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**Hemispheric Seminar “Toward the First Review Conference of the
Rome Statute of the International Criminal Court”
Mexico City, Mexico
20-21 August 2007**

Note by the Secretariat

The Secretariat of the Assembly of States Parties has received a communication from Mexico on the outcome of the Hemispheric Seminar “Toward the First Review Conference of the Rome Statute of the International Criminal Court”, held in Mexico City, (Mexico) from 20 to 21 August 2007. In accordance with the request in the communication, a report on the outcome of the Hemispheric Seminar meeting is submitted to the Assembly.*

* The content of the report and its translations were prepared by the organizers of the Seminar.

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Introduction

1. The First Review Conference of the Rome Statute of the International Criminal Court demands priority and timely attention not only from States Parties, but also from other key actors that have contributed in the creation and establishment of the International Criminal Court (ICC) such as international organisms, regional organizations, civil society and academia.

2. In this context it was considered highly important to ensure the region's participation in this preparatory process, fostering spaces of reflection where regional concerns and initiatives on the first Review Conference could be discussed. The American hemisphere has historically been an important counterpart to the International Criminal Court. The fact that 23 States Parties to the Rome Statute belong to this region is a concrete manifestation of this commitment.

3. Bearing this in mind, Mexico, Canada, the Human Rights Program of the Universidad Iberoamericana Ciudad de México and the Coalition for the International Criminal Court considered appropriate to hold a seminar that would bring together government officials from different states in the American hemisphere with responsibility over these issue and international experts, academics and activists with a recognized background on ICC related topics.

4. The Hemispheric Seminar "Toward the First Review Conference of the Rome Statute of the International Criminal Court" was held on 20 and 21 August at the headquarters of the Mexican Ministry of Foreign Affairs in Mexico City. The Under Secretary for Multilateral Affairs and Human Rights of the Mexican Ministry of Foreign Affairs, Ambassador Juan Manuel Gomez Robledo; the Legal Counsel of the Ministry of Foreign Affairs and International Trade of Canada, Alan Kessel; the Coalition for the International Criminal Court's Convenor, William Pace, as well as the Coordinator of the Human Rights Program of the Universidad Iberoamericana-México, Juan Carlos Arjona participated in the inauguration session. Forty-five guests participated in the Seminar: 32 from participating States, 9 from academia, 7 from civil society, two from international organisms, one representative from the Court and one from the Assembly of States Parties. Participation during the seminar was carried out in a personal capacity.

5. The Hemispheric Seminar was held with the financial support of the Konrad Adenauer Foundation, the McArthur Foundation, the Inter American-European network of Human Rights of the European Union, as well as from the organizers. Additionally, the Secretariat of the Assembly of States Parties to the Rome Statute supported in the organization of the Seminar.

6. Officials from the Office of the Legal Counsel of the Mexican MFA were in charge of the logistics of the Seminar and the Human Rights Program of the Universidad Iberoamericana provided logistical support during the seminar. This summary report was prepared by the organizers and has the objective of providing a summary of the discussions.

Seminar Methodology

7. The Hemispheric Seminar addressed five general issues through ten roundtables introduced by experts on the issue, followed by an open discussion between participants. The first part of the Seminar focused on the Review Conference, while the second segment was dedicated to conducting an evaluation of the ICC's work five years after the entry into force of the Statute. The third and last part consisted of an open dialogue between government representatives. As has been mentioned before, participation and views expressed during the

seminar do not represent institutional or official positions. Thus this document should be understood as a general summary that seeks to highlight the main issues discussed.

PART I

Issue I. Five years after the entry into force of the Rome Statute: a view of its application at the regional and international level

Moderator: Juan Carlos Arjona, Human Rights Program, Universidad Iberoamericana

Presentation by: William Pace, Convenor, Coalition for the International Criminal Court

8. The presentation provided a regional and global overview of the status of ratification of the Rome Statute and the Agreement on Privileges and Immunities of the International Criminal Court. Emphasis was placed on the need to continue conducting efforts to ensure that States take appropriate steps to become parties to both instruments.

9. In relation to implementation of the Statute at the national level, the expert highlighted that more States are adopting measures to fulfill their obligations to fully cooperate with the Court, as well as to update their criminal, criminal procedural and military legislation in relation to crimes under the Court's jurisdiction.

10. The expert stressed that although Canada was the only country in the hemisphere that had adopted ICC implementing legislation as of 2000, other States in the region had taken positive steps in the past two years. Trinidad and Tobago, Uruguay, Argentina and Panama had all adopted some form of ICC implementing legislation. At the same time, he also reflected on the current stage of these processes in countries such as Nicaragua, Costa Rica, Peru, Honduras, Brazil, Bolivia, Colombia and Mexico.

11. In the context of intergovernmental and regional organizations, the expert mentioned that given the current dynamics of the international legal order, many countries have assumed a proactive role in the promotion of the International Criminal Court and the defense of the Rome Statute's integrity. In this context he highlighted the Organization of American States' annual resolution on the ICC which has been adopted by the General Assembly since 1999, as well as the Working Meeting on measures that Member States can adopt to cooperate with the ICC that the Organization's Juridical and Political Commission annually organizes since 2001. He also stressed other sub regional efforts such as MERCOSUR's common position on the ICC, as well as the 2003 CARICOM Statement of support to the principles and purposes of the ICC.

12. In relation to the next Review Conference, the expert emphasized the importance of ensuring that the preparatory process is inclusive and transparent. He highlighted issues that the Review Conference will probably address, including a definition for the crime of aggression, the question of article 124 (or the transitional clause for war crimes) of the Statute, and the determination of whether the crime of terrorism and other drug crimes should be incorporated as part of the Court's jurisdiction. He also referenced the need to determine the focus that the Review Conference itself will have. Similarly, he raised the importance of defining whether or not Non States Parties will be allowed to participate, and underscored that the Review Conference should be understood not only as an opportunity to present amendments but also as a space for States to present their views on the ICC with the aim of improving both the current and future work of the Court. Cooperation between the Court and governments, international and regional organizations and civil society could also be addressed at this time.

13. One of the issues discussed centered on the difficulties the Court has encountered in accomplishing its mandate. Participants expressed that the ICC has faced complications because of a lack of necessary resources to fulfill its judicial mandate, as well as because of a lack of cooperation from some States vis-à-vis the Court's judicial work. In this context, some participants coincided in indicating that the Court is a young institution whose progress and achievements will be evident with time, and not in the short term, as some States would desire. Others highlighted that the Review Conference will represent a good opportunity to reflect on the Court's work as well as on the commitment of States to the Court, particularly in the exercise of the principle of complementarity.

Issue II. The First Review Conference of the Rome Statute

Chairperson: Víctor M. Uribe Aviña, Mexican Ministry of Foreign Affairs

Roundtable No. 1 - Possible scenarios for the Review Conference

Presentation: by Osvaldo Zavala, CICC

14. The panelist opened his presentation by questioning what exactly a Review Conference refers to. He insisted that there is a need to clarify whether this will be a Conference to "review" or to "amend" the Rome Statute. As article 123 of the Statute remains unclear in relation to this point there is thus a need for consensus among States. In his opinion, the amendments have to be put forward while the review process itself is established by the Rome Statute.

15. Some of the issues discussed as topics that could potentially be addressed by the Conference included article 124, article 5 (regarding the list of crimes), Resolution F and the crime of aggression. The panelist also mentioned that the amendments to the Rome Statute require a special vote whose rules are clearly defined and determined by the treaty.

16. The panelist mentioned that there is general agreement on the need to ensure that the First Review Conference preserves the Rome Statute's integrity.

17. During the roundtable dialogue, participants repeatedly raised questions in relation to differences between amendments and review, and in general terms, coincided with the panelist's views. Most of the participants agreed that there needs to be time to present amendments. In this context, the Draft Rules of Procedure of the Conference establishes that the amendments can only be presented three months in advance of the Conference.

18. Considering possible scenarios for the Review Conference, the participants referred to several issues which should be addressed including article 124, the incorporation of new crimes such as terrorism and drug-trafficking, and the crime of aggression.

19. Participants agreed in pointing out that the crime of aggression appears to be one of the key issues for the first Review Conference. However, the discussion included remarks on the interpretation of paragraph two of article 5 of the Rome Statute regarding the Court's jurisdiction over this crime.

20. Finally, participants agreed that a clear message of support to the ICC should be provided during the Review Conference.

Round table No. 2 - Preparatory work (1st part)Presentation by Sabelo Sivuyile Maqungo, NY- Working Group Facilitator- For the Issue on the Review Conference (South Africa)

21. The panelist presented a general view of the advances leading up to the Review Conference vis-à-vis the work of NY- ASP Working Group on the Review Conference. He highlighted that the Group's discussion had focused on the Rules of Procedure for the Conference, as well as on a draft agenda that will be adopted by the ASP Bureau. In this context, several meetings have been held to exchange views, experiences, and information on the issue. In particular, during the fourth session of the Assembly of States Parties (ASP), Mr. Rolf Fife was designated as focal point, and he later presented his report on the matter to the fifth session of the ASP. As a next step, the Bureau proceeded to designate him as facilitator for the NY- Working Group.

22. The facilitator mentioned that discussions of the Working Group have focused on the Rules of Procedure of the Conference. Currently, a third version of the Rules is ready. In addition, he expects that the Rules will be presented during the next ASP for their subsequent adoption.

23. He also mentioned that the agenda is still pending. Discussions on this issue had focused on the right time for adoption. One possibility is that the agenda be adopted by the Conference or that the ASP adopt it before the Review Conference. He stated that they are currently working on the content of the agenda.

24. In relation to the possible scenarios for the Conference, the panelist said that it is necessary to agree on the scope of the Conference, mentioning that possible amendments can only be presented to the General Secretary seven years after the entry into force of the Rome Statute, that is, from July 2009 onwards. According to him, a special process should be established to consider possible amendments. To do so, he suggested establishing a work schedule and taking advantage of the time allocated during the ASP in 2009 to adopt decisions regarding the Review Conference.

25. Regarding the venue of the Conference it was noted that Uganda had presented an offer to host the Conference. In addition, he also noted that the RC could be held in either The Hague or New York.

26. The panelist also addressed aspects related to whether the RC should have a Ministerial or technical character.

27. Regarding the length of the Conference, the panelist expressed that he considered that more than ten days would be necessary. However, there are those who believe that five days will be enough. During his intervention he underscored that if only five days are allocated for the Conference, several issues could be previously discussed or reviewed by the ASP. Nevertheless, considering the discussions on the crime of aggression the Conference could take ten days. Discussions in the Working Group have leaned toward holding the Review Conference in the first half of 2010.

Roundtable No. 3 - Preparatory work (2nd part)

Chairperson: Alejandro Alday González, Permanent Mission of Mexico to the United Nations

Presentation by Renán Villacís, Secretariat of the Assembly of States Parties

28. The panelist mentioned that the ASP Secretariat had initiated a consultation process in conjunction with representatives of the Focal Point for the Review Conference (Norway). This process has been inclusive and transparent and has incorporated civil society participation in the consultations.

29. Regarding the treatment that the Review Conference should receive, he mentioned that during the sixth session of the ASP an important section has been allocated in the agenda to discuss this concern. The tentative dates to discuss the Review Conference are from December 3 to the 7th.

30. He mentioned that other important aspects for consideration include the costs of the Review Conference and that estimates fluctuate between 1.5 and 1.8 million euros. These estimates were calculated bearing in mind that the Conference would take place in New York or in The Hague. In addition, these estimates only consider single meetings and not parallel meetings—as this latter modality would considerably impact the budget. He also noted a third option to be considered only once the Host State decides on its contribution. He highlighted that this is one of the issues that would benefit from further discussions by the NY- Working Group.

31. Regarding the venue of the Conference, there are three options: New York, The Hague and Uganda. He recalled a view according to which a meeting in The Hague may impact State participation as not all countries have delegations in that city. There is also a possibility, which is still being considered, to set up a special fund to support the Host State with the implementation of the Conference.

32. The Review Conference is tentatively scheduled for the first trimester of 2010 with a duration of 5 to 10 days. The panelist highlighted the need to have alternative options in order to plan logistical issues with appropriate consideration and an adequate timeframe.

33. Those issues of greatest concern addressed by participants during roundtables 2 and 3 included the preparatory work and the need to establish a proper mechanism for the process. In this regard, it was mentioned that the ASP could serve as a preparatory body. Emphasis was also placed on the fact that States should maintain a flexible approach and not arrive at the RC with prior restrictions nor intransigent positions.

34. Most participants agreed that the venue should be carefully selected as the RC will be a good moment to strengthen the work of the Court. It was evident that despite the robust efforts which have already been implemented by various bodies, there is still a need to define many issues. The budget required to execute the First Review Conference is one example. In addition, the role of the ASP in the preparatory work of the Conference is also seen as a key element to ensure its success.

Issue III. Mandatory issues to be reviewed during the First Review Conference**Round table No. 4 - The Crime of Aggression**

Chairperson: Douglas Cassel, Human Rights Center, University of Notre Dame

Presentation by Stefan Barriga, Permanent Mission of Liechtenstein to the United Nations

35. At the beginning, the discussions around the crime of aggression were predominantly focused on four areas which were all related to the role of the UN Security Council:

- (a) Conditions required for the ICC to exercise its jurisdiction over the crime of aggression vis-à-vis the competences of the UN Security Council in this regard;
- (b) The ICC's relation with non signatories to the RS who are permanent members of the SC with veto power (China, Russia and the United States);
- (c) Individual responsibility for the crime of aggression vs state responsibility for the crime aggression (the latter as defined and interpreted by the Security Council);
- (d) How to include the definition of aggression as a crime under the ICC's jurisdiction.

36. In his presentation the panelist addressed the current status of the negotiations on the crime of aggression. He first outlined the parameters of the discussion, starting with Article 39 of the UN Charter which includes a reference to the role of the Security Council regarding acts of aggression. One important question in this respect was whether the Security Council had an exclusive competence to determine the existence of an act of aggression, or whether the competence to determine aggression under article 39 had to be seen as a mere first step to be taken by the Security Council before taking action to maintain or restore international peace and security. A second important parameter for the definition of aggression was UN General Assembly Resolution 3314, adopted by consensus in 1974. This resolution was considered to be the most likely basis for the definition of the State act of aggression, in light of its balanced nature as a "package deal" which is not binding on the Security Council, and in light of its recognition in the jurisprudence of the International Court of Justice.

37. As one further important sources that needed to be considered, the facilitator referred to article 16 of the 1996 draft Code of Crimes against Peace and Security of Mankind, prepared by the International Law Commission. This article defines the conduct of an individual who commits a crime of aggression (as opposed to the State act of aggression defined in resolution 3314). Following the Nuremberg precedent, the crime of aggression is defined as a leadership crime.

38. Moreover, article 5(2) of the Rome Statute must also be considered as it clarifies that the crime of aggression is already one of the crimes under the jurisdiction of the ICC.

39. The panelist highlighted that in the framework of the Preparatory Commission (PrepCom), little progress was made on the definition of aggression and that the work was intensified in the framework of the ASP (Special Working Group on the Crime of Aggression). Most progress was made during intersessional meetings held at the Liechtenstein Institute on Self Determination at Princeton University in 2004, 2005, 2006 and 2007. This process was characterized by a positive atmosphere which allowed delegates to further discussions in a constructive manner.

40. Regarding the work carried out by the Special Working Group the panelist indicated that there are three main areas of discussion. The first one concerns the definition of aggression as a state act. In this discussion it was important to consider the list of acts contained in Resolution 3314. There were currently diverging views whether this was a closed or open list, and also whether the final definition should indeed have an open or a closed list. The second area concerns the definition of the individual conduct which qualifies as a “crime” of aggression, and the third area relates to the role of the Security Council.

41. Regarding the role of the Security Council (conditions for the exercise of jurisdiction), the facilitator listed the options that had been presented so far. On one end of the spectrum of positions, the Security Council would, on the basis of article 39 of the UN Charter, have the exclusive competence to determine whether an act of aggression has been committed. On the other end of the spectrum, the position was held that the Security Council should have no specific role in the determining the existence of an act of aggression to be prosecuted by the ICC, given the role already accorded to the Security Council in article 16 of the Rome Statute. Other intermediary positions would grant the Security Council the possibility to determine whether an act of aggression had been committed, but in case of inaction on the part of the Council the proceedings should not be blocked. Others would assign a role to other UN organs such as the General Assembly or the International Court of Justice.

42. During the last Princeton meeting further ideas were introduced. For example, allowing the Prosecutor together with the Pretrial Chamber to act *motu proprio* in the prosecution of a crime of aggression, as is currently foreseen in article 15 of the Rome Statute. Another possibility was to allow the SC to give the “green light” for the Court to proceed, without the Council making a specific determination that an act of aggression had occurred. This would increase the options for the Council, while keeping the possibility of a veto.

43. Further proposals ideas discussed in Princeton tried to lower the bar for such a “green light” even further. One suggestion was that the ICC should exercise its jurisdiction if the Security Council has determined the existence not of an act of aggression, but of a threat to or a breach of the peace as a result of a threat or the use of armed force of one State against another. This option would offer the advantage of employing familiar language used by the Security Council. However, there would be a need to evaluate the impact of such a solution on the day-to day work of the Security Council. The Council would probably watch its formulations more carefully, knowing that using such language could allow the ICC to investigate. Furthermore, a suggestion had been made that the Court should be allowed to proceed with an investigation into crime of aggression in cases where the Security Council had already *implicitly* determined the existence of an act of aggression, e.g. by using the language contained in Resolution 3314 without using the term “aggression”.

44. The panelist concluded by stressing his optimism that these discussions can be further advanced. In this sense, the adoption of the Rome Statute itself and the fact that the Court was at an operational stage and making progress was very helpful for the negotiations. Additionally, the RC presented an opportunity to strengthen the Court in political terms.

45. The discussion following the presentation was very broad and different views were expressed. Some participants supported the notion of an exclusive SC determination for the crime of aggression, while others were firm in noting that the ICC should be independent and autonomous from the SC, taking into account the commitments adopted since Rome Diplomatic Conference. Others still indicated that the General Assembly could also make that determination to allow the ICC to exercise jurisdiction over this crime.

46. There seemed to be an emerging consensus among participants in relation to the role of UNGA Resolution 3314 in the definition of the crime of aggression. Questions on the principle of legality and the definition of the individual conduct were also brought up. There was a general recognition that a pragmatism approach needed to be adopted in order to advance the definition of the crime.

Roundtable No. 5 - Article 124 of the Rome Statute

Chairperson: Mauricio del Toro, Universidad Nacional Autónoma de México

Presentation by Anton Camen, International Committee of the Red Cross

47. The panelist initiated the discussion of article 124 of the Rome Statute by highlighting some of its elements. In this context, he referred to the nature of this article indicating that it excludes the jurisdiction of the ICC over war crimes for a period of seven years.

48. Regarding the consequences of this article, he noted that article 124 could produce confusion and troubles in the relations between States. In his opinion, if a national of a certain State which has made use of this declaration commits a war crime in the territory of another state, the jurisdiction of the latter should prevail over the one which made the declaration.

49. The facilitator mentioned that there are no records of important incidents over the use of an article such as article 124. Only two States have made this declaration: France and Colombia. Despite its use, the article has not affected the obligation to punish war crimes at the national level.

50. During the Roundtable 5 dialogue, an exchange of views over the interpretation of article 124 by States took place. Discussions were particularly focused around the Colombian case.

51. Part of the debate centered on the issues which motivated Colombia to use the declaration, as well as the response that this generated from civil society with many NGOs stating that this would generate impunity. It was also noted that the declaration employed by the government had the objective of granting the peace process negotiations at the time a fair opportunity to prosper, and in no way to provide immunity for these crimes given that Colombian national law already includes these. It was also noted that Colombia does not have a position in relation to the elimination of article 124 of the Statute and that an analysis would have to be done to develop a specific position on the matter.

52. The use of the declaration by France was also considered. Reference was made to the fact that unlike in the Colombian case, France had not modified its national legislation despite the fact that this was one of the primary arguments used by the country when they made the declaration.

53. Some participants underscored whether it would be appropriate to eliminate the article all together, while others expressed that due to the fact that the expiration date for the only two countries who have employed it is approaching, it would just be better to leave it without effects. In general, participants seemed to agree that it didn't make much sense to leave the article in the Statute.

Issue IV. Review of other provisions and inclusion of other crimes in the Rome Statute

Round Table No. 6 - Resolution E of the Final Act of the Rome Diplomatic Conference of 1998: Crime of Terrorism, Drug-trafficking, and other crimes

Chairperson: Javier Dondé, National Institute of Criminal Science, Mexico

Presentation by Dorothée Marotine, International Centre for Transitional Justice

54. The panelist highlighted the impact that the September 11 events and the subsequent “war against terrorism” have had at the international level as they have made terrorism one of the principal concerns of the international community.

55. She noted that Resolution E was the result of the commitment reached among states that wanted to include the crime of terrorism, the crime of drug-trafficking and other crimes based on treaties, and those who did not want to broaden the number of crimes under the ICC’s jurisdiction. According to the International Law Commission, the crimes based on treaties are those of international concern defined by treaties (the examples of these crimes include crimes such as the offences against diplomatic personnel or piracy).

56. She mentioned that some scholars suggest that these crimes should be included within the ICC’s jurisdiction as crimes against humanity.

57. On the one side, she noted that before defining if the Court could have jurisdiction over these crimes or not, the advantages and disadvantages of this possibility should be reviewed. On this regard, she stated that including these crimes could represent an important economic impact on economically weak countries. Similarly the inclusion of these crimes could also politicize the work carried out by the Court.

58. The facilitator expressed that in her opinion, crimes of terrorism and drug-trafficking do not comply with the criteria of violating humanitarian principles, as the other crimes currently under the jurisdiction of the Court do. To conclude, she acknowledged that although their inclusion within the ICC’s jurisdiction would assist the fight against impunity of the crimes of terrorism and drug-trafficking, we should ask ourselves if these are international crimes.

59. During the dialogue some participants expressed that the risk of politicizing the work done by the Court was very high. Others agreed that as had been mentioned by the panelist, these crimes did not reflect humanitarian elements and therefore, without diminishing the importance and gravity of these crimes for the international community, those were other types of crimes that would fall more along the lines of transnational crimes. In these cases, bilateral and multilateral cooperation among States should prevail for their investigation and punishment at the national level.

PART II**Issue V. An evaluation of the ICC five years after the entry into force of the Rome Statute****Round Table No. 7 - The work of the Office of the Prosecutor – case docket**

Chairperson: Naomi Roht-Arriaza, Hastings College of the Law, University of California

Presentation by William Schabas, Irish Centre for Human Rights

60. The panelist pointed out that there are certain inconsistencies in the Prosecutor's discourse, particularly in relation to issues of national jurisdiction and the responsibility of States.

61. It was stated that, in practice, the Prosecutor has not encouraged States to assume their own responsibilities. The Prosecutor has concentrated himself in the investigation of rebel groups and the gravity threshold that he is dealing with is an important component. While the Prosecutor's approach has been quantitative, that of the Pre Trial Chamber is based on "social alarm".

62. The panelist offered a brief overview of the judicial activity of the Court, drawing particular attention to the four situations that are currently being considered by the ICC: Uganda, Democratic Republic of Congo (DRC), Darfur and the Central African Republic (CAR).

63. Regarding these four situations, the expert highlighted some issues for consideration. For example in the Ugandan case, he pointed out that the arrest warrants issued included only rebels and not members of the Ugandan Army. The fact that only members of the Lord's Resistance Army (LRA) are being prosecuted provides the State an advantage in relation to negotiate on the basis of the unresolved dilemma of peace-justice.

64. Referring to the situation of the DRC, he expressed his concern that the crimes for which Thomas Lubanga Dyilo is being held responsible, were in fact, as grave as the ones committed by other actors. Nevertheless in four years, there has only been one case before the Court.

65. He also reflected on the Darfur situation, mentioning the slow nature and process through which it had been handled. He questioned whether justice would have been more expedient were there ad hoc tribunals in place.

66. In relation to the slow pace of investigations in Central African Republic he underscored that the government itself had questioned the Court in December 2006, inquiring why there had not been any advances in the investigations, given that they had referred the matter in January 2005.

67. The panellist noted that between 2003 and 2004 there was some enthusiasm but since then nothing has happened. The Prosecutor has failed to insist that States assume their responsibilities and the fact that the investigations are focused in rebel groups suggests that States have very little to fear from the ICC.

68. The open discussion on this topic was intense and the exchange of points of view particularly interesting. While there were participants that argued that the ICC was in a crisis, others felt that the success of the ICC consisted in its very existence, and that it would not be

fair or accurate to label it as a failure after such a short period of operation. More so when a significant part of its first years were devoted to making it work and implementing the Rome Statute's provisions.

69. It was also agreed that the Prosecutor's Office has not been able to fully comply with its mandate because it does not have the necessary financial resources to pursue the investigations adequately. Some participants expressed that it might be necessary to establish an intelligence and/or police unit that would allow the Court to execute the arrest warrants.

70. Some participants also underscored that the Prosecutor's public comments highlighting that he will focus on those "bearing the greatest responsibility" is a provision contained in the Statute of the Special Court for Sierra Leone, not in the Rome Statute. This policy could potentially transmit the wrong message to perpetrators in Africa, as reducing the situation to only a few arrest warrants is a very simple analysis.

71. In light of the questions raised about the Prosecutor's work, many coincided in signaling that it is not possible to think that this is the only source of the problem, as it would be necessary to evaluate the level of cooperation of States with the Court. This lack of cooperation is one of the principal problems facing the ICC. The ICC has issued several arrest warrants, yet these can only be executed by States and in this sense the relationship between States and the Court is closely interrelated. There were even some participants that argued that the problem is the complementarity principle as this has caused that processes be much slower.

Round Table No. 8 - Outreach – Victims' participation and rights of the accused under the Rome Statute

Chairperson: Paulina Vega, CICC

Presentation by Karine Bonneau, International Federation for Human Rights

72. The expert Karine Bonneau presented the existing legal basis for victims under the Rome Statute and other related documents such as the Rules of Procedure and Evidence as well as the Court and Registry Regulations which together amount to nearly 115 provisions on the subject. She noted that the principles contained in these provisions have begun to be developed and implemented by the Court, specifically by Pre-Trial Chambers I and II which oversee the situations of the Democratic Republic of the Congo and Uganda.

73. The expert started from the premise that before the ICC victims have the right to participate in the proceedings, to be represented and to receive reparation and protection.

74. The expert explained that in recent decisions the OTP has outlined that the participation of victims can jeopardize the investigation. She also stated that Pre Trial Chambers I and II in their decisions of 17th July 2006 and 10th August 2007, respectively, outlined that the victims' participation begins at the start of the investigation and that it does not contravene the principle of a fair and expeditious trial. Also, the expert explained that the differences in the precedents among Chamber I and II, and between the participation in the situation and in the case (Lubanga case). The harmonization of precedents for the interests of victims, the participation in group, the disclosure and translation of the victims' participation formats, the support to intermediaries – even material and security support – without them substituting the ICC, remain as the most relevant challenges for the Court in terms of participation.

75. Another issue addressed was that of the legal representation of victims. On the one hand, there is an Office of Public Counsel for Victims (OPVC) which has the mandate of

helping and assisting victims' legal representatives, even appearing before a chamber regarding some issues on the representation of victims, mandate that still has to be précised. On the other hand, the Court still has to establish the effective regulations for the legal assistance of victims.

76. The expert also insisted in the mandate in terms of reparation, the role of the Court and of the States in order to immobilize the profit from the goods of the accused persons, and also about the double mandate of the fiduciary fund and the importance of developing fair assistance programs from voluntary contributions.

77. The expert outlined that in order for victims to know their rights it is necessary that the Court strengthen its outreach activities. Up until now the Court has not known how to approach victims. It is necessary that their approach be flexible and that it be adapted to fit different realities.

78. The panelist also highlighted that for the victims to be aware of their rights it is necessary that the Court strengthens its outreach activities. As said, up to this date the Court has not approached enough to the victims, and it is necessary that the focus of the approach is adapted to their reality. The Assembly of the States Parties, just as in 2005 and 2006, will have a determining role.

79. Protection measures for victims are focused on not revealing their identities. This also influences their participation and it is necessary to reach an adequate balance between participation and security. The panelist also highlighted that there is a need for more States to conclude witness relocation agreements.

80. The expert pointed out that the rights of the accused contained in the Rome Statute incorporate international human rights standards. Nevertheless, certain concerns need to be addressed. One of these relates to legal aid of the accused. In the Lubanga case, for example, the defense has declared that he has not had the necessary resources. Another issue to consider is the classification of documents that are passed from the OTP to the defense, as it is necessary to protect sources as stipulated by article 53 (e). Finally, the expert raised the concerns over problems and delays with translations.

81. There was an exchange of ideas regarding the two types of victims that have been established in practice: those of situations and those of cases. Some of the participants recognized the existence of a consolidated jurisprudence on reparation issues that would be useful for the Court, although at the same time the ICC itself will set new precedents or build upon existing advances.

82. Finally some participants expressed that although there is a need to evaluate victims' participation, the Prosecutor's position in the Lubanga case has been very restrictive as it has not considered victims of many crimes, which implies a restriction on victims participation. In this context, it is important to rethink victim's demands and victims participation.

Round Table No. 9 - Cooperation and implementation

Chairperson: Oscar Julián Guerrero, Office of the Prosecutor, Colombia

Presentation by Hugo Relva, Legal Advisor, Amnesty International

83. The expert Hugo Relva explained that the success of the judicial system resides in national courts and not in international ones. Without undermining the importance of the ICC,

he indicated that the Court is a valuable instrument, but one grounded on the principle of complementarity.

84. The expert underlined the obligation of States to review obligations emerging from treaties other than the Rome Statute, but related in the thematic, when undergoing national implementation of the RS. Not doing so could imply not complying with those other treaties.

85. The expert presented a hemispheric overview of ICC implementation at the national level. He noted that one of the problems of implementation is related to crimes that can be committed in an isolated manner, such as torture or disappearances, and the need of adapting not only the Criminal Codes of each country but also the Military Codes. For example, in terms of revisions to the Military Code, issues such as “responsibility of commanders and other superiors” and “due obedience” need to be addressed. The importance of prohibiting amnesties for the commission of crimes under the Statute and not allowing Military Tribunals jurisdiction over war crimes were also highlighted. The expert also called for the removal of the figure “exception on grounds of national security”, included in articles 72 and 73 of the Statute.

86. In the discussions, the participants highlighted the importance of the national implementation of the Rome Statute and other related treaties such as the 1949 Geneva Conventions and their additional Protocols. It was also underlined that the implementation processes should be based on the principle of legality and the importance of civil society in the efforts realized by States while adapting national legislation to international standards.

Round Table No. 10 - Contribution of the ICC to justice, peace and security

Chairperson: Elizabeth Salmón, Catholic Pontifical University of Peru

Presentation by Socorro Flores Liera, Head of the ICC Office to the United Nations

87. The expert referred to the success of the ICC given the fact that it’s a young institution. She pointed out that there have some significant advances in national legislations but that the establishment itself of the Court is a success and a contribution to peace, justice and security. Another significant issue is that the Security Council has referred a situation (Darfur) to the Court recognizing this tribunal as a deterrence mechanism for crimes and an important contributing mechanism to achieving peace.

88. The expert remembered how the first years of the Court were dedicated to making it a functional mechanism and how in 2004 it was the Ugandan government itself who referred a situation to the Court. The obligations of the Court in practice are complex given that most of its work has to develop in places where armed conflicts are currently taking place.

89. She also noted the positive and deterrent impacts that the Court has brought about. She pointed particularly to the case of Côte d’Ivoire as well as to the use of child soldiers in Africa.

90. She concluded observing that given that the Court does not have an execution organ, it depends on States to comply with and implement its decisions.

91. Among participants there was a general feeling that the Court has had a positive impact at both the national and international level by requiring States to adapt their legislations and ensuring that criminals are brought to justice. There has also been a clear contribution to peace and security.

92. Some noted that the Security Council has to have a more active role in the Darfur situation. There was also agreement on the fact that the Court needs to receive more cooperation from states in order to legitimize its performance while proving its efficiency.

PART III

Dialogue among participants (1st part)

Chair: Valerie Oosterveld, Canada

93. In order to favor the exchange of opinions among participants, the facilitator presented a series of issues that, in her opinion, should have been further discussed. She referred to article 8.2.b.xx of the Rome Statute relative to the list of means and methods of combat that should be amended in accordance to articles 121 and 123 of the Rome Statute as well as the process leading up to the Review Conference. In the questions that she formulated, she referred to the way in which NGO's would organize or would structure a Review Conference. She also enquired State and Court representatives their opinions on the foreseeable needs for the Conference.

94. Some of the participants indicated that civil society participation is necessary in the process leading up to the Review Conference, and that this process should be as active as possible.

95. State representatives' expectations toward the Review Conference, particularly on the crime of aggression tended to agree on the need of reviewing in more detail the role of the Security Council. Some participants indicated that this crime should not be treated as an amendment but as a Conference requisite.

96. In regards to the needs for the preparatory process, some participants pointed out the need to: a) Rely on a more active participation of the Assembly of State Parties; b) designate more time than the three months that are established by the Rules in order to present amendments or proposals; c) consider technical reviews of the Statute to facilitate the Court's work and in particular, the work of the Prosecutor's Office; d) take advantage of the Conference so that Member States can evaluate the work of the ICC and that the Court itself can also evaluate its work; e) establish criteria to define the venue of the RC.

97. In regards to the list referred to in article 8.2.b.xx of the Rome Statute concerning the means and methods of combat, it was noted that an attachment should be presented at the Conference for the consideration of States.

Dialogue among participants (2nd part)

Chair: Juan Manuel Gómez-Robledo, Mexico

98. The facilitator centered his participation on two main issues that he thought should be addressed given their complexity: the definition of the crime of aggression and particularly the role of the SC in this process, and the peace and justice dilemma.

99. In regards to the first issue, the participants expressed the need to find a formula that doesn't jeopardize the integrity of the Statute. Some participants indicated the need to be cautious in relation to the SC's role and on the actions that some countries that are permanent members of the Council but not a part to the Rome Statute could undertake. Others referred to the role that the Security Council could potentially have in regards to Chapter VII of the UN

Charter. It was also said that the faculties of Security Council were not thought so as to activate individual criminal jurisdiction.

100. Additionally, some participants made reference to the work carried in Princeton, in particular on the need of having a realist approach with regard to the position of the permanent members of the Security Council. The idea of having the Pre Trial Chamber as a filter was also discussed, and it was mentioned that this initiative has both advantages and disadvantages and that therefore there has been no consensus on the matter. Others indicated that the application of article 16 for determining the crime constitutes an obstacle, while others indicated that if a definition such as the one that was being established by the Special Work Group on the Crime of Aggression was to be approved, article 16 should have to be modified.

101. It was also said that the existence of a procedure to review the Rome Statute constitutes an advantage when compared to the UN Charter because amendments can be approved without the need of securing the vote of the five permanent members of the Security Council. The willingness of the Security Council to cooperate with the Court in the Darfur case was also highlighted.

102. In regard to the peace and justice dilemma, the facilitator asked participants about the viability of taking this matter before the Review Conference. Many participants agreed that it was an important issue that had to be discussed, but stated that Review Conference was not necessarily the best space for consideration of this matter. For others it's an issue where state responsibility plays a fundamental role. As such, some pointed out that even when there are peace processes going on, States have the responsibility to refer cases to the ICC if they are not able to initiate judicial proceedings nationally. Some others indicated that even within the context of peace processes, amnesties are not allowed for crimes under the Statute. There was an agreement on the fact that the concepts of peace and justice are complementary.

Closing Ceremony

103. During the closing ceremony the organizers stated that the Hemispheric Seminar constituted a very useful space to promote an open and inclusive dialogue within the region. The desire to further the analysis on the issues that will come before the Review Conference was also stressed. The organizers highlighted that most participants had agreed that these types of forums constituted positive spaces for reflection that would assist the process leading up to a Review Conference capable of strengthening the principles contained in the Rome Statute.

Annex I

List of participants

ARGENTINA/ARGENTINE

1. Juan Manuel Gramajo

Ministerio de Relaciones Exteriores Comercio Internacional y Culto.

BOLIVIA/BOLIVIA

2. Claudia Barrionuevo Romero

Ministerio de Relaciones Exteriores y Culto.

BRASIL/BRAZIL

3. Antonio Paulo Cachapuz de Medeiros
4. Franklin R. Hoyer

Ministerio de Relaciones Exteriores.

CANADÁ/CANADA

5. Alan Kessel
6. Christine Hanson

Ministerio Federal de Relaciones Exteriores.

CHILE/CHILI

7. Claudio Troncoso Repetto

Ministerio de Relaciones Exteriores.

COLOMBIA/COLOMBIA

8. Clara Inés Vargas

Ministerio de Relaciones Exteriores.

9. Oscar Julián Guerrero

Procuraduría General de la Nación.

COSTA RICA/COSTA RICA

10. Oscar Omar Monge Castro
11. Gioconda Ubeda Rivera

Ministerio de Relaciones Exteriores y Culto.

CUBA/CUBA

12. Anet Pino

Ministerio de Relaciones Exteriores.

GUATEMALA/GUATEMALA

13. Erick Mauricio Maldonado Ríos

Ministerio de Relaciones Exteriores.

LIECHTENSTEIN/ LIECHTENSTEIN

14. Stefan Barriga

Misión Permanente de Liechtenstein ante las Naciones Unidas.

MÉXICO/MEXICO

15. Juan Manuel Gómez-Robledo
16. Joel Hernández García
17. Víctor M. Uribe Aviña

18. Liliana López Ortíz
19. Gabriela A. Moreno Hidalgo
20. Sandra Sánchez Aguillón
21. Sylvia Cabrera Lara
22. Luis Ángel Benavides Hernández
23. Alejandro Alday González
24. Alonso Martínez Ruiz
Secretaría de Relaciones Exteriores.

NICARAGUA/NICARAGUA

25. Horacio Brenes Icabalceta
Ministerio de Relaciones Exteriores.

PERÚ/PERU

26. Carmen Rosa Arias Morales
Ministerio de Relaciones Exteriores.

PORTUGAL /PORTUGAL

27. Francisco Falcao Machado
Ministerio de Relaciones Exteriores de Portugal en México,
Presidencia de la Unión Europea.

SUDÁFRICA/SOUTH AFRICA

28. Sabelo Sivuyile Maqungo
Facilitador del Grupo de Trabajo Nueva York para el tema de la Conferencia de Revisión.

TRINIDAD Y TOBAGO/TRINIDAD AND TOBAGO

29. Eden Charles
Ministerio de Relaciones Exteriores.

URUGUAY/URUGUAY

30. Berta Feder
Ministerio de Relaciones Exteriores.

VENEZUELA/VENEZUELA

31. Adriana Celis
32. José Manuel Casal Vázquez
Ministerio de Relaciones Exteriores.

CORTE PENAL INTERNACIONAL/INTERNATIONAL CRIMINAL COURT

33. Socorro Flores Liera
Oficina de la Corte Penal Internacional ante las Naciones Unidas.

SECRETARÍA DE LA ASAMBLEA DE ESTADOS PARTES/SECRETARIAT OF THE ASSEMBLY OF STATES PARTIES

34. Renán Villacís

COALICION POR LA CORTE PENAL INTERNACIONAL/COALITION FOR THE INTERNATIONAL CRIMINAL COURT

35. William Pace
36. Osvaldo Zavala
37. Francesca Varda
38. Paulina Vega

UNIVERSIDAD IBEROAMERICANA/UNIVERSIDAD IBEROAMERICANA

- 39. Juan Carlos Arjona
- 40. Sofía Lascrain
- 41. Abigail Díaz de León
- 42. Denise González Núñez

COMITÉ INTERNACIONAL DE LA CRUZ ROJA/INTERNATIONAL COMMITTEE OF THE RED CROSS

- 43. Anton Camen
- 44. Romaric Ferraro

EXPERTOS ACADEMICOS/ACADEMIC EXPERTS

45. Valerie Oosterveld
University of Western Ontario.

46. Douglas Cassel
Centro de Derechos Humanos, Universidad de Notre Dame.

47. Elizabeth Salmón
Pontificia Universidad Católica del Perú.

48. Javier Dondé
Instituto Nacional de Ciencias Penales.

49. Mauricio del Toro
Instituto de Investigaciones Jurídicas, UNAM.

50. William Schabas
Centro Irlandés por los Derechos Humanos.

51. Naomi Roht-Arriaza
Universidad de California.

EXPERTOS DE LA SOCIEDAD CIVIL/CIVIL SOCIETY EXPERTS

52. Karine Bonneau
Federación Internacional de los Derechos Humanos.

53. Hugo Relva
Amnistía Internacional.

54. Dorothée Marotine
Centro Internacional por la Justicia Transicional.

INVITADOS/INVITES

55. Thomas Stolz
Delegación de la Comisión Europea en México.

56. Adrián Mouriz
Coalición Mexicana por la Corte Penal Internacional.

Annex II

PROGRAM
HEMISPHERIC SEMINAR
TOWARDS THE FIRST REVIEW CONFERENCE OF THE ROME STATUTE
OF THE INTERNATIONAL CRIMINAL COURT
MEXICO CITY, AUGUST 20-21, 2007

Monday, August 20th, 2007

8:30- 9:00 HRS REGISTRATION

9:00- 10:00 HRS OPENING CEREMONY

William Pace,
Convenor, Coalition for the International Criminal Court.

Juan Carlos Arjona Estévez,
Director of Human Rights Program, Universidad Iberoamericana.

Alan Kessel,
Legal Adviser, Foreign Affairs and International Trade, Canada.

Juan Manuel Gómez-Robledo,
Undersecretary for Multilateral Affairs and Human Rights, Ministry of Foreign
Affairs, Mexico.

INTRODUCTION AND OUTLINE OF THE SEMINAR

Joel Hernández G.,
Legal Adviser, Ministry of Foreign Affairs, Mexico.

10:00- 10:30 HRS THE ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT
AFTER FIVE YEARS OF ITS ENTRY INTO FORCE: A VISION OF ITS
APPLICATION AT THE REGIONAL AND INTERNATIONAL LEVELS

Chairperson: Juan Carlos Arjona, Human Rights Program, Universidad
Iberoamericana.

Presentation by William Pace, Convenor, Coalition for the International Criminal
Court (CICC) (20 mins).

10:30-10:45 HRS COFFEE BREAK

10:45-12:00 HRS THE FIRST REVIEW CONFERENCE OF THE ROME STATUTE
Chairperson: Víctor M. Uribe Aviña, Ministry of Foreign Affairs, Mexico.

ROUND TABLE NO. 1 - POSSIBLE SCENARIOS FOR THE REVIEW CONFERENCE

Presentation by Osvaldo Zavala, Associate Legal Officer, CICC (15 mins).

ROUND TABLE NO. 2 - PREPARATORY WORK (1ST PART)

Presentation by Sabelo Sivuyile Maqungo, Facilitator of the New York Working Group for the topic Review Conference (15 mins).

12:00-12:15 HRS COFFEE BREAK

12:15-13:00 HRS THE FIRST REVIEW CONFERENCE OF THE ROME STATUTE
(CONTINUATION)

ROUND TABLE NO. 3 - PREPARATORY WORK (2ND PART)

Chairperson: Alejandro Alday González, Permanent Mission of Mexico to the United Nations.

Presentation by Renán Villacís, Director of the Secretariat of the Assembly of States Parties (15 mins).

13:00-15:00 HRS LUNCH

15:00-17:00 HRS MANDATORY ISSUES TO BE REVIEWED DURING THE FIRST REVIEW
CONFERENCE

ROUND TABLE NO. 4 - THE CRIME OF AGGRESSION

Chairperson: Douglas Cassel, University of Notre Dame.

Presentation by Stefan Barriga, Legal Advisor, Permanent Mission of Liechtenstein to the United Nations (15 mins).

ROUND TABLE NO. 5 - ARTICLE 124 OF THE ROME STATUTE

Chairperson: Mauricio del Toro, Judicial Research Institute, Universidad Nacional Autónoma de México.

Presentation by Anton Camen, Legal Advisor, International Committee of the Red Cross (15 mins).

17:00-17:15 HRS COFFEE BREAK

17:15- 18:00 HRS REVIEW OF OTHER PROVISIONS AND INCLUSION OF OTHER CRIMES IN
THE ROME STATUTE

**ROUND TABLE NO. 6 - RESOLUTION E OF THE FINAL ACT OF THE ROME DIPLOMATIC
CONFERENCE OF 1998: CRIME OF TERRORISM, DRUG TRAFFICKING, AND OTHER CRIMES**

Chairperson: Javier Dondé, National Institute of Criminal Science.

Presentation by Dorothée Marotine, International Centre for Transitional Justice (15 mins).

20:00 HRS GALA DINNER

Tuesday, August 21st, 2007

ACHIEVEMENTS OF THE ICC AFTER FIVE YEARS OF THE ENTRY INTO FORCE OF THE ROME STATUTE

9:00- 10:00 HRS

ROUND TABLE NO. 7 - THE WORK OF THE OFFICE OF THE PROSECUTOR – CASE DOCKET

Chairperson: Naomi Roht-Arriaza, Hastings College of the Law, University of California.

Presentation by William Schabas, Professor, Irish Centre for Human Rights (15 mins).

10:00-11:00 HRS

ROUND TABLE NO. 8 - OUTREACH – VICTIMS’ PARTICIPATION AND RIGHTS OF THE ACCUSED UNDER THE ROME STATUTE

Chairperson: Paulina Vega, CICC.

Presentation by Karine Bonneau, International Federation for Human Rights (15 mins).

11:00-11:15 HRS

COFFEE BREAK

11:15- 12:15 HRS

ROUND TABLE NO. 9 - COOPERATION AND IMPLEMENTATION

Chairperson: Oscar Julián Guerrero, Office of the Prosecutor, Colombia.

Presentation by Hugo Relva, Legal Advisor, Amnesty International (15 mins).

12:15 -13:15 HRS

ROUND TABLE NO. 10 - CONTRIBUTION OF THE ICC TO JUSTICE, PEACE AND SECURITY

Chairperson: Elizabeth Salmón, Catholic Pontifical University of Peru.

Presentation by Socorro Flores Liera, Head of the ICC Office to the United Nations (15 mins).

13:15 – 15:00 HRS

LUNCH

15:00 – 16:30 HRS

DIALOGUE AMONG PARTICIPANTS (1ST PART)

Chair: Valerie Oosterveld, Canada.

16:30 – 16:45 HRS

COFFEE BREAK

16:45 – 18:15 HRS

DIALOGUE AMONG PARTICIPANTS (2ND PART)

Chair: Juan Manuel Gómez-Robledo, Mexico.

18:15 HRS CLOSING CEREMONY

Final remarks:

Juan Manuel Gómez-Robledo,
Undersecretary for Multilateral Affairs and Human Rights, Ministry of Foreign
Affairs, Mexico.

Alan Kessel,
Legal Adviser, Foreign Affairs and International Trade, Canada.

19:00 HRS COCKTAIL

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