
Review Conference of the Rome StatuteDistr.: General
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Kampala
31 May – 11 June 2010**Report of the Working Group on other amendments****A. Introduction**

1. The Working Group on other amendments held three meetings, on 1, 4 and 10 June 2010 and one round of informal consultations on 9 June 2010. Mr. Marcelo Böhlke (Brazil) and Ms. Stella Orina (Kenya) served as Chairpersons of the Working Group. The Secretariat of the Assembly of States Parties provided the substantive servicing for the Working Group.

2. The discussions in the Group focused on two issues:

- a) draft amendments to article 8 of the Rome Statute¹ and to the elements of crime,² which had been conveyed to the Review Conference by the eighth session of the Assembly of States Parties; and
- b) article 124 of the Statute.

B. Amendments to article 8 of the Rome Statute

3. In introducing the draft resolution amending article 8 of the Rome Statute,³ the delegation of Belgium explained that the draft amendments were intended to extend the jurisdiction which the Court already had over the crimes in article 8, paragraph 2 (b) (xvii), (xviii) and (xix), to armed conflicts not of an international character through their inclusion in article 8, paragraph 2 (e), as new sub-paragraphs (xiii), (xiv) and (xv), respectively.⁴ These crimes are as follows: employing poison or poisoned weapons (article 8, paragraph 2 (b) (xvii)); employing asphyxiating, poisonous or other gases, and all analogous liquids, materials and devices (article 8, paragraph 2 (b) (xviii)) and employing bullets which expand or flatten easily in the human body (article 8, paragraph 2 (b) (xix)).

4. It was stressed that the crimes that were proposed for inclusion in article 8, paragraph 2 (e), were already crimes within the jurisdiction of the Court if committed in an international armed conflict and that the amendments extended the jurisdiction of the Court to such crimes if committed in a non-international armed conflict.

¹ *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* (International Criminal Court publication, ICC-ASP/8/20), vol. I, part II, resolution ICC-ASP/8/Res.6, para. 3 and annex III.

² *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Resumed eighth session, New York, 22 – 25 March 2010* (International Criminal Court publication, ICC-ASP/8/20/Add.1), parat II, resolution ICC-ASP/8/Res.9, para. 9 and annex VIII.

³ RC/WGOA/1/Rev.2.

⁴ *Ibid.*, annex I.

5. It was noted that the crimes set out in preambular paragraph 8 related to weapons whose use was strictly forbidden. The crimes were serious violations of the laws and customs applicable in armed conflicts not of an international character, as reflected in customary international law, i.e. employing poison or poisoned weapons, as well as employing asphyxiating, poisonous or other gases, and all analogous liquids, materials and devices. There was no absolute prohibition on the weapons referred to in preambular paragraph 9, i.e. bullets which expand or flatten easily in the human body and the crime was committed only if the perpetrator employed the bullets to uselessly aggravate suffering or the wounding effect upon the target of such bullets, as reflected in customary international law. It was also stressed that law enforcement situations are excluded from the Court's jurisdiction.

6. As regards the Elements of Crimes,⁵ the delegation of Belgium indicated that they mirrored precisely the Elements of Crimes for the war crimes contained in article 8, paragraph 2 (xvii), (xviii) and (xix), except that the crimes occurred in conflicts not of an international character.

7. The Working Group noted that the procedure for entry into force of the amendment to article 8 pursuant to article 121, paragraph 5, of the Statute was related to the outcome of the discussion on the other amendments. Preambular paragraph 2 would be discussed further.

8. At its second meeting, on 4 June, the Working Group adopted the draft resolution amending article 8 of the Rome Statute and decided to refer it to the Conference for adoption, subject to a decision on the amendment procedure set out in article 121.

C. Article 124

9. The Chairpersons of the Working Group introduced the options regarding article 124. These were either to delete, retain, or redraft article 124. In this respect, one delegation proposed the introduction of a "sunset" clause in article 124, with a timeframe after which it would automatically expire.

10. Some delegations supporting deletion of article 124 were ready to accept the "sunset" provision, while other delegations were against any retention of article 124, whether with or without such a provision. Some other delegations expressed a preference for the retention of article 124. Views were also expressed that, in case of amendment or deletion, the amendment procedure could be undertaken in applying article 40, paragraph 5, of the Vienna Convention on the Law of Treaties. The arguments exposed in support of these different views replicated those expressed during the consideration of article 124 by the Assembly of States Parties at its eighth session.⁶

11. Following informal consultations, held on 9 June 2010, the Working Group decided to convey a draft resolution on article 124 (see annex II) to the Conference for adoption, whereby the Conference would decide to retain article 124 in its current form and to further review its provisions during the fourteenth session of the Assembly.

⁵ Ibid., annex II.

⁶ *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* (International Criminal Court publication, ICC-ASP/8/20), Annex II, paras. 6 to 13.

Annex I

Draft resolution amending article 8 of the Rome Statute

[To be inserted]

Annex II

Draft resolution on article 124

[To be inserted]

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