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### Report of the Working Group on Amendments

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## I. Introduction

1. The present report is submitted pursuant to the mandate given by the Assembly of State Parties (“Assembly”) to the Working Group on Amendments (“Working Group”). The Working Group was established by Assembly 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 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.<sup>1</sup>

2. The Working Group’s consideration of amendment proposals to the Rome Statute and to the Rules of Procedure and Evidence is governed by the Terms of Reference set out in Assembly resolution ICC-ASP/11/Res.8, annex II.<sup>2</sup> The amendment procedure for the Rules of Procedure and Evidence is also governed by the “Roadmap on reviewing the criminal procedures of the International Criminal Court”, the main purpose of which is to facilitate a structured dialogue between key stakeholders on proposed amendments to the Rules of Procedure and Evidence.<sup>3</sup> In endorsing the Roadmap by resolutions ICC-ASP/11/Res.8 and ICC-ASP/12/Res.8, the Assembly has reaffirmed the role of the Working Group in receiving and considering recommendations to the Assembly on proposals of amendments to the Rules of Procedure and Evidence.

3. At its eighteenth session, the Assembly invited the Working Group to continue its consideration of all amendment proposals in accordance with the Terms of Reference of the Working Group, and requested the Working Group to submit a report for the consideration of the Assembly at its nineteenth session.<sup>4</sup>

4. On 6 February 2020, the Bureau reappointed Ambassador Juan Sandoval Mendiola (Mexico) as Chairperson of the Working Group via silence procedure.<sup>5</sup>

5. The Working Group met on 23 June 2020 to conduct its business as mandated by the Assembly, virtually via a Web-Ex remote link in light of the restrictions caused by the outbreak of the COVID-19 pandemic. Cognizant of the importance of observing the measures to mitigate the impact of the pandemic, the Working Group agreed to spare no effort for efficient discussions as well as openness and flexibility in the Group’s deliberations.

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

6. The Working Group had before it those amendment proposals previously referred to it by the Assembly at its eighth session, as well as those transmitted by the Depositary of the Rome Statute on 14 March 2014 and 15 August 2017.<sup>6</sup>

<sup>1</sup> Resolution ICC-ASP/8/Res.6, paragraph 4, available at [https://asp.icc-cpi.int/iccdocs/asp\\_docs/Resolutions/ICC-ASP-8-Res.6-ENG.pdf](https://asp.icc-cpi.int/iccdocs/asp_docs/Resolutions/ICC-ASP-8-Res.6-ENG.pdf).

<sup>2</sup> Resolution ICC-ASP/11/Res.8, annex II: Terms of Reference of the Working Group on Amendments, available at [https://asp.icc-cpi.int/iccdocs/asp\\_docs/Resolutions/ASP11/ICC-ASP-11-Res8-ENG.pdf#page=11](https://asp.icc-cpi.int/iccdocs/asp_docs/Resolutions/ASP11/ICC-ASP-11-Res8-ENG.pdf#page=11)

<sup>3</sup> The Roadmap is contained in the Report of the Bureau on the Study Group on Governance to the eleventh session of the Assembly (ICC-ASP/11/31, annex I). The Revised Roadmap is contained in the Report of the Bureau on the Study Group on Governance to the twelfth session of the Assembly (ICC-ASP/12/37, annex I). The Roadmaps are available respectively at [https://asp.icc-cpi.int/iccdocs/asp\\_docs/ASP11/ICC-ASP-11-31-ENG.pdf](https://asp.icc-cpi.int/iccdocs/asp_docs/ASP11/ICC-ASP-11-31-ENG.pdf) and at [https://asp.icc-cpi.int/iccdocs/asp\\_docs/ASP12/ICC-ASP-12-37-ENG.pdf](https://asp.icc-cpi.int/iccdocs/asp_docs/ASP12/ICC-ASP-12-37-ENG.pdf).

<sup>4</sup> *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Eighteenth session, The Hague, 2–7 December 2019* (ICC-ASP/18/20), vol. I, part III, ICC-ASP/18/Res.6, annex I, paras. 18(a) and (b), available at [https://asp.icc-cpi.int/iccdocs/asp\\_docs/ASP18/ICC-ASP-18-20-vol-I-ENG-24jul20-1700.pdf](https://asp.icc-cpi.int/iccdocs/asp_docs/ASP18/ICC-ASP-18-20-vol-I-ENG-24jul20-1700.pdf).

<sup>5</sup> Decision of the second meeting of the Bureau of the Assembly of States Parties, 25 February 2020, available at [https://asp.icc-cpi.int/iccdocs/asp\\_docs/ASP19/Bureau%20-%20Agenda%20and%20decisions.pdf](https://asp.icc-cpi.int/iccdocs/asp_docs/ASP19/Bureau%20-%20Agenda%20and%20decisions.pdf).

<sup>6</sup> These amendment proposals are contained in the Report of the Working Group on Amendments to the thirteenth session of the Assembly (ICC-ASP/13/31) and the Report of the Working Group to the sixteenth session (ICC-ASP/16/22), available respectively at [https://asp.icc-cpi.int/iccdocs/asp\\_docs/ASP13/ICC-ASP-13-31-ENG.pdf](https://asp.icc-cpi.int/iccdocs/asp_docs/ASP13/ICC-ASP-13-31-ENG.pdf) and [https://asp.icc-cpi.int/iccdocs/asp\\_docs/ASP16/ICC-ASP-16-22-ENG.pdf](https://asp.icc-cpi.int/iccdocs/asp_docs/ASP16/ICC-ASP-16-22-ENG.pdf). Having been notified to the Depositary, they are also found at the United Nations Treaty Collection, available at [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-10&chapter=18&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10&chapter=18&clang=en).

7. As in the past, proponents were given the opportunity, at each meeting of the Working Group, to provide updates on their proposals. All delegations were invited to comment on the different proposals before the Working Group.

#### **A. Belgium**

8. At its meeting, on 23 June 2020, Belgium reminded that three out of four proposals of amendments to article 8 of the Rome Statute which it had proposed in 2009 in relation to war crimes were adopted at the sixteenth session of the Assembly in the spirit of compromise. Belgium informed the Working Group that Latvia, Luxemburg and Slovakia had ratified those amendments and it was also in the process of ratifying them, and called upon all States Parties for their ratification. Belgium indicated that, based on the previous discussions held during the meetings of the Working Group, it had decided to conduct bilateral consultations at this stage on the proposal of amendment to article 8 of the Rome Statute regarding the use of anti-personnel mines, while requesting that the relevant proposal remain on the table and expecting to discuss it in the Working Group after the nineteenth session of the Assembly.

#### **B. Mexico**

9. At its meeting, on 23 June 2020, Mexico indicated that it intended to maintain on the agenda of the Working Group the proposal of amendment on the use of nuclear weapons and discuss its amendment proposal at a later stage, taking into consideration the progress made in relation to the number of ratification by countries of the relevant international conventions, including the Treaty on the Prohibition of Nuclear Weapons adopted on 7 July 2017.

#### **C. Trinidad and Tobago**

10. No further updates were provided by Trinidad and Tobago concerning its proposal during the intersessional period.

#### **D. South Africa**

11. No further updates were provided by South Africa concerning its proposal during the intersessional period.

#### **E. Kenya**

12. No further updates were provided by Kenya concerning its proposal during the intersessional period.

### **III. Consideration of the procedure for amending the Rules of Procedure and Evidence**

13. The Chair informed the Working Group that the Study Group on Governance was exploring the possibility of improving the procedure for amending the Rules of Procedure and Evidence of the Court, which might be brought at a later stage to the Working Group for its consideration.

14. The Chair of the Working Group was invited to join the meeting of the Study Group held on 14 May 2020 to discuss the diverse aspects entailed in addressing this topic and the Co-Chairs of the Study Group further conducted informal consultations with the Chair. The Working Group will remain engaged with the Study Group and attentive to its deliberations on this issue in order to follow up on them in due time.

#### **IV. Information on the status of ratifications of the Kampala amendments to the Rome Statute as well as on the amendments adopted at the fourteenth, sixteenth and eighteenth sessions of the Assembly**

15. The Working Group was kept regularly informed of any ratifications of the amendments to the Rome Statute adopted at the 2010 Review Conference, the fourteenth session, the sixteenth session and the eighteenth session of the Assembly. Since the submission of its last report, New Zealand had ratified the Kampala amendment to article 8; Andorra and Latvia had ratified the amendment to article 124 of the Rome Statute; the Czech Republic, Latvia, Netherlands, New Zealand and Switzerland had ratified the three amendments to article 8, paragraph 2 (b) and to article 8, paragraph 2 (e), of the Rome Statute relating respectively to weapons which use microbial or other biological agents, or toxins, weapons the primary effect of which is to injure by fragments which in the human body escape detection by X-rays and weapons specifically designed, as their sole combat function or as one of their combat functions, to cause permanent blindness to unenhanced vision, that is to the naked eye or to the eye with corrective eyesight devices; and Andorra and New Zealand had ratified the amendment to article 8, paragraph 2 (e) relating to intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies.<sup>7</sup>

16. As of 14 October 2020, the Kampala amendment to article 8 had been ratified by 39 States Parties;<sup>8</sup> the Kampala amendments on the crime of aggression had been ratified by 39 States Parties;<sup>9</sup> the amendment to article 124 had been ratified by 15 States Parties;<sup>10</sup> the three amendments to article 8, paragraph 2 (b) and to article 8, paragraph 2 (e) relating respectively to weapons which use microbial or other biological agents, or toxins, weapons the primary effect of which is to injure by fragments which in the human body escape detection by X-rays and weapons specifically designed, as their sole combat function or as one of their combat functions, to cause permanent blindness to unenhanced vision, that is to the naked eye or to the eye with corrective eyesight devices has been ratified by seven States Parties;<sup>11</sup> and the amendment to article 8, paragraph 2 (e) relating to intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies had been ratified by two States Parties.<sup>12</sup>

#### **V. Decisions and recommendations**

17. The Working Group recommends that regular meetings be held throughout 2021, including, if necessary, in expert meetings format.

18. The Working Group concludes its intersessional work by recommending to the Assembly the inclusion in the omnibus resolution of six paragraphs (annex).

<sup>7</sup> The list of the States that ratified relevant amendments is available at the United Nations Treaty Collection, [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-10&chapter=18&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10&chapter=18&clang=_en).

<sup>8</sup> [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-10-a&chapter=18&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10-a&chapter=18&clang=_en).

<sup>9</sup> [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-10-b&chapter=18&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10-b&chapter=18&clang=_en).

<sup>10</sup> [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-10-c&chapter=18&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10-c&chapter=18&clang=_en).

<sup>11</sup> [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-10-d&chapter=18&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10-d&chapter=18&clang=_en);

[https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-10-e&chapter=18&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10-e&chapter=18&clang=_en);

[https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-10-f&chapter=18&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10-f&chapter=18&clang=_en).

<sup>12</sup> [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-10-g&chapter=18&clang=\\_en](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10-g&chapter=18&clang=_en).

## Annex

### Draft text for the omnibus resolution

1. Paragraph 155 of the 2019 omnibus resolution (ICC-ASP/18/Res.6) remains unchanged, reading:

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

2. Paragraph 156 of the 2019 omnibus resolution (ICC-ASP/18/Res.6) would be deleted.

3. Paragraph 157 of the 2019 omnibus resolution (ICC-ASP/18/Res.6) would be deleted.

4. Paragraph 158 of the 2019 omnibus resolution (ICC-ASP/18/Res.6) would be deleted.

5. Paragraph 159 of the 2019 omnibus resolution (ICC-ASP/18/Res.6) remains unchanged, reading:

*“Calls upon all States Parties to ratify or accept the amendment to article 124;”*

6. Paragraph 160 of the 2019 omnibus resolution (ICC-ASP/18/Res.6) would be updated, reading:

*“Also calls upon all States Parties to ratify or accept the amendments to article 8 adopted at the sixteenth and eighteenth sessions of the Assembly;”*

7. Paragraph 18 of annex I (mandates) of the 2019 omnibus resolution (ICC-ASP/18/Res.6) is replaced by the following:

*“(a) invites the Working Group to continue its consideration of all amendment proposals, in accordance with the Terms of Reference of the Working Group; and*

*(b) requests the Working Group to submit a report for the consideration of the Assembly at its twentieth session”*

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