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Proposal submitted by Colombia

Comments on the discussion paper proposed by the Coordinator (PCNICC/1999/WGRPE/RT.5)

Chapter III. "Offences against the administration of justice"

1. With respect to rule 6.26, "Jurisdiction":

1.1. The rule contained in the discussion paper and further developed in the proposals submitted by the delegations of the Netherlands (PCNICC/1999/WGRPE/DP.27) and Poland (PCNICC/1999/WGRPE/DP.29):

1.2. Concerning these documents we should like to state:

- Apparently there exists a phenomenon known in internal law as "conflict of jurisdictions";
- However, what presents itself here is a conflict between the power-duty of the State and the competence (jurisdiction) of the International Criminal Court. This is a conflict of interest with regard to the protection of the sovereignty of States and the statutes of application of the law in a spatial sense in each internal legal system;
- A distinction should be made between the territorial State and the custodial State;
- The dominant jurisdiction should be clearly established where there is a dual possibility for the exercise of penal authority, confirming among other principles that of the complementarity of the International Criminal Court;
- Definitions such as those contained in document PCNICC/1999/WGRPE/DP.31, submitted by the delegations of the Netherlands and Poland, are of implicit interest, in view of the provisions of article 70, paragraph 4 (b).

2. With respect to rule 6.29, "Statute of limitations":

2.1. With regard to offences against the administration of justice, there is apparently a possibility of a "statute of limitations"; this is sufficient reason to consider the importance of specifying a length of time for this purpose during the debates on the adoption of the Rules of Procedure and Evidence.[1] The delegation of Colombia cannot affirm with certainty that there is a mandate for such a normative implementation, either in terms of a statute of limitations or in terms of the decision to regulate such a possibility.

2.2. However, we must make clear our concern with respect to the establishment of a "statute of limitations" on offences against the administration of justice, in view of the existence of crimes within the jurisdiction of the International Criminal Court, which are imprescriptible. For example:

- Using fraudulent means, presenting false documents, corruptly influencing a witness or expert, and so on, are reproachable behaviours, considered as such. The use of such mechanisms within the International Criminal Court is the most highly reproachable conduct, not only because of the behaviours — the crimes — being judged by the Court, but also because of the quality and quantity of the penalties;
- This is especially true in view of the possibility of revision (art. 84 of the Rome Statute), although it is a mechanism to re-establish the presumption of innocence. It should be recalled that one of the conditions is present (art. 84 (b)) when "*It has been newly discovered that decisive evidence, taken into account at trial and upon which the conviction depends, was false, forged or falsified*". The statute of limitation, then, would prevent the possibility of revision, for obvious reasons;
- The above argument is applicable to the case of a statute of limitations with regard to a criminal action. However, we see no difficulty whatsoever in the case of a statute of limitations on the penalty, where the perpetrator's responsibility has been proved.

2.3. In brief, in accordance with the above, the statute of limitations is a matter of concern where there is a possibility of revision.

3. With respect to rule 6.32, "Penalties":

3.1. The proposal in question regulates only penalties in the form of fines that may be imposed on those responsible for offences "against the administration of justice".

3.2. However, this could be ambivalent and contradictory with respect to the Statute, since article 70, paragraph 3, provides that "*the Court may impose a term of imprisonment not exceeding five years, or a fine in accordance with the Rules of Procedure and Evidence, or both*", which indicates that the penalties that may be imposed are of two kinds and two qualitative categories, namely, imprisonment or fine, or both, at the discretion of the Court.

3.3. In view of the foregoing, to develop only fines and exclude the generic application of article 77 of the Rome Statute goes beyond the Statute itself. Then we come to the proposal submitted by the delegation of the Netherlands (PCNICC/1999/WGRPE/DP.27), which adds to the Coordinator's proposal on which

[1] See document PCNICC/1999/WGRPE/DP.25.

we have been commenting that article 103 and article 109, paragraph 1, should apply *mutatis mutandis*.

3.4. We consider that a provision stipulating the exclusion of penalties of imprisonment[2] greater than the limits established in article 70, paragraph 3, of the Statute should be added to the proposal by the delegation of the Netherlands.

4. In relation to rules 6.33 to 6.36, "International cooperation and judicial assistance", "Referral", "*Ne bis in idem*" and "Immediate arrest":

We are in agreement with and endorse their sense and direction, especially in relation to rule 6.36, which provides for the principle of "*ne bis in idem*" and that based on an "actual charge": conduct or fact.

[2] Provided for in article 77 of the Statute.