

CICC Report of the 2008 OAS Working Meeting on the ICC

On January 28th, 2008 the OAS held a working meeting on the ICC as set out by its 2007 resolution on the Promotion of the International Criminal Court. Since 1999 the OAS has been issuing an annual resolution on the ICC which has included increasingly stronger language and more concrete measures and directives.

2007 OAS Resolution on the Promotion of the ICC

The 2007 Resolution *AG/RES. 2279 (XXXVII O/07)* includes three key aspects. (1) the drafting of a model cooperation law by one of the OAS specialized bodies; (2) the holding of a working session on the ICC and (3) the appointment of a focal point to start consideration of a cooperation agreement between the OAS and the ICC. These different aspects are contained in the resolution through the following language:

“8. To request the Inter-American Juridical Committee, on the basis of the information received from and updated by the member states, the recommendations contained in report CP/doc. 4194/07, and existing cooperation law, to prepare model law on cooperation between states and the International Criminal Court, taking into account the Hemisphere’s different legal systems, and to submit it to the General Assembly of the Organization at its thirty-eighth regular session.

9. To invite the General Secretariat to designate a point of contact to consider entering into a cooperation agreement with the International Criminal Court and to report to the member states on progress in that regard before the thirty-eighth regular session of the General Assembly.

10. To request the Permanent Council, with support from the Office of International Law, to hold a working meeting on appropriate measures that states should take to cooperate with the International Criminal Court, which should include a high-level dialogue in which member states discuss the recommendations contained in report CP/doc.4194.07. The International Criminal Court, international organizations, and nongovernmental organizations will be invited to cooperate and participate in this working meeting.”

OAS Working Meeting on the ICC

In the context of point 10 of the resolution, the Committee on Political and Juridical Affairs (CPJA) of the OAS held its working meeting on the ICC. Chaired by Mr. Roberto Alvarez, Ambassador to the Dominican Republic and President of the CPJA, the panelists of the session included Ms. Olivia Swaak Goldman from the ICC, Mr. Anton Camen from the ICRC, Mr. Luis Toro from the Inter-American Juridical Committee (IJC), Mr. Mauricio Herdocia, ICC Rapporteur for the IJC, and Mr. Richard Dicker from HRW. Salvador Herencia from the Andean Commission of Jurists, Eduardo Bertoni from the Due Process of Law Foundation and Francesca Varda from the CICC Secretariat attended as well.

The States present at the session were El Salvador, Argentina, Jamaica, Honduras, Suriname, Dominican Republic, Peru, Paraguay, Panama, Nicaragua, Mexico, United States, Ecuador, Canada, Brazil, Bolivia, Belize, Costa Rica, Venezuela, Colombia, Uruguay, Antigua and Barbuda, Guatemala and Chile.

Ms. Olivia Swaak Goldman spoke on the challenges faced by the ICC five years after the entry into force of the Statute. She raised the importance of ensuring that States are able to appropriately cooperate with the ICC, and highlighted that this can be done through many forms including political, diplomatic and legal mechanisms. She also referred to the need for States and regional organizations to continue mentioning the ICC in as many forums, resolutions and contexts as possible. Most of the presentation was devoted to the Court’s current investigations,

providing a detailed summary of the Court's activities on the basis of the Prosecutors report during the 6th ASP.

Mr. Herdocia's panel was entitled measures states should take to cooperate with the ICC in the investigation and prosecution of those responsible for committing war crimes, crimes against humanity and genocide. Mr. Herdocia referred to his previous work around ICC issues as part of the IJC. As he noted, the 2005 OAS resolution included the following language:

"To request the Inter-American Juridical Committee to draw up a questionnaire, to be presented to the OAS member states, on how their laws allow for cooperation with the International Criminal Court and, on the basis of the findings of the questionnaire, to present a report to the Permanent Council, which, in turn, will transmit it to the General Assembly at its thirty-sixth regular session".

In that context, Mr. Herdocia was requested to prepare a questionnaire that would be distributed to States. In June 2006, the Inter-American Juridical Committee approved his report based on the questionnaires received by 17 States, and through the 2006 Resolution on the Promotion of the ICC, the OAS called for the elaboration of a series of recommendations for OAS Member States based on the findings of that initial report, as well as further update of the document. This second report was presented and approved in March 2007.

During his presentation Mr. Herdocia provided a general overview of ratification of both the Rome Statute and the APIC in the region, as well as specifics in relation to ICC implementation laws/provisions in Uruguay, Argentina, Colombia, Trinidad and Tobago, Peru and Panama. He also referenced draft bills available in Brazil and Mexico. In addition, he raised some of the general constitutional questions faced by governments including ne bis in idem, no immunity for high level officials etc and reiterated that the RS constitutes the minimum acceptable standard for typifying crimes. His presentation also addressed general issues related to cooperation with the ICC, such as the surrender of suspects to the Court, adequate communication procedures in order to assure prompt compliance with the Court's determinations and the adoption of internal mechanisms to ensure cooperation with the Rome Statute integrally, and not just in relation to part IX of the treaty.

Mr. Herdocia has also been tasked with preparing a report for the IJC that will include recommendations as to what a proposed OAS model cooperation law should include.

Richard Dicker presented on a proposed OAS-ICC cooperation agreement. He raised general issues related to cooperation between States including both political and diplomatic pressure, as well as concrete technical and legal provisions that can assist this process. In terms of a specific agreement, he made reference to provisions such as establishing a specific channel of communication between these two entities, recalled that an agreement would involve exchange of information and would therefore be reciprocal, and noted that the agreement should also recognize the potential to conclude future agreements both at a bilateral level with States, as well as with the OAS.

Most States seemed to endorse the proposal for a cooperation agreement between the OAS and the ICC. Argentina, Costa Rica, Venezuela, Peru, Honduras, Jamaica, Nicaragua, Paraguay, Ecuador, and Costa Rica publicly took the floor in the Q&A and all of them agreed that it would be important to continue these discussions. Argentina raised a specific question. They noted that when the ICC requested information to SP regarding the situation in DRC, because of their federal nature, the one month allocated for such request constituted a very short time frame. They wanted to raise this point as they do not consider that this is realistic. The United States also took the floor and stated that it is important to recognize that there are several OAS States that are not Parties to the Statute, and that any Cooperation Agreement should consider this issue, as well as the capacity and limitations of the OAS itself to cooperate with other organizations.

In this context, we should also keep in mind the 2007 US reservation to the OAS resolution on the promotion of the ICC.

2007: The United States has long been concerned about the persistent violations of international humanitarian law and international human rights law throughout the world. The United States will continue to be a forceful advocate for the principle of accountability for war crimes, genocide and crimes against humanity, but cannot support the flawed International Criminal Court (ICC). Thus, the United States has not ratified the Rome Statute and has no intention of doing so. *In light of this position, the United States cannot join in the consensus on an OAS resolution that promotes the Court, nor support the use of the OAS regular budget to fund cooperation and any other support rendered to the ICC, including under any OAS-ICC cooperation agreement.* The United States understands that any such support will result only from specific fund contributions http://www.iccnw.org/documents/ICC_Resolution_07june05_eng.pdf

MEXICAN ROUNDTABLE ON A PROPOSED OAS MODEL ICC COOPERATION LAW

During the afternoon, the Mexican delegation organized a roundtable with Member States to discuss the issue of an OAS model cooperation law. Member States present were Honduras, Nicaragua, Canada, Mexico, Argentina and Panama. DPLF, the ICRC, the CAJ and the Coalition Secretariat attended as well. As the person charged with drawing up the recommendations in relation to a proposed model law, Mr. Herdocia provided a series of comments essentially referring to a very wide range of issues that could be addressed by a model law of this kind. One of the contentious issues revolved around including the tipification of crimes in the model law. During the discussion several States raised whether this in fact would be a good idea, as it could perhaps represent an area where many States could potentially be in disagreement. Others highlighted that it would be better to focus on a model cooperation law that would address most specifically issues related to Part 9 of the Statute. Still others questioned whether it would be better to have a model law, or rather a series of guidelines or directives as to what should definitely be included in national legislation so as to ensure effective cooperation with the ICC.

The CAJ also offered an overview of what it considers the main issues that a model cooperation law should address such as (i) measures to assure compliance with ICC requests; (ii) measures to facilitate the ICC's investigation; and (iii) measures to criminalize the offences against the administration of justice of the ICC. DPLF similarly underscored that certain restrictions in providing information related to State national security should be tailored narrowly in a way that ensures that full and complete cooperation is possible.