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The Assembly of State Parties of the Rome Statute: Perspectives on the Years Ahead, 2009-2011

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When you are not a lawyer but you are surrounded by them most of the time, you learn the importance of a disclaimer. Let me then reiterate Mexico's unwavering support to the ICC, as well as my personal commitment to continue working closely with its different organs and other State party's representatives to move the Court agenda's forward. Therefore, for me to state ICC challenges or even problems today should only be understood as a pledge to address and face them successfully.

In order to stimulate the discussion, I would like to follow the path set out by the President of the ASP in his paper for this afternoon's discussion and elaborate on the relationship between the ASP and the States parties with the different organs of the ICC.

^{/*} The views expressed in this paper are entirely personal and do not indicate endorsement by the Assembly of States Parties or its Bureau

The ICC is breaking every single mould and setting new precedents almost in every field. This includes not only legal and political groundbreaking moves, where new paradigms for sovereignty and other principles are being consolidated, but also innovations from an organizational point of view. As a result of this, the ICC's structure is unique and unprecedentedly complex. I will concentrate my intervention on the latter and its repercussions from the practical point of view.

As a result of the complexity of its structure, the fact that the Court came into operation earlier than expected and had to dwell itself into situations of ongoing conflict almost from the very beginning – all this within an extremely complicated political environment - the ICC has faced crucial challenges and some difficulties in achieving organizational stability and implementing the all essential one-Court principle.

A key element in the conception of the ICC is the independence of its organs. The ICC forefathers clearly sought to isolate the Court from undue influence, particularly political pressure. The independence of both the Chambers and the Prosecutor is therefore fundamental and has become a cornerstone of the ICC's structure.

It is also clear that, when dealing with the independence of the organs, the drafters of the Rome Statute had essentially judicial decisions in mind and the delivery of justice. Their aim was to guarantee that the Prosecutor could perform its duties isolated from any outside, non-judicial influence, and that the Chambers could make their rulings based purely on the merits of the cases. So far, the judicial activity of the Court has proved to be of a high standard of independence and legality and its reputation as a judicial institution is gradually being consolidated.

But what about the running of the ICC as an organization? What about policy-making decisions? What about the administration of both the Court as a whole and that of its different organs? What is exactly the role of the States Parties on these issues? How far can and should the ASP go? Where exactly is the line that States Parties cannot cross? Is the independence of the organs meant to be strictly for judicial decisions?

After a few years of implementation, maybe the time has come to examine the relation between the ASP and the different, independent organs of the ICC, and explore the limitations and possible alternate avenues to improve the Court's efficiency and efficacy without tampering with its judicial independence.

Amb. Wenaweser has already identified one example of the complexities of the interaction between the ASP and the independent organs of the Court. Indeed, within the necessary management oversight referred to, I see the potential of subtle tensions between creating a culture of accountability and the respect to the independence and judicial nature of the Court. I would like to point out a couple of illustrations on these issues:

- **Budget and management.** Although there are those who believe that by setting the ICC's budget State Parties are interfering with the independence of the Court, there is general understanding that the approval of the budget is clearly within the purvey of the ASP. However, in some quarters there is the view that justice has no price and that the budget should simply be the result of "judicial needs" of the Court. In an ideal world that might be, but the reality is that treasury departments around the world do not work that way.

Moreover, the Court still has to go through its first stockholding exercise, its budget is not yet stabilized and, in practice, administrative oversight has proven to be very useful and necessary.

But the complexities of this issue go beyond the basic argumentation I just laid out. According to article 38 (3)(a) of the Rome Statute, the Presidency is responsible for the proper administration of the Court, with the exemption of the Office of the Prosecutor. However, in practice it is in the Registry where we find the necessary administrative structure and expertise for a proper administration of the Court. At the same time, as Amb. Wenaweser just noted, the ASP shall “provide management oversight to the Presidency, the Prosecutor and the Registrar regarding the administration of the Court”. In short, not an easy conundrum to resolve.

- **Family visits**. For years, the ASP sustained the position that any funding of family visits should be preceded by a policy decision by States parties. Discussions on the issue were nevertheless taken over by a surprising decision by the Presidency last March 10th, placing positive obligations upon the Registrar to provide financial assistance for family visits on a specific case. Concerns were immediately expressed by several delegations as to the nature and implications of this decision vis-à-vis its ensuing financial implications, the possibility of setting a precedent and the consequences thereof, in addition to questions of a legal nature on the use of the Regulations of the Registry and on the robustness of the decision. Preliminary discussions have shown that the implementation of the decision is far from being clear cut. On the one hand, there are those who strongly believe that the decision is purely administrative and that, given its

background and potential implications, the Court should review it. On the other, it is generally interpreted that the obligation has been placed solely on the Registry, but that such organ cannot implement it on its own, without the intervention of the ASP, since it has budgetary implications. Again, constructive dialogue between the ASP and the Court will have to continue in order to find an appropriately balanced solution.

Now, this panel is about perspectives and I have concentrated my intervention on diagnosis. So, for the purpose of launching the discussion let me briefly share with you a couple of thoughts, one on the future work of the ASP itself, the other on the challenges ahead, including some initial hints as to the role that the ASP might play in addressing some of them:

Due to the fluid environment in which it has operated, the ASP has tended to react to the different issues as they have emerged. Nevertheless, the growing stability of the Court as institution may now allow for the ASP, through constructive dialogue with the different organs, to take a more proactive approach on certain matters before tensions arise and set policies on issues such as victims' compensation, arrest of suspects, transfer of detainees, among others.

All of which brings me, hopefully in full circle, to the other thought, as I finish my intervention listing what I believe are the main challenges that the ICC will face in years to come. For the purpose of clarity, I will distinguish the purely judicial challenges, where the role of the ASP will be to better assess the needs of the Court in order to help the ICC to consolidate itself as a strong institution, from those in which the ASP may play an active and crucial role.

The first group of challenges, related to the judicial work of the Court, will be essential to define the future priorities of the ASP:

- A successful, efficient, transparent, fair conclusion of the first judicial cycle.
- The launching of other trials.

The second group of challenges, where the ASP should play a proactive role, would be:

- The Court's image beyond the elites and the specialists. In my opinion, **the ASP should get more involved in promoting much more ambitious initiatives for reaching out to the public at large.**
- A successful Review Conference. **The ASP will play a crucial role for attaining concrete results and assessing the implementation of the Rome Statute from a holistic point of view.**
- The execution of all pending warrants of arrest. **State parties' cooperation - or non-cooperation- will become a critical issue for the ASP in years to come.**
- Universality, particularly the incorporation of the Permanent Members of the UN Security Council that remain outside of the regime created by the Rome Statute. **State parties should incorporate the ICC as an integral part of their respective bilateral agendas with non-State parties.**