

RESOLUTION SUBMITTED TO THE NATIONAL CONGRESS OF URUGUAY ON BILATERAL IMMUNITY AGREEMENTS

The Chamber of Representatives addresses both the Executive branch and the Ministry of Foreign Relations, stating the following as its aim:

1.- To ratify the will of the Chamber of Representatives to defend the sovereign exercise of criminal jurisdiction, and the principle of jurisdictional complementarity of the International Criminal Court as established in the Rome Statute, in order to prosecute crimes of genocide, crimes against humanity, war crimes and crimes of aggression.

2.- To affirm that peace, justice, security and universal respect for human rights will all be strengthened more effectively through the intensification of cooperation between States, in seeking legal protection for the population based on the law and justice.

3.- To declare as illegal all bilateral agreements that seek to limit the International Criminal Court's scope, based on the specific nationality of certain persons. These initiatives, which are based on an erroneous interpretation of Article 98 of the Statute, affect the principle of equality of all persons and of States, as well as the conventional commitments made by these states in the Statute.

4.- To therefore reject any attempt to propose a bilateral agreement to the Republic, particularly the agreement promoted by the government of the United States of North America, which would exempt nationals of a given country from the jurisdiction of the International Criminal Court.

5.- To request that the Executive branch reject any agreement that seeks to deviate from the Rome Statute, and that the Executive unequivocally and clearly denounce all actions that are incompatible with the objectives and goals of this treaty.

Montevideo, October 17, 2002.

EXPLANATION OF MOTIVES

The Chamber of Representatives played a historical role in our country's definitive ratification of the Rome Statute. For this reason it is imperative that the Chamber of Representatives express its opinion as regards the renewed efforts of the United States of North America to seek immunity for its nationals and exemption from the actions of the International Criminal Court, which will be charged with prosecuting crimes against humanity, genocide, war crimes and crimes of aggression. It is therefore essential that the Executive branch approve this draft on this important and delicate subject.

We are not confident that the Executive branch will withstand the pressure exercised. It is for this reason that we present the following communiqué requesting that the Executive branch reject any proposal from any country to subscribe to bilateral agreements within the terms of Article 98 of the Rome Statute, and in particular this proposal from this government of the United States of North America.

Uruguay will receive a proposal to sign such a bilateral agreement just as other countries have, and indeed may already have received one. Leading international legal experts have called these accords “impunity agreements.” Such accords entail an erroneous and arbitrary application of Article 98 of the Statute, which changes the nature of universal jurisdiction when prosecuting crimes that affect all humanity. The nations that negotiated the language within this Statute used international law as their frame of reference, and tried to avoid any conflict between this instrument and all preexisting international obligations, particularly those linked with extradition. This Statute was written with the goal of considering any possible future discrepancy that could arise from existing agreements, and to permit cooperation with the Court.

This article also prioritizes the country of origin in terms of investigating accusations of crimes committed by its own citizens, in a form that is compatible with the Statute’s principle of complementarity which also gives a country the first opportunity to investigate accusations of crimes committed against its own citizens.

The proposals for bilateral agreements which have spurred this communiqué have the final goal of guaranteeing immunity for certain individuals or groups based on their nationality. This goal is contrary to the general aim of the Statute to guarantee that the crimes of greatest international concern-- including genocide, crimes against humanity and war crimes--are judged at a national level or by an international tribunal when the states themselves are incapable of or unwilling to truly investigate and prosecute them. The broad support for the Court is evident in that 139 states have signed the Statute and 78 countries have ratified it. The article referred to, Article 98, was not formulated with the goal of permitting the signing of agreements to impede an ICC trial, in the event that the country of origin would not exercise its competency over its own citizenry.

In addition, we declare the juridical illegality of these agreements, as they are based on an incorrect interpretation of Article 98. The possible signing of such a bilateral accord would have consequences for internal legislation, causing a violation of the obligations contemplated in the Rome Statute, as well as those contained in the Vienna Convention on the Law of Treaties.

Montevideo, October 17, 2002.

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National Representative DRAFT OF COMMUNIQUE

This communiqué is based on the draft resolution presented in Argentina by Congresswoman Margarita Stolbizer, Vice-President of the International Council of Parliamentarians for Global Action.