Japan and the International Criminal Court

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It is a great pleasure for me to have the opportunity today to speak with you not only about Canada's contribution to the ICC and Japan's upcoming accession, but also about Canada's support for the Responsibility to Protect and human security. These issues, as you know, are of central importance to the foreign policy of our two nations. Incidentally, they will also attract a lot of attention in the coming months.

As you know, today's seminar is part of a series of talks, which will culminate with the 28th Annual Forum of the Parliamentarians for Global Actions, to be held in Tokyo, on December 4 and 5. This international event will explore the importance and relevance of the ICC and Human Security in today's world. You may also be aware that for this occasion, Philippe Kirsch, the current President of the ICC, but also a former Canadian diplomat and a close personal friend of mine, will address the PGA. Later next year, in May 2007, the Japan Federation of Bar Associations, the International Criminal Bar and the Law Association for Asia and the Pacific will also, together, hold a seminar in Tokyo which will focus on the ICC. All those exchanges of ideas amongst scholars, practitioners, parliamentarians and bureaucrats, will, I am sure, ensure that Japan will be in a strong position to join the ICC when the time comes.

Coming back to today's presentation, we are grateful for the opportunity to share with our Japanese colleagues and friends some of our perspectives on the Rome Statute of the ICC.

Over the past century millions of children, women and men have been victims of unimaginable atrocities that have deeply shocked the conscience of humanity. In too many cases, these crimes have been committed with impunity, which has only encouraged others to flout the laws of humanity. As the UN Security Council noted when it created the ad hoc tribunals for Rwanda and the former Yugoslavia, such grave crimes threaten the peace, security and well-being of the world and must not go unpunished. For this reason, the international community adopted the Rome Statute of the International Criminal Court in 1998. The Court was created to provide accountability for the most serious crimes of international concern, namely genocide, crimes against humanity and war crimes. With the creation of the ICC, potential perpetrators of atrocity crimes are on notice they may find themselves before the Court.

The idea for an International Criminal Court has been around for a long time – the effort to create a permanent international criminal court dates back over 85 years. That dream was realized in July of 1998 with the adoption of the Rome Statute of the International Criminal Court. Because the Rome Statute is an international treaty, it is binding only on those States which formally express their consent to be bound by its provisions. The Statute entered into force on July 1st, 2002, once 60 States had become Parties. In

accordance with the Statute, the Court's jurisdiction is limited to events taking place after that date. In addition, if a State joins the Court after 1 July 2002, the Court only has jurisdiction after the Statute entered into force for that State.

Today, 102 States have become Parties to the Statute. This impressive number, which will continue to grow, demonstrates that the majority of the world's states have chosen to place their confidence in the provisions of the Rome Statute and in the independent, responsible and effective judicial institution it establishes. And being a party to the Rome Statute has become an emblem of a state's commitment to human rights, humanitarian law, and accountability for individuals who would violate some of international law's most fundamental rules.

As I have already mentioned, the Court may exercise jurisdiction to prosecute individuals for the most serious crimes of international concern, namely genocide, crimes against humanity and war crimes. The crimes are rigorously and carefully defined in the Statute to focus on only the most serious atrocities. The definitions of the crimes adopted in the Rome Statute reflect the more positive strands of the authorities as well as sound policy considerations. For example, the most prevalent armed conflicts today are those not of an international character. Thus it makes eminent sense that war crimes committed in that context should be subject to criminal accountability. Similarly, while widespread or systematic attacks against civilian populations occur all too frequently in times of war, it is obvious that they also occur in the absence of armed conflict. Thus, a definition of crimes

against humanity that encompasses violations committed during armed conflict or during peacetime is a welcome reflection of reality. In both instances, the definitions adopted during the Rome Conference will greatly enhance the Court's – and States' – ability to address real-life situations of the utmost gravity.

The crime of aggression is also listed in the Statute, but with the proviso that the Court will not exercise jurisdiction over it until states can agree on a relevant definition and preconditions. The proposed definition and preconditions must in turn be adopted by a Review Conference of the Assembly of States Parties. The Statute approached the crime of aggression in this way because—though the importance of the crime is widely acknowledged—delegations at the Rome Conference were unable to develop a generally acceptable definition. It is our clear understanding that any amendments to the Rome Statute concerning crimes will enter into force only for those States Parties that accept the amendment.

As you know, the ICC is a "court of last resort". State authorities still have the first responsibility to carry out investigations and prosecutions. This is known as the principle of "complementarity". The ICC may only take jurisdiction when States are unwilling or genuinely unable to bring alleged perpetrators to justice on their own. For example, a case would be admissible if national proceedings were undertaken for the purpose of shielding the person from criminal responsibility. In addition, a case will be inadmissible if it is not of sufficient gravity to justify further action by the Court.

You may be wondering how cases come to the ICC. There are a number of ways that theis can happen. States Parties or the United Nations Security Council may refer situations of crimes within the jurisdiction of the Court to the Prosecutor. When this occurs, the Prosecutor evaluates the available information and commences an investigation unless he determines there is no reasonable basis to proceed. The Prosecutor may also begin an investigation on his own initiative. He or she may do so after receiving information submitted by a variety of reliable sources. If the Prosecutor concludes he or she has jurisdiction and that there is a reasonable basis to proceed with an investigation, he asks a Pre-Trial Chamber to authorize an investigation. The Prosecutor has a duty to investigate incriminating and exonerating circumstance equally and fully respect the rights of the accused.

I. The Court's activities to date

I would like to now tell you a little bit about the ICC's activities to date. The ICC has come a long way in the very short time since the Rome Statute came into force on July 1, 2002. Already the Court is fully functional and working at or near capacity. All of the senior officials of the Court have been in place now for two or three years and staffing is all but complete. Formal investigations by the Office of the Prosecutor into a number of situations are well-advanced; arrest warrants have been issued and others are expected imminently; pre-trial proceedings have begun; and the first trials are expected to commence within the year. In other words, the Court is already developing a track record.

To date, four situations have been referred to the Prosecutor. Three State Parties (Uganda, Democratic Republic of the Congo and Central African Republic) have referred situations occurring on their territories to the Court, and the Security Council, acting under Chapter VII of the United Nations Charter, has referred a situation on the territory of a non-State Party (Darfur, Sudan). After analysing the referrals for jurisdiction and admissibility, the Prosecutor began investigations in three situations – Uganda, Democratic Republic of the Congo and Darfur, Sudan. The Prosecutor continues to monitor situations in other countries, including Côte d'Ivoire, a non-State Party, which has declared its acceptance of jurisdiction over crimes on its territory.

With regard to the Uganda situation, the Pre-Trial Chamber issued the ICC's first arrest warrants in July of 2005. The warrants were for five senior leaders of the Lord's Resistance Army (LRA) for Crimes against Humanity and War Crimes committed in Uganda since July 2002. The men are charged with crimes against humanity including murder, rape, sexual enslavement and inhumane acts and war crimes including murder, attacking civilians and the forced enlistment of children.

In the Democratic Republic of the Congo, Mr Thomas Lubanga Dyilo, a Congolese national and alleged founder and leader of the Union des Patriotes Congolais (UPC) was arrested and transferred to the International

Criminal Court as part of the judicial proceedings under the Rome Statute. Thomas Lubanga is alleged to have committed the war crime of conscripting and enlisting children under the age of fifteen years and using them to participate actively in hostilities in the territory of the Democratic Republic of the Congo since July 2002. The trial is expected to commence early in 2007.

The continuing insecurity in Darfur is prohibitive of effective investigation inside Darfur.—The investigative activities of the Office of the Prosecutor have therefore continued outside of Darfur. The Prosecutor of the ICC has so far documented (from public and non-public sources) thousands of alleged direct killings of civilians by parties to the conflict and hundreds of cases of alleged rape. In addition to direct killings, there is a significant amount of information indicating that thousands of civilians have died since 2003 as a consequence of the conditions of life resulting from the conflict and the ensuing displacement. This type of 'slow death' has particularly affected the most vulnerable groups, including children, the elderly and the sick.

As of February 2006, the Prosecutor has received 1732 communications from 103 different countries. 80% of communications were found to be manifestly outside jurisdiction after

initial review. 10 situations have been subjected to intensive analysis; of these, 3 proceeded to investigation, 2 were dismissed, and 5 analyses are ongoing.

II. Canada and the ICC

Let me turn now to Canada's relationship with the ICC. Canada has been a world leader in efforts to establish and support the ICC. Canada continues actively to support ratification and implementation of the Rome Statute of the ICC as the best means of combating impunity and promoting accountability for serious international crimes. Canada strongly believes that bringing perpetrators of serious crimes to justice is an important element of long-term peace and reconciliation in any conflict.

Since September 2000, Canada=s ICC and Accountability Campaign, funded by the Department of Foreign Affairs' Human Security Program, has provided more than $4.3 million in funding to support events and projects that promote ratification and implementation of the Rome Statute, assist with the effective functioning of the ICC and other international criminal tribunals, and to provide education and outreach on the ICC and international criminal tribunals. In addition and at the request of the Prosecutor, Canada has made a voluntary contribution of $500,000 to support the ICC=s investigation in Darfur. We were the first country to make such a pledge. The $4.3 million in funding that Canada has provided through the ICC and Accountability Campaign and the voluntary contribution to assist with the Darfur investigation is in addition to Canada's normal annual assessed contribution to the Court.

III. Japan and the ICC

Canada, however, is just one of the 102 state parties of the Court – an impressive figure which demonstrates widespread international support for the institution. Indeed, 28 African states have ratified the Rome Statute along with 23 from the Americas, 6 of the Pacific Islands, 39 from Europe and Central Asia, and 1 from the Middle East (Jordan). Asia, however, remains significantly underrepresented at the ICC, despite the active participation of many Asian governments at the Rome Conference and at meetings of the Preparatory Commission and the Assembly of States Parties, as well as the current membership of Judge Sang-Hyun Song of the Republic of Korea. Out of the 24 countries in Asia, only five (Afghanistan, Cambodia, Mongolia, the Republic of Korea and Timor-Leste) have ratified the Rome Statute. Japan's membership in the Court, therefore, will it put it in a position to provide a strong Asian voice for this underrepresented region at the Assembly of States Parties, which is the legislative body of the Court and decides on various items, such as the adoption of normative texts and of the budget, the election of the judges and of the Prosecutor and the Deputy Prosecutors. Japanese accession will also allow Japan to fully participate in the ICC Review Conference in 2009.

Japan is already recognized the world over for its important and ongoing contributions to international peace and security and its accession to the Rome Statute will only further demonstrate its commitment in this regard by bringing new leadership to international

efforts to replace a culture of impunity with a culture of accountability for the most serious international crimes.

What the responsible Parliamentarian who is concerned with the spending of public funds should know is that the ICC is subject to a sound, reliable and transparent financial management regime which is overseen by the Assembly of States Parties, of which Japan will be a part when it accedes to the Rome Statute. The Assembly of States Parties makes decisions concerning the budget of the Court and has adopted the Financial Regulations and Rules governing all financial matters relating to the Court. In addition, the Committee on Budget and Finance was created by the Assembly to maintain a close monitoring of the resources of the Court. Article 117 of the Rome Statue states that "the contributions of States Parties shall be assessed in accordance with an agreed scale of assessment, based on the scale adopted by the United Nations for its regular budget and adjusted in accordance with the principles on which that scale is based." The UN principles include the imposition of floor and ceiling limits for contributions. Canada considers these principles to be equitable and believes that they reflect the intentions of Article 117 of the Rome Statute.

IV.Implementation

It is Canada's understanding that the government of Japan may accede to the Rome Statute by July of 2007 and that the Japanese government hopes the Diet will pass the necessary domestic legislation in a timely manner. The Japanese government has also stated on a

number of occasions that it will have to create new domestic laws to enable them to meet all of their obligations under the treaty. Canada is very pleased to offer the Japanese government its expertise in this regard.

Canada was the first country in the world to adopt comprehensive legislation implementing the Rome Statute. To meet our obligations under the Statute, we had to make changes to our domestic laws and procedures relating to such matters as the protection of the privileges and immunities of the personnel of the ICC, the execution of requests for arrest and surrender to the ICC and the collection and preservation of evidence for the ICC. We also had to make changes to our domestic criminal laws in order to ensure that we were able to prosecute individuals for war crimes and crimes against humanity should the need arise, in accordance with the complementarity provisions of the Rome Statute. Japan will likely have to do the same, and will also have to consider whether it is more appropriate to create only one implementing law or to create several.

As a part of our efforts to assist other states with implementation challenge, the Government of Canada sponsored the development in 2000 of a technical *Manual for the Ratification and Implementation of the Rome Statute of the International Criminal Court*, which was revised and updated in March 2003. The Manual could be of great assistance to Japan - it outlines how states can incorporate their obligations under the Rome Statute into their national laws in order to cooperate fully with the ICC. More specifically, it highlights the obligations of States Parties to the Statute, and the features of the Statute that may

affect approaches taken by States to ratify and implement the treaty. It has also been designed to provide guidance as to how States with different legal systems might implement their obligations into their national legal systems. Policymakers, government administrators and various criminal justice professionals may find this document particularly useful in assessing the Statute's overall and specific impacts on their respective jurisdictions.

V. Conclusion

In conclusion, the creation of the ICC was a historic achievement more than fifty years in the making. Its creation was only the beginning. The Court now stands as a permanent institution capable of punishing perpetrators of the worst offences known to humankind. The Court is already fully operational, but this does not mean that it can act alone. It needs, more than ever, the practical, political and moral support of countries like the Japan in order to succeed. Canada very much looks forward to working closely with Japan in the coming months and years as we go forward in our efforts to end impunity for the worst crimes known to humanity.

Thank you for this opportunity. I will now take questions.