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**Report of the Bureau on the Review Conference**

**Addendum**

## Annex I

### Belgium: Proposal of amendments\*

[Original: English]

Sir,

I have the honour to transmit to you herewith the amendments that Belgium proposes to the Rome Statute of the International Criminal Court, article 8.

Pursuant to article 121 of the Statute, I would be grateful if you would communicate those proposals to Member States.

Accept, Sir, the assurances of my highest consideration.

*(Signed)*

Jan Grauls

Ambassador, Permanent Representative

### Draft amendments to the Rome Statute on War Crimes

#### Introduction

1. The present proposal aims at:
  - a) standardizing rules regarding situations of international armed conflict and situations of non international armed conflict by adding in the list of the article 8, paragraph 2, e) the use of three sort of weapons (poison and empoisoned weapons, asphyxiating, poison or other gases and all analogous liquids, materials or devices and bullets which expand or flatten easily in the human body) already listed in the article 8, paragraph 2, b) (amendment n°1).
  - b) adding directly to the list of war crimes in situations of international armed conflict and in situations of non international armed conflict the use of biological and chemical weapons, anti-personnel mines and some weapons falling under the Convention on certain conventional weapons (amendment n°2 and 3).
2. The informal initial proposals circulated in February 2009 contained also a draft annex as foreseen by article 8, paragraph 2, b), xx) of the Rome Statute. These proposals have received comments from States and the ICRC and were adapted consequently.
3. The following changes have been introduced in the informal initial proposals:
  - The draft annex to article 8, paragraph 2, b) is transformed into a draft amendment (amendment 2, paragraph 1) in order to make sure that article 121, para.5 of the Rome Statute is applicable to the adoption and entry into force of the proposal. It is understood that such amendment has to be specifically accepted by a State Party, whenever that State becomes State Party to the Rome Statute, for the Court to exercise its jurisdiction regarding such a crime when committed by that State Party's nationals or on its territory (article 121, para.5 of the Rome Statute). This could be clarified explicitly in the resolution which would include the amendments to article 8 adopted by the Review Conference.

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\* Issued previously as United Nations depositary notification C.N.733.2009.TREATIES-8, dated 29 October 2009.

- Amendments relating to the same forbidden weapons committed, in the one hand, in the case of an international armed conflict, and in the other hand, in the case of an armed conflict not of an international character, have been combined in one unique amendment with two paragraphs.
- The reference to the Protocols II and III to the 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons has been deleted, in answer to technical remarks made during the abovementioned discussions.
- The reference to the Cluster munitions Convention has been deleted, taking into account the fact that this Convention is not yet entered into force.

4. These modifications also take into account the fact that the present proposals are part of an ongoing process of reviewing the Rome Statute, which will begin with the Review Conference, and continue through the other opportunities, foreseen in articles 121 and 123 of the Rome Statute.

5. It is the intent of the sponsors not to insist for amendments to be transferred by the Assembly to the Review Conference if they do not attract an overwhelming support.

#### **Amendment 1**

**Proposed by Austria, Argentina, Belgium, Bolivia, Bulgaria, Burundi, Cambodia, Cyprus, Germany, Ireland, Latvia, Lithuania, Luxembourg, Mauritius, Mexico, Romania, Samoa, Slovenia and Switzerland,**

Add to article 8, paragraph 2, e), the following: «xvii) Employing poison or poisoned weapons;

xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

xix) Employing 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.»

#### **Justification**

The use of the weapons listed in this draft amendment is already incriminated by article 8, paragraph 2, b), xvii) to xix) of the Statute in case of an international armed conflict. This amendment extends the jurisdiction of the Court for these crimes in case of an armed conflict not of an international character (article 8, paragraph 2, e).

#### **Amendment 2**

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

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

« xxvii) Using 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>1</sup>;

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<sup>1</sup> 163 States parties (2 July 2009).

xxviii) Using 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>2</sup>;

xxix) Using 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>3</sup>.»

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

« xiii) Using 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) Using 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) Using 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).

#### Amendment 3

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

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

« xxx) Using 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:

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<sup>2</sup> 188 States parties (2 July 2009).

<sup>3</sup> 156 States parties (2 July 2009)

- Protocol on Non-Detectable Fragments (Protocol I to the 1980 Convention), Geneva, 10 October 1980<sup>4</sup>;
- Protocol on Blinding Laser Weapons (Protocol IV to the 1980 Convention), Vienne, 13 October 1995<sup>5</sup>.»

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

« xvi) Using 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;
- 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).

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<sup>4</sup> 106 States parties (2 July 2009).

<sup>5</sup> 94 States parties (2 July 2009).

## Annex II

### Liechtenstein: Proposal of amendment\*

[Original: English]

The Permanent Representative of the Principality of Liechtenstein to the United Nations presents his compliments to the Secretary-General of the United Nations and has the honor, in his capacity as former Chairman of the Special Working Group on the Crime of Aggression, to refer to article 121, paragraph 1 of the Rome Statute of the International Criminal Court. In accordance with that provision, the proposed amendment on aggression elaborated by the Special Working Group is herewith submitted for circulation to all States.

The Permanent Representative of the Principality of Liechtenstein to the United Nations avails itself of this opportunity to renew to the Secretary-General of the United Nations the assurances of his highest consideration.

#### **Proposals for a provision on aggression elaborated by the Special Working Group on the Crime of Aggression**

##### **Draft resolution**

*(to be adopted by the Review Conference)*

The Review Conference,

*(insert preambular paragraphs)*

1. *Decides* to adopt the amendments to the Rome Statute of the International Criminal Court (hereinafter: “the Statute”) contained in the annex to the present resolution, which are subject to ratification or acceptance and shall enter into force in accordance with article 121, paragraph [4 / 5] of the Statute;

*(add further operative paragraphs as needed)*

##### **Appendix**

#### **Draft amendments to the Rome Statute of the International Criminal Court on the Crime of Aggression**

1. *Article 5, paragraph 2, of the Statute is deleted.*
2. *The following text is inserted after article 8 of the Statute:*

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\* Issued previously as United Nations depositary notification C.N.727.2009.TREATIES-7, dated 29 October 2009.

**Article 8 bis**  
**Crime of aggression**

1. For the purpose of this Statute, “crime of aggression” means the planning, preparation, initiation or execution, by a person in a position effectively to exercise control over or to direct the political or military action of a State, of an act of aggression which, by its character, gravity and scale, constitutes a manifest violation of the Charter of the United Nations.

2. For the purpose of paragraph 1, “act of aggression” means the use of armed force by a State against the sovereignty, territorial integrity or political independence of another State, or in any other manner inconsistent with the Charter of the United Nations. Any of the following acts, regardless of a declaration of war, shall, in accordance with United Nations General Assembly resolution 3314 (XXIX) of 14 December 1974, qualify as an act of aggression:

(a) The invasion or attack by the armed forces of a State of the territory of another State, or any military occupation, however temporary, resulting from such invasion or attack, or any annexation by the use of force of the territory of another State or part thereof;

(b) Bombardment by the armed forces of a State against the territory of another State or the use of any weapons by a State against the territory of another State;

(c) The blockade of the ports or coasts of a State by the armed forces of another State;

(d) An attack by the armed forces of a State on the land, sea or air forces, or marine and air fleets of another State;

(e) The use of armed forces of one State which are within the territory of another State with the agreement of the receiving State, in contravention of the conditions provided for in the agreement or any extension of their presence in such territory beyond the termination of the agreement;

(f) The action of a State in allowing its territory, which it has placed at the disposal of another State, to be used by that other State for perpetrating an act of aggression against a third State;

(g) The sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein.

3. *The following text is inserted after article 15 of the Statute:*

**Article 15 bis**  
**Exercise of jurisdiction over the crime of aggression**

1. The Court may exercise jurisdiction over the crime of aggression in accordance with article 13, subject to the provisions of this article.

2. Where the Prosecutor concludes that there is a reasonable basis to proceed with an investigation in respect of a crime of aggression, he or she shall first ascertain whether the Security Council has made a determination of an act of aggression committed by the State concerned. The Prosecutor shall notify the Secretary-General of the United Nations of the situation before the Court, including any relevant information and documents.

3. Where the Security Council has made such a determination, the Prosecutor may proceed with the investigation in respect of a crime of aggression.

4. **(Alternative 1)** In the absence of such a determination, the Prosecutor may not proceed with the investigation in respect of a crime of aggression,

*Option 1 – end the paragraph here.*

*Option 2 – add:* unless the Security Council has, in a resolution adopted under Chapter VII of the Charter of the United Nations, requested the Prosecutor to proceed with the investigation in respect of a crime of aggression.

4. **(Alternative 2)** Where no such determination is made within [6] months after the date of notification, the Prosecutor may proceed with the investigation in respect of a crime of aggression,

*Option 1 – end the paragraph here.*

*Option 2 – add:* provided that the Pre-Trial Chamber has authorized the commencement of the investigation in respect of a crime of aggression in accordance with the procedure contained in article 15;

*Option 3 – add:* provided that the General Assembly has determined that an act of aggression has been committed by the State referred to in article 8 bis;

*Option 4 – add:* provided that the International Court of Justice has determined that an act of aggression has been committed by the State referred to in article 8 bis.

5. A determination of an act of aggression by an organ outside the Court shall be without prejudice to the Court's own findings under this Statute.

6. This article is without prejudice to the provisions relating to the exercise of jurisdiction with respect to other crimes referred to in article 5.

4. *The following text is inserted after article 25, paragraph 3 of the Statute:*

**3 bis.** In respect of the crime of aggression, the provisions of this article shall apply only to persons in a position effectively to exercise control over or to direct the political or military action of a State.

5. *The first sentence of article 9, paragraph 1 of the Statute is replaced by the following sentence:*

1. Elements of Crimes shall assist the Court in the interpretation and application of articles 6, 7, 8 and 8 bis.

6. *The chapeau of article 20, paragraph 3 of the Statute is replaced by the following paragraph; the rest of the paragraph remains unchanged:*

3. No person who has been tried by another court for conduct also proscribed under article 6, 7, 8 or 8 bis shall be tried by the Court with respect to the same conduct unless the proceedings in the other court:



## **Annex III**

### **Mexico: Proposal of amendment\***

[Original: Spanish]

The Permanent Mission of Mexico to the United Nations presents its compliments to the Secretary-General of the United Nations and has the honour to refer to the Review Conference of the Rome Statute of the International Criminal Court to be held in Kampala, Uganda, from 31 May to 11 June 2010.

As the Secretary-General is aware, the Review Conference is an opportunity to consider and, if appropriate, adopt amendments to the Statute on those issues that were not included in it in 1998, as well as on any other matter related to the work and operation of the International Criminal Court.

During the Rome Conference, the Mexican Government, in line with its commitment to achieve a total ban on nuclear weapons in view of their indiscriminate nature and the superfluous and unnecessary harm that they cause to humankind and the environment, pressed to have the use of nuclear weapons included as a war crime under article 8 of the Rome Statute; its proposal was not adopted at that time.

With that in mind, pursuant to article 121, paragraph 1, of the Rome Statute and the decision taken by the Bureau of the Assembly of States Parties at its tenth meeting on 9 July 2009, the Permanent Mission, on behalf of the Mexican Government, has the honour to submit officially to the Secretary-General a proposal for the amendment of article 8, paragraph 2 (b), of the Rome Statute, with the aim of explicitly characterizing as a war crime the use or threat of use of nuclear weapons. A position paper on the proposal, containing the wording of the proposed amendment, is enclosed.

The Permanent Mission of Mexico to the United Nations takes this opportunity to convey to the Secretary-General the renewed assurances of its highest consideration.

#### **Amendment to article 8 of the Rome Statute of the International Criminal Court regarding the use of Nuclear Weapons**

##### **Position paper**

In the framework of the informal consultations held by the New York Working Group of the Bureau of the Assembly of States Parties to the Rome Statute, the Mexican Delegation wishes to reassert its amendment proposal to article 8 of the Rome Statute to criminalize the use or threat of use of nuclear weapons as a war crime.

Article 5 of the Rome Statute of the International Criminal Court sets forth the Court's jurisdiction over the most serious crimes of concern for the international community, namely genocide, crimes against humanity and war crimes.

War crimes are defined by article 8 of the Rome Statute as grave breaches of the Geneva Conventions of 12 August 1949, as well as other serious violations of the laws and customs applicable in armed conflicts - both international and non-international - within the framework of international law.

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\* Issued previously as United Nations depositary notification C.N.725.2009.TREATIES-6, dated 29 October 2009.

Within the category of serious violations of the laws and customs applicable in international armed conflicts, the use of certain weapons whose effects are of an indiscriminate nature or cause superfluous injury or unnecessary suffering is included. Such weapons are: a) poison or poisoned weapons<sup>1</sup>; b) asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices<sup>2</sup>; and c) bullets which expand or flatten easily in the human body<sup>3</sup>. The use of these three kinds of weapons is prohibited by conventional and customary international law.

Criminalizing the use of weapons of mass destructions - including nuclear weapons - is not a new issue for States Parties to the Rome Statute. Deliberations over this topic were not concluded when the Rome Statute was adopted, despite the efforts displayed by México and other like-minded delegations. Consistent with Mexico's advocacy for the total prohibition of nuclear weapons, the Mexican delegation confirms its conviction of criminalizing the use of nuclear weapons as a war crime.

Article 8 of the Rome Statute also includes as a war crime the following conduct: *"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 violations of international law of armed conflict, provided that such weapons, projectiles and material and methods or warfare are the subject of a comprehensive prohibition and are included in an annex to this Statute, by an amendment,.."*

Such provision, which enables the extension *a posteriori* of the list of forbidden weapons is the result of the difficult negotiations that took place before and during the Rome Conference, at which weapons of mass destruction, including nuclear weapons, were excluded.

For Mexico, the use and the threat of use of nuclear weapons is prohibited by international law. The superfluous injury and unnecessary suffering that an atomic explosion would cause in an armed conflict, fully justifies their absolute prohibition. Notwithstanding this position of principle, Mexico is aware that, in certain States' view, such prohibition would only be possible on a conventional basis.

Nevertheless, the Mexican proposal of criminalizing the use or threat of use of nuclear weapons would not be implemented through its inclusion an annex, as set forth in article 8, paragraph 2, section b), subsection xx), for which such conventional basis would indeed be required. What México seeks is to include said conduct as an independent war crime, to be added to the list of crimes of article 8, paragraph 2, section b). The proposal is based on the following elements:

#### *The Mexican proposal*

In its resolution 1653 (XVI) the UN General Assembly decided: "The use of nuclear and thermonuclear 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>4</sup>

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<sup>1</sup> To employ poison or poisoned weapons is specially forbidden by Article 23(a) of the Regulations respecting the laws and customs of war on land, annex to the Convention (IV) respecting the laws and customs of war on land, 1907.

<sup>2</sup> This provision is based on the 1925 Protocol for the prohibition of the use of asphyxiating, poisonous or other gases, and of bacteriological methods of warfare.

<sup>3</sup> This provision is based on the 1899 Declaration concerning expanding bullets.

<sup>4</sup> UNGA resolution 1653 (XVI) of 24 November 1961, operative paragraph 1 b).

The Rome Statute itself sets forth that "*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*"<sup>5</sup> constitutes a war crime. According to this provision, the use of weapons of mass destruction in such circumstances could amount to a war crime. However, México deems necessary to have an explicit provision on the use of nuclear weapons in particular.

The Mexican position is based on various international treaties that prohibit the use of nuclear weapons<sup>6</sup>, as well as on the central argument of the advisory opinion of the International Court of Justice on *The Legality of Threat or Use of Nuclear Weapons* of 8<sup>th</sup> July, 1996, which states 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.*"

The Review Conference of the Rome Statute to be held in June 2010 will be the opportunity to examine certain issues which remained pending after the Rome Conference, among which the list of forbidden weapons, established in article 8 of the Rome Statute, cannot be overlooked.

The Mexican Delegation wishes to point out that the criminalization of the use or threat of use of nuclear arms should not be confused with the efforts of the international community to reach a treaty on general and complete disarmament under article VI of Treaty of the Non-Proliferation of nuclear weapons. The seriousness of the use and the threat of use of nuclear weapons justifies their criminalization as a war crime independently of the course taken by nuclear disarmament negotiations.

If adopted by the Review Conference, said amendment should enter into force in accordance article 121, paragraph 5, which would allow States to decide the basis of its adherence to the Rome Statute.

### **Proposed amendment**

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

*(...) Employing nuclear weapons or threatening to employ nuclear weapons.*

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<sup>5</sup> Article 8, paragraph 2(b)(iv) of the Rome Statute.

<sup>6</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.

## Annex IV

### Netherlands: Proposal of amendments\*

[Original: English]

The Permanent Mission of the Kingdom of the Netherlands to the United Nations presents its compliments to the Secretary-General of the United Nations and has the honour to submit the enclosed amendment proposal for the inclusion of the crime of terrorism in the Rome Statute of the International Criminal Court, in accordance with article 121, paragraph 1, of the Statute.

The Permanent Mission of the Kingdom of the Netherlands 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.

#### Proposal for the inclusion of the crime of terrorism in the Rome Statute

The First Review Conference of the Rome Statute of the International Criminal Court (May-June 2010) will provide the international community with a unique opportunity to further advance the cause of justice and the rule of law on a global scale. In this regard, the Netherlands is of the view that the time has come to consider the inclusion of the crime of terrorism in the list of crimes over which the Court has jurisdiction.

Terrorism is one of the biggest and most challenging threats the world is facing in the twenty-first century. The international community stands united in its strong condemnation of terrorism in all its forms and manifestations, committed by whomever, wherever and for whatever purposes, as it constitutes one of the most serious threats to international peace and security (see for instance A/Res/60/288 - The United Nations Global Counter-Terrorism Strategy). Indeed, terrorist acts, by whomever and wherever perpetrated and whatever their forms, methods or motives, are serious crimes of concern to the international community. We have all committed ourselves to cooperate fully in the fight against terrorism, in accordance with our obligations under international law, in order to find, deny safe haven and bring to justice, on the basis of the principle of extradite or prosecute, any person who supports, facilitates, participates or attempts to participate in the financing, planning, preparation or perpetration of terrorist acts or provides safe havens. Yet, at the same time, there is all too often impunity for acts of terrorism in cases where states appear unwilling or unable to investigate and prosecute such crimes.

Impunity for such serious crimes calls for a role for the International Criminal Court. After all, the Court has been established to prosecute the most serious crimes of concern to the international community. In 1998, the Rome Conference adopted Resolution E, which specifically regards terrorist acts as such. In Resolution E, regret is expressed that no generally acceptable definition of the crime of terrorism could be agreed upon for the inclusion within the jurisdiction of the Court. Unfortunately, this is still the case today. While we must therefore further increase our efforts to overcome this lack of agreement, we should at the same time start moving towards preparing the provisional inclusion of the crime of terrorism within the jurisdiction of the Court. In this respect, the upcoming Review Conference provides for an important momentum. Resolution E indeed recommends that a Review Conference considers, *inter alia*, the crime of terrorism, with a view to arriving at an

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\* Issued previously as United Nations depositary notification C.N.723.2009.TREATIES-5, dated 29 October 2009.

acceptable definition and its inclusion in the list of crimes within the jurisdiction of the Court.

The Netherlands considers that the time has come to take the necessary preparatory steps, in order to be able to defeat impunity for acts of terrorism. Therefore, and in the light of the absence of a generally acceptable definition of terrorism, the Netherlands proposes to use the same approach as has been accepted for the crime of aggression, i.e. the inclusion of the crime of terrorism in the list of crimes laid down in article 5, paragraph 1, of the Statute while at the same time postponing the exercise of jurisdiction over this crime until a definition and conditions for the exercise of jurisdiction have been agreed upon.

To this end, the Netherlands proposes to amend the Rome Statute as indicated below. For this purpose, the text of article 5 as currently in force has been used; the proposed amendments are underlined and in bold. Should the Review Conference come to an agreement on the crime of aggression and, as a result, decide to delete the present paragraph 2 of article 5, the suggested new paragraph 3 below would become a new paragraph 2 of article 5. In addition, the Netherlands proposes that the Review Conference establish an informal working group on the crime of terrorism. This informal working group should be tasked to examine the question to what extent the Statute would need any adaptations as a result of the introduction of the crime of terrorism within the jurisdiction of the Court, as well as other questions relevant to this extension of the jurisdiction. It should not in any way interfere with the efforts to come to an agreement on a definition of terrorism as currently carried out within the context of the work on a comprehensive convention on terrorism.

## **Proposed amendments**

### **Article 5**

#### **Crimes within the jurisdiction of the Court**

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 terrorism.**

2. The Court shall exercise jurisdiction over the crime of aggression once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations.

**3. The Court shall exercise jurisdiction over the crime of terrorism once a provision is adopted in accordance with articles 121 and 123 defining the crime and setting out the conditions under which the Court shall exercise jurisdiction with respect to this crime. Such a provision shall be consistent with the relevant provisions of the Charter of the United Nations.**

## Annex V

### Norway: Proposal of amendment\*

[Original: English]

Excellency, Dear friend,

With reference to paragraph 1 of article 121 of the Rome Statute of the International Criminal Court, I have the honour to submit a Norwegian proposal for an amendment to paragraph 1 of article 103 of the Rome Statute. The proposal is further described in the annex to this letter.

I should be grateful if the proposed amendment could be circulated to all States Parties to the Rome Statute.

Please accept, Excellency, the assurances of my highest consideration.

Morten Wetland  
Ambassador, Permanent representative

### Suggested Draft Amendment

*Article 103 of the Rome Statute - Enforcement of sentences of imprisonment*

#### 1. Background

No enforcement of sentences by the International Criminal Court has yet been carried out. The experience of international criminal tribunals has, however, shown that only a limited number of States has so far been designated to accept sentenced persons. This has to do with the fact that few States have declared their willingness to be designated. At the same time, there may be reason to believe that more States may in principle be willing to accept sentenced persons, but are excluded from coming into consideration because of the required prison standards.

There should, in our view, be scope for such States to conclude international or regional arrangements enabling them to qualify for acceptance of sentenced persons, including through receipt of voluntary financial contributions to upgrade prison facilities and other assistance or supervision. A broader group of States participating in enforcement of sentences would also have other advantages, including with regard to facilitation of family visits. To this end, we believe that it may be important to explicitly provide for added flexibility in the language contained in article 103, paragraph (1)(a), as suggested below. Technically, amendments might be called for in the Rules of Procedure and Evidence and other secondary or derived instruments.

#### 2. Suggested language for a Draft Amendment

Add to the end of article 103, Paragraph (1) (a):

*"... for enforcement in a national prison facility or in a prison facility made available to the State by an international or regional organization, arrangement or agency, as provided in the Rules of Procedure and Evidence."*

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\* Issued previously as United Nations depositary notification C.N.713.2009.TREATIES-4, dated 29 October 2009.

Article 103 (1) (a) would thus read (addition underlined):

1. (a) A sentence of imprisonment shall be served in a State designated by the Court from a list of States which have indicated to the Court their willingness to accept sentenced persons for enforcement in a national prison facility or in a prison facility made available to the State by an international or regional organization, arrangement or agency, as provided in the Rules of Procedure and Evidence.

## Annex VI

### **Trinidad and Tobago: Proposal of amendments\***

[Original: English]

The Permanent Representative of the Republic of Trinidad and Tobago to the United Nations presents her compliments to the Secretary-General of the United Nations and has the honour to refer to article 121, paragraph 1 of the Rome Statute of the International Criminal Court (ICC) which provides that:

“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 of the United Nations, who shall promptly circulate it to all States Parties.”

The Permanent Representative of the Republic of Trinidad and Tobago has the further honour to transmit as an attachment to this Note a Proposal for the inclusion of the Crime of International Drug Trafficking in the Rome Statute of the International Criminal Court on behalf of the Government of the Republic of Trinidad and Tobago and the Government of Belize, and requests that this information be circulated to all States Parties to the Rome Statute of the ICC.

The Permanent Representative of the Republic of Trinidad and Tobago to the United Nations avails herself of this opportunity to renew to the Secretary-General of the United Nations the assurances of her highest consideration.

#### **Proposal for the inclusion of the Crime of International Drug Trafficking in the Rome Statute of the International Criminal Court**

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

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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:

## **Proposed amendments**

### **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>1</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

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<sup>1</sup> Language for the proposed amendment.

- 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).

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