

**Thirteenth session**

New York, 8-17 December 2014

**Report of the Working Group on Amendments****I. Introduction**

1. The present report is submitted pursuant to the mandate given to the Working Group on Amendments (“the working group”).
2. The working group was established by the Assembly of States Parties (“the Assembly”) at its eighth session pursuant to resolution ICC-ASP/8/Res.6, “for the purpose of considering [...] amendments to the Rome Statute proposed in accordance with article 121, paragraph 1, of the Statute at its eighth session, as well as any other possible amendments to the Rome Statute and to the Rules of Procedure and Evidence, with a view to identifying amendments to be adopted in accordance with the Rome Statute and the Rules of Procedure of the Assembly of States Parties.”<sup>1</sup>
3. At its twelfth session, the Assembly “*invite[d]* the working group to continue its consideration of amendment proposals, including all proposed amendments submitted prior to the Review Conference<sup>2</sup> and those submitted following the decision by the Extraordinary Summit of the African Union held on 12 October 2013 in Addis Ababa, in accordance with the Terms of reference of the Working Group and *request[ed]* the Bureau to submit a report for the consideration of the Assembly as its thirteen session.”
4. The working group thus continued to meet intersessionally. Informal consultations were held on 20 May, 24 June, 5 November, 12 November (expert level), 21 November, 24 November (expert level) and 2 December to discuss two sets of proposals for amendments to the Rules of Procedure and Evidence prepared by the Court’s Working Group on Lessons Learnt (WGLL) and the Study Group on Governance (SGG) as well as (already) submitted proposals for amendments to the Rome Statute. To inform the discussion of the Working Group two briefings, via video link, were held with the SGG on 4 June and 29 October. In accordance with its Terms of Reference, the working group focused its attention first and foremost on proposals that aim to improve the effective and efficient functioning of the Court.
5. These discussions were very useful and provided an opportunity for a constructive exchange of views and information which helped to inform discussions and facilitate the work of the working group. Based on this assessment, the working group was of the view that more regular meeting were needed and decided that it will convene its first intersessional meeting in January 2015.

<sup>1</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, eighth session, The Hague, 18-26 November 2011* (ICC-ASP/8/20), Vol. I, part II, ICC-ASP/8/Res.6.

<sup>2</sup> As annexed to ICC-ASP/10/32.

## II. Consideration of proposals to amend the Rome Statute

6. The working group continued to have before it those amendment proposals previously referred to it by the Assembly at its eighth session<sup>3</sup> as well as those transmitted by the Depositary of the Rome Statute on 14 March 2014<sup>4</sup>. Delegations were given the opportunity, at each of its meetings, to comment on these proposals.

7. At its meeting on 20 May, Belgium, Mexico, Trinidad and Tobago, South Africa and Kenya presented their proposals. At its meeting on 24 June, delegations commented the different proposals and asked questions. There was an agreement that further discussions were needed.

8. Belgium informed the working group at its meeting of 5 November of a technical update concerning its proposals. None of the other delegations who had made amendment proposals provided updates to the text of their submissions during the reporting period. The working group decided to annex to its report the informal compilation of proposals to amend the Rome Statute, including the technical update made by Belgium.<sup>5</sup>

9. At its meeting on 5 November 2014, South Africa provided further explanation and information to the working group on its proposal. Some delegations asked for clarification of certain terms or expressions used in the proposal, such as the exact meaning of “[a] State with jurisdiction over a situation before the Court” and how to interpret the expression “when the United Nations Security Council fails to decide”. These questions led to a fruitful exchange of views within the working group. There was agreement that the proposal raises numerous questions notably with regard to the relationship between the organs of the United Nations as well as on the relationship between the Court and the United Nations. There was agreement that further discussions would be necessary after the thirteenth session of the Assembly. During the same meeting, Kenya also introduced its amendments and questions were raised by some delegations.

10. At its informal meeting on 12 November, Belgium briefed the working group on its proposals and explained that they had been working to revise their proposals to accommodate concerns expressed by some delegations. The explanation of these revisions can be found in the informal compilation of proposal to amend the Rome Statute<sup>6</sup>. Some delegations expressed their appreciation for this constructive approach but were of the view that the time was not ripe to bring forward these proposals and that more discussion would be necessary after the thirteenth session of the Assembly.

11. At its meeting on 21 November, Mexico informed the working group of the background and rationale for its proposal, notably on the basis of the explanation that is contained in the informal compilation of proposals to amend the Rome Statute<sup>7</sup>. Mexico also informed the working group of some new developments at the international level in the disarmament context. Several delegations expressed their appreciation for this update but were of the view that the time was not ripe for expanding the Court’s jurisdiction. There was agreement that further discussions were needed after the thirteenth session of the Assembly, including with regard to the new developments mentioned by Mexico.

12. During the same meeting, Kenya introduced and explained to the working group its proposal to amend article 27 of the Rome Statute with a view to provide some clarifications. In particular, Kenya explained that the objective of their proposal was not to grant immunity to Heads of State, their deputies and persons acting or entitled to act as such, but only to “pause” prosecutions during their term of office. It was therefore to be understood as a “comma” rather than a “full stop”. Several delegations expressed their appreciation for this clarification but had additional questions and comments with regard to the text of the proposal, notably concerning the meaning of the expressions “current term of

<sup>3</sup> *Official Records ... Eighth session... 2009* (ICC-ASP/8/20), Vol. I., part II, ICC-ASP/8/Res.6, , footnote 3. These amendment proposals are also contained in annexes I-IV of the previous report of the Working Group on Amendments, ICC-ASP/10/32.

<sup>4</sup> UN depositary notification C.N.1026.2013. TREATIES-XVIII.10 (proposal of amendments by Kenya to the Statute).

<sup>5</sup> See Annex I.

<sup>6</sup> See Annex I.

<sup>7</sup> See Annex I.

office” and “anybody acting or is entitled to act as [a Head of State or their deputy]”. Moreover some delegations requested further clarification regarding the term “may” as it was not clear to them on who would be entitled to make the decision and on the basis of what criteria. Several delegations recalled that article 27 was the cornerstone of the Rome Statute and that they were not willing to modify it. There was agreement that discussions need to continue after the thirteenth session of the Assembly.

13. In more general terms, several delegations were of the view that it would be better to postpone any amendments to the Rome Statute that would add new crimes to the Court’s jurisdiction until such a time when the Court has been able to consolidate it further. Moreover there was agreement that only proposals that enjoy broad support or preferably consensus should be transmitted for the consideration of the Assembly, in accordance with the Terms of Reference of the working group. In conclusion, the working group was of the view that more discussion were needed on all the proposals and that it will continue these discussions after the thirteenth session of the Assembly.

### III. Consideration of amendments of the Rules of Procedure and Evidence

14. On the basis of the Roadmap on reviewing the criminal procedures of the International Criminal Court,<sup>8</sup> the working group had before it two reports of the Working Group on Lessons Learnt (WGLL). The first report contained recommendations to amend rule 76(3), rule 101(3) and rule 144(2)(b) of the Rules of Procedure and Evidence identified under the “Language Issues” cluster.<sup>9</sup> The second contained a recommendation for a new rule 140*bis*, identified under the “Organizational Matters” cluster.<sup>10</sup>

15. The working group took note of the report of the Study Group on Governance “Cluster I in relation to amendment proposals to the Rules of Procedure and Evidence put forward by the Court” dated 17 October 2014. The report contained the following recommendation to the working group: “[t]ogether with the wide variety of views expressed by delegations, the Study Group refers the proposed amendments to the Working Group on Amendments”. The report also included an amended proposal by one delegation to the Rule 140*bis* and suggested that it be considered by the working group, alongside the Court’s text.<sup>11</sup>

16. To inform its discussion, the working group heard two briefings on 4 June and on 29 October by the Chair of the Study Group on Governance (SGG), Ambassador Emsgård (Sweden), and the Principal Legal Adviser to the Presidency of the Court, Mr Hiram Abtahi, via video link. The working group was informed of the genesis of the proposals’ inside the Court, where they had been adopted by the Advisory Committee on Legal texts (ACLT), a committee containing representatives of the three judicial divisions of the Court, the Office of the Prosecutor, victims counsel and defense counsel, with the participation of the Registry. It gave an opportunity to the working group to ask questions, to seek more clarity on the proposals and to be briefed on the content of the discussion held within the SGG.

17. At its meeting on 5 November 2014, the working group discussed the two sets of recommendations, the proposed rule 140*bis* (“temporary absence of a judge”) as well as the proposals to amend rules 76, 101 and 144 (“translation cluster”). The working group first noted that enhancing the efficiency and effectiveness of the Court is of common interest both to the Assembly and the Court and in that regard expresses its appreciation to the Court for its amendment proposals to the Rules of Procedure and Evidence. However, the discussions showed that the working group was not yet in a position to make recommendations on these two sets of proposals as several delegations had still some concerns and/or needed further clarification. The Chair of the working group decided to appoint two facilitators to hold informal discussions, one on the issue of the “temporary absence of a judge” and one on the “translation cluster”.

<sup>8</sup> ICC-ASP/11/31, annex I (and ICC-ASP/11/31/Add.1) revised by ICC-ASP/12/37, annex 1.

<sup>9</sup> ICC-ASP/13/28, annex I, appendix III.

<sup>10</sup> *Ibid.*, appendix II.

<sup>11</sup> *Ibid.* Both proposals are reflected in annex II.

18. At its meeting on 21 November 2014, the working group continued its consideration of the two sets of amendment proposals to the Rules of Procedure and Evidence on the basis of the two oral reports from the facilitators.

19. As noted in the report of the SGG, the proposed rule 140*bis* on “temporary absence of a judge” provides that where a Trial Chamber judge is absent for illness or other unforeseen and urgent personal reasons, the remaining judges of the Chamber may continue hearing the case to complete a specific matter, provided that such continuation is in the interests of justice and the parties consent. The Court further explained that the proposed new rule sought to grant the Trial Chamber a measure of flexibility to respond to the absence of a judge in unforeseen and exceptional circumstances. The Court noted that the proposed rule arose in response to several situations where a single judge was temporarily absent and that absence resulted in delays to Court proceedings. The Court stated that the proposed rule would contribute to the efficient management of the work of Trial Chambers and that its structure both emphasizes the exceptional nature of the measure and gives due regard to the rights of the accused. The report of the SGG also mentions that following formal and informal discussions, one delegation suggested an amendment which sought to clarify further the circumstances in which a judge may be temporarily absent from trial.

20. In the course of the informal consultations conducted by the facilitator, several delegations expressed their satisfaction with the proposal of the WGLL and were ready to support it. Some delegations highlighted the process by which the proposal had been developed and considered, in particular the approval by the ACLT, that it should give the working group sufficient confidence to support the proposal. Some delegations also expressed the view that the proposal helped to reduce delays and would allow the Trial Chamber flexibility in minimizing the time vulnerable witnesses were absent from their communities. They emphasized the importance of the various safeguards contained in the proposed rule amendment, including the consent of all the parties. For the sake of compromise, those delegations also expressed their willingness to accept the amended proposal, although some delegations noted that it was unnecessarily restrictive.

21. Other delegations expressed doubts regarding the proposal’s consistency with Article 74(1) and Article 39(2)(b)(ii) of the Rome Statute. They suggested that, were it to be adopted, the proposal would appear to be contrary to the principle of continuous presence of all three trial judges of the Trial Chamber as contained in Article 74 (1). A view was expressed that, if adopted, it would seem to amend indirectly Article 74 of the Rome Statute, which is not a provision of a purely institutional nature under Article 122 of the Rome Statute. Some delegations also raised concerns about the alleged ambiguity of some of the words contained in the proposed text, such as “unforeseen”, “urgent personal reasons”, “short timeframe”, “in the interests of justice”. Other delegations expressed the view that such phrases had sufficiently clear meaning and were suitable for application to the narrow circumstances in which the rule would apply.

22. Some delegations were satisfied that the proposal conformed to the Rome Statute. They did not interpret article 74(1) or article 39(2)(b)(ii) to require the presence of all three trial judges throughout the entirety of every hearing of every matter during the trial, even where a single judge was temporarily unavailable for unforeseen and urgent personal reasons. They noted that articles 74(1) and 39(2)(b)(ii) had to be read in conjunction with article 64(3)(a), the proposal’s legal basis, which allows the Trial Chamber to adopt, after conferring with the parties, such procedures as are necessary to facilitate the fair and expeditious conduct of proceedings.

23. The working group also recalled paragraphs 10 and 11 of the WGLL report which set out the three occasions on which the Trial Chamber has dealt with the temporary absence of one judge . One of those occasions dealt with a situation in which a judge was temporarily absent after a witness had commenced but not finished giving evidence and the parties and participants consented to the witness concluding his evidence before the two remaining judges<sup>12</sup>. Delegations noted that the Court had been able to resolve the issue. In this regard, some delegations expressed doubts as to the necessity and efficiency gains of

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<sup>12</sup> *The Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui*, Transcript of Trial Hearing, 24 November 2010, ICC-01/04-01/07-T-222-Red2-FRA, pp. 1-8.

the proposed amendment. Other delegations suggested that given the approach taken by the Court, it was appropriate for the Assembly to codify the procedure.

24. Following the informal consultations and the discussions held during its meetings, the working group accepted the approach the Court has taken so far<sup>13</sup> and invites the Court to bring to its attention any information that could further inform the discussion of the working group on this issue, as it deems appropriate.

25. As noted in the report of the SGG concerning the “translation cluster”, the proposed amendment to rule 76(3) would allow the Court to authorize partial translations of prosecution witness statements, where such partial translations would not infringe the rights of the accused. The proposed amendment to rule 144(2)(b) allows the Court to authorize partial translations of decisions of the Court, where such partial translations would not infringe the rights of the accused. The proposed amendment to rule 101(3) allows the Court to delay the commencement of time limits of certain decisions until their translations are notified. The Court further explained that the proposed amendment to rule 76(3) was drafted in response to circumstances where full translations of prosecution witness statements have proven unwieldy and resulted in considerable delays to Court proceedings. The Court considered that partial translations of prosecution witness statements are fully consistent with article 67(1)(f), which provides that the accused is entitled to “such translations as are necessary to meet the requirements of fairness”, and article 67(1)(c), which provides that the accused must be “tried without undue delay”. Accordingly, the Court stated that the proposed amendment would afford Chambers greater flexibility in making decisions that would balance both considerations of fairness and expediency. Furthermore, the Court explained that the proposed amendment to rule 144(2)(b) arose out of ambiguity as to whether a Trial Chamber could authorize partial translations of certain decisions. Although one Trial Chamber has interpreted the rule to permit such partial translations, the Court determined that greater clarity was warranted. The Court affirmed that the amendment would continue to be subject to the safeguards of article 67(1)(f). Finally, the Court explained to the Study Group that the proposed amendment to rule 101(3) was drafted in response to the ad hoc practice of Chambers extending time limits where translations of certain decisions had been deemed necessary. Accordingly, the proposed amendment would clarify that a Chamber may order that time limits shall begin to run once the translations of certain decisions are notified.

26. The informal consultations conducted by the facilitator as well as the discussions within the working group showed that there was strong support in favor of recommending the Assembly to adopt the proposed amendments to rule 76(3), rule 101(3) and rule 144(2)(b) of the Rules of Procedure and Evidence. However, some delegations expressed concerns about the proposed amendments and/or were waiting for instructions on how to proceed. One delegation expressed the fact that it was not in a position to support a recommendation to the Assembly as outlined above. Based on this, the working group agreed to continue its deliberations on this topic during the thirteenth session of the Assembly.

#### **IV. Exchange of information on the status of ratification of the Kampala amendments to the Rome Statute**

27. At its 21 November 2014 meeting, the working group was informed of the recent ratification by San Marino of the Kampala Amendments on the crime of aggression, having previously ratified those pertaining to article 8 of the Rome Statute. Since the submission of the working group’s last report, Belgium, Croatia, Slovakia, Austria, Latvia, Spain and Poland had also ratified both sets of Kampala Amendments. At the time of this report, 19 States had thus ratified the amendments on the crime of aggression and 21 the amendment regarding article 8 of the Rome Statute.

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<sup>13</sup> *See id.*

## V. Recommendations and way forward

28. The working group agreed to reconvene during the upcoming Assembly to continue and potentially conclude the discussion on the proposals to amend Rules 76, 101 and 144 of the Rules of Procedure and Evidence.

29. The working group invites the Court to bring to its attention any information regarding the temporary absence of a judge (and the proposed rule 140*bis*) that could further inform the discussion of the working group on this issue in the future, as it deems appropriate.

30. The working group is of the view that regular meetings are important and decides that it will convene its first intersessional meeting in January 2015.

31. The working group concluded its intersessional work by recommending that the Assembly include in the omnibus resolution two paragraphs on its work as contained in annex IV.

## Annex I

### Informal compilation of proposals to amend the Rome Statute

#### I. Introduction

1. According to article 121(1) of the Rome Statute, any State Party may propose amendments to the Statute after the expiry of seven years from its entry into force. The following compilation lists all amendment proposals to the Rome Statute that are under consideration by the Working Group on Amendments. This excludes those amendment proposals that have been acted upon at the Kampala Review conference in 2010,<sup>1</sup> or which in the meantime have been withdrawn proposing delegations.<sup>2</sup>

2. Although this is not a requirement for the Working Group's consideration, all proposals listed have previously been submitted to the United Nations Secretary-General in accordance with article 121(1) of the Rome Statute, and have subsequently been circulated to all States Parties in the form of depositary notifications.<sup>3</sup>

3. The compilation lists all proposals in their latest iteration with accompanying comments, reflecting any revisions by the proposing delegation(s) subsequent to the formal circulation by the Secretary-General. The proposals are enumerated in the order they were submitted and, in case submitted on the same day, in alphabetical order.

#### II. Belgium<sup>4</sup>

##### A. Proposed amendment 2

**Proposed by Argentina, Belgium, Bolivia, Burundi, Cambodia, Cyprus, Ireland, Latvia, Luxembourg, Mauritius, Mexico, Romania, Samoa and Slovenia, as revised**

1. Add to article 8, paragraph 2, b, the following:

“xxvii) Employing the agents, toxins, weapons, equipment and means of delivery as defined by ~~and in violation of~~ the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, London, Moscow and Washington, 10 April 1972<sup>5</sup>;

xxviii) Employing chemical weapons ~~or engaging in any military preparations to use chemical weapons~~ as defined by ~~and in violation of~~ the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, Paris, 13 January 1993<sup>6</sup>;

<sup>1</sup> See resolutions RC/Res.3, “Strengthening the enforcement of sentences” (proposed by Norway); RC/Res.5, “Amendments to article 8 of the Rome Statute” (proposed by Belgium); and RC/Res.6, “The crime of aggression” (proposed by Liechtenstein). With regard to article 124 of the Rome Statute, cf. the decision of the Assembly in resolution RC/Res.4 to review article 124 once again at the fourteenth session of the Assembly: “*Having reviewed* the provisions of article 124 at the Review Conference in accordance with the Rome Statute, 1. *Decides* to retain article 124 in its current form; 2. *Also decides* to further review the provisions of article 124 during the fourteenth session of the Assembly of States Parties to the Rome Statute.”

<sup>2</sup> The proposal of the Netherlands, in *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Eighth session, The Hague, 18-26 November 2009* (ICC-ASP/8/20), vol. I, annex II, appendix III, was withdrawn at the 5 June 2013 meeting of the Working Group on Amendments.

<sup>3</sup> All pertinent depositary notifications conveyed to States Parties by the Secretary-General are available online at [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-10&chapter=18&lang=en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10&chapter=18&lang=en).

<sup>4</sup> *Official Records ... Eighth session... 2009* (ICC-ASP/8/20), vol. I, annex II, appendix I; UN depositary notification C.N.733.2009.TREATIES-8 of 29 October 2009 (Proposal of amendment by Belgium to the Statute). Note that amendment proposal 1 has been acted upon at Kampala, see footnote 1, and therefore is not listed here.

<sup>5</sup> 170 States parties (3 November 2014).

<sup>6</sup> 190 States parties (3 November 2014).

xxix) Employing anti-personnel mines as defined by ~~and in violation of~~ the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, Ottawa 18 September 1997<sup>7</sup>.”

2. Add to article 8, paragraph 2, e), the following:

“ xiii) Employing the agents, toxins, weapons, equipment and means of delivery as defined by ~~and in violation of~~ the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, London, Moscow and Washington, 10 April 1972;

xiv) Employing chemical weapons ~~or engaging in any military preparations to use chemical weapons~~ as defined by ~~and in violation of~~ the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, Paris, 13 January 1993 ;

xv) Employing anti-personnel mines as defined by ~~and in violation of~~ the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, Ottawa 18 September 1997.”

### Justification

The draft amendment refers to the use of specific weapons forbidden by international treaties ratified or accepted by more than four fifth of the States in the world; some of them are almost universally ratified. All are considered by an extremely large number of States as international customary law.

The first paragraph incriminates this use in case of an international armed conflict (article 8, para. 2, b) of the Rome Statute). The second paragraph extends the jurisdiction of the Court to the employment of such weapons in case of armed conflict not of an international character (article 8, para. 2, e) of the Rome Statute).

## B. Proposed amendment 3

**Proposed by Argentina, Belgium, Bolivia, Burundi, Cambodia, Cyprus, Ireland, Latvia, Luxembourg, Mauritius, Mexico, Romania, Samoa and Slovenia, as revised<sup>8</sup>**

1. Add to article 8, paragraph 2, b), the following:

“ xxx) Employing weapons as defined by ~~and in violation of~~ any of the following Protocols to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects. Geneva, 10 October 1980:

- Protocol on Non-Detectable Fragments (Protocol I to the 1980 Convention), Geneva, 10 October 1980<sup>9</sup> ;
- Protocol on Blinding Laser Weapons (Protocol IV to the 1980 Convention), Vienne, 13 October 1995<sup>10</sup>.”

2. Add to article 8, paragraph 2, e), the following:

“ xvi) Employing weapons as defined by ~~and in violation of~~ any of the following Protocols to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects. Geneva, 10 October 1980 :

- Protocol on Non-Detectable Fragments (Protocol I to the 1980 Convention). Geneva, 10 October 1980 ;

<sup>7</sup> 162 States parties (3 November 2014).

<sup>8</sup> *Official Records ... Eighth session... 2009* (ICC-ASP/8/20), vol. I, annex II, appendix I.

<sup>9</sup> 113 States parties (3 November 2014).

<sup>10</sup> 103 States parties (3 November 2014).

- Protocol on Blinding Laser Weapons (Protocol IV to the 1980 Convention), Vienne, 13 October 1995.”

### **Justification**

The draft amendment refers to the use of weapons forbidden by two Protocols to the 1980 Convention which are broadly ratified or accepted. Both are considered by a large number of States as international customary law.

The first paragraph incriminates this use in case of an international armed conflict (article 8, para. 2, b) of the Rome Statute). The second paragraph extends the jurisdiction of the Court to the employment of such weapons in case of armed conflict not of an international character (article 8, para. 2, e) of the Rome Statute).

## **C. Explanations to the revisions**

### **Amendments 2 and 3: on the use of the terms “using”:**

It is suggested to replace, in Amendments 2 and 3, the word “using” with the word “employing”. The purpose of this new draft is to establish consistency with the terms already used in article 8 of the Rome Statute concerning prohibited weapons (article 8, §2 b), xvii), xviii), xix) and xx)).

### **Amendment 2, §1, line 2 and §2 line 2: deletion of the terms “engaging in any military preparations to use chemical weapons”:**

Following comments made by States, it is suggested to delete, in Amendment 2, §1 line 2 and §2, line 2, the terms “engaging in any military preparations to use chemical weapons”. The existing provisions of Rome Statute article 8 concerning prohibited weapons take into account only the use of certain weapons and do not encompass the preparation to use those weapons. It is consistent to use the same formula for all prohibited weapons.

### **Amendments 2 and 3: on the use of the terms “as defined by and in violation of”:**

It is suggested to replace the words “as defined by and in violation of” with the words “as defined by”. The current wording of the amendments raises problem as far as the new criminalization’s scope of application is concerned. The words “in violation of” imply that a State that ratifies the amendments has to be party to the Conventions to which the amendments refer in order for those amendments to take effect. If a State ratifies the proposed amendments without being party to one or more Conventions, the using of the prohibited weapons, by a State national or on the State’s territory, would not be made “in violation of” that or those Convention(s). In order to avoid this illogical consequence of an ineffective ratified amendment, it is suggested to keep only the terms “as defined by”. These terms imply that the prohibition set forth in Amendments 2 and 3 will apply to the nationals and on the territory of the States which will ratify this or these amendments, the question of whether it is a State Party being irrelevant. In this respect, it is recalled that the entry into force of the proposed amendments is governed by article 121, §5 of the Rome Statute. According to this article, “Any amendment to articles 5, 6, 7 and 8 of this Statute shall enter into force for those States Parties which have accepted the amendment one year after the deposit of their instruments of ratification or acceptance (...)”. The States that are not parties to the Conventions to which the amendments refer will acknowledge, by means of the ratification of the aforementioned amendments, the Court’s jurisdiction regarding those crimes if they do not prosecute those crimes themselves.

### III. Mexico<sup>11</sup>

#### A. Proposed amendment

Add to article 8, paragraph 2, b), the following:

**[...] Employing nuclear weapons.**

#### B. Explanation

This proposal is based on the following considerations:

1. The use of nuclear weapons is contrary to the principles of distinction and proportionality that underlie International Humanitarian Law (IHL):

(a) In resolution 1653 (XVI), the United Nations General Assembly decided that: “The use of nuclear and thermo-nuclear weapons would exceed even the scope of war and cause indiscriminate suffering and destruction to mankind and civilization and, as such, is contrary to the rules of international law and to the laws of humanity.”<sup>12</sup>

(b) The principles of distinction and proportionality are fundamental principles of IHL:

(i) According to the principle of distinction, “Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.”<sup>13</sup>

(ii) According to the principle of proportionality, indiscriminate attacks are prohibited, including those that employ methods or means of combat:

- The effects of which cannot be limited, which “are of a nature to strike military objectives and civilians or civilian objects without distinction”<sup>14</sup>; and

- Which may be expected to cause effects among civilian population (loss of life, injury, damage to civilian objects) “which would be excessive in relation to the concrete and direct military advantage anticipated”.<sup>15</sup>

(c) Consistent with such principles, according to conventional and customary IHL “It is prohibited to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering”<sup>16</sup>. In addition, IHL includes the prohibition of the use of methods or means of warfare that are expected to cause widespread, long-term and severe damage, prejudicing the health or survival of the population<sup>17</sup>.

(d) Without a doubt, the use of nuclear weapons in an international armed conflict would be contrary to the principles of distinction and proportionality that underlie IHL, as well as to the norms of IHL that protect the environment. Nuclear

<sup>11</sup> Report of the Working Group on Amendments, ICC-ASP/10/32, annex II; see also UN depositary notification C.N.725.2009.TREATIES-6 of 29 October 2009 (Proposal of amendment by Mexico to the Statute); “Proposal of Mexico: Amendment to article 8 of the Rome Statute of the International Criminal Court regarding the use of nuclear weapons-Position paper”, revised draft dated 19 May 2011.

<sup>12</sup> Resolution 1653 (XVI) of the General Assembly, November 24 1961, operative paragraph 1, subparagraph b).

<sup>13</sup> Articles 48 and 51 of Additional Protocol I to the 1949 Geneva Conventions and Norms 1, 2, 7, 11, 12 and 13 of Customary International Humanitarian Law.

<sup>14</sup> Article 51.4(c) of Additional Protocol I to the 1949 Geneva Conventions.

<sup>15</sup> Article 51.5(b) of Additional Protocol I to the 1949 Geneva Conventions and Norms 14, 15, 16, 17, 18 and 19 of Customary International Humanitarian Law.

<sup>16</sup> Article 35 of Additional Protocol I to the 1949 Geneva Conventions and Norms 70 and 71 of Customary International Humanitarian Law.

<sup>17</sup> Article 55 of Additional Protocol I to the 1949 Geneva Conventions and Norms 43, 44 and 45 of Customary International Humanitarian Law.

weapons are, by their own nature, indiscriminate arms that cannot be directed to a specific military objective. If used in the context of an international armed conflict, they are likely to cause loss of civilian life, unnecessary injuries and harm to civilians, as well as damage to civilian objects, and their harmful effects would escape, in space and time, the control of those who use them. Various international treaties recognize these characteristics<sup>18</sup>.

(e) The International Court of Justice, in its Advisory Opinion dated 8th July, 1996 on The Legality of Threat or Use of Nuclear Weapons, expressly recognizes that: "the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law."

(f) For the reasons stated above, the use of nuclear weapons in the context of an international armed conflict complies with the characteristics of grave breaches to IHL referred to by the Geneva Conventions and their Additional Protocols<sup>19</sup>.

2. As it is a grave breach to IHL, the use of nuclear weapons must be criminalized as a war crime in the Rome Statute:

(a) Article 8 of the Rome Statute recognizes as war crimes the "serious violations of the laws and customs applicable in international armed conflict, within the established framework of international law", and enlists each of the acts that would represent such a violation.

(b) As evidenced in the previous section, the use of nuclear weapons in the context of an international armed conflict is a grave breach to IHL, which justifies the inclusion of this conduct in the Rome Statute among those acts enlisted as war crimes by article 8.2(b).

(c) Criminalizing the use of nuclear weapons is not a new issue for States Parties to the Rome Statute. Deliberations over this topic were not concluded during the 1998 Rome Conference, reason for which it is necessary for the international community to mend this gap.

3. Criminalizing the use of nuclear weapons as a war crime in article 8.2(b) of the Rome Statute is necessary and complementary to other subparagraphs of that article.

(a) Article 8.2(b) of the Rome Statute states, in subparagraph (iv), as a war crime, the act of "Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian objects or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the concrete and direct overall military advantage anticipated".

(b) In addition to this general criminalization, subparagraphs (xvii), (xviii) and (xix) of article 8.2(b) of the Rome Statute criminalize specifically as war crimes the acts of employing:

(i) Poison or poisoned weapons;

(ii) asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices; and

(iii) bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions.

(c) In light of the above, it is unjustified that article 8.2(b), while criminalizing specifically the use of the above-mentioned arms, does not specifically

<sup>18</sup> E.g., Comprehensive Nuclear-Test-Ban Treaty; Treaty for the prohibition of nuclear weapons in Latin America (the Treaty of Tlatelolco); Treaty on the Non-Proliferation of nuclear weapons; Treaty banning nuclear weapon tests in the atmosphere, in outer space and under water; Treaty on the prohibition of the emplacement of nuclear weapons and other weapons of mass destruction on the seabed and the ocean floor and in the subsoil thereof.

<sup>19</sup> As per the list of grave breaches contained in article 85.3(b) of Additional Protocol I to the 1949 Geneva Conventions, and in articles 50, 51, 130 and 147 of 1949 Geneva Conventions I, II, III and IV, respectively.

criminalize the use of other arms that have an indiscriminate destructive effect that is considerably greater than the effect of the arms already criminalized, as is the case of nuclear weapons.

(d) Subparagraph (xx) of article 8.2(b) criminalizes as a war crime the act of “employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict”. Nevertheless, it subjects this conduct to a condition: “provided that such weapons, projectiles and material and methods of warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment in accordance with the relevant provisions set forth in articles 121 and 123”. Due to the fact that, to date, the annex referred to in this subparagraph has not been adopted, the condition to which it is subject has not been complied with and, therefore, fraction (xx) of article 8.2(b) is, in practice, inoperative.

(e) In view of the above, it is necessary and justified to include an express criminalization of the use of nuclear weapons in the context of an international armed conflict as a war crime in article 8.2(b) of the Rome Statute, which would complement the other subparagraphs currently contained in this article.

4. Criminalizing the use of nuclear weapons as a war crime is different to the issue of the legality of the possession of this type of arms

The criminalization of the use of nuclear weapons should NOT be confused with the efforts of the international community to reach a treaty on general and complete disarmament under article VI of the Treaty of the Non-Proliferation of nuclear weapons. The seriousness of the use of nuclear weapons justifies their criminalization as a war crime independently of the course taken by nuclear disarmament negotiations.

5. The amendment would enter into force only for those States Parties which have accepted it

Being an amendment to article 8 of the Statute, its entry into force will be only for those States Parties which have accepted it, which will allow such States Parties to decide on their acceptance of the amendment.

6. Establishing as a war crime the use of nuclear weapons would be compatible with the grounds for excluding criminal responsibility provided in the Rome Statute

(a) Article 31.1 (c) of the Rome Statute provides among the grounds for excluding criminal responsibility, that a person shall not be criminally responsible if, at the time of that person’s conduct: “[t]he person acts reasonably to defend himself or herself or another person or, in the case of war crimes, property which is essential for the survival of the person or another person or property which is essential for accomplishing a military mission, against an imminent and unlawful use of force in a manner proportionate to the degree of danger to the person or the other person or property protected.”

(b) The International Court of Justice in its Advisory Opinion of 8 July 1996, despite recognizing that in general the threat or use of these weapons would be contrary to the International Law, also mentioned that “the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake”. It recognized, however, that in any case, the use of nuclear weapons must:

(i) Be consistent with paragraph 4 of Article 2 of the Charter of the United Nations, and comply with the requirements of necessity and proportionality in article 51 of the Charter<sup>20</sup>; and

(ii) Be compatible with “the requirements of the international law applicable in armed conflict, particularly those of the principles and rules of

<sup>20</sup> Advisory Opinion of 8 July 1996, paragraph 105. 2 (c).

international humanitarian law, as well as with specific obligations under treaties and other undertakings which expressly deal with nuclear weapons<sup>21</sup>.

(c) The proposed amendment would be consistent with article 31.1 (c) of the Rome Statute considering the provisions of the aforementioned Advisory Opinion. In order for those grounds to exclude criminal responsibility of a person that uses nuclear weapons, this could only occur in the remote case that such weapons are used in extreme circumstances of self-defence in which the very survival of the State would be at stake, when such use complies with the above mentioned<sup>22</sup>. However, it should be emphasized that the Court itself has recognized that, regarding the principles and norms of international humanitarian law, “[i]n view of the unique characteristics of nuclear weapons [...], the use of such weapons in fact seems scarcely reconcilable with respect for such requirements<sup>23</sup>”.

## IV. Trinidad and Tobago and Belize<sup>24</sup>

### A. Proposed amendment

#### Article 5

1. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

- (a) The crime of genocide;
- (b) Crimes against humanity;
- (c) War crimes;
- (d) The crime of aggression;
- (e) **The Crime of International Drug Trafficking<sup>25</sup>**

2. For the purposes of the present Statute, crimes involving the illicit trafficking in narcotic drugs and psychotropic substances mean any of the following acts, but only when they pose a threat to the peace, order and security of a State or region:

a) Undertaking, organizing, sponsoring, ordering, facilitating or financing the production, manufacture, extraction, preparation, offering for sale, distribution, sale, delivery on any terms whatsoever, brokerage, dispatch, dispatch in transit, transport, importation or exportation of any narcotic drug or any psychotropic substance contrary to the provisions of the 1961 Single Convention on Narcotic Drugs; the 1961 Single Convention on Narcotic Drugs, as amended; the 1971 Convention on Psychotropic Substances, or the 1988 United Nations Convention against Illicit Traffic in Narcotics Drugs and Psychotropic Substances when committed on a large scale and involving acts of a transboundary character;

b) Murder, kidnapping or any other form of attack upon the person or liberty of civilians or security personnel in an attempt to further any of the acts referred to in subparagraph (a); and

c) Violent attacks upon the official or private premises of persons or institutions with the intention of creating fear or insecurity within a State or States or disrupting their economic, social, political or security structures when committed in connection with any of the acts referred to in subparagraph (a).

<sup>21</sup> Advisory Opinion of 8 July 1996, paragraph 105. 2 (d).

<sup>22</sup> It should be recalled that established principles of international law of armed conflicts are applicable law for the International Criminal Court, as per article 21 (b) of the Rome Statute.

<sup>23</sup> Advisory Opinion of 8 July 1996, paragraph 95.

<sup>24</sup> *Official Records... Eighth session... 2009* (ICC-ASP/8/20), vol.I, annex II, appendix IV; see also UN depositary notification [C.N.737.2009.TREATIES-9](#) of 29 October 2009 (Proposal of amendments by Trinidad and Tobago to the Statute).

<sup>25</sup> Language for the proposed amendment.

## B. Explanation

The Review Conference 2010 in Kampala, Uganda will provide the international community with the unique opportunity to advance even further international security and justice in the global community by considering the inclusion of the Crime of International Drug Trafficking in the Rome Statute. The work in this area of prescribing international sanctions for serious international criminal conduct remains unfinished.

International drug trafficking is a major challenge to the international community as a whole because it threatens the peace, order and security of States in the international community. The growing transboundary impact of drug trafficking calls for urgent and effective international legal sanctions to combat what has become a crime of grave international concern. Otherwise, in the absence of an appropriate international legal framework, organized criminal networks and international drug traffickers will continue to spread, their corrosive tentacles beyond national borders, to subvert democratically elected governments and to threaten socio-economic development, political stability and the internal and external security of States and the physical and mental security of individuals.

The inclusion of the crime of international drug trafficking will enhance the principle of complementarity, because some member States lack the capacity and necessary facilities to combat this burgeoning problem of grave concern to the international community as a whole. Acting as a Court of last resort where national Courts are either unable or unwilling to prosecute, the International Criminal Court ("ICC") will be able to protect the international community against the perpetrators of these heinous crimes without compromising the integrity of the national Courts.

Notwithstanding the provisions of the *1961 Single Convention on Narcotic Drugs*, the *1961 Single Convention on Narcotic Drugs, as amended*, the *1971 Convention on Psychotropic Substances*, or the *1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances*, drug barons continue to operate with impunity within the international community. In fact, transboundary criminal activities by international drug barons in the form of murder, extortion and money laundering constitute serious crimes of concern to the international community as a whole. No member State of the international community is immune from the deleterious socio-economic effects of international drug trafficking. The security of the State and the well-being of individuals are at stake.

Trinidad and Tobago and Belize believe that it is time to take necessary and preparatory steps to combat the crime of international drug trafficking. Accordingly, Trinidad and Tobago and Belize suggest that the Review Conference establish an informal working group on the crime of international drug trafficking and that the working group consider a proposed amendment to the Rome Statute as follows:

## V. South Africa<sup>26</sup>

### 1. Proposed amendment

#### Article 16

##### Deferral of Investigation or Prosecution

1) No investigation or prosecution may be commenced or proceeded with under this Statute for a period of 12 months after the Security Council, in a resolution adopted under the Chapter VII of the Charter of the United Nations, has requested the Court to that effect, that request may be renewed by the Council under the same conditions.

2) **A State with jurisdiction over a situation before the Court may request the UN Security Council to defer the matter before the Court as provided for in (1) above.**

<sup>26</sup> *Official Records... Eighth session... 2009* (ICC-ASP/8/20), vol.I, annex II, appendix VI; see also UN depositary notification [C.N.851.2009.TREATIES-10](#) of 30 November 2009 (Proposal of amendment by South Africa to the Statute).

3) **Where the UN Security Council fails to decide on the request by the state concerned within six (6) months of receipt of the request, the requesting Party may request the UN General Assembly to assume the Security Council's responsibility under paragraph 1 consistent with Resolution 377 (v) of the UN General Assembly.**

## 2. Explanation

The Permanent Mission of the Republic of South Africa to the United Nations presents its compliments to the Secretary-General of the United Nations and has the honour to refer to Article 121(1) of the Rome Statute of the International Criminal Court which provides as follows:

After the expiry of seven years from the entry into force of this Statute, any State Party may propose amendments thereto. The text of any proposed amendment shall be submitted to the Secretary-General, who shall promptly circulate it to all States Parties.

The Permanent Mission of the Republic of South Africa further has the honour to inform the Secretary-General that the African States Parties to the Rome Statute held a meeting from 3-6 November 2009 in Addis Abba chaired by South Africa, at which it was decided to propose an amendment to the Rome Statute in respect of Article 16 of the Statute.

Pursuant to the decision taken by the meeting of African States Parties to the Rome Statute, the Permanent Mission hereby transmits the attached amendment in accordance with Article 121(1) of the Rome Statute and requests the Secretary-General to circulate the same in accordance with the Article 121(2) of the Rome Statute.

The Permanent Mission of the Republic of the South Africa to the United Nations avails itself of this opportunity to renew to the Secretary-General of the United Nations the assurances of its highest consideration.

## VI. Kenya<sup>27</sup>

### A. Proposed amendment 1

#### Article 63 - Trial in the Presence of the accused

Under the Rome Statute, article 63(2) envisages a trial in absence of the Accused in exceptional circumstances. The Rome Statute does not define the term exceptional circumstances and neither are there case laws to guide the Court on the same.

Article 63(2) further provides other caveats in granting such trials in circumstances where other reasonable alternatives have provided to be inadequate and for a strictly required duration.

From the above, it is our humble opinion that an amendment to article 63(2) may be considered along the following lines:

**“Notwithstanding article 63(1), an accused may be excused from continuous presence in the Court after the Chamber satisfies itself that exceptional circumstances exists, alternative measures have been put in place and considered, including but not limited to changes to the trial schedule or temporary adjournment or attendance through the use of communications technology or through representation of Counsel.**

**(2) Any such absence shall be considered on a case-by-case basis and be limited to that which is strictly necessary.**

**(3) The Trial Chamber shall only grant the request if it determines that such exceptional circumstances exist and if the rights of the accused are fully ensured in his**

<sup>27</sup> UN depositary notification [C.N.1026.2013.TREATIES-XVIII.10](#) of 14 March 2014 (Proposal of amendments by Kenya to the Statute).

or her absence, in particular through representation by counsel and that the accused has explicitly waived his right to be present at the trial.”

## **B. Proposed amendment 2**

### **Article 27 - Irrelevance of official capacity**

Article 27(1) provides that **“This Statute shall apply equally to all persons without any distinction based on official capacity. In particular, official capacity as a Head of State or Government, a Member of a Government or parliament, an elected representative or a government official shall in no case exempt a person from criminal responsibility under this Statute, nor shall it, in and of itself, constitute a ground for reduction of Sentence.**

**Further article 27(2) provides that Immunities or special procedural rules which may attach to the official capacity of a person, whether under national or international law, shall not bar the Court from exercising its jurisdiction over such a person.”**

The meeting also may consider proposing an amendment to article 27 by inserting in paragraph 3 the words:

**“Notwithstanding paragraph 1 and 2 above, serving Heads of State, their deputies and anybody acting or is entitled to act as such may be exempt from prosecution during their current term of office. Such an exemption may be renewed by the Court under the same conditions.”**

## **C. Proposed amendment 3**

### **Article 70 - Offences against Administration of Justice**

This particular article presumes that such offences save for 70(1) (f) can be committed only against the Court. Noting the current situation in the Kenyan cases especially Trial Chamber V (b). This article should be amended to include offences by the Court Officials so that it's clear that either party to the proceedings can approach the Court when 2 such offences are committed. It is proposed that paragraph 1 be amended as follows:

**“The Court shall have jurisdiction over the following offences against its administration of justice when committed intentionally by any person:”**

## **D. Proposed amendment 4**

### **Article 112 - Implementation of IOM**

Article 112 (4) Assembly of States Parties shall establish such subsidiary bodies as may be necessary including Independent Oversight mechanism for inspection, evaluation and investigation of the Court ,in order to enhance its efficiency and economy. This includes the conduct of officers/procedure/code of ethics in the office of the prosecutor. The Office of the Prosecutor has historically opposed the scope of authority of the IOM. Under Article 42 (1) and (2) the Prosecutor has power to act independently as a separate organ of the Court with full authority *over* the management and administration of the office. There is a conflict of powers between the OTP and the IOM that is continuously present in the ASP.

It is proposed that IOM be operationalized and empowered to carry out inspection, evaluation and investigations of all the organs of the Court.

## **E. Proposed amendment 5**

### **Complementarity**

The Preamble of the Rome Statute provides “Emphasizing that the International Criminal Court established under this Statute shall be complementary to national criminal jurisdictions,” In accordance with African Union resolution, an amendment is propose to the *above* preambular provision to allow recognition of regional judicial mechanisms as follows:

**“Emphasizing that the International Criminal Court established under this Statute shall be complementary to national and regional criminal jurisdictions.”**

## Annex II

### I. Proposed Rule 140bis

#### 140bis

##### Temporary Absence of a Judge

If a judge is, for illness or other unforeseen urgent personal reasons, unable to be present at any hearing, the remaining judges of the Chamber may exceptionally order that the hearing of the case continues in the absence of that judge for completion of a specific matter which has already commenced and can be concluded within a short timeframe, provided that:

- (a) The Chamber is satisfied or, if it is not practicable to consult the absent judge, the remaining judges of the Chamber are satisfied that this arrangement is in the interests of justice; and
- (b) The parties consent to this arrangement.

### II. Amended proposed Rule 140bis<sup>1</sup>

#### Rule 140bis

##### Temporary Absence of a Judge

If a judge is, due to illness or other unforeseen urgent personal reasons, is unable to be present at any hearing, the remaining judges of the Chamber may exceptionally order that the hearing of the case continue in the absence of that judge for completion of a specific matter which has already commenced and can be concluded within a short timeframe, provided that:

- (a) The Chamber is satisfied or, if it is not practicable to consult the absent judge, the remaining judges of the Chamber are satisfied that this arrangement is required for compelling reasons in the interests of justice, inter alia in order to preserve evidence that will otherwise be lost or endangered;
- (b) At least one of the remaining judges has not been temporarily absent before in the hearing of this case;
- (c) The absent judge is given the opportunity to make himself familiar with the entirety of the proceedings conducted in his absence by means of video recording and the transcript; and
- (d) The parties consent to this arrangement.

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<sup>1</sup> ICC-ASP/13/28, annex I, para.19, "Following formal and informal discussions, one delegation suggested an amendment which sought to clarify further the circumstances in which a judge may be temporarily absent from trial (proposed text change underlined".

## Annex III

### Proposed amendments to Rule 76 (3), Rule 101 (3) and Rule 144 (2) (b) of the Rules of Procedure and Evidence

<i>Current rule 76(3)</i>	<i>Proposed rule 76(3)</i>
3. The statements of prosecution witnesses shall be made available in original and in a language which the accused fully understands and speaks.	3. The statements of prosecution witnesses shall be made available in original and in a language which the accused fully understands and speaks. Where appropriate, the Chamber may authorize translations of relevant excerpts of the statements when, after seeking the views of the parties, it determines that full translations are not necessary to meet the requirements of fairness and would adversely affect the expeditiousness of the proceedings. For the purpose of such determination, the Chamber shall consider the specific circumstances of the case, including whether the person is being represented by counsel and the content of the statements.
<i>Current rule 144(2)(b)</i>	<i>Proposed rule 144(2)(b)</i>
2. Copies of all the above-mentioned decisions shall be provided as soon as possible to: [...] (b) The accused, in a language he or she fully understands or speaks, if necessary to meet the requirements of fairness under article 67, paragraph 1 (f).	2. Copies of all the above-mentioned decisions shall be provided as soon as possible to: [...] (b) The accused, in a language he or she fully understands or speaks, in whole or to the extent necessary to meet the requirements of fairness under article 67, paragraph 1 (f).

#### **Rule 101** **Time limits**

1. In making any order setting time limits regarding the conduct of any proceedings, the Court shall have regard to the need to facilitate fair and expeditious proceedings, bearing in mind in particular the rights of the defence and the victims.
2. Taking into account the rights of the accused, in particular under article 67, paragraph (1) (c), all those participating in the proceedings to whom any order is directed shall endeavour to act as expeditiously as possible, within the time limit ordered by the Court.

#### *Proposed rule 101(3)*

3. The Court may order in relation to certain decisions, such as those referred to in rule 144, that they are considered notified on the day of their translation, or parts thereof, as are necessary to meet the requirements of fairness, and, accordingly, any time limits shall begin to run from this date.

## Annex IV

### **Draft text for the omnibus resolution**

Paragraph 68 of the 2013 omnibus resolution (ICC-ASP/112/Res.8) is replaced by the following:

“*Welcomes* the report of the Bureau on the Working Group on Amendments”

Paragraph 12 of annex I of the 2013 omnibus resolution (ICC-ASP/112/Res.8) is replaced by the following:

“*invites* the working group to continue its consideration of all amendment proposals, in accordance with the Terms of Reference of the Working group, and *requests* the Bureau to submit a report for the consideration of the Assembly at its fourteenth session.

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