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First Meeting of the Group on Terrorism Final Report

Mexico City, 21 May 2003



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1. Introduction

The First Meeting of the Special Group on Terrorism of FIPA was held at Mexico's Senate on May 21st, 2003, attended by 16 parliamentarians from 13 countries, representing the hemisphere's four subregions. (See the list of countries and delegates in Annex 1.)

The meeting was convened pursuant to a proposal by the Colombian delegation to establish a working group on terrorism, which was approved in a resolution of the Plenary Meeting of FIPA on 21 February 2003.

2. Inaugural session

The representative of the host country, Senator Silvia Hernández, welcomed the parliamentarians, stressing the importance of distinguishing between violence and terrorism and the need to find concerted political solutions to fight this scourge.

The Chair of FIPA, Senator Céline Hervieux-Payette, gave a brief account of the organization and its work on this issue. She also noted the responsibility of parliamentarians to guarantee the security of their citizens and, at the same time, to protect the democratic process, which is a direct victim of terrorism.

Senator Germán Vargas Lleras of Colombia explained the reasons for his proposal to the Second Plenary Meeting of FIPA to establish this working group, stressing the importance of this issue for his country. He also underlined the role of parliamentarians in complementing the efforts of the executive branch in the field of hemispheric security and the fight against terrorism, giving as an example the prompt ratification of instruments such as the Inter-American Convention Against Terrorism and the updating of domestic legislation in this field, to complement collective efforts.

Last, the Speaker of Mexico's Senate, Senator Enrique Jackson, reiterated the welcome to the participants and applauded FIPA's initiative to establish this working group. He also mentioned the importance of participation by parliamentarians in the fight against terrorism, anticipating events and filling in gaps in legislation in this field. Senator Jackson then formally declared the meeting open so that the work could begin.



Chairing the opening session; Senator Germán Vargas, Senator Céline Hervieux-Payette, Senator Enrique Jackson and Senator Silvia Hernández.

3. Hemispheric security and terrorism

Mexican Senator Silvia Hernández summarized FIPA's past work in the area of hemispheric security and terrorism, noting the main recommendations of the working groups that discussed the issue at the Plenary Meeting in 2002. She also stressed the need to have a permanent mechanism to follow up on the decisions taken at the different meetings, ensuring that FIPA was an action-oriented organization.

Mr. Jorge Chabat of Mexico's Economic Research and Teaching Centre made a presentation on the concept of hemispheric security. He underlined the historical development of the issue of hemispheric



security and the obstacles to establishing a framework that defined the concept of regional security. He also noted the importance of revisiting the concept of threats to security, not defining it in terms of specific topics, but in terms of the impact it had in certain situations. Doing so made it possible to design a flexible mechanism that would permit governments to respond quickly to such threats.

Ms Patricia Olamendi, Deputy Minister for Global Issues of Mexico's Department of External Relations, made a presentation explaining the concept of terrorism and its evolution in today's international context, and the main international legal instruments related to this issue. She also described Mexico's position on terrorism and its participation in developing measures for international cooperation on the matter. (*See the text of the presentation in Annex 3.*)

4. The Inter-American Convention Against Terrorism

Mr. Dante Negro, attorney with the OAS' Office of the Assistant Secretary for Legal Affairs, made a detailed presentation on the Inter-American Convention Against Terrorism, discussing the background, structure and features of the document and stressing the commitments assumed by the signatory countries. (*See the text of the presentation in Annex 4.*)

After answering several questions from the audience, Mr. Negro concluded by underlining the importance of supporting the minimum consensus among countries that the convention represents, and urged the parliamentarians present to promote the process of its ratification in their respective countries.

The parliamentarians then discussed terrorism, taking different positions regarding its definition and the scope that the fight against this scourge ought to have.

5. Progress and strategies in the fight against terrorism

Mr. Jorge Calderón of the OAS' Unit for the Promotion of Democracy (UPD) described the work that the organization was doing with the legislative branches of the Central American countries on the issue of terrorism. The work was intended to facilitate implementation of the Inter-American Convention Against Terrorism on the legislative level, promote a sustained political response by the legislative branches of the region to the process of combating terrorism, design national and subregional parliamentary strategies to strengthen the role of legislatures in developing policies against terrorism and ensure that legal instruments on the subject were ratified and placed in effect.

The strategy used to achieve these objectives was based on the development of a general regulatory framework that could serve as a model for drafting domestic legislation based on each country's legal system. That approach enabled the countries of the region to draft homogeneous legislation on terrorism, without the need to go through the process of negotiating and adopting an international treaty.



Congresswoman Milena Calderón from El Salvador complemented the presentation on Central American experience and briefly recapitulated the development of FOPREL (Forum of the Speakers of the Central American Legislative Branches), which was an initiative intended to harmonize the laws of the Central American countries and develop flexible, effective and modern mechanisms for legislative integration. She also described FOPREL's participation in this initiative to combat terrorism, through the International and Economic Affairs and Regional Integration Committee that she chaired. Last she urged that the strategy for fighting terrorism developed in Central America be replicated in other subregions of the Americas.

Mr. Alex Solís, external OAS consultant, presented the project for a subregional regulatory framework to combat terrorism developed for the Central American countries. He explained that this initiative was intended to complement the efforts made on the hemispheric level to combat terrorism, in the form of a piece of model legislation that could be used by the countries of the subregion in drafting their own legislation in that field.

A question and answer period followed and the parliamentarians discussed the issue of extradition as a tool for combating the crime of international terrorism and the need to update cooperation agreements on criminal matters between the countries.



Congressman Cristian Paredes, Senator Arthur Williams, Legislator Javier Sierra, Congressman Ángel Salazar, Congressman Carlos Mejía and Congresswoman Milena Calderón.

6. The International Criminal Court and terrorism

Congressman Marcelo Stubrin of Argentina made a presentation on the jurisdiction of the International Criminal Court (ICC) with respect to terrorist acts. He explained that at present, the ICC could not try cases of international terrorism, since the crimes that fell under its jurisdiction (established in Article 5 of the Rome Statute) were genocide, crimes against humanity, war crimes and aggression. However, it was possible to include the crime of international terrorism in the ICC's jurisdiction by revising the Rome Statute seven years after it came into effect, i.e. after 1 July 2009.

He also stressed that the fight against terrorism should be a multilateral undertaking in the hands of the States, since terrorist organizations and organized international crime had proven to be capable of threatening the security of the international community. The role that could be played by the IIC, on account of its international jurisdiction and its powers to specialize in international crimes was a particularly relevant one.

Last, Congressman Stubrin mentioned the countries of the Americas that formed part of the ICC and stressed the need for parliamentarians to work to develop domestic legislation that permit their laws to be adapted to the Rome Statute. *(See the text of the presentation in Annex 5.)*

7. Discussion and conclusions

After the presentations, the parliamentarians shared their views on the topics presented. They recognized the importance of promoting prompt ratification of the Inter-American Convention Against Terrorism, as the first step in developing collective instruments for fighting this scourge.

There was also agreement that the work being carried out by the UPD with the Central American legislatures regarding the ratification and implementation of the convention could become a model to be replicated in other parts of the hemisphere. The framework law developed for the Central American countries could be enriched with other advanced legislative experiences in this field and adapted for use by other countries.

The importance of performing a critical review of criminal legislation and the cooperation agreements in effect between the countries of the hemisphere was stressed. The purpose was to share experiences and jointly update laws on that subject, thereby strengthening regional cooperation in the fight against terrorism.



Congressman Waldo Mora, Congressman Mario Calderón, Senator Ciro Ramírez, Senator Luis H. Gómez and Congressman Torgan Moroni.

With regard to the situation in Colombia, the participants expressed their solidarity with the Colombian people and rejected the acts of violence perpetrated by terrorist groups in that country. The Colombian delegates shared their experiences in developing anti-terrorist legislation and stressed the importance Colombia attached to the support and solidarity of the countries of the hemisphere in their struggle against this scourge. They also reiterated their invitation to hold the next meeting of the working group in Colombia, which was gratefully accepted.

The Brazilian representative spoke about his country's Congressional Committee to Combat Organized Crime, whose purpose was to develop legislation on the subject and carry out oversight and investigative activities. He also mentioned that this might be an example to be kept in mind by other hemispheric parliaments for establishing committees that specialized in combating organized crime.

Senator Hervieux-Payette, Chair of FIPA, proposed the name of Senator Silvia Hernández of Mexico as leader of the working group on terrorism, to follow up on the conclusions of the meeting and speak on behalf of the group. The proposal was accepted by all the parliamentarians present.

Last, the parliamentarians concluded their deliberations with the following points:

1. To express their solidarity with the Colombian people and government, recognizing their efforts in the fight against terrorism and condemning the recent acts of violence perpetrated by illegal groups. The participants decided to adopt an official declaration reflecting this position. (*See the text of the declaration in Annex 2.*)
2. To support and promote ratification of the Inter-American Convention Against Terrorism through joint parliamentary activity, led by the members of the group, with the aim of speeding up the process in countries that had not yet ratified it.



3. To perform a study of the international legal instruments that were available in the fight against terrorism, in order to evaluate their scope and whether they were in effect, and to promote facilitation of the formalities related to instruments that had not yet been ratified.
4. To carry out consultations with parliamentarians of the hemisphere, with a view to preparing recommendations for the OAS Special Conference on Security. The consultations could be held using FIPA's Virtual Parliament.

It was also agreed that the date of the next meeting would be determined by the chair of the working group and would be contingent on the follow-up on the conclusions of the meeting.

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Participants in the First Meeting of the Special Group of Terrorism of FIPA

First row: Con. Waldo Mora (Chile); Sen. Silvia Hernández (Mexico); Sen. Céline Hervieux-Payette (Canada); Con. Milena Calderón (El Salvador); Con. Cristian Paredes (Dominican Rep.)

Second row: Con. Torgan Moroni (Brazil); Sen. Germán Vargas (Colombia); Con. Marcelo Stubrin (Argentina); Sen. Ciro Ramírez (Colombia); Sen. Luis H. Gómez (Colombia); Con. Mario Calderón (Costa Rica); M.P. Blasco Peñaherrera (Ecuador); Con. Ángel M. Salazar (Guatemala); Con. Carlos F. Meña (Guatemala); Sen. Arthur Williams (Jamaica); Con. Javier Sierra (Honduras)



8. Annexes

8.1 *Annex 1 – Countries and delegates present*

Argentina

Congressman Marcelo Stubrin

Canada

Senator Céline Hervieux-Payette

Colombia

Senator Germán Vargas Lleras
Senator Ciro Ramírez
Senator Luis H. Gómez

Dominican Republic

Congressman Cristian Paredes

Guatemala

Congressman Carlos E. Mejía
Congressman Angel M. Salazar

Jamaica

Senator Arthur Williams

Andean Parliament

M.P. Blasco Peñaherrera
(Ecuador)

Brazil

Congressman Torgan Moroni

Chile

Congressman Waldo Mora

Costa Rica

Congressman Mario Calderón

El Salvador

Congresswoman Milena Calderón

Honduras

Congressman Javier Sierra

Mexico

Senator Silvia Hernández



8.2 Annex 2 – Declaration of the Group on Terrorism

DECLARATION OF THE FIRST MEETING OF THE SPECIAL GROUP ON TERRORISM OF FIPA

Original version: Spanish

The Special Group on Terrorism of the Inter-Parliamentary Forum of the Americas (FIPA), which met in Mexico City the 21st of May, 2003:

Condemns the acts perpetrated by the terrorist group of the FARC on the life of the Governor of Antioquía, Guillermo Gaviria, the ex-Minister of State Gilberto Echeverri and eight members of the military forces of Colombia, as well as all of its operations against the civilian population and the productive infrastructure of the Republic of Colombia.

Expresses its solidarity with the victims of terrorism and repudiates any terrorist action carried out by the groups outside the law.

Welcomes the creation of a common front against terrorism in Colombia, made up of all the political parties represented in the Colombian Congress.

Urges all the Parliaments of the region to promptly ratify the Inter-American Convention against Terrorism.

Welcomes the invitation of the Colombian delegation to hold a future meeting in that country.



8.3 Annex 3 – Presentation: Mexico and the international fight against terrorism

MEXICO AND THE INTERNATIONAL FIGHT AGAINST TERRORISM

*First Meeting of the Parliamentary Group Against Terrorism of the
Inter-Parliamentary Forum of the Americas*

Presentation by Patricia Olamendi

Deputy Minister for Global Issues of the Department of External Relations

21 May 2003

Original: Spanish

I am very grateful to the Inter-Parliamentary Forum of the Americas and the Senate for the invitation to participate in this meeting on the fight against terrorism and the international strategies that stem from it.

Terrorism is a prime topic on the international agenda. The events of September 11th, 2001 in the United States marked a 'before' and 'after' in our view of terrorism. Today we live in a different world, in which security issues have come to occupy a position of priority in international affairs that they did not have just a while ago.

Despite its notoriety today, terrorism is not new on international agendas. Serious work has been done for several decades in international organizations that has not arisen in the wake of recent events but which, of course, has gained new impetus in today's circumstances.

That being so, I would like to begin my presentation with some considerations on the nature of terrorism and then talk about the difficulties in defining the phenomenon and how it is dealt with in international instruments. Last, I will describe Mexico's position on this issue and its actions in the United Nations as a member of the Security Council, and on the regional level.

1. The nature of terrorism

Terrorism is an old practice in domestic political conflicts and internationally as well. Literally, it refers to acts of violence whose objective is to spread fear and create a climate of apprehension in the body politic that allows the perpetrators to achieve ulterior motives. Terrorism is, in short, the spread of terror.

Throughout history, terrorist acts have been undertaken by governments against their own people or against other states, or by discontented groups that seek to overthrow a regime or form of government. At the start of the 21st century, terrorism – like other forms of crime – has taken advantage of globalization and is now perpetrated by groups that may or may not have links to nation states or to organized crime, that act in places that are distant from the point or points where they are located geographically. In short, international terrorism today is much more complex than its forerunners, if they can be called that.



But let's take it step by step. Acts of terrorism are marked, in the first instance, by their indiscriminate nature with respect to the target population and to the means of aggression used. Terrorist acts generate widespread effects of apprehension that facilitate the purposes of those who promote and carry them out. The essence of terrorist acts lies in their unforeseeable consequences and in the absence of humanitarian considerations.

Terrorism can be linked to virtually any social cause, including causes whose noble ends may be evident to large segments of public opinion. This forces us to make a fundamental distinction when talking about terrorism: in the fight against terrorism it is **not the causes** that should be the object of persecution, but the **means** used to achieve them. This distinction is crucial because very frequently the positive values of certain causes – for example, the quest for social equity, the independence of a region, the struggle to protect the environment, the right to practice a religion, etc. – can create a tendency to find justification for the use of violence.

That being so, we must make it very clear that States, individually and collectively, must voice their total rejection of terrorist practices, regardless of the reasons or pretexts that attempt to justify them. The nature of terrorist acts is essentially injurious to all forms of civilized coexistence and to the peaceful settlement of disputes, and therefore such acts cannot be justified in the name of any right, political claim or alleged future advantages.

2. The difficulty in defining terrorism

Given the many cultures and interests in the international community, in the field of multilateralism that is no single and precise definition of terrorism. However, international law on this issue has included the concept of terrorism in a series of acts defined in existing conventions and agreements. In other words, the conventions deal with and punish *terrorist acts* but not terrorism. This is known as the 'piecemeal approach' to the definition of terrorism.

Although it is desirable to have a common definition of international terrorism in the United Nations system, a definition forced by political and strategic pressures of the moment could have some drawbacks:

- The first would undoubtedly be that a very broad definition could lead to international rules which extend the definition to include acts of violence that, using common sense or conventional political and legal analysis, would be difficult to view as terrorist. I am talking about many social expressions, such as protest marches, demonstrations or expressions of discontent that are very far from being terrorist acts.
- Another obstacle for constructing a definition lies in the difficulty of differentiating terrorist practices from the struggle for liberation of people from colonialism and unjustifiable subjugation. Although this argument may have had more validity in the 1960s when, for example, various African nations were born, that is no reason for us to reject a concept recognized internationally as *liberation movements* in a world as changing and socially dynamic as today's world.
- Another obstacle is the stress placed by some countries on avoiding any condemnation of their armed or security forces as the instigators of terrorist acts.

The prospect that the international community will reach a consensus on terrorism does not have so much to do with arriving at a definition as with reaching a political agreement on the unacceptability of the use of violence and the growing application by governments of the different existing international instruments, to which I will now refer.



3. International instruments

As the phenomenon of international terrorism has been affecting the international community, it has been constructing a legal scaffolding to contain it, and the effort is continuing.

- First, the most significant effort has been the series of 12 United Nations instruments that prohibit, condemn and punish specific practices considered to be acts of terrorism and which include variations in the phenomenon in the national and international spheres. These instruments range from consideration of acts against aircraft and passengers at airports, against fixed maritime platforms, against diplomats and persons who are protected internationally, embassies and consulates, to consideration of the use of bombs in terrorist acts and financing for terrorism – with the last two being more recent instruments. Mexico is party to all 12 instruments (which are listed in the annex).
- Second, on the regional level, the countries of our content reached a substantive agreement in the Inter-American Convention Against Terrorism. This convention does not give a generic definition of terrorism either, but it accepts and promotes the ratification of the 12 United Nations instruments. It contains a goodly number of measures for cooperation among the countries, such as border controls, travel documents and measures to combat money laundering and financing for terrorism. Mexico, owing to its greater specific weight in the Americas, chaired the work of negotiating the instrument and achieved its own objectives of maintaining the validity of asylum and refugee status – in the face of the temptation to curtail those rights in the fight against terrorism – and respect for human rights in that fight. The convention has been signed by 30 of the 34 members of the OAS and has already been ratified by Mexico.
- Last, in the United Nations, a group of countries is negotiating a ‘framework’ agreement against terrorism. And it is precisely because of the obstacles I mentioned earlier regarding the definition and scope of the instrument that the negotiations have bogged down. It is likely that another instrument, currently being negotiated – on acts of nuclear terrorism – will be concluded before the United Nations ‘matrix’ convention against terrorism.

4. Mexico’s position on combating terrorism

Given the risks to national and international security posed today by international terrorism, the role that Mexico seeks to play in the international scenario is based on three central elements:

1. *Total and emphatic condemnation of all acts of terrorism*
2. *A commitment to adopt all necessary measure to combat it; and*
3. *A call for the protection and preservation of human rights in the fight against international organized crime and terrorism.*

Based on these three core elements, Mexico’s position on terrorism and the actions it has undertaken to combat it places special stress on the following approaches:

One. The form of combating terrorism. Mexico maintains that the effective way of combating terrorism is through international cooperation based on the United Nations Charter and other instruments of international law, with full respect for human rights.

Two. The linkage between terrorism and human rights. In combating a crime such as terrorism, no government or international society can justify violating fundamental human rights or deprive the accused of their legal guarantees. Interpretations to the effect that since terrorists commit unspeakable acts, they can be tried with less regard for their human rights are not acceptable.



Three. Relations between terrorism and armed social struggles. The United Nations Charter and the pertinent General Assembly resolutions protect and recognize the right of peoples to self-determination. Therefore, it is wrong to classify national liberation movements as terrorism, since that classification would only be valid for those of their members who individually engage in acts of terrorism and not for the organization as a whole. National liberation movements act – like other combatants – in the framework of the law that governs armed conflicts, which prohibits terrorism as a method of warfare.

Four. Peaceful conflict solution. Peaceful solutions should be promoted to conflicts whose nature could encourage terrorist acts, although the call for the solution of international disputes should never be interpreted as an attempt to justify terrorist acts in any way.

5. Mexico's participation in the international fight against terrorism

As I mentioned earlier, Mexico is a Party to the 12 United Nations instruments to combat terrorism and to the Inter-American Convention Against Terrorism.

Also, two weeks after the attacks on the United States, our country expressed its full support for the efforts of the international community to apply UN Security Council Resolution 1373, adopted on 28 September 2001 as a consequence of those attacks.

The resolution, whose observance is binding, requires the Member States to adjust their legislation and practices in areas such as border and banking controls to combat terrorism and prevent its financing. It also requires the members of the UN to report on the legislative, regulatory and practical steps they have taken for that purpose. Mexico's report is public and can be consulted on the United Nation's web page.

Mexico's participation as a non-permanent member of the Security Council for the period 2002-2003 has allowed it to participate in the groups that review the reports required by Resolution 1373. The approach that Mexico has taken to its participation in this task promotes international cooperation, which would assist countries with dire shortages of financial resources and legislative and institutional weaknesses in combating and punishing terrorism.

In the inter-American sphere, in addition to promoting the Convention Against Terrorism and presiding over its negotiation, Mexico is also an active participant in the Inter-American Committee Against Terrorism, which has taken steps for cooperation in customs and border control and to halt financing for terrorism and money laundering. In this last area, Mexico forms part of the International Financial Action Group which has come up with specific recommendations on how to prevent and combat money laundering and stop the financing of terrorism

Having given an overview of terrorism in the international sphere and Mexico's position and involvement, I would like to end this presentation by referring to one aspect of my country's position, whose validity and importance are indisputable.

Mexico calls for the economic and social development of peoples as a factor in preventing conflicts and controlling other threats to peace, domestically and internationally. The social and economic roots of much of the violence that scourges our society can never be mentioned too often. If these causes of violence remain untouched, there can be no mechanism capable of putting an end to such reprehensible actions as spreading terror and apprehension among the peoples of the world. Prevention is a titanic task but, in the long run, it is more effective than taking a punitive approach that could end up creating more violence.

The nations of the world must band together in the efforts to prevent terrorist actions, so that no one in any part of the world lives in constant fear. Thanks.



Annex

Mexico has signed the following multilateral instruments to combat international terrorism:

United Nations Organization

1. Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963.
2. Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16 December 1970.
3. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 23 September 1971.
4. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973.
5. International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979.
6. Convention on the Physical Protection of Nuclear Material, signed at Vienna on 3 March 1980.
7. Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, signed at Montreal on 24 February 1988.
8. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988.
9. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, done at Rome on 10 March 1988.
10. Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on 1 March 1991.
11. International Convention for the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999.
12. International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997.

Organization of American States

13. Inter-American Convention Against Terrorism, 2002.



8.4 *Annex 4 – Presentation: The Inter-American Convention Against Terrorism*

First Meeting of the Group on Terrorism of the Inter-Parliamentary Forum of the Americas

*Transcription of the presentation by Mr. Dante Negro
OAS Office of the Assistant Secretary for Legal Affairs*

Original: Spanish

My presentation deals basically with the Inter-American Convention Against Terrorism. Some of the people at this working meeting have already heard it elsewhere. I hope it will not be too tedious for them to listen to it again, since it has been enriched over the months. My purpose is to look at the details of the convention more closely.

We often come across legal texts that are somewhat difficult to understand and to determine the scope of the obligations that arise from them. It is important to make the effort, since the decisions that different parliaments take on whether or not to adopt or ratify a legal instrument hinge on that understanding.

The presentation I am about to make is not an official position of the OAS. The General Secretariat, as depository of the inter-American treaties, does not make official interpretations. My interpretation is personal and I make it in my capacity as an attorney and, as I have said on previous occasions, each attorney has a different interpretation.

The Inter-American Convention against Terrorism is the most recent convention adopted by the inter-American system. It has been signed by 33 member states of the OAS, but just three instruments of ratification have been deposited so far, which is not encouraging.

The convention was adopted at the General Assembly held in Barbados last year. The most immediate factor leading up to the convention were the events of September 11, but they were not the only ones.

For many years, the OAS has worked quite fruitfully to combat terrorism. Since the 1970s, there were attempts to draft conventions on the global fight against terrorism, but they were very scattered. In the 1990s, a declaration and an action plan were approved in Lima, establishing some fairly basic guidelines for the fight against terrorism. Years later, at Mar del Plata, a commitment by the member states was approved which created the Inter-American Committee Against Terrorism (CITCE) which is the OAS agency that channels the activities of the members states in the fight against this scourge.

The Convention sets out very clear objectives and purposes: to prevent, punish and eliminate terrorism. We can evaluate the usefulness of the Convention on the basis of whether the rules it contains comply with those objectives.

For methodological purposes, I will divide my analysis of the Convention into two different fields:

1. The field of the obligations that arise from it and which need to be developed in domestic legislation; and
2. The field that establishes other obligations that are no less important, but which can be complied with by the States in their existing cooperative relations, in other words, in their relations with other countries. They do not necessarily need to be developed in legislation by the countries that wish to become parties to the Convention.

There are basically four areas that countries wishing to join the Convention must give close attention to, either because they either require legislative development or because they could in some way contradict rules already adopted domestically. These four areas are:

1. Financing of terrorism;



2. Money laundering;
3. Asylum and extradition; and
4. The transfer of persons in custody and the guarantees they should be offered for such transfers.

In the first two areas, perhaps because they are relatively new, some countries still do not have legislation that is sufficiently developed to become parties to the Convention. In the last two areas, many countries already have highly developed laws.

What I would like to demonstrate with this presentation is that it is not as difficult to adapt to the Convention as it might appear. And as we analyze each of the areas I have mentioned, I will give you some pointers that can be of help in developing domestic legislation.

Later we will have a presentation on the development of domestic legislation in many areas, but I would like to establish the minimum standards that we should keep in mind to be able to comply with the obligations of the Convention.

With regard to financing for terrorism, which is the first area I mentioned, we have Article 4 of the Convention, which calls on each party state to establish a legal and administrative framework to prevent, combat and eradicate that financing.

A legal and administrative system framework may appear to be very broad in content and we might find ourselves on ground where our ideas are not very clear. However, Article 4 itself gives us guidelines for developing legislation in this field and the guidelines refer to the 40 recommendations on money laundering and movements of capital put out by the Financial Action Task Force on Money Laundering (FATF) plus some special recommendations that FATF approved in relation to terrorism.

These are the most specific guidelines established in the Convention and they can be used to develop legislation on this matter.

There are two basic areas related to financing mentioned in the Convention itself in which a legal and administrative framework needs to be established – bank supervision and the cross-border movement of capital, securities, etc. These are the basic areas although there may be others. In any event, to be part of the Convention, each country can develop additional measures to step up the fight against terrorism.

The Convention does not require that the offence of financing for terrorism be legally characterised, which is very important. It envisages the establishment of an intelligence unit – an intelligence unit that will regulate, that will serve as a means for exchanging information, a means of cooperation between countries.

Summarizing this first point on financing for terrorism, we have two minimum areas – bank supervision and cross-border movements of funds and we can use the FATF recommendations as a guide.

The second area is money laundering, which is mentioned in Article 6 of the Convention. The article establishes that the states parties are required to view the conduct regulated in the Convention as the offence of money-laundering. Therefore the obligation that arises from this article is the legal characterization of the determining offences.

This leads to a larger question. What conduct is regulated in the Convention? The answer takes us to Article 2 which could appear to be somewhat problematic and cause confusion. This article contains a list of conventions which are basically the United Nations conventions adopted in the fight against terrorism. As we heard in the previous presentation, the offence of terrorism is not characterized in those conventions; instead they describe conduct that is going to be regulated under those conventions.

The Inter-American Convention Against Terrorism refers to the 10 conventions listed in Article 2, which permits us to define its coverage. It should be made clear that it is not by virtue of the Inter-American Convention that countries have to shoulder the obligations of the 10 agreements mentioned in Article 2. The idea is for those agreements to serve as a reference for the purposes of describing the conduct to which the Inter-American Convention will apply.



Also, a country that becomes party to the Inter-American Convention does not necessarily have to accept the definition of the conduct given in those 10 legal instruments. A country can make a declaration to the effect that the definitions contained in conventions mentioned in Article 2 to which it is not yet a party will not apply to it.

In short, if a country wishes to become a party to the Inter-American Convention, the steps it needs to follow under this point are:

First, it needs to determine whether it is party to the 10 legal instruments mentioned in Article 2. If it is, no problem exists, since it is already bound by the obligations that arise from them. If it is not, it has to decide whether it wants the conduct defined in those instruments be covered by the Inter-American Convention. And if it does not want that, it will issue a declaration at the time it signs or deposits its instrument of ratification, stating that those legal instruments are not applicable to it.

Those are the three steps that all countries should take to determine whether or not they want the provisions of Article 2 to apply to them.

None of the three countries that have already deposited their instruments of ratification with the General Secretariat made a declaration of that kind. Those countries are Canada, Antigua and Barbuda and El Salvador, in chronological order.

There are other countries that have ratified the convention but that have not deposited their instruments. Mexico is one and I believe that Nicaragua has announced that it completed the ratification.

The reason I explained Article 2 was because we were talking about money laundering. Under that point we saw that countries undertake to include all the conduct that could be covered in Article 2 in their domestic legislation as part of the offence of money laundering. This would be their basic obligation in this area.

The third topic is asylum and extradition, which are particularly delicate areas in Latin American legislation, where they have a long tradition.

On reading Articles 11, 13 and 15 on asylum and extradition and Article 12 on refugee status, we might conclude that a party state is renouncing its right to define the criminal nature of these issues by virtue of the Inter-American Convention.

I will not subject you to the task of reading those articles together, but I would like to give you a rough idea of their content. Later you can read them at leisure and we could debate them afterward.

At the time the Convention was signed, Mexico made a declaration that I believe was intended to safeguard its right to determine the nature of the institution of asylum, which has been used for so many decades in Latin America. If you like, we can provide you with the text of Mexico's declaration when it signed, which could help us to understand the thesis I am putting forward right now, that the Convention appears to remove the right to determine the legal nature of the institution of asylum.

The fourth area is the area of transfers of persons and their human rights guarantees. I am referring to Article 10 of the Convention, which establishes a series of guidelines for the transfer of persons in custody in one country to another that requires that person's presence, either to give testimony or to obtain evidence regarding the conduct that is regulated in the Convention.

The article is quite clear but we must take care to determine whether all the requisites that are established in Article 10 of the Convention are consistent with our countries' domestic legislation, so that there will be no contradiction with the Convention.

These, then, are the four areas. The importance of singling each of them out is that, as you all know, after a country becomes party to an international instrument it cannot make the argument that its domestic legislation is in contradiction or is not sufficiently developed to implement the obligations arising from the treaty as an excuse for failing to comply with its obligations.

Therefore, each country that wishes to become party to the Convention is responsible for determining whether its internal legal and administrative scaffolding contributes to complying with the obligations that stem from this Inter-American Convention. That is why it is important to identify these areas.



There are many other obligations that stem from the Convention however, in my opinion, they are not obligations that would necessarily have to be developed in domestic legislation. A country can decide to work in many other areas because, and I repeat, the Convention is setting minimum standards for the fight against terrorism.

However, the minimum is not necessarily the best and is not necessarily perfect. The minimum is the result of a very complex process of negotiation under the OAS in which many positions had to be set aside in order to reach a consensus and give expression to it in this legal instrument.

Therefore, we have the minimum in hand but, as I said earlier, this does not mean that we cannot develop domestic legislation to perfect the mechanisms used to fight terrorism.

There are other obligations that do not necessarily require development in domestic legislation, since they are simply obligations. Which ones, you ask? Some can be found in Article 7 which promotes cooperation and the exchange of information. Article 8 calls for close cooperation to strengthen the effectiveness of law enforcement. It also speaks of establishing and improving channels of communication between the competent authorities. Coincidentally, many of these obligations were included in the action plan that CICTE approved at its third ordinary session period at the start of this year.

If you compare the commitments that countries assume under that action plan and in other obligations, you will find that there is a great deal of coincidence and that they can easily be complied with by the countries' executive branches through their ministries of foreign affairs.

There are two further points to be made before concluding this brief overview of the Convention. The first is the work done by CICTE, which is a mandate given to it in the Convention, to provide the states parties with assistance in implementing the convention.

Another very important point which has also been included in the most recent inter-American conventions is the role played by the General Secretariat in calling consultative meetings when a given number of instruments of ratification have been deposited. In the case of the Inter-American Convention, 10 instruments are required.

These consultative meetings are not mechanisms to revise the Convention, but they make it possible to evaluate, exchange ideas, report on best practices in its application and identify the obstacles encountered by the states parties in its application; in other words they are an opportunity to evaluate the evolution of the Convention.

The Unit for the Promotion of Democracy's work with the Central American countries with regard to the Convention is also worth noting.

We have many conventions in the inter-American system that were adopted with great conviction, with high hopes of bolstering inter-American cooperation but which, owing to the lack of the necessary number of ratifications, have not come into force or are very limited in scope. I hope that meetings of this kind can help us to ensure that this will not be true of the Inter-American Convention Against Terrorism and that most of the member states will acceded to it.

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8.5 *Annex 5 – Presentation: The International Criminal Court and terrorism*

THE INTERNATIONAL CRIMINAL COURT AND TERRORISM

*First Meeting of the Parliamentary Group Against Terrorism of the
Inter-Parliamentary Forum of the Americas*

Presentation by Congressman Marcelo Stubrin of Argentina

Original: Spanish

The history of the International Criminal Court

On 1 July 2002, when the 60 ratifications required by the Statute of the International Criminal Court, adopted in Rome four years earlier (17 July 1998), were obtained, the international treaty entered into force, marking a milestone in international law and standing tall as a fundamental legal instrument in the international protection of human rights. To date, it has 77 States Parties and 139 Signatory States. The International Criminal Court is already operating. It was established in March 2003 in the Hague (Netherlands) and is initially composed of 18 justices and the Argentine attorney Luis Moreno Ocampo was recently elected as the court prosecutor. It is in the process of being organized and international legal rules are being prepared to complement the statute, as provided for in it. Also, the legal and legislative activity that has been generated in the States Parties is important, since they are required to adjust their legislation and establish mechanisms for linkage with the high international court.

It is encouraging to report on the significance that the Rome Statute and the International Criminal Court has had for the countries of the Americas. Out of a total of 35 countries (North America, Central America, the Caribbean and South America), 17 countries are already States Parties (virtually 50%). Of the remaining 18, it should be clarified that eight have not signed the statute and have not adhered to it (mainly the countries of Central America and the Caribbean), while 10 are Signatory States and are in the process under their domestic legislation of obtaining consent to undertake the international obligations established in the treaty (through ratification, acceptance or approval). One of the states that had not signed – Dominica – joined on 12 February 2001, after the period during which the treaty remained open for signature expired (31 December 2000).

In other words, 77% of the countries of the Americas have made an international commitment to comply with the objectives of the Statute of the International Criminal Court and promote the installation and operation of so important a tribunal.

The United States has maintained its opposition to this international treaty and to the operation of the International Criminal Court, questioning the universal jurisdiction of the tribunal, despite the fact that it is subsidiary to national tribunals. During the preparatory work and at the international conference that drafted the Rome Statute, it showed its aversion to the possibility that a tribunal of this kind should exist and only signed the treaty on the last day of the period it was open for signature. President Clinton did so on his last day in office (31 December 2000), despite significant congressional opposition and without full support from his own Democratic Party.



Later, the Republican government of George W. Bush would set aside the signature, in a note sent to the Secretary General of the United Nations on 6 May 2002, stating that the United States does not have the intention of becoming a State Party to the statute. In other words, today the country cannot even be considered a Signatory State.

The obstacles to the International Criminal Court

Undoubtedly, the implications of the operation of the International Criminal Court and its universal jurisdiction over international crimes and the legal effects of the statute – even in the case of non-member countries – have meant that many countries have decided not to sign the treaty or, having signed it, not to ratify it. However and despite the large number of ratifications required for it to enter into force, it only took four years after it was concluded to become a reality in the international community.

Approval of United Nations Security Council Resolution No. 1422 (2002) on 12 July 2002, based on a proposal by the United States, once again put the Rome Statute on the table, a few days after it had come into effect, and led to a heated debate on the jurisdiction of the court. The result was different from the original intention owing to resistance to the United States proposal by a group of States Parties to the treaty.

The resolution that was approved refers specifically to Article 16 of the Rome Statute and determines that for a period of one year, the court will not initiate or proceed with investigations or trials of any kind relating to cases linked to actions or omissions related to operations established or authorized by the United Nations and that involve the participation of officials, former officials, personnel or former personnel of any state that is not a party to the Statute but which provides troops for such operations. This exception can be renewed for annual periods by the Security Council.

The first period is drawing to an end and the Security Council should not call for its renewal, since the resolution was designed to apply to exceptional and very specific situations, in which the court's action could interfere with the efforts of the Security Council to maintain international peace and security. Clearly, the intent was to protect the members of the United Nations 'peace forces', who are citizens of non-parties to the statute, from any irresponsible accusation that might lead to charges against them that fall under the court's jurisdiction and to the court's intervention. A further intention was to prevent politicization of the tribunal's international jurisdiction.

However, it was not the intention of the framers to transform the resolution into a general article that would be forever transitory, creating the suspicion of hidden immunity that would alter the spirit of the Rome Statute.

Months ago, the United States began a campaign to convince other countries that the American troops in the United Nations 'peace forces' merit total and permanent immunity, given the large number of troops provided and the probability that their operations could lead to trials or judicial investigations based on political grounds. It has promoted and obtained a large number of bilateral treaties in terms of Article 98 of the statute, with the objective of achieving reciprocal immunity for its troops from all prosecution based on the commission of international crimes.

These decisions affect the integrity of the Rome Statute and the credibility of the United Nations Security Council, making a debate necessary in that organization to make the United Nations Charter and the powers of the Security Council compatible with the Rome Statute and the International Criminal Court. Any ambiguity or gaps in interpretation will conspire against the harmonious functioning of the United Nations bodies and the effectiveness of the international court.



Also, recent developments in Iraq involved an armed international conflict, in which the invading coalition composed of the USA and the United Kingdom used force illegally under international law, because it failed to obtain the necessary authorization from the United Nations Security Council, under Chapter VII of the United Nations Charter, of which all the countries are members. Independently of the aggression – in itself an international crime although not included for the time being in the jurisdiction of the International Criminal Court – this international armed conflict creates the conditions for the commission of war crimes, illegal actions that could come under the existing jurisdiction of the tribunal at any time, if the requisites of admissibility established in the Rome Statute are met.

Terrorism as an international crime

But there is clearly a longstanding international criminal action which, since the strike on the Twin Towers on September 11th, 2001, has become highly important under international law, from the standpoint of defining the start of a new stage in the history of international relations and a new world order that is still in the formative stage. It is international terrorism.

This international crime has been and continues to be regulated by several international treaties, depending on its nature and the means used in committing it. However, the crime has never been defined on the basis of a widespread consensus. The debate on the nature of the crime places many countries in a difficult position, because there is no definition of terrorism that is completely free from political considerations. Many national liberation movements, when confronting colonizing powers in their struggle for freedom, and other movements that have and continue to use force to defend their right to the self-determination of peoples have been accused of being terrorists but have later become governing parties or participants in national or international political negotiations (the African National Congress in South Africa, the PLO, the IRA the East Timor Liberation Front, etc.).

Today, non-State organizations – terrorists and international organized crime – have proven themselves to be capable of jeopardizing the security of countries and the entire international community, through sneak attacks. These organizations have become an international threat that can make it necessary to combat them in the sovereign territory of any country, for reasons that transcend the country itself, although sometimes that country can be an accomplice or protector. The organizations have no territory to defend, they operate on the world level, they are not interested in the peaceful settlement of disputes or in diplomatic negotiations, they have access to weapons of mass destruction and modern technologies that perfect the speed and effectiveness of their actions, and their objectives go beyond specific claims, fusing with fundamentalism, discrimination or religious hatred or economic power and control of natural resources. Unfortunately, this has led to a tendency to legitimize the unilateral actions of countries (preventive actions, right to interfere, humanitarian interventions, etc.) which are essentially contrary to the United Nations Charter and international law and which can destabilize the rules of the game under the current system of international relations by undermining the institutional resources and practices that have been enshrined.

Therefore, the fight against international terrorism should be a multilateral undertaking, in the hands of the countries but coordinated by international organizations, not just general ones such as the United Nations or the Organization of American States, but special ones such as the specialized United Nations agencies or regional bodies. The diversity and complexity of criminal behaviour makes a strategy of this kind indispensable to achieve the hoped-for results. In this sense, the role that can be played by the International Criminal Court is extremely important, owing to its nature as an international judicial body with universal jurisdiction and a specialized area of action (international crimes).



International terrorism and the jurisdiction of the International Criminal Court

But today, the International Criminal Court does not have the authority to judge cases of international terrorism. The crimes that fall under its jurisdiction are established in Article 5 of the Rome Statute and are: genocide, crimes against humanity, war crimes and aggression. In the case of this last area, the lack of consensus on a definition postponed its inclusion in the powers of the court until a later conference to review it. The detailed description of these crimes constitutes a code of rules that already exist and are enshrined under international law, based on the provisions of the many international legal instruments such as the Hague Conventions of 1907, the 1948 Convention on the Prevention and Punishment of the Crime of Genocide, the 1949 Geneva Conventions on War and their Additional Protocols of 1977, the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984, and many others. Unless a terrorist action to be judged coincides with any of the behaviours described in Article 5, the International Criminal Court is not competent to hear it.

How, then, can international terrorism be included as a crime coming under the jurisdiction of the International Criminal Court? Only through a revision of the Rome Statute. Article 121 and 123 of the statute spell out the procedure. Seven years after it comes into force – i.e. on 1 July 2009 – the Secretary General of the United Nations will convoke a review conference of the States Parties to examine amendments to the statute, which could include the crimes mentioned in Article 5 but not necessarily be limited to them. The participants will be members of the Assembly of States Parties to the statute and they will participate under the same conditions as in the assembly. After this first review conference, at any time at the request of a States Party and with the same objective of proposing amendments, the Secretary General of the United Nations can convoke successive review conferences to discuss amendments or may propose them directly to the assembly of the States Parties, provided a majority of those states grants him permission to do so in advance.

It will clearly be necessary to build the widest possible consensus on a definition of international terrorism between now and July 2009, based on the definitions included in the different international treaties in effect and including those resources that international reality, scientific and technical research, government measures, and funding can provide to settle differences and build a common concept.

It is useful to recall that the inclusion of terrorism in the jurisdiction of the International Criminal Court was dealt with unsuccessfully at the Preparatory Commission (PREPCOM) that drafted the Rome Statute during the period 1996-1998 and in the Preparatory Commission (Resolution F) of the International Criminal Court, which operated from 1998 to 2003 for the purpose of addressing administrative and financial issues, regulating the statute with respect to procedures and evidence and the elements of crimes and formulating proposals for amendments for the first Review Conference to be held in 2009, with respect to the crime of aggression and any other. Several countries, such as Algeria, India, Spain, have expressed great interest in including terrorism as an international crime under the court's jurisdiction, owing to their painful experience in this area. It is considered as one of the most reprehensible forms of international crime, on account of its massive and total violation of fundamental human rights, threatening the territorial integrity and the political and social structure of States, cutting short the lives of innocent men, women and children, without distinction as to sex, race or creed and with no respect for borders. It is an aberrant crime that represents a true challenge for all humanity.

The fight against terrorism in the inter-American system and the International Criminal Court

The Inter-American Convention Against Terrorism, signed in Bridgetown, Barbados, on 3 June 2002, not yet in force, was the result of a process of hemispheric cooperation to prevent, combat and



eliminate terrorism as an international crime, that was begun at the Lima Conference in 1996. It is a foundation that can be used as the core around which a consensus can be built on the definition of terrorism as an international crime. Although the convention does not provide a definition, Article 2 remits the members to many international treaties which, to a greater or lesser extent, mark off a semantic space in which a definition can be agreed upon by a majority, with the elements necessary for its unequivocal identification and prescinding with ideological or political nuances that stand in the way of a consensus.

The convention also provides a catalogue of interim and other measures based on international cooperation, whose purpose is to prevent, combat and eradicate terrorism, particularly with regard to its financing and related crimes such as money laundering and drug trafficking, provide mutual legal assistance, promote technical-cooperation and training programs and police and judicial investigation. A few months ago, on 24 January 2003, on the occasion of its third regular session period, CICTE (the Inter-American Committee Against Terrorism), meeting in El Salvador, adopted the San Salvador Declaration on Strengthening Cooperation in the Fight against Terrorism. Some of the main points of the declaration refer to the links between terrorism and the different forms of international organized crime, cyberspace security and international cooperation with the pertinent regional and international organizations.

Special mention should also be made of Resolution 49/60 of 17 February 1995 of the United Nations General Assembly on measures to eliminate international terrorism and Resolution 1373 (2001) of 28 September 2001 of the Security Council on international terrorism, issued in reaction to the attack of September 11th. Both resolutions contain a detailed study of the courses of action to be taken, ranging from a preventive approach to concrete measures for repression.

It is undeniable that the possibility of having the International Criminal Court incorporate this international crime into its jurisdiction would lead to a much broader and universal framework for efforts to eradicate this reprehensible behaviour. However, enough time remains until 2009 to continue working regionally and, of course, globally, to establish general guidelines for action in the work of prevention and repression. The link between CICTE and the Assembly of the Parties to the Rome Statute and to the International Criminal Court itself, should make it a necessity to include this international crime within the court's jurisdiction. Furthermore, the objective can be achieved if CICTE promotes joint action with similar bodies in the United Nations system or different regional organizations, intended to build a consensus in defining international terrorism and in the means for its prevention, combat and repression. This joint action should take place in academic, governmental and political circles, as well as in civil society and NGOs, to promote an understanding of the subject and of the consequences of its responsible and effective treatment. There may be strong political resistance to the international punishment of behaviour that can be used to justify the most exalted ends with the basest means. The resistance may not just come from rogue states, but also from the great powers, particular if the preventive use of force is legitimized [sic].

However, we should not forget that there are social and economic causes that generate a culture medium in which future terrorists grow and the reasons for their self-destructive, fundamentalist and ultimately discriminatory, intolerant and authoritarian attitudes. Eradicating these causes is as important and probably more effective than preventing, combating and repressing crime. This supposes a much more inclusive and enriching process in which globalization can show its friendlier face, working for a fairer distribution of world wealth, which will simultaneously reduce both poverty and violence.

Also, ethnical, moral and legal barriers should continue to exist, as signs of human dignity and the deep conviction that the fight against terrorism should respect the sovereign equality of nations, the rule of law, the international law of human rights, the international law of refugees and international humanitarian law.



Why is it so important for the fight against international terrorism to ensure that the Rome Statute is ratified and implemented in all of the Americas, despite the fact that the International Criminal Court cannot try the crime yet?

Because, the most relevant thing is to recognize the most important judicial body in the world for the investigation, treatment and repression of international crimes, organize it and develop it, submit to its jurisdiction and agree to gradually expand its original powers. Only when this behaviour has spread in the Americas and throughout the world, and when the tribunal has carried out its functions with justice and effectiveness and become consolidated with the weight of its own rulings, will criminals fear punishment and no longer believe that they can enjoy impunity or the protection of any one state. The countries will also cease to support them, harbour them, or finance them, thereby avoiding clear complicity.

The parliaments of the Americas and the International Criminal Court

The parliamentarians of the Americas should ensure that the rule of law prevails in our societies and that modern democracy exists, which links the economy to justice, initiative to security, respect for the individual to solidarity. Legal security is a republican and democratic principle. The International Criminal Court is an institution that the international community has created to put that principle into practice and turn it from an abstract idea into a reality for the essence of all human beings – their lives, their physical and mental integrity, their personal freedom, their dignity, their rights as individuals and as social beings. The tribunal is a guarantee that humanity has given to enable international law to limit the power of countries and the people who govern them when their conduct violates the most sacred rules of human coexistence and international relations, injures the international common good and affects international public order.

Each parliament, in accordance with its special nature and the characteristics of the country it represents, should make innovative and firm proposals for strengthening the existence and operation of the tribunal and raising the awareness of their societies about the importance of its functions, the values on which it is based, and the positive consequences to the international community of imparting justice. Each parliament should coordinate joint strategies with the other parliaments to adjust their domestic criminal legislation to the basic international rules that will help to establish future international criminal law, in which the goods that are protected and the conduct that is punished form part of shared convictions and a universal ethical and legal structure.

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