

Informal and Unofficial Notes from the ASP
SWGCA, 29 November 2006 (Afternoon Session)

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Chair: Good afternoon, colleagues. I call to order the third meeting of the Special Working Group of the Crime of Aggression. We are meeting this afternoon for the sole purpose of considering the Draft Report that you have in front of you, which is document ICC/ASP/5/SWGCA/CRP.1, of course, in order to adopt this Draft Report.

As in the past, this Report is a very straightforward and concise report of the discussion that we held during our first two meetings. And you will recall that I urged delegations to take the floor in particular on two topics, mainly the Princeton report and the timetable toward the Review Conference. Several delegations made comments of substance that are reflected in the report in a manner that is as balanced as possible. Obviously, quite a few delegations refrained from taking the floor. I hope that you have found that your views are fairly and accurately reflected in the Report.

Now, I have a couple of changes to make to the Report before I open the floor. The first is in paragraph 4 of the Draft Report. Paragraph 4 in the sixth line, you should replace the word “among” with the word “between.” That is simply a linguistic issue. In para.11, I suggest, for the sake of clarity, that we delete the second sentence. As you remember, I told you at the end of the first meeting to review the Coordinator’s Paper of 2002 in order to have comments ready possibly at the second meeting of the SWGCA and also outside the room in talks that I have had with people. Now this sentence has been misunderstood. It has been understood by some to mean that I am asking you to send me position papers and comments and what have you in order for me to be able to produce a revised version. This was not the intention of the sentence. And since the issue of the consultations I have been having is already reflected in the first sentence of para.11, the most straightforward way to solve this is to simply delete the second sentence in para.11.

One final change in para.12: Delegates have approached me and expressed the view that the sentiment in the room was that the Review Conference should take place in 2009, that this should be reflected in the Report in a slightly stronger manner, which is a point I am happy to accommodate. And the way to do this would be the following: Delete the first sentence in para.12 and before the second sentence you add the following words: “Given that the Rome Statute provides for the Review Conference to be convened in 2009, ”, then you add the word “continued” so that it goes on with “continued support was expressed ...”, i.e. the rest of the language will not be changed. So these are the revisions that I am proposing to be made to the Draft Report. And I thus open the floor for your comments. Does anyone wish to take the floor on the Draft Report? France.

France: Thank you Chairman. Please excuse my delay. I may not have heard all the different observations and comments that you made in the proposals for amendments that you suggested. I just have a question. In paragraph 4 of the Draft, there is a mention of the fact that the WG would conclude 12 months before the convening of the conference. And I understood that it would conclude 12 months before the conference itself. But perhaps I haven't understood this part.

Chair: Could you just repeat your last question?

France: I just said that paragraph 4 of the Draft Report mentions the fact that the WG should finish its work at least 12 months before the convening of the Review Conference. And unless it was a mistake on my part, it was concluded that it was 12 months before the Conference and not of the *convening* of the Conference. Because there would be the convening of the conference around July 2009, but it could perhaps then be actually *held* either in 2009 or perhaps only in 2010. But this is just a question on my part.

Chair: Thank you very much. Well, it depends a bit on your interpretation of the word *convening*. I think in my opinion, convening is the date on which the Conference actually takes place. So that would be the same thing at the end of the day, ok?

France: My question came from the fact that the report of the Focal Point on the preparation for the Review Conference indicated that we could have a convening in 2009 but a Conference might be held in 2010. That was my question.

Chair: I think it ends up being the same thing at the end. But if you want, we can have a look at the language that we adopted the last time in the Resolution. We just repeated the language that we had the last time. Because we make a reference to the previous Resolution. So with your agreement, we will just reproduce what we wrote last time. Ok, thank you. Germany?

Germany: Thank you Mr. Chairman. First of all, thanks very much for having produced this report, which in your usual brief and precise way keeps us very well aware of what has happened. Especially now that you have also added amendments. I think that this is really an excellent reflection of our debate.

We have only two minor suggestions.

On paragraph 8, where the second half of the paragraph says that different views were expressed on the need to qualify the act of aggression as „flagrant“ or „manifest“: I think that „flagrant“ did find little support, whereas „manifest“ found more support. I wonder... Here they appear as equal. I think a differentiation could be made. And I wonder if this is something you may wish to reconsider.

On paragraph 9, in the third line, the report says there very little progress has been made. I think on that point you are a bit too modest. In our view, progress has been made in the sense that we have indeed exchanged views and the provisions have become a lot clearer. So I wonder whether this could be also slightly redrafted to sound a bit more positive.

For example, in the second sentence something like: “Delegations reiterated their position in this regard, but there was not yet a convergence of views”, or something of that kind. Our delegation is of the view that some progress has been made. That’s all from our side. Thank you very much.

Chair: Thank you. As far as your last point, maybe we can just write, “Some delegations reiterated their positions in this regard without there being an agreement on the issue.” Would that be agreeable? “Without there being an agreement on the issue.” Thank you. Thank you very much. South Africa?

South Africa: Thank you Chairman. I can’t quite follow the extent of the presentation of France. But if the text as amended in para. 12 stays as it is and you look at the text in paragraph 4 towards the end, second to last sentence, I think then we got somewhat of a conflict. Here we talk about the fact that the Review Conference may be held in 2010 and then in paragraph 12 we say given that the Review Conference will convene in 2009. So I think that we’ve got a slight conflict in our document; a factual conflict that we maybe should take a look at.

Chair: Thank you. I think it relates to the same issue. It stems from the language in the paper of the Focal Point on the Review Conference. He expressed the view that the word convene could mean invite and that the actual holding of the meeting itself might take place later on. This was not an understanding that was shared by everybody. Given that this discussion was not conclusive, this is how it was reflected. Then I don’t believe that there is conflict in this paper. In this group, people said, I think almost in general agreement, that they thought the Review Conference should be held in 2009, but the fact is that there are views out there especially in the consideration of the Focal Point, That is the reason why we mention 2010. Norway?

Norway: Thank you Mr. Chairman. You just raised a point I wish to make. As you already pointed out, of course, there is the paper provided by the Focal Point. It is mentioned that the word „convene“ could mean that the conference could be held within a reasonable timeline in 2009 and in 2010. The obvious solution would be the fixing of the venue and date. The RC is something that will be discussed under the auspices of the Bureau of the ASP. The SWGCA has to interface into the plan which is to be established by the WG of this Bureau. So we thank you very much Mr. Chairman.

Chair: Thank you very much for that. It is my understanding that para. 12 is agreeable and para. 4 is also agreeable, that we use the language that was referred to in the last Resolution from the ASP. Sweden.

Sweden: Thank you. We think that this is a very good report. We do not have comments.

We would like to ask a question on the paragraph regarding the issue of the convening of the conference. Para.4 might be important in the future. We would like to look for maximum clarity in the language here. Not sure how we should maintain line 4. One solution would be to just delete the words “the convening of” to provide for maximum

clarity. With regards to the time period in last year's ASP resolution, we were not clear about possible different interpretations of the word "convene." That's just a suggestion. But I am not insisting.

Secondly, I think that the German delegation had a point regarding paragraph 9: I think that there has been some progress, although perhaps not definite progress. We are closer to consensus. Discussions have definitely shown that there are various options on the table. So, I am not sure what the outcome with regard to the comment of the German delegation was, whether they want to keep the word „progress“ or whether there was something else to modify the text, perhaps „some progress“. Some progress has been made. That could be useful to indicate in the Report as well. Thank you.

Chair: We have already deleted the phrase that speaks of progress with a qualifier. So we just have the language that says, "Delegations reiterated their positions without there being an agreement on the issue." So, we don't talk about the progress.

I now have the language of last year from the Omnibus Resolution. That takes us back to paragraph 4 and should resolve that issue. The Omnibus Resolution actually says "at least 12 months prior to the Review Conference." So we delete in para. 4, line 4 "before the convening of" and write instead "prior to the Review Conference" which covers the point of the French Delegation.

Greece: Thank you Mr. Chairman. That was exactly my proposal to use the wording of the Omnibus Resolution.

Chair: Thank you very much. Any other requests for the floor?

United Kingdom: Mr. Chairman, this may be extremely minor. The final two words say June 2007. I had actually understood it to be July. So I just had a query whether that reference was right.

Chair: I did say June. I mentioned dates, but they may not be the final dates. But I did say June. But thanks a lot. Anybody else? May I then take it that you wish to adopt...? Germany.

Germany: Sorry Mr. Chairman for intervening again. What happened to paragraph 8 and our proposal to look at „flagrant“ and „manifest“? Our proposal would be simply to drop the word "flagrant." Because there were no views expressed in support of it. But indeed there were different views expressed concerning "manifest." So in our view "flagrant" could go, but of course this is only a suggestion.

Chair: So, we have the suggestion to delete the words "flagrant or" in the third to last line in para 8. Is that agreeable? Should I repeat? In paragraph 8, if you go to the third to last line. This is the issue that was raised by Germany in their first intervention. Regarding the need to qualify the act of aggression, the proposal is to delete the words "flagrant or." The argument being that the current text is not really supported by the

discussion that we had. Is that agreeable? Ok, so we make that additional revision. I then suggest to you that we adopt the Draft Report with several revisions that were made in this meeting orally. Thank you very much and that is so decided.

The last thing we need to do this afternoon is to take an oral decision that the Report of Intersessional Meeting contained in document ICC/ASP5/SWGCA/INF.1, that is the Report of the Princeton Intersessional Meeting be annexed to the proceedings of the Fifth Session of the Assembly, as was the case last year. I then take it that it is the wish of the SWGCA to make that recommendation to the Plenary in order for that report to be annexed to the proceedings of the Fifth Session of the Assembly. Thank you very much and that is also decided. Lichtenstein.

Liechtenstein: Thank you very much Mr. Chairman. Of course, this is not to object, and in the assumption that you are about to close the meeting, I would just like to draw the attention of our delegates again to the Virtual Working Group that we have established as an informal platform for exchange on the issue of aggression. Many delegates here in the room are already on this mailing list. I would invite everyone else who is not on the list to drop their business card here with the Liechtenstein Delegation. This might be useful in preparation for the meeting in January, again as we did in the past as an informal means of exchanging views and documents.

Chair: Thank you very much for that reminder. This indeed brings us to the close of this meeting.

Chair: I want to thank you all for participating in the work of the SWGCA and for all the very important and interesting conversations I had outside this room. I would like to thank you also for entrusting me with the difficult task of producing a revised version of the Coordinator's Paper. As I have indicated, I will have this paper out well in time before the resumed Session of the ASP that starts on January 29 in New York. So you have ample time to digest its contents and to think about it, so that we can have a very productive and informed Session in January. And with this, I would like to thank you again and the meeting is closed.

SWGCA, 29 November 2006, 3:00 pm-4:30 pm

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