

**Coalition for the International Criminal Court (CICC)**

**Questionnaire to ICC Judicial Candidates**

**2009 Elections**

*Please reply to some or all the following questions as comprehensively or concisely as you wish*

**Name:** Marco Gerardo Monroy Cabra

**Nationality:** Colombian

**Nominating State:** Colombia

**List:** A \_\_\_\_ or B X

**BACKGROUND:**

**1. Why do you want to be a judge at the ICC?**

I want to be a Judge of the International Criminal Court (ICC) because I have the experience and capabilities required for this position as a result of my extensive judicial experience at the most important judicial positions in Colombia, and I have my knowledge on International Law, Human Rights and International Humanitarian Law, being a professor of these subjects. Also, I have experience in Human Rights because I was a member and President of the Interamerican Commission of Human Rights for nearly ten years. Furthermore, I believe that this is the best way to prosecute international crimes within the Court's jurisdiction, thus avoiding impunity and applying justice, truth and reparation.

**2. What do you think will be the biggest challenges facing you as an ICC judge?**

I think that the biggest challenges that I would face as an ICC judge are the following:

- a) Have good understanding with the other ICC judges because they have different cultural and legal backgrounds;
- b) Obtain in my activity as a judge the legal objectivity without political considerations;
- c) Help to establish precedents that will shape the Court for years to come.

**3. What do you believe are currently some of the major challenges facing the Court and what do you believe will be some of the major challenges in the coming years?**

I believe that currently the major challenges facing the Court are: a) Getting more cooperation from States for executing arrest warrants and other judicial orders, collecting evidence ,and seizing documents: b) Ensure uniformity in the interpretation and application of the Statute of Rome especially in procedural matters; c) Achieve that more States accept the jurisdiction of the ICC; d) Increase the funding of the ICC through voluntary contributions of governments, international organizations, and corporations taking into account that the Assembly of States Parties declared in its first session in September 2002 that these contributions “are not intended to affect the independence of the Court”

In the coming years the mayor challenges would be the amendment of the Rome Statute by the Assembly of States or by a review Conference to include new crimes, to establish flexibility in the proceedings that have excessive length. Minor alterations can be effected by the Assembly of States Parties at any time through modification of the Elements and the Rules.

**List A or B Criteria:**

**4b) For Candidates on list B**

- **How would you describe your competence in relevant areas of international law, such as humanitarian and human rights law?**

I have competence in international law because I wrote several books that are guide texts in different Colombian universities: on Human Rights, Enforced Disappearances of Persons, Public International Law, Law of Treaties, Private International Law and others in different matters. Also, I have been professor for forty years for these two subjects at Colombian universities, especially at the Universidad del Rosario and Universidad Externado de Colombia. I also have participated as a representative of Colombia in several International Conferences such as the Conferences of Panama (1975) and Montevideo (1989) in which some treaties were adopted.

Regarding my competence on human rights I was Member and President of the Inter-American Commission on Human Rights (IACHR) of the Organization of American States (OAS) for nearly ten years (1978-1987). In this position, I did in situ observations in Argentina, Nicaragua, Panama, Guatemala, Haiti and other states. Also, I participated in hearings on the human rights situation in several States; deliberated and decided on numerous cases. I also represented the Commission before the Inter-American Court of Human Rights. Also, I wrote a book entitled "Human Rights" published by Editorial Temis, Bogota, Colombia. In addition, I've been speaker and professor of Human Rights in several national and foreign universities.

In relation to my expertise in international humanitarian law, I was involved in negotiations on prisoner exchanges in the internal armed conflict in El Salvador and in various conflicts that were filed from 1978 to 1987. Then, I was an Alternate Representative of Colombia to the OAS (1989-1993) and participated as a member of the Committee on Legal Affairs of the OAS Permanent Council to resolve conflicts in Panama, Haiti, El Salvador, Colombia, Argentina and Nicaragua.

In addition, I was Judge of the Constitutional Court for eight years and participated in the study on the constitutionality of various laws that have been enacted to resolve the armed conflict in Colombia such as Law 975 of 2005 entitled "Peace and Justice" to resolve the situation created by the surrender of paramilitary groups to Colombian authorities, Law 418 on recognition of political status to insurgents who surrender to justice, Law 742 of 2002 approving the Statute of Rome on establishment of the International Criminal Court. The aforementioned law was declared constitutional by the Colombian Constitutional Court. Also, I decided on protection actions relating to the validity in Colombia of precautionary measures ordered by the Commission and the Inter-American Court on Human Rights, on the legal force of the recommendations of the Inter-American Commission on Human Rights, and protection or protection actions for cases of internally displaced Colombian persons.

- **How would you describe your professional legal experience that is of relevance to the judicial work of the Court?**

I believe that my judicial and academic experience in international law, human rights and humanitarian law is useful in the Court because these issues are present in the decisions about war crimes, crimes against humanity and genocide that are prosecuted in the Court. Judging of such cases is not only related to international criminal law but also involves aspects and principles of international law, international human rights and international humanitarian law.

I think that my judicial experience as judge in the highest judicial positions in Colombia for forty years is relevant to the judicial work as judge of the ICC. Also, my experience as international consultant and lawyer in different matters is important for the judicial work in the ICC.

#### **Nomination Process:**

- 5. **What are the qualifications required in your nominating state for appointment to the highest judicial offices? How do you meet these qualifications?**

Article 232 of the Colombian Political Constitution states that: "To be a Judge of the Constitutional Court, the Supreme Court and Council of State it is required:

1. Be a native Colombian citizen and an empowered citizen
2. Be a lawyer.
3. Not have been convicted by a court decision to prison sentence, except by political or culpable crimes.
4. Have occupied, for ten years, positions in the judiciary or in the prosecutor's office, or have practiced with good credit, for the same time, the profession of lawyer, or cathedra in universities, in legal disciplines at officially recognized institutions.

To be a Judge of these judicial institutions, it is not a requirement to be a member of the judicial career."

I meet the above requirements because I'm a native Colombian citizen and an empowered citizen. I am a lawyer from the Universidad del Rosario. I have been in

positions in the Judiciary as a judge of La Calera, Municipal Civil Judge of Bogota, Civil Judge of the Circuit of Bogotá, Magistrate of the Civil Division of the Superior Court of Bogota, Magistrate of the Constitutional Division of the Supreme Court, Magistrate of the Disciplinary Tribunal, and Magistrate of the Constitutional Court for many years. I've also worked as an international lawyer, and I have been professor in several universities such as El Rosario, El Externado de Colombia, Los Andes, Santo Tomás, La Sabana, La Libre and other universities in subjects such as Introduction to Law, Public International Law, Private International Law, International Criminal Law in Post-Graduate Studies on Criminal Law, Human Rights and some other cathedras for forty years.

Additionally, I have not been convicted by a court decision to a prison sentence

**6. Article 36 of the Rome Statute provides for two possible nomination procedures. Please describe in detail the procedure used for your nomination.**

The procedure used for my nomination was the procedure established in the Statute of the International Court of Justice. I was nominated by the national group of the Permanent Court of Arbitration in a communication addressed to the Director of the Permanent Secretariat of the Assembly of States Parties to the Rome Statute. The Colombian Ministry of Foreign Affairs supported the communication of the National Group of the Permanent Court of Arbitration and made official the nomination.

**7. Have you provided the statement required by article 36 (4)(a) of the Rome Statute and by the nomination and election procedure adopted by the Assembly of states Parties? If not, why not?**

I have provided the statement required by Article 36 (4) (a) of the Rome Statute by the procedures adopted by the Assembly of States Parties.

**Legal System and Language Abilities**

**8 a) Which legal system does your country belong to? Do you have knowledge or experience working in other legal systems?**

Colombia belongs to the system of "Civil Law" of Roman-Germanic-Canonical origin. I know the "common law" system because I had the opportunity to work with the common law system during four years when I was working as Minister Plenipotentiary to the OAS, in which are represented in both the civil law system as well as the common law system.

Moreover, in my article "the U.S. Constitution and its influence on Public Law," I made an analysis on the historical background of the Constitution of the United States, the Bill of Rights, the protection of constitutional freedoms in light of the North American jurisprudence and the structure and general characteristics of this Constitution (Separata de la Revista de la Academia Colombiana de Jurisprudencia Nro 278-279, Julio-Diciembre de 1987).

**8 b) What difficulties do you envision encountering working with judges from other legal systems? How would you resolve such difficulties?**

I think there will be no difficulties. But if there is a difficulty, it will be possible to find a consensus based on the general principles and general values of law that are universal, and additionally based on comparative law.

**9 a) What is your knowledge and fluency in English, if it is not your native language? Do you have experience working in this language?**

I have knowledge of the English language. I have experience working in English language because I was Minister Plenipotentiary of Colombia at the OAS in Washington D.C, USA during four years.

**9 b) What is your knowledge and fluency in French, if it is not native language? Do you have experience working in this language?**

I read and understand the French language and I have ability to speak. I have experience working in the French language with the OAS, especially working on human rights in Haiti.

**Expertise and Experience**

**10. Please explain your qualifications for this position. What aspects of your career, experience or expertise do you consider especially relevant to the work of an ICC judge?**

I am qualified to be a Judge of the International Criminal Court. I have judicial experience in judicial positions especially at the Constitutional Court where cases of fundamental rights are decided. I have experience in human rights and international humanitarian law by my work on the Inter-American Commission on Human Rights. I have academic experience because I was professor for many years and Dean of the School of Law of the Rosario University in Bogota. Also, I was litigant in cases of the Interamerican Court on Human Rights in San Jose, Costa Rica.

I believe that this experience and academic knowledge are necessary skills to hold the position to which I aspire with responsibility.

**11. Do you have any specific legal expertise, including, but not limited to, violence against women or children?**

I wrote a book on Family and Juvenile Law which have had 15 editions. I have given lectures on Juvenile Law matters and advised the Instituto Colombiano de Bienestar Familiar on several specific areas, especially about the rights of children.

**12. Historically, many of the grave abuses suffered by women in situations of armed conflict have been marginalized or overlooked.**

**a) What experiences have you had dealing with crimes of sexual and/or gender based violence?**

These matters were discussed in my academic work at the universities, but I have no experience as a judge.

**b) Are there situations or cases in the past where you believe you have applied a gender perspective, i.e., inquired into the ways in which men and women were differently impacted? If so, to what effect?**

No, there aren't.

**c) Are there situations where you did not analyze the different impacts of a situation on women and men but on reflection now think such an analysis would have been appropriate?**

No.

**13. Victims have a recognized right to participate in ICC proceedings and to apply for reparations under Article 75. What experience relevant to these provisions do you have?**

Article 11 of the Code of Criminal Procedure of Colombia (Law 906 as of 2004, Law 1142 of 2007) lists the rights of victims. Victims' rights are not restricted to a financial compensation, but also include guarantees such as rights to truth, justice and integral reparation of the damage. The Constitutional Court declared the constitutionality of Articles 11 and 357 of Law 906 of 2004 conditioning it for representatives of victims in criminal proceedings, who may also make evidentiary requests in preliminary hearings, in order to guarantee the rights of victims to truth and justice (C-209 of 2007 - C-516 of 2007).

In my experience as a Judge of the Constitutional Court I have studied the constitutionality of Laws on rights of victims and adapted them to the issues that treaties and international jurisprudence have accepted, especially the rights of victims to truth, justice and integral reparation.

**14. Did you help advocate for the adoption of human rights or international humanitarian law treaties or other instruments? Please describe your experience.**

As member of the Mission of Colombia to the OAS and as a member of the Committee on Legal Affairs, I had the opportunity to participate in the negotiation and drafting of treaties on human rights and humanitarian law such as the Inter-American Convention on Forced Disappearance of Persons, the Protocol for the Abolition of the Death Sentence, the Inter-American Convention on Mutual Assistance in Criminal Matters, and the Inter-American Convention to Prevent and Punish Torture, among others.



**15. Have you served on the staff or board of directors of human rights or international humanitarian law organizations? Please describe your experience?**

I was President of the Inter-American Commission on Human Rights. I conducted in situ observations in several states, prepared reports on the human rights situation there, held hearings on the human rights situation of many States, and spoke on behalf of the Commission before the Court of Human Rights in many cases and advisory opinions.

**16 a) Please provide us with a list of your writings and opinions relevant to evaluating your experience.**

Among others, I wrote the following books and legal texts in the areas of competence of the International Criminal Court:

- *Human Rights*, Edit Temis, Bogota, 1980.
- *Enforced Disappearances of Persons*, Edit Libreria del Profesional, Bogotá, 2000.
- *Implementation of the American Convention on Human Rights in National Law*, in the book *Human Rights in the Americas*, in homage to Carlos Dunshee de Abranches, Washington D.C (OAS)
- *Rights and Duties established by de American Convention on Human Rights*, in *The American University Law Review*, Vol. 30, 1980.
- *Human Rights in the Colombian Constitution of 1991*, in the *Liber Amicorum in Homage to Héctor Gross Espiell*, Brussels, 1997.
- *Public International Law*, Edit Temis, 5 edit, Bogotá, 2002.
- *Private International Law*, Edit Temis, 6 edit, Bogotá, 2005.
- *Law of Treaties*, Edit Temis, 2 edit Leyer, 1995.
- *Legal regime of Extradition*, Edit Temis, Bogotá, 1985.
- *Pacific Settlement of International Disputes*, Edit Diké, 1995.
- *The Inter-American System*, Edit Juricentro, Costa Rica, 1994.
- *Essays on Constitutional Theory and International Law*, University of Rosario, Bogotá, 2007.

- *Constitutional Interpretation*, Edit Libreria del Profesional, Bogota, 2 edic, 2005.

**16b) Please provide us with an electronic copy of any writing or opinion describing your experience.**

Please refer to Annex 1.

**Other Matters:**

**17. Have you ever resigned from a position as a member of the bar of any country or been disciplined or censured by any bar association of which you may have been a member? If yes, please describe the circumstances.**

No, I have not resigned from a position as a member of the bar of any country or have not been disciplined or censured by any bar association.

**18. Have you ever been found an administrative or judicial hearing to have discriminated against or harassed an individual on the grounds of actual or perceived age, race, creed, color, gender, sexual orientation, religion, national origin, disability, marital status, socioeconomic status, alienage or citizenship status? If yes, please describe the circumstances.**

No, as Judge I always met with my duties and did not discriminate or violate the dignity of any person

**19. It is expected that a judge shall not, by words or conduct, manifest or appear to condone bias or prejudice, including, but not limited to, bias or prejudice based upon age, race, creed, color, gender, sexual orientation, religion, national origin, disability, marital status, socioeconomic status, alienage or citizenship status and shall require staff. Court officials and others subject to his or her direction and control to refrain from such words or conduct.**

**a) Do you disagree or have difficulty with this expectation?**

No, I agree and I have no difficulty with this expectation.

**b) How will you be able to meet this expectation?**

Acting in public and in private having respect for the dignity and rights of all persons working in the Court or involved in it, or in general have respect for any person I should interact with.

**20. Article 40 of the Rome Statute requires judges to be independent in the performance of their functions. Members of the CICC and governments are concerned about the difficulties judges might experience in interpreting articles of the Rome Statute where their government has already expressed an opinion.**

**a) Do you expect difficulties in your taking an independent position?**

No. In the Constitutional Court I always took an independent position in relation to the Government. Also, I always act with independence and autonomy.

**b) Would you be able to judge impartially whether an investigation by your government was genuine?**

If there were a case involving my own country, I would excuse from deciding it. In my extensive judicial positions I have always been impartial and independent.

**21. A judge is expected to be on the bench or otherwise handle legal matters for at least seven hours per day, five days per week, and at times a judge's responsibilities may require him or her to be on the bench or at work into the evenings and on weekends. Do you expect to be able, now and in the foreseeable future, to perform these tasks on your own or with reasonable accommodation? If no, please describe the circumstances.**

Yes. I am used to work as a judge at the different Courts not only in those labor hours, but also overtime. I expect to be able, now and in the future, to perform the tasks of Judge of the ICC by my own capacity.

**22. Do you know of any factors that would adversely affect your ability to competently serve as a judge, to comply with a judge's ethical**

**responsibilities, or to complete the day-to-day responsibilities that a judge is required to assume?. If yes, please explain.**

There is no factor that prevents me from performing the functions and responsibilities of a judge.

Thank you

## ANNEX 1

### (Question 16b)

Doctor Marco Monroy Cabra

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Reference: This is the answer to question 16b. "Please provide us with an electronic copy of any writing or opinion describing your experience."

#### Presentation

With the publication of this volume written by Dr Marco Gerado Monroy Cabra, the School of Jurisprudence of the Rosario University wants to render a deserved homage to its graduate, honor student, emeritus professor, honorary professor, director of the area of international law, and its dean from 1995 to 2001.

The life and juridical work of Dr Monroy Cabra are paradigms of virtues, in the diverse spheres that a good citizen and professional aspires to in the search of perfection in his life passage, this is, in the professional and personal aspects, in his formation and in that of his students and disciples, in his devotion to teaching and learning, to research and the uses of the derivative knowledge and to its communication and transmission from the professorship and the academic publications.

In our ample and diverse academic community in general, and the juridical in particular, historically we have been benefited with the presence of prominent citizens, who have given prominence to their respective disciplines in the most defined areas of research and scientific and intellectual production.

In this elite in a visible public position is found Dr Monroy Cabra, with his academic contribution in 31 books published of individual authorship and 11 more in collaboration (annexed to this article) in addition to more than one hundred essays issued in national and foreign journals in which there are 24 in the collection of the *Colombian Academic Journal of Jurisprudence* and 12 in *Nova et Vetera* (journal of the Colegio Mayor de Nuestra Señora del Rosario) and others in the *Socio-Juridical Studies* journal of our department.

Also with each of the recent essays, Dr Monroy Cabra contributed to exalt the memory of his colleagues, in the four separate volumes that were compiled and published in the years 2005 and 2006 in the School of Jurisprudence of the Rosario University in posthumous honor to the distinguished Colombian jurists Carlos Holguín Holguín, Alirio Gómez Lobo, Vladimiro Naranjo Mesa and Germán Cavalier (who were emeritus and honorary professors of the department.)

We consider that because of their qualities and contributions, the essays of Dr Monroy Cabra, some unpublished and others dispersed in journals or in works of several authors, could be better disseminated if grouped into one volume. It was in this way that we obtained authorization from the author to carry out this editorial project, for which we selected 17 essays (8 on constitutional theory and 9 about international law). Most of them are texts written by the author during the years 2005 and 2006, either to be published or as lectures presented at academic conferences or seminars, so far inedited.

In the essays for this compilation it is noticeable the coherence of the philosophic juridical thought of Doctor Monroy Cabra, whom we could identify as an integrationist author of modern neoclassic tendencies that we could graphically express as a similarity with the Dworkinian philosophy of Judge Hercules, who solves the easy cases by the norm and the difficult ones according to principles and values.

This eclecticism of Professor Ronald Dworkin somehow reflects the current tendency of the renowned thinkers and theorists of our discipline to reverse the radical separation between ethics and law, defending its approximation without mistaking it with the classic naturalism. These ideas emerge as a synthetic understanding of the extensive work about law and justice of Professor Monroy Cabra.

Generally speaking, the studies of modern Colombian law tend to interact harmonically with the Latin-American law of the twentieth century, and in the recent decades to contribute to a Hispano-American juridical thought, away from ideological or philosophical confrontations that could lead to ambivalences of the juridical operators in the administration of justice. These operators act as such following the procedural cannon of the norm, precedent, and juridical reasoning.

In this sense, the theoretical identities of the studies of law tend not to be differentiated and generational groupings and specialists are scarcely visible in each of the branches of a discipline that is increasingly more diverse and complex.

Doctor Monroy Cabra is a multi-specialist, not only for having taken postgraduate courses in international, labor and family law and about human rights, but for his research about juridical theory and technique, constitutional and international law, human rights and humanitarian international law, commercial law, civil procedural law and other aspects and branches of law.

Notwithstanding this cult for the dominance of the parts, Doctor Monroy Cabra conceives the integrality of law, and to this objective he has dedicated the research of the past years by identifying the convergence points between constitutional law, human rights and international law; this can be observed in the reading of the essays that form the present volume, among others, the ones that are about the constitutionalization and the internationalization of law, or the constitution as a source of law and a system of sources.

The academic valuation of the set of works of Professor Monroy Cabra about international law has permitted him to be received as a par among the greatest specialists of Hispano-America, with whom he interacts in the exchange of important ideas on the topic. This explains the

cumulus of references about the works of his colleagues, some of which appear in the present volume.

The professional and academic life of Doctor Monroy Cabra is a plethora of deserved dignities and outstanding activity, from his formal training in the Augustinian School, where he obtained his high school diploma in 1957, and in his undergraduate studies between 1958 and 1962, from which he obtained his degree of Doctor in Jurisprudence in 1963. From this period, his classmates keep an affectionate remembrance of him as a student devoted to his studies, with excellent grades from which he deservedly obtained the honorable distinction of Honor Student.

In the judicial environment he starts his career as municipal and circuit city judge (1963-1970), continues in the Superior Tribunal of Bogotá (civil court) for seven years (1970-1977). In this last year he was Interim Magistrate of the Supreme Court of Justice (Constitutional Court). After a period in which he practiced his profession as a consultant for eight years (1982-1989), he works as Magistrate of the Disciplinary Tribunal, of which, he was also president. Later, he works as vice president of the Superior Council of Justice Administration (1989) and shortly after will come the zenith of his career as judge when he is designated Constitutional Court Magistrate for the period 2001-2009.

In the international field, he has accomplished appointed positions in the administration of international justice, in diplomacy and in representation before international organizations. For a decade (1978-1988) he was member and president of the Inter-American Commission of Human Rights, vice president of the Commission of Juridical and Political Affairs of the Permanent Council of the OAS (1992), substitute magistrate for the Andean Tribunal of Justice, ambassador to the conferences on private international law of Panama (1975) and Montevideo (1979 and 1989) and delegate from Colombia to other international conferences. Likewise, as a diplomat he lived during a lustrum in Washington, DC, as plenipotenciary minister of the Colombian Mission before the OAS (1989-1993).

In academic work, Professor Monroy Cabra, has been –as seen before- emeritus professor (1996) and honorary professor (2005) and dean during the period 1995-2001 at the Jurisprudence School, where he has been a lecturer from 1965 until the present time, with the exception of the intervals and his residence abroad as a diplomat or international officer.

During his tenure in the dean's office of our school, Professor Monroy Cabra leaves a legacy of important accomplishments like the creation of the research group Carlos Holguin Holguin, the foundation of the *Socio-Juridical Studies* journal and the obtaining of the first accreditation of the school, the first law school in Colombia that received such recognition, with a high quality mention on the part of the Ministry of Education (National Council of Accreditation).

Similarly, he has taught in many universities in the country and abroad. Among the first ones are Los Andes, the Javeriana, Libre, Santo Tomas, Sergio Arboleda, Gran Colombia, Militar, and others, and among the foreign ones, American University (Washington, DC) United Nations University, and others in several Latin-American countries.

He is an active member of 14 academic institutions in Colombia and abroad, including the prestigious Colombian Academy of Jurisprudence, where he is an appointed member and its current president. In his involvement in the Academy since he occupied its vice-presidency, we have accompanied him in association with Doctor Jorge Velez Garcia (his antecessor in that honorific position of law academia) and our emeritus professor, Doctor Vidal Perdomo (current vice-president).

It is important to state that these essays were written in the extra time that he had due to his careful attention to his judicial functions as a magistrate of the Constitutional Court, to his tasks as president of the Colombian Academy of Jurisprudence and to the carrying out of magistrate conferences as university emeritus lecturer- self imposed tasks- that for benefit of our world he continues exercising with unquestionable mastery and enthusiasm.

I would like to mention these activities of Doctor Monroy Cabra, a faithful professor in our department for the last forty years, and point out as something really extraordinary in our medium that one person until today would have been author of the immense work whose bibliography we are annexing here. To this respect we have to note that at least six of the books of Doctor Monroy Cabra register between five and thirteen editions, each one carefully revised and updated, and that some appear in national and foreign university program syllabi, in the form of undergraduate and graduate texts, or as reference works or additional readings in school subjects or modules.

Lastly, I would like to reiterate that the edition of this volume has the nature of a tribute from our school –your school- to whom we pay homage for the indelible links of someone who has been its alumnus, professor and dean, and to whom we present to our student body as a paradigm of an exemplary life, devoted to academia and the formation of present and future academic researchers.

Alejandro Venegas Franco

Dean of the School of Jurisprudence at the Rosario University

Taken from *Essays of Constitutional Theory and International Law* by Marco Gerardo Monroy Cabra

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