.

Nicaragua and Surinam do not permit extradition of nationals, and in the case of Surinam extradition of aliens is regulated by bilateral and multilateral agreements.

#### **Art. 77 - LIFE IMPRISONMENT**

Life imprisonment does not exist in the national legislation of most American countries. This means a problem for some countries, as in the case of Nicaragua and El Salvador. Other countries overcame this problem by reforming their Constitution, as happened in the case of Brazil.

#### **PARDONS AND AMNESTIES**

Another potential incompatibility indicated by the Constitutional Court of Chile expressed that the Criminal Court could be unaware of its sentences, pardons or amnesties previously granted by the competent authorities.

## COMMENT

As an earlier comment by the rapporteur on these conflicting points, mention is made as an introduction that countries such as Colombia did not make specific amendment to each one of the different regulations that might clash with the Rome Statute. On this matter, they chose to make a single overall reform that permits the Rome Statute to be more assertive before the guaranties contained in the Constitution.

In fact, the Colombian addition to Article 93 of the Constitution indicates that "the admission of a different treatment in matters of substance by the Rome Statute regarding the guaranties in the Constitution will have effects solely within the sphere of the matter regulated therein."

El Salvador is also considering choosing this kind of reform.

In the case of Brazil, some of these possibly contradictory topics caused legal discussions on constitutionality. Nevertheless, Amendment No. 45 to the Federal Constitution, in the chapter on individual and collective rights and duties, states that "Brazil submits to the jurisdiction of the International Criminal Court to whose creation it adhered", which gives full support to the Statute.

## V. OTHER REPORTS AND RECOMMENDATIONS REGARDING THE TOPIC, ISSUED PRIOR TO THE MANDATE GIVEN TO IAJC

### 1. IACHR Report (1999)

The Inter-American Commission on Human Rights in its report OAS/Ser.L/V/II.102/doc. 6 rev., dated April 16, 1999, in chapter VII, issued a series of recommendations on the universal jurisdiction and International Criminal Court, in commemoration of the fifty years of the enactment of the American Declaration of Human Rights and Duties and the Universal Declaration of Human Rights. On this occasion, it registered as one of the most important milestones in contemporary public international law the establishment of the principle of criminal responsibility of the individual in the international system. It stressed that the Diplomatic Conference of Rome approved the Statute of the International Criminal Court as permanent. On this occasion, it recommended "...the member states of the Organization of American States to adopt the necessary legislative and other measures to urge and exercise universal jurisdiction before individuals in terms of crimes of genocide, crimes against humanity, and war crimes". It also recommended, "...the member states of the Organization of American States that did not to do so to sign and ratify the Statute of the International Criminal Court...". On the other hand, in its resolution No. 1/03 dated October 24, 2003, on the judgment of international crimes, the Inter-American Commission of Human Rights resolved, among other questions, the following:

- To urge the States to combat impunity of international crimes by calling upon and exercising their jurisdiction on such crimes based on the different forms of existing jurisdictions.
- To urge the States to take the necessary measures to consider these international crimes as offenses that incur extradition and grant extradition of any person accused of having committed an international crime or proceed to his judgment.
- To urge the States to cooperate in the basic work of preventing, sanctioning, repairing and eradicating such international crimes. Therefore, should two or more States call upon their jurisdiction to judge people accused of having committed international crimes, they should give preference to the State whose jurisdiction is best for judging such crimes.
- To point out that the principle of territoriality must prevail over that of nationality in cases in which the State where the international crimes occurred is willing to take

them to court and offer the appropriate guaranties of the due process of those accused as responsible.

- To demonstrate that when a State does not grant extradition it will submit the case to its competent authorities as if the crime were committed in the sphere of its jurisdiction, for the purpose of investigation, judgment, and when applicable, sanction those responsible.

## **2. IACJ report on legal aspects of internal compliance with international court decisions (2005).**

Under resolution CJI/RES.67 (LXIII-O/03) the Inter-American Juridical Committee undertook a study on the theme that was finally called: "Legal aspects concerning the States complying internally with sentences passed by international courts or other international organizations with jurisdictional functions".

The study included a questionnaire that was sent to the States with a series of specific questions on the different courts or other international organs with jurisdictional functions. Three of these questions worth mentioning with regard to the International Criminal Court are as follows:

1. Has your country ratified the Statute of the International Criminal Court?
2. Has your country offered that prison sentences stated by the court be served in its territory?
3. Are there constitutional or legislative provisions or administrative practices in your country applicable to serving the Court sentences?

The final report on the topic is "Legal aspects of compliance within the States with decisions of international courts or tribunals other international organs with jurisdictional functions" under abbreviation CJI/doc.199/05 rev. 1, August 15, 2005. A total of 20 countries answered the questionnaire, but Argentina could not be considered in the report since it submitted its answer at a later date.

Fourteen of the States that answered the questionnaire are currently Parties while six are not Party to the Statute of the International Criminal Court<sup>4</sup>.

The report also concludes that no State Party offered its territory for the compliance with sentences of the Court, although two States expressed their intention to do so. Argentina's answer indicated that: "The draft law on implementing the Statute presented by the national Executive in 2002 provides for compliance with prison sentences passed by the Court in the territory of the Republic with regard to nationals".

Lastly, it informs that no decisions of the Court were passed.

## **3. Working meeting on the International Criminal Court (2005)**

Pursuant to resolution AG/RES.2072 (XXXV-O/05) approved on June 7, 2005, in Fort Lauderdale, Florida, the Committee on Legal and Political Affairs (CAJP) held a working meeting on February 3, 2006, to promote cooperation among OAS member states and the International Criminal Court.

The report by the rapporteur of the working meeting on the International Criminal Court (**CP/CAJP-2327/06 corr. 1**) presents a series of cooperation measures that were proposed and could consider the OAS member states, among which it is worth mentioning the following:

- Circulation of information and documents between the States and the Court on crimes that come under its jurisdiction.

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<sup>4</sup> Mexico was not a Party when the report was written.

- Provision of logistical assistance, for example, transportation and lodging for investigators, witnesses or even victims in cases lodged with the Court.
- Possibility of providing a place of arrest for people convicted of an international crime<sup>5</sup>.
- Training officials to understand the Court's procedures the ICC procedures; and support the participation of civil society in the process of promoting and strengthening ICC.
- Suspending recourse to amnesty laws for such crimes, since they facilitate impunity and affect the policies of the Rome Statute and Court activities.

Added to this should also be one of the recommendations made by the third panel: *"Bringing about universal jurisdiction as regards victims, regardless of their nationality or place of residence"*.

The rapporteur of this meeting said that the main conclusions reached would be the following:

1. Delegates expressed great interest in the ways in which their States could cooperate with the ICC.
2. The ICC expressed great interest in lending cooperation to and establishing closer ties with the OAS and the member states.
3. Delegates recommended that member states that had not yet done so ratify the Rome Statute and the agreements on privileges and immunities and take the necessary measures to adapt their national law to make those instruments fully effective.
4. Delegates recommended increased cooperation between the ICC and the OAS General Secretariat.
5. Delegates expressed a strong desire to continue holding working meetings with the ICC and to secure the adoption of a General Assembly resolution supporting its activities.

## **VI. SUMMARY OF THE ANSWERS TO QUESTIONNAIRE APPROVED BY IAJC**

### **◆ Has your legislation established the following crimes provided in the Statute: Crime of genocide, war crimes and crimes against humanity?**

With regard to the crime of genocide, 11 States said that they had established it in their legislation, while six States answered in the negative.

Concerning war crimes, nine States affirmed that they had established it in their national legislation, while eight answered in the negative.

In relation to crimes against humanity, only six States answered in the affirmative, while 11 States said that they had not established this crime.

### **◆ If so, indicate such definitions and their elements**

The States in their national laws tend to adopt certain elements of these crimes, but leave others without regulation or address them differently.

Some countries chose to avoid the precise definition of the Statute in their national laws, remitting the content to that established in international conventions.

One State informed in detail about certain laws to implement specific conventions relating to those crimes<sup>6</sup>.

<sup>5</sup> The ICC Secretariat, it seems, already requested the OAS member states to consider the possibility of receiving prisoners to serve their sentences in accordance with their national criminal system.

<sup>6</sup> The Statute establishes that genocide considers the forced transfer of children from one group, but certain States also include adults.

Certain countries mention that it is not always possible to find even one regulation applicable to the punishable fact, and it is necessary to resort to a number of provisions in different legal texts.

Other States state that they did not consider such crimes in their laws; however, they said that they included some of the elements of these crimes, mentioning, as an example, the case of war crimes, which many States included in the laws regulating their armed forces.

In the case of the crime of genocide, certain States have defined it with an apparently broader coverage than even established in the Statute<sup>7</sup>.

Although not all States have established these crimes, the vast majority say that they are working to integrate these definitions of crimes provided in the Statute in their own national legal system.

- ◆ **Indicate whether the State does or does not have procedures applicable to all forms of cooperation provided for in Part IX (On international cooperation and judicial assistance) and X (On enforcement of sentence), including - but not limited to - the following:**
  - Surrender of persons accused, including the implementation of requests for provisional arrest;
  - The taking and submission of evidence, both documentary evidence and evidence in the form of testimony of witnesses; and
  - The execution of orders of the ICC: (1) concerning the property of persons found criminally responsible for the purpose of providing for the forfeit of proceeds derived from the crime and for the award of reparations to victims; y (2) where applicable, to the serving of sentences.

**(The States Parties to the Statute are asked this question)**

Bearing in mind the 11 States Parties to the Statute that answered the questionnaire – not including the States that did not ratify or support it – three of them (Costa Rica, Canada and Colombia) state that they have mechanisms specially created for cooperation with ICC, some to a greater degree than others; three States (Mexico, Bolivia and Brazil) say that they do not have a special cooperation procedures for ICC and five States (Uruguay, Argentina, Paraguay, Ecuador and the Dominican Republic) seem to suggest – some more clearly than others - that although they do not have at present a law or regulation specifically created for cooperation with the Court, they would eventually be obliged to provide it through the competent authorities, under the prevailing legal framework before the ratification of or adherence to the Statute.

Paraguay mentioned that, although it answered positively, certain partial reforms are being discussed in the national Parliament in terms of the order of form and content.

Costa Rica fixed specific regulations for cooperation with the Court in the sphere of the administrative police and legal authorities, Attorney General's and Prosecutor's office and interpreted that the provision in the second paragraph of Article 27 of the Statute (Irrelevance of official capacity) would not be applicable in detriment to certain articles of the Costa Rica political Constitution.

Mexico said that today its legislation does not consider mechanisms of cooperation with the International Criminal Court. However, it did mention that it is drafting the law that will permit meeting requests of cooperation with the Court. This task is done in two stages. The

<sup>7</sup> This is the case, for example, of the United States of America with the Act of Implementation of the Convention on Genocide; the 1996 Act on war crimes and different domestic statutes on the convention against torture, for example.

first covers the design of procedural regulations while the second refers to drafting fundamental regulations for updating its criminal laws.

Bolivia said that it had begun the process of implementing the Statute under an implementation bill for adapting the regulations to Part IX (International Cooperation and Judicial Assistance).

Argentina mentioned that until the time when the law of implementation is sanctioned, which contains a special procedure for regulating international cooperation with the Court, the provisions in Law 24,767 on International Cooperation in Criminal Terms are considered applicable as a supplement. This regulatory content was used by the Ministry of Foreign Affairs, Foreign Trade and Culture, as the central authority in terms of international legal cooperation, to start processing the request for surrender of the accused Milan Lukic, made by the International Criminal Court for former Yugoslavia. This request had already been granted by the competent court.

The Eastern Republic of Uruguay informed about the existence of a bill on “Genocide, Crimes against Humanity, War crimes and cooperation with the International Criminal Court (Rome Statute)”, which was formally submitted to the Senate in November 2005.

Ecuador said that it had begun a process of legal reforms that are awaiting approval from the National Congress to have a legal basis for cooperation with the Court.

Canada stated that it had a procedure applicable to the forms of cooperation in Part IX, but not in relation to Part X of the Statute.

Colombia mentioned that the Bill 225 of 2004 is going through Congress, which provides for regulations of cooperation with the Court.

Brazil informed that there is a bill on internal implementation of the Rome Statute that includes cooperation with the Court.

- ◆ **If not, indicate whether your country is prepared to amend its legislation in order to cooperate with the International Criminal Court.**

**(This question is directed at the States Parties and non-party to the Statute)**

In this case all States that ratified or supported the Statute that do not have specially created cooperation procedures or that require to strengthen them indicated that they are working to include in their laws the necessary measures for cooperating with the ICC.

- ◆ **Has your country found particular obligations in the Rome Statute inconsistent with the provisions of your Constitution?**

**(This question is directed at the States Parties and non-party to the Statute)**

Three of the State Parties to the Statute (Colombia, Mexico and Brazil) answered that they had particular obligations contradicting their Constitutions, while eight States (Uruguay, Argentina, Paraguay, Canada, Costa Rica, Ecuador, Bolivia and the Dominican Republic) answered that the Statute did not contain provisions against their Constitutions.

Three States that are non-Party to the Statute (El Salvador, Nicaragua and Chile) said that they have contrary provisions and two States (Guatemala and Surinam) affirmed that there was no contradiction between their own Constitutions and the Statute. The United States of America considered the question not applicable.

- ◆ **If so, please indicate which obligations could be inconsistent with your Constitution and the nature of that inconsistency?**

**(This question is directed at the States Parties and non-party to the Statute)**



Of the States Parties, Colombia said that there were no contradictions concerning topics such as immunities, life imprisonment, imprescriptibility of crimes and the principle of *ne bis in idem*, even if overcome by a Constitutional reform.

Mexico presented problems arising from the fact that its Constitution did not permit a double trial (Art. 20 *Ne bis in idem* of the Statute); the lifting of immunities and privileges of certain employees (Art. 27 "Irrelevance of Official Capacity" of the Statute) and life imprisonment; (Art. 77 Life imprisonment) and although the legislation of that country does not refer to the surrender of persons to international courts, it was an omission that while it was not in itself contrary to the Constitution, if not corrected would cause problems of application.

Brazil listed the topics of surrender of nationals, question of immunities and life imprisonment, stressing that Constitutional Amendment 45 gives constitutional support to the Rome Statute.

*For States that are not Party to the Statute:* The resulting contradictions were: a ban on extraditing nationals (two States), prohibited life imprisonment (one State), special procedures for an official capacity (one State), pardons and amnesties (one State); contradictions between functions of the national Prosecutor and ICC Prosecutor (one State). The constitutional court of a State said that the Constitution contradicted because the ICC establishes a jurisdiction that can be corrective and substitutive. One State said that the question was not applicable.

- ◆ **Do you know of any other legal issue that could affect your country's compliance with the obligations provided for in the Statute? If so, could you please inform what questions are they?**

**(This question is directed at the States Parties and non-party to the Statute)**

*For the States Parties to the Statute:* Colombia informed, when depositing the ratification instrument of the Statute and with regard to war crimes, that "...it does not accept the competence of the Court in the category of crimes under reference in Art. 8, when it is reported that one of these crimes is committed by Colombian nationals or in Colombian territory".

*For the States non-Party to the Statute:* Nicaragua mentioned that a legal question that would affect its compliance would be the current lack of legal mechanisms for cooperation with international courts. In the case of Surinam extradition of nationals is prohibited and extradition of aliens is regulated by bilateral or multilateral agreements.

- ◆ **Has your country enacted or does it intend to enact amendments to ratify or adhere to the Rome Statute?**

**(This question is directed at the States that are not party to the Statute)**

Among the six States non-Party to the Statute considered, Guatemala and the USA answered negatively to this question. The other States mentioned that they are working on studies and consultations (Nicaragua) and on reform projects (Chile and El Salvador).

Surinam expressed its intention to issue new legislation or amend the existing law.

Chile, for example, said that the process required for ratification began on January 6, 1999 and on April 9, 2002 a reform project to the political Constitution was submitted to the National Congress to recognize the Court's jurisdiction.

El Salvador said that it submitted for consultation a proposed constitutional reform inspired on the formula used by France and Colombia.

- ◆ **Is there any impediment of a legal nature to cooperate with the ICC in the cases provided for in the Statute for a State that is not party?**

Chile and Surinam answered that it was necessary to establish agreements with the Court to overcome impediments of cooperation with it.

The United States of America indicated that the 2002 American Service Members' Protection Act<sup>8</sup> contains restrictions for cooperation.

◆ **Does your country have any additional comments of a legal nature?**

**(This question is directed at the States Parties and not party to the Statute)**

Surinam in turn made comments on the Statute and mentioned, among other questions, that it is not convenient for the Statute to restrict its jurisdiction solely to natural persons (Art.25 of the Statute); it also added that corporate bodies must be taken into consideration; it commented that the constitutional instrument of the Court does not define the crime of aggression or other inhuman acts with similar characteristics.

Argentina informed that on June 23, 2004 its Senate sanctioned the bill to implement the Rome Statute of the International Criminal Court, which at the moment of sending this questionnaire was being put to the consideration of the Chamber of Deputies.

Chile said that a bill is going through its National Congress to penalize crimes of genocide, against humanity and war crimes.

Nicaragua referred to the new military code and draft criminal code approved in general, considering crimes of genocide, against humanity and war crimes.

## **VII. CONCLUSIONS**

1. There is strong interest by the member states of the Organization of American States in the theme of cooperation with the International Criminal Court, which is fully demonstrated by the fact that 16<sup>9</sup> States initially answered the questionnaire from the Committee in a relatively short time (September 13 to January 30, 2006). The reports differed in terms of detail with which they addressed the matters of cooperation with the Court.

2. The number of answers received altogether (17), although not offering final universal conclusions, is significant and comprehensive enough to show certain tendencies and 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 in an important number of OAS member States.

3. Most States have included in their legislation the crime of genocide; 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.

4. 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.

5. Although the result is clear that not all countries included the crimes established in the Rome Statute in their national laws, the answers to the questionnaire clearly reflect that a majority is working to integrate or broaden these definitions in their national legislation.

6. 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 specially devised or because they consider that the prevailing law always permits them

<sup>8</sup> "The American Service Members' Protection Act of 2002, Title II of Public Law 107-206(22 U.S.C sec.7421 et seq.).

<sup>9</sup> Also one country delivered the questionnaire after this date.

to cooperate with the Court. Emphasis then is placed on the fact that for some States Parties to the Statute the lack of specific laws would not seem to necessarily prevent their capacity to attend the Court's requests for cooperation under the already existing legal system, while they undertake the corresponding reforms.

7. In the case of the States Parties to the Statute that do 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 stages of progress.

8. To settle the problems of a constitutional clash that the Statute causes at the discretion of some States, recourse was made to certain mechanisms worth considering for the case of the States that are not yet party to the Statute. Some of these mechanisms were as follows:

- a) One single global constitutional reform that overcomes any contradiction or opposition, accompanied or not by interpretative statements.
- b) A request to the relevant control agencies of constitutionality of a report, statement or opinion that permitted in some cases the simple interpretation pursuant to the Statute and Constitution and, in one case, the direct request for a prior constitutional reform.
- c) Studies and inquiries that permitted ratification or direct adhesion, with no further inconveniences.

9. It would be useful to ask the OAS member States to consider the possibility of completing the questionnaire prepared by the IAJC, in the case of States that have not answered. It would also be useful for the States Parties to the Statute that completed the process of approving laws implementing Part IX and X of the Statute to provide the Inter-American Juridical Committee with such updated information.

10. This same recommendation is applicable to all States that complete the process of approving laws that include, modify or add the kinds of crime stated in the Rome Statute, providing the Committee with updated information.

11. It is suggested that it is advisable that the IAJC keep on its agenda, among the topics under consideration, the subject relating to the "Promotion of the International Criminal Court" and that the Committee, in possession of the information provided in points 9 and 10 herein – if it so decides – submit an updated report including the new information provided by the States that have already answered the questionnaire, and the information given by the States that have not yet done so.

12. Given the complementary nature of the ICC jurisdiction in relation to the national criminal jurisdictions, it is important – also as a form of cooperation (generally speaking) and to facilitate the work of the Court – to strengthen the national jurisdiction itself. It implies properly establishing 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.

13. It is worth mentioning the value itself of the answers to the questionnaire presented by the IAJC, inasmuch as it permits updated information and sharing legal actions and measures that could be of benefit to the States in their efforts to quality the national laws to cooperate with the Court, in its broad sense.

14. It is grateful to the member States that answered the questionnaire so far for their cooperation with the Inter-American Juridical Committee in complying with the mandate received from the OAS General Assembly.

ANNEX I<sup>10</sup>

CRIME OF GENOCIDE					
	EQUAL	SIMILAR	WITH DIFFERENCES	NOT ALIKE	NOT CONSIDERED
<b>Non-Party</b>					
El Salvador		X			
Nicaragua		X			
Chile					x
Guatemala	x				
Surinam					x
USA		x			
<b>Party</b>					
Uruguay					x
Dominican Republic					x
Costa Rica					x
Brazil	x				
Canada	x				
Argentina			x		
Ecuador					x
Bolivia		x			
Colombia		x			
Mexico		x			
Paraguay		x			
<b>TOTAL</b>	<b>3</b>	<b>7</b>	<b>1</b>	<b>0</b>	<b>6</b>

<sup>10</sup> The Annex herein in no way whatsoever acts as qualification and is merely the rapporteur's guide for organizing the documents received, in some cases voluminous.

ANNEX II<sup>11</sup>

WAR CRIMES					
	EQUAL	SIMILAR	WITH DIFFERENCES	NOT ALIKE	NOT CONSIDERED
<b>Non-Party</b>					
El Salvador			x		
Nicaragua			x		
Chile					x
Guatemala					x
Surinam					x
USA			x		
<b>Party</b>					
Uruguay					x
Dominican Republic					x
Costa Rica			x		
Brazil					x
Canada			x		
Argentina			x		
Ecuador					x
Bolivia			x		
Colombia			x		
Mexico					x
Paraguay		x			
<b>TOTAL</b>	<b>0</b>	<b>1</b>	<b>8</b>	<b>0</b>	<b>8</b>

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<sup>11</sup> *Ibid.*

ANNEX III<sup>12</sup>

CRIMES AGAINST HUMANITY					
	EQUAL	SIMILAR	WITH DIFFERENCES	NOT ALIKE	NOT CONSIDERED
<b>Non-Party</b>					
El Salvador					x
Nicaragua					x
Chile					x
Guatemala					x
Surinam					x
USA			x		
<b>Party</b>					
Uruguay					x
Dominican Republic					x
Costa Rica	x				
Brazil					x
Canada		x			
Argentina			x		
Ecuador					x
Bolivia			x		
Colombia					x
Mexico					x
Paraguay			x		
<b>TOTAL</b>	<b>1</b>	<b>1</b>	<b>4</b>	<b>0</b>	<b>11</b>

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 28/3/2006 – última rev. da Elvyn- msg  
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<sup>12</sup> *Ibid.*