

Translated from Spanish

Permanent Mission of Costa Rica to the United Nations

New York, 30 April 2010
ECR-431-2010

Sir,

I have the honour to transmit herewith, pursuant to General Assembly resolution A/64/117, information and observations on the scope and application of the principle of universal jurisdiction in Costa Rica.

Accept, Sir, the renewed assurances (gojTmy higheCi/)-6(t)m14mijEu4MCIgneo0

On the application of the principle of universal jurisdiction in Costa Rica

The legitimacy of the principle of universal jurisdiction in Costa Rica is linked directly to the support which our country provided from the outset to the process of domestic approval of the Rome Statute and the International Criminal Court.

The Rome Statute of the International Criminal Court is par excellence a fundamental instrument for the development of international law and the elimination of massive violations of human rights and international humanitarian law.

Costa Rica acceded to the Rome Statute on 7 October 1998, following which the Legislative Assembly submitted the draft law of that international legal instrument to the Costa Rican Constitutiona

pronouncement from the Costa Rican Legislative Assembly in order to initiate its own proceedings.

In this regard, the Constitutional Chamber considered that the immunity which members of the Legislative Assembly enjoy, while constituting an obstacle to the normal conduct of criminal proceedings at the national level, could not be considered so sacrosanct as to impede the proceedings of an international tribunal such as the International Criminal Court. Thus, there would be no need to wait for a pronouncement by the Legislative Assembly in order to initiate proceedings.

It should be noted, however, that the International Criminal Court cannot convict an “accused” in absentia, because that would violate the constitutional guarantees set forth in international human rights instruments, particularly the guarantee of due process. This guarantee implies the need for the accused to be present to defend himself or herself against the charges or to exercise control over the deposition of witnesses. Apart from that, nothing prevents the International Criminal Court from initiating proceedings even when the accused is not physically present.

Concerning the penalty of life imprisonment referred to in articles 77 and 78 of the Statute of the International Criminal Court, the Constitutional Chamber pointed out the conflict between article 40 of our Political Constitution, which proscribes life imprisonment, and article 80 of the Statute, which stipulates that nothing in this Part affects the application by States of penalties prescribed by their national law.

In this regard, the Chamber reasoned that this process must be subordinated to the Costa Rican system in that it cannot be applied if our constitutional laws do not provide for life imprisonment. The previous interpretation was undoubtedly based on the fact that in order to proceed with the surrender of persons requested by the International Criminal Court, it should also be understood that this surrender shall take into account the nationality of the person, and that the possible penalty to be imposed if the person is found guilty of the alleged charges shall not be life imprisonment or other penalties — such as capital punishment — that are not recognized in Costa Rican law, otherwise it would violate constitutional principles and thus would not be possible.

The draft characterizes the crimes contained in the Rome Statute and amends the above-mentioned articles 375, 378 and 379, which do not describe the illegal act but refer to the text of the Rome Statute. Instead, the draft describes, exhaustively, crimes against humanity and war crimes.

In the draft, stiffer penalties are imposed for the commission of the crimes of genocide, crimes against humanity and war crimes. Currently, the terms of imprisonment range from 10 years to 25 years; with the amendment, the penalties will range from 25 years to 40 years:

Article 378. Genocide. A sentence of between 10 and 25 years' imprisonment shall be imposed on any person who, with the intent to destroy, in whole or in part, a national, ethnic, racial, religious, political or trade union group or any identifiable group based on gender, sexual orientation, culture, social status, age, disability or health, commits any of the acts mentioned below:

(1) Killing of one or more members of the group.

(2) Torture, enforced disappearance, deprivation of liberty, rape, forced pregnancy with intent of changing the ethnic composition of the group, inflicting of inhumane or degrading treatment or serious injury on the physical or mental integrity of a member or members of the group. For the purpose of this paragraph, deprivation of liberty and rape shall be determined as stipulated in the Code, based on their seriousness.

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(5) Torture, which means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions.

(6) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization or any other form of sexual violence of comparable gravity; for the purpose of this article, “forced pregnancy” means the unlawful confinement of a woman forcibly made pregnant.

(7) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious or gender grounds. “Persecution” means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity.

(8) Enforced disappearance of persons, which means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a

For the purpose of this article and the other rules of this title, protected persons shall be defined in accordance with international humanitarian law, as follows:

- (1) Members of the civilian population;
- (2) Persons who do not participate in hostilities and civilians in the hands of the opposing side;
- (3) Wounded, sick or shipwrecked persons located outside the combat area;
- (4) Medical or religious personnel located outside the combat area;
- (5) Journalists on assignment or war correspondents;
- (6) Combatants who have put down their weapons following their capture, rendition or other similar cause;
- (7) Persons who before the start of hostilities were considered stateless or refugees;
- (8) Any other person who meets this condition under the 1949 Geneva Conventions (I, II, III and IV) and Additional Protocols I and II of 1977, as well as others that have been ratified on the subject.

Similarly, **cooperation** with the International Criminal Court is contemplated under the amendment, as follows:

Article 415. Scope — Conditions of Extradition

- (1) The crimes and offences listed in articles 375, 378 and 379 and in Title XVIII shall apply to:
 - (a) Crimes and offences committed or whose effects shall be felt in the territory of the Republic or in areas under its jurisdiction or which have been committed against Costa Rican nationals.
 - (b) Crimes and offences committed abroad by Costa Rican nationals, whether they are public officials or not, civilians or military, provided the accused has not been absolved or convicted abroad or, in the latter case, has not completed his or her sentence.
- (2) When a person suspected of committing one of the crimes or offences listed in articles 375 and 378 to 411 of this Code is present in the territory of the Republic or in places under its jurisdiction, the State of Costa Rica has the obligation to take the necessary measures to exercise its jurisdiction in respect of the said crime or offence, unless it has received a request for surrender to the International Criminal Court or unless it has agreed to extradite the individual, and it shall prosecute the latter as if the crime or offence had been committed in the territory of the Republic, regardless of where it was committed and of the nationality of the suspect or the victims.
- (3) National jurisdiction shall not be exercised in the following cases:
 - (A) In the case of crimes or offences that fall under the jurisdiction of the International Criminal Court if:
 - (a) The surrender is requested by the International Criminal Court.

