

Fifth Session of the Assembly of States Parties to
the Rome Statute of the International Criminal Court
SWGCA, 27 November 2006, 3pm-4.30pm

**Informal and Unofficial Notes from the ASP
SWGCA, 27 November 2006 (Afternoon Session)**

These notes are not an official transcript of the meetings, but may serve as an informal and general overview of the proceedings. Please do not use these notes for official purposes. Please note in particular that some of the interventions were listened to in translation and may differ significantly in meaning from the original.

Chair: Before us we have the report of the inter-sessional meeting in Princeton ICC-ASP/5/SWGCA/INF.1. This meeting was organized and financially supported by the Liechtenstein Institute on Self-Determination. I want to thank Wolfgang Danspeckgruber, the director of the Liechtenstein Institute and I want to thank in particular the States which contributed financially to this event: Canada, Finland, the Netherlands, Switzerland, Sweden and Liechtenstein. At this meeting more than 100 people participated and the quality of discussions was very high. This will certainly help us forward a lot. We are now looking into planning the next inter-sessional meeting; this will take place sometime in the first half of June.

Given the time we have, we cannot go into the substance of the Crime of Aggression (CoA) very deeply, but all States who want to comment on the report are invited to do so.

Secondly I would like to hear from you, your comments on how to move forward with the work of this Working Group. The ASP decided last year that the work of the SWGCA will be continued at the resumed session of the ASP in January 2007 and will have 3 days for further discussion.

The issue of the CoA is closely linked to the work of the Review Conference (RC). The work shall be carried further in accordance with article 5.2 of the Statute. The work of the SWGCA should conclude at least one year before the RC. We assumed 2009 for the year of the RC, so we would conclude 2008. If the RC were slightly later, how would that impact on our road map? Would there be changes with regard to the date of the RC timetable, then we will have to take our own timetable into consideration again. If our last meeting were early 2008 and the RC in 2010, that gap might be too big.

We can do this informally today. You can comment on both items. I open the floor.

Belgium: Thank you, Mr. Chairman. Could I please start by expressing our fullest confidence in your guidance and in your methods of work. Belgium believes that the work that was done in Princeton was essential to this ASP. Furthermore, it is very important that we incorporate the findings of Princeton in the report of the SWGCA.

Secondly, I'd like to introduce a substantive issue, with your permission, in relation to the report, with regard to the question of whether it is desirable from a legal point of view and for the rules of independence of the Court, to introduce the matter of prior determination of an act of aggression by an organ other than the court. It has become clear in the Princeton report that the treatment of the question of the determination of the act of aggression in the 2002 Coordinator's Paper has been overtaken by events. The 2002 Coordinator's Paper does not incorporate the issues as we now understand them. We have to embark on a new version. Princeton has also shown that it is necessary for the Court to insert some kind of filter in order to safeguard the independence of the Court and the rights of the accused, and also to avoid

reported by The European Law Students' Association (ELSA) and Council of American Students in International Negotiations (CASIN)

Fifth Session of the Assembly of States Parties to
the Rome Statute of the International Criminal Court
SWGCA, 27 November 2006, 3pm-4.30pm

legal obstructions. This is in order to avoid the politicized use of the Court. For the reasons mentioned in Princeton, I'd like to propose that we continue our discussion based on a new draft which incorporates the new issues brought forward by the States there, including the recent findings of our work.

If I may take up a substantive issue. We have agreed on the need for the protection of the rights of the accused. This does not mean that some kind of 'filter' could not be had. I'd like to touch upon one concrete solution based on article 13 of the Statute, which hence can be explored. Belgium would like to invite the other States to think about a solution differentiating in accordance with the three channels to the Court: We have the referral by the Security Council, referral by a state, and the ex proprio motu trigger by the Prosecutor. We might ask ourselves if a filter will be necessary for all three channels in order to remove politically motivated referrals. In the case of the referral of a situation by the Security Council (SC), we have 15 members representing the world community, and the right of the veto. In this case, there would be no need for an extra filter. In the case of a referral by a State or proceedings initiated by the Prosecutor, a filter would ensure that purely political recourse to the Court would be blocked ab initio. In these cases, we are proposing an expanded Pre-Trial Chamber of nine Judges, half the judges of the Court, to make a preliminary decision, with the opportunity to appeal. With an appeal, fourteen of the judges would be involved before the Prosecutor could move ahead. The benefit would be that this filter would be purely judicial.

We want to pave the way for the members to take up this matter next January.

We have to keep moving forward in this tempo to continue our work on the CoA, whether the RC will take place in 2010 or not.

If the RC is taking place in 2010, then we have to revisit our timing. We need then additional days before 2010.

We believe that the revised version of the 2002 Coordinator's Paper for the January session can help us move forward with our work. Belgium supports you. Thank you Mr. Chairman.

Chair: Thank you very much, particularly on article 13.

Greece: Thank you Mr. Chairman. The report of the Princeton meeting provides a clear and concise reflection. Thanks to all the States who have contributed to the Princeton meeting, financially and substantially. Thanks also to Wolfgang Danspeckgruber. There is a widespread view that the meetings in Princeton are very successful. and that this year the meeting was very successful as well. Princeton benefited from wide participation, the replies to questionnaires circulated in between meetings, and by considerable preparatory work. There has been a gradual shift to more flexible positions. We can move forward.

I would like to comment on the question of the definition of a State act of aggression, which was assigned to me [as Coordinator]. Although in previous meetings a generic approach was favoured over a specific one, this time a combination of a generic and specific definition gained support. This would create only a minor issue. Essentially the generic definition and the specific list of GA resolution 3314 could be used, which leads to the next question: what should be the exact reference to GA resolution 3314?

Mainly there are two problems. How would an illustrative list of acts fit with the legality principle, and what about the references to the SC in the resolution?

Fifth Session of the Assembly of States Parties to
the Rome Statute of the International Criminal Court
SWGCA, 27 November 2006, 3pm-4.30pm

The main difficulty here is that article 4 of GA resolution 3314 opens up the list of article 3 which combines badly with the legality principle. If we should use a list in the definition, then it would have to be the list of article 3. Yet the example of article 7.1(k) of the Statute, which refers to other inhumane acts, does not work here for reasons which are given in the report. Therefore, the list of article 3 has to be exhaustive. Later, we could add other acts to the list, just as in article 8 of the Statute, where other weapons can be added to the list. I suggest this idea for further consideration. In this way all the acts are under the chapeau and we don't need further discussion on that.

If we use this combined approach, then the choice between "use of force" and "use of armed force" is not so important.

We need the term "act of aggression" in the chapeau.

Some States also preferred to see the term 'manifest or flagrant violation of the Charter of the UN' included in the definition; "manifest" was preferred over "flagrant" An extra threshold would exclude borderline cases. Others didn't see the benefit of a qualifier.

The debate was clear that the definition should not be limited to war of aggression or be linked to object or result. This can, in my view, be deleted from the Coordinator's Paper.

As for the concept of attempt of aggression, it should not be retained for reasons of simplicity and also because the timeframe of the act is anyway sufficiently broad.

The new Belgium proposal merits further attention.

I think that the time is now ripe for a new Coordinator's Paper which will encapsulate the work of the inter-sessional meetings.

If the Review Conference will be in 2010, then the SWGCA should be prolonged into 2009. I thank you very much.

Chair: Thank you very much for all the work you have done on this topic.

Sweden: Thank you Mr. Chair and I agree with my colleague from Greece that the discussions in Princeton were the most fruitful ones so far.

Since I was the author of the discussion paper on the exercise of jurisdiction by the Court, - that is basket 3 -, I'd like to point out that I would like to make some comments in my capacity as national expert rather than as Coordinator on that issue.

In the case of a prior determination of an act of aggression by the SC, it cannot be binding for the Court in a pre-judicial way. This would be contrary to the relevant provisions of the Rome Statute, the rights of the accused and other relevant human rights law. It must be possible for the accused to rebut all elements of the crime of aggression, including the State act. Any prior determination should only be a pre-condition for the jurisdiction of the Court; i.e. this is a procedural rather than a substantive matter. It must be possible that the determination can be reviewed.

The determination of an act of aggression is not the sole prerogative of the SC.

The authority of the SC is not exclusive.

I do think however that there are political reasons which may speak for a determination by the SC. The SC should have the first shot, so to speak, to review the matter, legally required or

reported by The European Law Students' Association (ELSA) and Council of American Students in International Negotiations (CASIN)

Fifth Session of the Assembly of States Parties to
the Rome Statute of the International Criminal Court
SWGCA, 27 November 2006, 3pm-4.30pm

not. If the Court gets a go ahead or a green light by the SC to proceed, the Court would benefit from the support of the SC as a political body, without prejudice to the legal outcome of the case.

There is the question of requiring a prior determination of the act of aggression or a procedural go-ahead. A determination would provide legal back-up for the ICC; a go-ahead would provide political back-up.

I think this issue, which was first discussed in Princeton, is fruitful and we should keep all options on the table for the time being.

I think that the idea of my Belgium colleague is very interesting and deserves further examination.

We are in a new phase of the discussion. We are getting more serious. It is high time to move forward and to involve all international criminal law expertise.

A new draft of the Coordinator's Discussion Paper would be very useful.

I also think that we should conclude our work not much more than one year prior to the RC. Thank you.

Chair: Many thanks for your sharp analyses and contributions. Kuwait has the floor, please press the button.

Kuwait: Thank you Chairman. All of us are aware of the serious nature of the CoA, and of the impact it has on the international community. An international crime usually starts with an act of aggression. Often when such an act has occurred we find that other crimes have been committed as well, such as genocide. Therefore we have a responsibility not to let the perpetrators go unpunished. The document which has been issued to us is highly satisfactory and we are privileged to have it. On behalf of Kuwait I have to make one or two comments on it.

When we think of a definition of aggression, we need a precise definition. In this stage we have to look at the articles of the Statute, which are relevant and where our effort should be aimed at. Following the example of Austria, we need to consider the impact which the perpetration of the CoA has. The objectives given by countries for an act of aggression often go beyond aggressive war. Of course, we have to bear in mind the various resolutions in Arab countries which hold that occupation of land is an act of aggression. But it appears to us that we should better not talk of objectives in the definition since it would narrow the definition.

There is also the issue of intent; aggression after all is a deliberate act.

Resolution 3314 of the GA refers to the use of force with respect to the CoA and that is also something we have to think about. The use of force by a State confirms the act of aggression. In the definition, intent is important.

And what about threat, - committing the crime of aggression is already much broader than the use of force. A GA resolution will still have to be adopted on these matters; however this does not mean that the Court loses its prerogative to determine an act of aggression. [*These sentences were particularly unclear in the translation.*]

Art.19 [13?] of the Statute reflects the role of the SC quite clearly. It sets out the conditions for the ability of the Court to determine whether an act of aggression has occurred or not. My delegation is of the opinion that the Court does not need a prior determination taken by any

reported by The European Law Students' Association (ELSA) and Council of American Students in International Negotiations (CASIN)

Fifth Session of the Assembly of States Parties to
the Rome Statute of the International Criminal Court
SWGCA, 27 November 2006, 3pm-4.30pm

other body including the SC. We also need to emphasize the independence and impartiality of the Court. We think that the Court is not bound by a resolution of the SC. The SC is a more political body, whereas the court is a legal body. Because these two bodies work from a different angle, the Court can make its own decision and determine if there is an act of aggression or not. From a legal point of view, the Court is more objective. Furthermore there are some SC resolutions which have not been implemented by the countries to which they were directed. And therefore pre-eminence should be given to the Court for the reasons I've given, thank you.

Chair: I thank you very much.

Canada: Thank you Chairman, for all the hard work you have put in. We also think that the meetings in Princeton were very fruitful.

I would like to take the floor in support of Belgium's call for a new Coordinator's Paper. And I'd like to add as our colleague from Sweden has indicated that it would be helpful to have a revised paper which captures the richness of the debate in Princeton. June 2006 was one of the more significant meetings. Of course there are many discussions which are still ongoing but nevertheless I think that a new version of the Coordinator's Paper will help us to move in the right direction. It will help delegates to get up to speed and enter the next phase of the debate, Thank you.

Chair: I thank you very much.

DRC: I thank you. Our impression is that Princeton was an excellent opportunity to make progress, and much progress has been made on this topic. It is high time to move forward. We want a new text on which we can work. A little bit of political will help us to finalize our work for the RC.

I would like to mention one or two points.

With regard to the definition of the act, we have been moving towards the combination of a generic and specific definition; this proves already progress in and of itself. We think that a generic definition alone will not be sufficient, to a certain extent due to the relation with the possible problems of the legality principle. We think that a generic definition should be accompanied by a list, as in GA resolution 3314.

When we looked at the question, whether to speak of an act of aggression or of armed struggle, we have other issues which arise. We look to an act by a state. - "Use of force" etc., these are descriptive elements. These are ways to commit aggression. It is difficult to think of an act of aggression without the use of force or an armed attack.

We think it is not very important to include the words "flagrant or manifest" in the definition because when an act of aggression occurs the facts will speak for themselves. Our objection is that these qualifiers are too subjective. We should be looking more at the act as such. We should not go into these details.

On the Review Conference: This is an important crime and a serious question in terms of international relations. World War II and World War I show the consequences of aggression. In Princeton we had also the active participation of non-parties. I think that before we send the draft paper to the RC, we should send it to governments for them get a chance to comment on it and contribute. To non-parties, to all governments. Not all are represented here. Thank you.

reported by The European Law Students' Association (ELSA) and Council of American Students in International Negotiations (CASIN)

Fifth Session of the Assembly of States Parties to
the Rome Statute of the International Criminal Court
SWGCA, 27 November 2006, 3pm-4.30pm

Chair: Thank you very much for this contribution.

Portugal: Thank you chairman. We think that this is not the time and place to go into substantive matters too deeply. I think we are turning a corner with our work at this moment. In New York we will have more substantive discussions. It really is time to move forward and that is why we also think that we could use a new draft paper as basis for our discussions.

We also support your idea that the conclusion of our work is linked to the RC. Therefore, if the RC will be later, the SWGCA also needs to be given more time. Thank you Chairman.

Chair: I thank you very much.

New Zealand: Thank you very much. I just want to support the previous speakers, in particular in light of the need for a new discussion paper. Princeton was important because so many more countries attended and participated in that meeting, including developing countries. We are moving into a new phase. As more newcomers will join the discussion, the basic document should reflect the actual state of the discussions. Thank you.

Chair: Thank you very much and I have the Netherlands. You have the floor.

The Netherlands: Thank you very much. It is good to see you again guiding our work Mr. Chairman. First of all, we would like to thank the Liechtenstein-Institute on Self-Determination and Director Wolfgang Danspeckgruber and his team for hosting and organizing the third informal inter-sessional meeting of the Special Working Group. These Princeton inter-sessionals have been most useful to deepen our understanding of issues to be solved. The Special Working Group could not have wished to have a better context for its consultations and we look forward to another meeting next June in Princeton. We have to demonstrate, however, that we can take the remaining difficult hurdles on the road towards an agreement on the CoA.

Secondly, as we will intensify our work starting with a three day meeting in New York next January, it is necessary to emphasize that as many states as possible should participate in our negotiations, States Parties to the Rome Statute as well as non-States Parties. We must keep in mind that there was considerable discussion in 2002 as to where our negotiations should take place, within the context of the 6th Committee of the General Assembly or within a working group of the Assembly of States Parties. It was agreed that our work should take place under the umbrella of the Assembly of States Parties but at the same time that it has to be possible for non-States Parties to participate as full members not as observers. The Assembly of States Parties decided in 2002 that a Special Working Group is, and I quote, “open on an equal footing to all states members of the UN or members of the specialized agencies or of the Atomic Energy Agency”. I know of no other case in which a subsidiary body of the plenary organ of an international organization has more full members than the plenary organ itself. This illustrates the importance attached to the participation also of non-Parties. Let us therefore hope that now, as we enter the next step of our negotiations, even more States will participate than before, including non-States Parties.

Fifth Session of the Assembly of States Parties to
the Rome Statute of the International Criminal Court
SWGCA, 27 November 2006, 3pm-4.30pm

Let me now just briefly mention some of the important results of our last Princeton meeting. First of all, as regards the definition of the state act of aggression, and all of you know the main results of Princeton 2006 were the following: first, there is of course the discussion, and that discussion has almost become an evergreen, whether the definition should be generic or specific. There seemed to be a lot of support for a generic definition combined with a list of specific acts, exhaustive or not.

Secondly, for the first time since its establishment, the Special Working Group looked into the question of how the provision of aggression should refer to the 1974 General Assembly definition. There was a lot of support for good reasons in our view for including a general reference to this definition. However, an important problem with this solution is that it is too open-ended in the context of individual criminal responsibility. The SC may always determine that the particular act is not qualified as one of the specific acts of aggression listed in art. 3 of the definition, but, nevertheless, has to be qualified as an act of aggression. In such a case how can the accused adequately defend himself? How can the Court scrutinize this determination? There is no standard against which the SC determination can be measured and we heard with great interest the statement by Greece with a further suggestion on how we could solve this problem and we look forward to further discussing this in January.

A third main result in this regard during the last Princeton meeting was that there was a prevailing view against including attempts of aggression by a state in the 2002 discussion paper, since this paper already covered most as certain types of acts which could be qualified as aggression; and also it seemed that there was little support for including a threat of aggression in the definition.

Secondly, as regards the topic on conditions for the exercise of jurisdiction, and this issue is probably the most difficult one in our discussions. Princeton 2006 did not bring much progress on this issue. The key problem is captured well in paragraph 52 of the Princeton report and I quote: "Opinions divert as to whether the exercise of jurisdiction over the Crime of Aggression should be conditioned on a prior determination of the act of aggression by the SC or another body outside the Court". It is difficult to see how the Special Working Group could arrive at an agreement on this key problem. Against this background, it is useful that in Princeton a number of specific questions relating to this key problem were discussed.

In our view, at the present stage of negotiations, the Special Working Group should attempt to further improve the relevant parts of the 2002 discussion paper and we support a proposal that has been made by other delegations that an updated version of this paper would be prepared for our January meeting and this update would also need to reflect the results of our Princeton discussions.

As is well known, the two extreme options are: first, that the Court may only exercise jurisdiction over the CoA after the SC has determined that the state concerned has committed an act of aggression, and second, no prior determination is required by any other body as the Court may itself determine whether or not the state concerned has committed an act of aggression. The challenge of our work in the Special Working Group is to identify the best possible compromise options between these two extremes.

Thank you, Mr. Chairman.

Fifth Session of the Assembly of States Parties to
the Rome Statute of the International Criminal Court
SWGCA, 27 November 2006, 3pm-4.30pm

Chair: I thank you very much for your comment. I next have Australia.

Australia: Thank you very much Mr. Chairman. I have three quick comments. Firstly, I would like to state, as other delegations did, that we agree this year's Princeton meeting was particularly useful and we are very pleased to hear that another inter-sessional meeting is on the card for next year. And secondly, we would also agree that a new coordinator's text would be particularly useful. And thirdly, I think that our discussions in Princeton and here as well have really benefited from a great deal of informality and in that way we might offer an initial reaction to the proposal which Belgium has put on the table this afternoon.

If I understood it correctly, Belgium is proposing an expanded Pre-Trial Chamber to consider whether a case is politically motivated or not and acting as trigger mechanism when it comes to prosecution for the crime of aggression and I do wonder if asking the Court to play that trigger mechanism perhaps would bring in political elements, if a potential case is involving the Court in a sort of politics which we are trying to shield the Court from. Because there are such political questions involved in that gate-keeping role, it is why Australia has favored in earlier discussions the very strong role for the Security Council in undertaking that sort of exercise, giving that the SC is of course a political body itself. So after that, it is very much an initial gut reaction to Belgium's proposal; we have to be mindful that all of these issues bear a great deal more thoughts. Thank you.

Chair: Many thanks. Spain.

Spain (translated from Spanish): Thank you chairman. First of all I thank your government for continuing to organize inter-sessional meetings. My delegation too feels that the debate on the CoA is at a crossroads and if there is not a complete change of the working methods then at least certain modifications will take place which will supplement the informal talks we have had until now. For that reason we need clarity and transparency, such as which the work on the CoA has not had until now.

It is necessary for us to clarify for the January session the basis for the discussions. The new document of the coordinator will take on board all of the advances we made until now. The 2002 paper from which we are working now needs some updating.

As regards the time planning, we think it would be preferable for the time being to continue with the work program which was laid down with the understanding that the RC will be held in 2009 and should it be necessary to have additional sessions which would allow us to go into greater detail on measures where we do not have already reached the level of agreement. But in any event, we need to have a clear cut idea when the conference is going to take place or at least in what year.

In response to the Belgium proposal: for my delegation, it is still too soon to be able to take a detailed stand on it, but in any event, we received it with interest and will respond to it at an appropriate time. Thank you.

Chair: Thank you. Austria has the floor.

Austria: Thank you Mr. Chairman and we are very happy to see you in this chair. We are looking forward for the discussions in New York and your assistance there. Finally thanks

Fifth Session of the Assembly of States Parties to
the Rome Statute of the International Criminal Court
SWGCA, 27 November 2006, 3pm-4.30pm

also to the Liechtenstein Institute on Self-Determination of Princeton University and Wolfgang Danspeckgruber. It was a fabulous meeting once again and thank you for your initiative which proved to be so important to advance the issues we are discussing. The report has been very good, I think, and you can see a clear progression over the last times that the meeting has taken place in Princeton.

We still have various opinions, particularly about the role of an outside body which is generally considered to be the SC in the determination of the existence an act of aggression and whether the SC has an influence on the exercise of jurisdiction of the ICC apart of course from art. 16. We consistently said that we have some concerns in this respect and perhaps I can just very briefly enumerate two central concerns that we have. We feel if the determination by an outside body were to be an essential and constitutive prerequisite for an act of aggression, we would have problems with regard to the whole question of the mental element: how can you have the intent to commit a crime when the question of whether this is a crime depends on a later decision by a body which you cannot know. You cannot know which direction the decision will go. Also generally, the whole planning and preparation of such a crime becomes questionable. With regards to the question of attempt and threat, we have decided that those will not be relevant because we have the planning and preparation in there anyway. But a constitutive requirement of a determination creates difficulties in the whole mental approach to the crime.

Then also for the exercise of jurisdiction, we see a general problem: Defendants of different nationalities may end up benefiting or not benefiting from rights that their respective states have in the organ that makes a determination of whether the act is an act of aggression and whether the ICC should proceed with exercising jurisdiction.

The Assembly of States Parties is deciding on the role of an organ of another organization. Perhaps the SC does not want to take the role that we are trying to assign it to. If we believe that another organization's input is relevant for cases before the ICC, we should require the Prosecutor to request the UN as a whole to provide assistance and to give its opinion. The Court could direct such a request to the Secretary General, who in turn has to decide which organ in its own system is the relevant one. There could be more than one relevant organ that could give an opinion to which due respect would be paid in the proceedings before the ICC.

Based on these general concerns we have listened with great interest to the Belgium proposal. It is very interesting and it is a new concept very focused on the Court. I like the way we look separately at the three ways in which jurisdiction is triggered. It may also mean that we might be able to advance with different speeds on the three ways to ensure jurisdiction. Perhaps we can agree earlier and sooner on one trigger than another, i.e. where the role of a filter might not have the same relevance, so that we might have progress in one field.

I think what Belgium, Greece and Canada and others have said is very true and an update of the discussion paper would be very welcome and would help us. We need to base our discussions on something new. I would ask you to be brave and focus on those options and proposals that in your opinion can be supported by a large majority. We all have confidence in you and you followed it very closely. We can always go back and consider other options. So I would encourage you to be brave and progressive and we wish you best of luck.

Chair: Thank you very much for this. I have Brazil next. Brazil, you have the floor.

reported by The European Law Students' Association (ELSA) and Council of American Students in International Negotiations (CASIN)

Fifth Session of the Assembly of States Parties to
the Rome Statute of the International Criminal Court
SWGCA, 27 November 2006, 3pm-4.30pm

Brazil: Thank you Mr. Chairman. First at all, like other delegations, I would like to congratulate you on your important work on the definition of the CoA as well as the report presented to us regarding the inter-sessional meeting held in Princeton. Considering the time, my delegation does not want to go into details on the CoA. Our positions will be better presented in the next inter-sessional meeting in January 2007, but I would like to highlight the challenge it is to get a definition of the CoA and the efforts it will require from all delegations to find an acceptable solution for all.

My delegation is of the view that the final text should observe as much as possible provisions contained in the resolution 3314. That resolution was the result of a great deal of meetings, debates and we thought a compromise of all delegations that took part in the discussions.

With regard to the timing my delegation would prefer to keep the timetable already established so that we can be sure that there will be enough time for internal analysis and debate in capitals before the Review Conference.

Finally, Brazil believes that the definition of the CoA should be the main topic in the RC. We favor a position focusing the Conference only on fundamental issues such as the CoA. Thank you Mr. Chairman.

Chair: Many thanks for your comment and I give the floor to the United Kingdom.

UK: Mr. Chairman, thank you. And, Mr. Chairman, like other speakers I would like to thank you and the members of your delegation for the hard work that I know you put in on this subject over the last year. I would particular like to thank you as well as the staff of the Woodrow Wilson Centre, in particular Wolfgang Danspeckgruber, for the very successful organization of the meeting in Princeton earlier this year. Mr. Chairman, I think the Princeton meeting led to some very interesting discussions on the substantive questions which are before us, but I think I would particularly note the very good and positive atmosphere that was present throughout the time at Princeton.

Mr. Chairman, you mentioned the date of the RC. I personally was also slightly surprised to hear earlier this week that the Conference may not take place until 2010. Certainly I have been working on the assumption that it would take place in 2009 and clearly if it does take place in that year we can continue to keep to the timetable that we have reached agreement upon. But I agree with other speakers that if in fact the Conference does not take place until the following year in 2010, then we will clearly need to revisit the timetable with which we have been working in accordance so far.

The question is how we now will take forward the discussions on this subject.

We agree very much with the proposal by our Belgian colleague supported by many others that we need to look again at the Coordinator's Paper. I think that our discussions particularly at Princeton over the last years have demonstrated that we need to do that. I hope that an updated paper will indicate the areas where the various positions have become closer. And from my point of view it would not be wise to be too ambitious, for example, I think it would be perhaps too soon to delete references to the term 'war of aggression' which appears in the current Coordinator's Paper. We look forward very much to receiving the updated paper and I think it would be very helpful for all of us if that paper could be available in good time before

Fifth Session of the Assembly of States Parties to
the Rome Statute of the International Criminal Court
SWGCA, 27 November 2006, 3pm-4.30pm

the resumed session at the end of January, so that our discussions can then be as fruitful as possible. Thank you.

Chair: I thank you very much for your comments. I give the floor to the delegate of Mexico.

Mexico (translated from Spanish): Thank you chairman. Like other delegations, I would like to endorse the congratulations to you for the job you have done on this issue and to the government of Liechtenstein for its support and the steps taken. Chairman, the debate and exchange of opinion on previous sessions have shown that a way has been made on some of the concepts and we have heard a far reaching debate on some of the terms and issues which are part of the terms of reference of this Special Working Group.

For this reason my delegations feels it is time for a new paper to be drafted reflecting the current status of the debate, not just for new delegations joining to whom this discussion is important, but in fact for all those delegations who have been participating from the start. The debate has been moving forward and I think the paper needs to be updated so that we do not repeat the same arguments, which have been overtaken by events. But as I have said, only on those parts which are possible.

My delegation has been said on different occasions that it has special concerns about the role to be played by the SC in respect to the CoA: Because of the nature of the SC itself but also because a decision by the SC does not necessarily respect the principle of legality. We observed this in some of the meetings of the Working Group; we also heard the same in the General Assembly. To consider this aspect, it is a concern which must be addressed so that we do not threaten the impartiality of a juridical body such as the ICC.

On the future and how we coordinate the work of the Group with the deliberations of the RC, we think it is only natural for this to be one of the most important issues at the RC. For that reason we would like to schedule well in advance the meetings at least until 2009 at this stage for that purpose. So it cannot be taken in isolation from the RC itself. That is certainly one of the most important issues for the 2009 or 2010 RC. Thank you.

Chair: Again thank you very much for contributing to the discussion this afternoon. You certainly have expressed a strong support from the room to me that I should produce a revised version of the Coordinator's Paper and I am certainly happy to try to do so in a manner that satisfies both Austria and the United Kingdom. I will give all of you the opportunity again to talk to this topic tomorrow.

I have of course very carefully taken note also of the comments you have made on the issue of timing of the RC and the possible effects that this might have on the Special Working Group.

So I encourage you in particular to perhaps re-read the Coordinators Paper, and that is annexed both to the report of this year's inter-sessional meeting on page 20 as well as to previous reports. I am of course very happy to try my hand on the revision. I am also very interested to get your comments and input which will help me with the decisions in how to revise that paper: So you can have perhaps a view on that paper and also additional comments tomorrow. That would be very efficient for me. So thank you again for coming and participating this afternoon. The meeting is adjourned.