



Twentieth session

The Hague, 6-11 December 2021

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.¹

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.² 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.³ 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 nineteenth 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 twentieth session.⁴

4. During the reporting period, the Working Group also conducted the assessment of the relevant recommendations of the Independent Expert Review (IER) pursuant to resolution ICC-ASP/19/Res.7, which had been included in the final report of the “Independent Expert Review of the International Criminal Court and the Rome Statute System”, dated 30 September 2020, and allocated to the Working Group under the “Comprehensive action plan for the assessment of the recommendations of the Group of Independent Experts, including requirements for possible future action”, submitted by the Review Mechanism on 30 June 2021 and adopted by the Bureau on 28 July.

5. The Bureau reappointed Ambassador Juan Sandoval Mendiola (Mexico) as Chairperson of the Working Group at its second meeting held on 8 April 2021.⁵ Further on, the Bureau appointed Ambassador Juan Manuel Gómez Robledo (Mexico) as his successor on 21 October.⁶

6. The Working Group met on 17 June 2021 and 18 November 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.

¹ 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.

² 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

³ 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 and at https://asp.icc-cpi.int/iccdocs/asp_docs/ASP12/ICC-ASP-12-37-ENG.pdf.

⁴ *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.

⁵ Decision of the second meeting of the Bureau of the Assembly of States Parties, 8 April 2021, available at https://asp.icc-cpi.int/iccdocs/asp_docs/ASP20/Bureau02.agenda%20and%20decisions%20-%2028Apr21.pdf.

⁶ ICC: Bureau, appointment of WGA Chair (official communication, 22 October 2021).

II. Consideration of proposals to amend the Rome Statute

7. 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 Depository of the Rome Statute on 14 March 2014 and 15 August 2017.⁷

8. 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

9. At its first meeting held on 17 June 2021, 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 2017. Belgium informed the Working Group that Croatia, Czech Republic, Latvia, Luxemburg, Netherlands, New Zealand, Norway, Slovakia and Switzerland had ratified those amendments and Belgium was also in the process of ratifying them, and called upon all States Parties for their ratification. Belgium indicated that it would like to work on its amendment proposal on the basis of consensus and given the circumstances, including those related to the COVID-19 pandemic, 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 this proposal remain on the table and expecting to discuss it in the Working Group after the twentieth session of the Assembly.

B. Mexico

10. At its first meeting held on 17 June 2021, Mexico indicated that it intended to maintain on the agenda of the Working Group the proposal of amendment to article 8(2)(b) of the Rome Statute on the use of nuclear weapons. Mexico informed the Working Group that the Treaty on the Prohibition of Nuclear Weapons had entered into force on 22 January 2021 and that it would continue to assess the number of ratifications and the status of implementation of the Treaty. Mexico further stated that in this context, it would like to discuss its amendment proposal at a later stage, taking into consideration the progress made in relation to this Treaty.

C. Sierra Leone

11. At its first meeting held on 17 June 2021, Sierra Leone expressed its intention to present an amendment proposal on slavery given the crime had not been included in the Rome Statute in 1998 while retaining flexibility depending on the workload of the Working Group. The Chair welcomed to see the plan in more concrete terms reminding that it was the collective wisdom of the Assembly to have this important forum open to be able to react to the evolving nature of international criminal law.

D. Trinidad and Tobago

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

E. South Africa

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

⁷ 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 and https://asp.icc-cpi.int/iccdocs/asp_docs/ASP16/ICC-ASP-16-22-ENG.pdf. Having been notified to the Depository, 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.

F. Kenya

14. 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

15. 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. This included the consideration of the relevant recommendations of the Independent Expert Review allocated to the Working Group for consideration pursuant to the “Comprehensive action plan for the assessment of the recommendations of the Group of Independent Experts”.

16. The Co-Chairs and focal points of the Study Group on Governance were invited to the first meeting of the Working Group held on 17 June 2021, where they briefed the Working Group on this topic for coordination between the Groups in relation to the relevant IER recommendations. The leadership of the Study Group stated that the current situation of processing amendments to the Rules of Procedure and Evidence had often been characterized by a deadlock in the consensus process, which made proposed amendments stay in limbo. To avoid this paralysis and enhance the efficiency and effectiveness of the Court, the Study Group proposed that the Assembly should consider voting on rule amendments by a two-thirds majority in line with article 51(2) of the Rome Statute, in the absence of consensus as established in article 112(7) of the Statute. In this regard, the Study Group called for cooperation with the Working Group given the latter is the entity to which the former sends the amendment proposals, subject to final adoption by the Assembly. Delegations supported this initiative with the observation that the Assembly was not able to timely adopt proposals put forward by judges, which had sent a negative political signal for the Court and thus encouraged cooperation between the Study Group and the Working Group.

17. The Chair of the Working Group conducted further consultations with the Study Group on Governance to facilitate the consideration of the procedure to amend the Rules of Procedure and Evidence in the Groups. As part of the consultations, the Chair of the Working Group attended the third meeting of the Study Group held on 14 September and provided comments on the proposed language of the relevant draft resolution and the procedural way forward.

18. At its second meeting held on 18 November, which is his first meeting as Chair of the Working Group, Ambassador Juan Manuel Gómez Robledo reviewed the work done in 2021. He further explained that the outcome of discussions of the Study Group on Governance did not include amendment proposals yet, and therefore, there was no need for the Working Group to review them during this session.

19. The Chair also outlined the preliminary programme of work for 2022, stressing that there were ten recommendations allocated to the Working Group in the “Comprehensive action plan”. Three recommendations allocated for 2021, namely R214 about amendments on the assignment of substitute Judge, and R381 and R384 on the possibility on improving the procedure for amending the Rules of Procedure and Evidence, were co-assigned to the Study Group on Governance and the Working Group. Therefore, the Working Group would need to wait for the discussions within the Study Group to continue in 2022 and to receive their outcome in the form of amendment proposals. In this sense, briefings and informal consultations may continue in the first half of 2022. The remaining recommendations are assigned for the second half of 2022.

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

20. 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, Mongolia had ratified the Kampala amendment to article 8; Bolivia and Mongolia had ratified the Kampala amendments on the crime of aggression; Croatia and Norway 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 Croatia, Netherlands, Norway and Portugal 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.⁸

21. As of 14 October 2020, the Kampala amendment to article 8 had been ratified by 40 States Parties;⁹ the Kampala amendments on the crime of aggression had been ratified by 41 States Parties;¹⁰ the amendment to article 124 had been ratified by 15 States Parties;¹¹ 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 nine States Parties;¹² 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 six States Parties.¹³

V. Decisions and recommendations

22. The Working Group recommends that regular meetings be held throughout 2022, including, if necessary, in expert meetings format.

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

⁸ 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.

⁹ https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10-a&chapter=18&clang=_en.

¹⁰ https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10-b&chapter=18&clang=_en.

¹¹ https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10-c&chapter=18&clang=_en.

¹² 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-f&chapter=18&clang=_en.

¹³ 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 159 of the 2020 omnibus resolution (ICC-ASP/19/Res.6) remains unchanged, reading:

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

2. Paragraph 160 of the 2020 omnibus resolution (ICC-ASP/19/Res.6) remains unchanged, reading:

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

3. Paragraph 161 of the 2020 omnibus resolution (ICC-ASP/19/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;”

4. Paragraph 18 of annex I (mandates) of the 2020 omnibus resolution (ICC-ASP/19/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 twenty-first session”
