

**Retreat on the Elements of Crimes for the crime of aggression
Montreux, Switzerland, 16 to 18 April 2009**

Summary

The Special Working Group on the Crime of Aggression (SWGCA) dealt with the drafting of Elements of Crimes for the crime of aggression on several occasions. Paragraph 42 of the Report of the SWGCA, dated 20 February 2009 (ICC-ASP/7/SWGCA/2), reflects the fact that two delegations were preparing a discussion paper on the Elements of Crimes and were willing to discuss it with interested delegations.

Upon consultation with the two delegations referred to – Australia and Samoa – the Swiss Federal Department of Foreign Affairs invited a number of experts involved in the work on the crime of aggression to participate in a retreat on the Elements of Crimes for the crime of aggression in Montreux, Switzerland, from 16 to 18 April 2009. Participants included experts from foreign affairs and justice ministries, academic institutions as well as a non-governmental organization. Every effort was made to ensure a balanced regional representation, but not all persons invited were able to attend. The list of experts may be found in the annex. Experts participated in their personal capacity, thus not necessarily representing the views of their government or institution.

The aim of the retreat was to exchange, in a small and informal gathering, initial ideas and thoughts on the drafting of the Elements of Crimes for the crime of aggression. Discussions during the Montreux retreat were based on the definition of the crime of aggression as drafted in the Report of the SWGCA of 20 February 2009.

Australia and Samoa kindly agreed to submit the result of their reflections for consideration at the retreat. On the basis of the paper submitted by them, participants examined the following issues:

- Scheme and principles of the Elements of Crimes
- The individual's conduct
- The leadership requirement
- The State act of aggression – material element and mental element
- The threshold requirement – material element and mental element
- Other matters (eg a special introduction)

Several options for possible elements were envisaged, and a number of drafting ideas were suggested. In light of the meeting, the authors of the paper who attended the retreat expressed their intention to undertake further work in preparation for the inter-sessional meeting in June 2009 in New York.

Annex:**List of Participants to the Montreux Retreat on the Elements of Crime**

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|------------------------------|---|
| Frances ANGGADI | Attorney-General's Department, Australia |
| Diana Patricia AVILA RUBIANO | Ministry of Foreign Affairs, Colombia |
| Thomas Michael BAIER | Ministry of Foreign Affairs, Austria |
| Stefan BARRIGA | Ministry of Foreign Affairs, Liechtenstein |
| Jutta BERTRAM-NOTHNAGEL | Union Internationale des Avocats |
| Marcelo BÖHLKE | Ministry of Foreign Affairs, Brazil |
| Victoria COLAMARCO | Permanent Mission of Panama to the UN, New York |
| Gerard DIVE | Ministry of Justice, Belgium |
| Young Sok KIM | Ewha Womans University College of Law, Republic of Korea |
| Claus KRESS | University of Cologne, Germany |
| Stefan KUZMENKOV | Ministry of Foreign Affairs, Russia |
| Jürg LINDENMANN (Chair) | Federal Department of Foreign Affairs, Switzerland |
| Martin MAINERO | Ministry of Foreign Affairs, International Trade and Worship, Argentina |
| Pablo MONROY CONESA | Ministry of Foreign Affairs, Mexico |
| James POTTER | Attorney-General's Department, Australia |
| Alvaro SANDOVAL BERNAL | Ministry of Foreign Affairs, Colombia |
| André STEMMET | Department of Foreign Affairs, South Africa |
| Francis STOLIAROFF | Ministry of Justice, France |
| Hideomi TAMBO | Ministry of Foreign Affairs, Japan |
| Katrin WEILHAMMER | Federal Department of Foreign Affairs, Switzerland |
| Noah WEISBORD | Duke University School of Law |
| Just WIARDA | Ministry of Justice, Netherlands |
| Elizabeth WILLIAMS | Ministry of Foreign Affairs and International Trade Law, Canada |