

The Embassy of Colombia presents its compliments to the Secretariat of the Assembly of States Parties of the International Criminal Court and with reference to note ICC-ASP/11/SP/PA/12 of 26 June 2012, requesting information concerning the promotion of ratification and full implementation of the Rome Statute, in accordance with Resolution ICC-ASP/5/Res.3, has the honour to append the response concerning the actions taken by Colombia in this regard.

The Embassy of Colombia avails itself of this opportunity to renew to the Secretariat of the Assembly of States Parties of the International Criminal Court the assurances of its highest and most distinguished consideration.

The Hague, 8 August 2012

***The Secretariat of the Assembly of States Parties
of the International Criminal Court
The Hague***

I. Promotion of ratification and full implementation of the Rome Statute of the International Criminal Court (paragraph 6, sub-paragraph (h), of the Plan of Action to achieve universality and full implementation of the Rome Statute)

Information on obstacles to ratification or full implementation facing States

Certain provisions of the Rome Statute are inconsistent with domestic legal tradition and with certain principles enshrined in the Constitution. It was accordingly considered that the most appropriate mechanism in order to establish a constitutional basis that would enable the Colombian State to become a member of the Rome Statute and to recognize the jurisdiction of the International Criminal Court (ICC) under the terms of the Rome Statute was a reform of the Constitution by means of a "legislative act"¹ that would render the differing regimes under the Rome Statute and the Colombian legal order mutually compatible. The purpose of that legislative act was, moreover, to provide that any special regimes would only apply in the context of the Rome Statute.

This issue will be dealt with in more detail in the section entitled "*Solutions to the constitutional problems arising from ratification*".

Strategies or National or Regional Plans of Action to promote ratification and/or full implementation

Although strictly speaking, no strategy or national plan of action exists to promote ratification and/or full implementation of the Rome Statute, *inter alia* because the Colombian State has already ratified it and communication with the ICC, in particular with the Office of the Prosecutor, is ongoing, Colombia has promoted its universality in various forums and on various platforms.

Indeed, Colombia co-sponsored and voted in favour of United Nations General Assembly resolution 66/252 on the report of the ICC and its preceding resolutions; it subscribed to the Special Declaration of Ministers of Foreign Affairs of the Union of South American Nations (UNASUR) to commemorate the tenth anniversary of the entry into force of the Rome Statute of the International Criminal Court, adopted in Bogotá on 11 June 2012; it joined resolution AG/RES. 2728 (XLII-O/12) of the General Assembly of the Organisation of American States, adopted on 4 June 2012, entitled Promotion of the International Criminal Court, as well as its preceding resolutions; and more.

Moreover, Colombian support for the work of the ICC and universality of the Rome Statute and its relevant instruments has been demonstrated in its yearly interventions before the Assembly of States Parties to the Rome Statute.

¹ In the Colombian constitutional tradition, a legislative act is a norm enacted by the Congress of the Republic with a view to amend, reform, supplement or derogate from constitutional texts. This prerogative is enshrined in the Constitution and Rules of Procedure of Congress (Law N° 5 of 1992). Generally, the procedure for the adoption of such an act is more stringent than the procedure to enact a Law. Whereas a normal Law is subject to four readings, legislative acts are subject to eight readings.

Examples of Rome Statute implementing legislation

1. The crimes contained in the Rome Statute were already characterized in domestic criminal legislation before Colombia ratified the Statute. Firstly, many punishable acts that constitute crimes against humanity under the Rome Statute are defined in Law 599 of 2000 of the Colombian Criminal Code², such as murder (articles 103 ff. of the Colombian Criminal Code), apartheid (articles 134A ff. of the Colombian Criminal Code), forced disappearance (article 165 of the Colombian Criminal Code), imprisonment and other serious deprivation of physical freedom in violation of fundamental rules of international law (articles 168 ff. and 175 ff. of the Colombian Criminal Code), torture (article 178 of the Colombian Criminal Code), forcible displacement (article 180 of the Colombian Criminal Code), crimes against sexual freedom and integrity (articles 205 ff. of the Colombian Criminal Code), etc.. Secondly, Chapter I, Part I, Book II of above Code covers Genocide (this section defines both genocide and incitement to genocide). Thirdly, Book II, Part II entitled "*Crimes against Protected Persons and Property under International Humanitarian Law*" covers and defines War Crimes.

2. Chapter I of Book V of Law 906 of 2004, the current Code of Criminal Procedure, enshrines the general principle of international cooperation in criminal matters:

Article 484, as amended by article 64 of Law 1453 of 2011. General principle. Investigative and judicial authorities, through the Ministry of Foreign Affairs, shall take the necessary measures to comply with requests for international cooperation submitted in accordance with the Constitution, international instruments and the Laws regulating such matters.

Finally, Law 1448 of 10 June 2011, entitled "*Law on Victims and Land Restitution*", provides for attention, assistance and full reparation for the victims of internal armed conflict.

Bilateral cooperation agreements between the Court and States Parties

Colombia is a State Party to the Rome Statute (Law 742 of 2002), to the Agreement on Privileges and Immunities of the ICC (Law 1180 of 2007) and to the Elements of Crime and Rules of Procedure and Evidence of the ICC (Law 1268 of 2008). Furthermore, on 17 May 2011, the President of the Republic of Colombia, Juan Manuel Santos Calderón, and the President of the ICC, Judge H.E. Sang-Hyun Song, signed "the Agreement between the Republic of Colombia and the International Criminal Court on the enforcement of sentences imposed by the International Criminal Court", which was ratified by a Law adopted on second reading by the Congress of the Republic on 6 June 2012. Colombia thus became the seventh country in the world, and the first in Latin America, to enter into this type of agreement with the ICC.

² Available on the web site of the Senate of the Republic: http://www.secretariasenado.gov.co/senado/basedoc/ley/2000/ley_0599_2000.html

Solutions to constitutional problems arising from ratification

As mentioned in the first section, in order for Colombia to accede to the Rome Statute and to avoid any inconsistencies between that instrument and domestic norms, the Congress of the Republic approved a constitutional reform with regard to the Rome Statute and the ICC: Legislative Act 02 of 2001. This provision added two paragraphs to article 93 of the Constitution, on the basis of which Colombia was able to become a Member State of the Rome Statute and to recognize the ICC's jurisdiction. This article provides as follows:

Article 93. Treaties and international agreements ratified by Congress that recognise human rights and prohibit their limitation during states of emergency shall take precedence over domestic jurisdiction.

The rights and duties enshrined in this Constitution shall be interpreted in conformity with international human rights treaties ratified by Colombia.

The Colombian State may recognise the jurisdiction of the International Criminal Court under the terms provided in the Rome Statute adopted on 17 July 1998 by the Conference of Plenipotentiaries of the United Nations, and it may therefore ratify the said treaty in accordance with the procedure set out in the Constitution.

The special regime for matters covered by the Rome Statute with regard to the guarantees contained in the Constitution will be strictly confined to matters falling within the scope of the Statute³

In accordance with the case-law of the Constitutional Court (the body charged with of determining the constitutionality of laws, including laws ratifying international instruments), in particular with Decision C-578 of 2002, whereby Law 742 of 2002 ratifying the Rome Statute was declared constitutional, Legislative Act 02 of 2001 (a) provided for ratification of the Rome Statute, (b) authorized recognition of ICC jurisdiction under the terms provided in the Rome Statute, and (c) provided for a special regime for matters falling within the jurisdiction of the ICC in terms of constitutional rights and guarantees, but confined it to matters regulated by the Rome Statute. This latter aspect is further developed under section 4.19 of the decision cited above, entitled "*Summary of the principal matters covered by the special regime*", concerning which the Court held as follows:

After completing its analysis of the Rome Statute, the Constitutional Court made it clear that Legislative Act 2 of 2001 authorizes a special regime to be applied solely in respect of substantive matters falling within the scope of the jurisdiction of the International Criminal Court. The scope of the constitutional guarantees to be respected by domestic authorities in exercising their own jurisdiction is accordingly not affected. Thus, the declaration of constitutionality in relation to the provisions of the Rome Statute which involve such a regime does not, for example, authorize or oblige domestic judges to hand down sentences of life imprisonment, and the Colombian legislator is not obliged to lift statutory limitations on the enforcement of sentences. The Constitutional Court accordingly concluded that the Head of State, as the authority responsible for international relations, was not required, when ratifying the

³ Emphasis added.

Statute, to make an interpretative declaration for each of the special regimes identified the Court's decision.

It follows that, when the Colombian State exercises its jurisdiction, the provisions of the Rome Statute that are incompatible with the Colombian legal order will not be applicable, as the criminal jurisdiction that Colombia applies to any crime, including those contained in the Rome Statute, must be underpinned by the minimal guarantees enshrined in the Constitution. However, when those national authorities cooperate with the ICC and provide it with judicial assistance under the terms of parts IX and X of the Rome Statute and other related provisions, then, under the terms of the decision of the Constitutional Court, they must apply the provisions of the Statute within the area regulated thereby.

Finally, it is noteworthy that, in Decision C-290 of 2012, the Constitutional Court indicated that certain provisions of the Rome Statute form part of the constitutional corpus of law; that is to say, rules that, although not part of the Constitution, enjoy Constitutional authority, and thus serve as a parameter in determining the constitutionality of Laws. The Court stated the following:

The Constitutional Court considers that, while the entirety of the Rome Statute does not form part of the constitutional corpus, certain of its articles are consistent therewith. Accordingly, the following provisions have been used as parameters on a case-by-case basis in the determination of constitutionality : the Preamble (C-928 of 2005); article 6 on the crime of genocide (C-488 of 2009); article 7 on crimes against humanity (C-1076 of 2002); article 8 characterizing war crimes (C-291 of 2007, C-172 of 2004 and C-240 of 2009); article 20 qualifying the principle of *res judicata* (C-004 of 2003 and C-871 of 2003), and also articles 19(3), 65(4), 68, 75 and 82(4) on the rights of victims (C-936 of 2010). Thus, the Court has preferred to determine individually which articles of the Rome Statute belong to the constitutional corpus, and to what effect.

National contact points on promotion of ratification and full implementation

The relations of Colombia with the ICC are conducted through diplomatic channels. Accordingly, the national contact is the Ministry of Foreign Affairs, as indicated under point 6 of Colombia's instrument of ratification of the Rome Statute. "*In accordance with article 87, paragraph 1 (a) and paragraph (2), first indent, the Colombian government hereby declares that requests for cooperation or assistance are submitted through diplomatic channels, and should be in Spanish or accompanied by a Spanish translation.*"

II. Follow-up to the "Recommendations of the Bureau concerning the plan of action for achieving universality and full implementation of the Rome Statute of the International Criminal Court" (annex II)

Colombia has implemented the *recommendations of the Bureau concerning the plan of action for achieving universality and full implementation of the Rome Statute of the International Criminal Court* intended for States Parties.

Colombia effectively promotes universality and full implementation of the Rome Statute, as described above. Thus, the Colombian State has disseminated information about the ICC and its work. The government, for example, has distributed the ICC's annual reports to the United Nations; it provided support for the address on 18 May 2011 by the President of the ICC, H.E. Sang-Hyun Song, entitled "*International Criminal Justice- How to move forward*", organized by the Colombian Diplomatic and Consular Association and the University of the Andes; it regularly transmits requests for information from the Office of the Prosecutor of the ICC to the authorities concerned; and it circulated particulars of the Court's first conviction and sentence of Thomas Lubanga Dyilo for the recruitment of children in the Democratic Republic of the Congo to the entities that constitute the *Intersectoral Commission for the Prevention of the Recruitment, the Use and Sexual Abuse of Children, Adolescents and Young Persons*.

In addition, the Public Prosecutor's office is working on the establishment of prioritization criteria for investigations, based *inter alia* on the experience of the ICC and on the main concerns of the Court in relation to the situation in Colombia. The Public Prosecutor's office and the Ministry of Law and Justice are also preparing a congress to be held in October of this year on the investigation of international crimes, which will address, *inter alia*, the work of the ICC.

Colombia has thus shown that it is willing to cooperate with other States in matters relating to the Rome Statute and the ICC. In this context, Colombia has cooperated with the Kenyan Reparations and Reconciliation Commission with regard to reparations for victims of crimes within the jurisdiction of the ICC.

Finally, it is noteworthy that Colombia, with a view to assisting the ICC and its related organs in conducting their work efficiently, has made a voluntary donation to the Court's Trust Fund for Victims.

III. Questionnaire on implementing legislation addressed to States Parties (annex III).

As stated above in the sections entitled *Examples of Rome Statute implementing legislation* and *Solution to constitutional problems arising from ratification*, Colombia had already incorporated into its domestic legislation provisions related to the Rome Statute prior to the latter's ratification. Likewise, under article 484 of the Code of Criminal Procedure, parts IX and X of the Rome Statute constitute sufficient legal basis for the Colombian authorities to cooperate with the ICC in the event that it is asked to do so.

Furthermore, it should be recalled that Colombia and the ICC have signed an agreement whereby the sentences imposed by the ICC may be enforced on Colombian territory, and that the channel responsible for communication between the ICC and Colombia is the Ministry of Foreign Affairs.

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