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**Review Conference of the Rome Statute**

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**Non-Paper by the Chair**  
**Further elements for a solution on the Crime of Aggression**

1. The present non-paper submitted by the Chair contains a number of elements that may be helpful in addressing certain issues regarding the draft amendments on the crime of aggression and are therefore recommended to the consideration of delegations.

2. **Timing of the entry into force of the amendments:** Concerns have been raised at the prospect of an early entry into force of the amendments on the crime on aggression in case article 121, paragraph 5, of the Statute was to be applied. Such concerns could possibly be addressed by a provision specifying that the Court should begin exercising jurisdiction over the crime of aggression at a later stage only. Such a provision would not as such affect the timing of the entry into force of the amendments, but would effectively delay the Court's exercise of jurisdiction. Such a provision would therefore have to be placed in draft article 15 *bis* and could read:

*Article 15 bis*

*Exercise of jurisdiction over the crime of aggression*

[...]

7. *The Court may exercise jurisdiction only with respect to crimes of aggression committed after a period of [x] years following the entry into force of the amendments on the crime of aggression.*

3. **Review clause:** The suggestion has been made that in the search for a compromise on the outstanding issues regarding the conditions for the exercise of jurisdiction, a review clause may be necessary to accommodate the concerns of delegations that have shown flexibility in their position. Such a review clause could be added to draft article 15 *bis*:

*Article 15 bis*

*Exercise of jurisdiction over the crime of aggression*

[...]

8. *The provisions of this article shall be reviewed [x] years after the Court may exercise jurisdiction over the crime of aggression.*

4. **Domestic jurisdiction over the crime of aggression:** Concerns have been raised that the consequences of adopting the amendments on the crime of aggression for the domestic exercise of jurisdiction over this crime are unclear, thus raising questions regarding the application of the principle of complementarity. The Special Working Group concluded at its early stages that no changes to article 17 of the Rome Statute – regarding inadmissibility of cases before the Court – were necessary when incorporating the crime of aggression.<sup>1</sup> This conclusion, however, does not address the question whether the amendments on the crime of aggression would, legally or effectively, require or encourage States to exercise domestic jurisdiction over the crime of aggression with respect to acts of aggression committed by *other* States, based on either the passive personality principle (as a victim State) or based on an assumption of universal jurisdiction. In fact, article 17 of the Rome Statute merely refers to “a State which has jurisdiction” over crimes, but does not address the question as to when States should establish such jurisdiction. The issue could possibly be addressed by adding a relevant paragraph to the understandings contained in annex III of the draft outcome on the crime of aggression:

*It is understood that the amendments address the definition of the crime of aggression and the conditions under which the Court shall exercise jurisdiction with respect to this crime for the purpose of this Statute only. The amendments shall, in accordance with article 10 of the Rome Statute, not be interpreted as limiting or prejudicing in any way existing or developing rules of international law for purposes other than this Statute. The amendments shall therefore not be interpreted as creating the right or obligation to exercise domestic jurisdiction with respect to an act of aggression committed by another State.*

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<sup>1</sup> 2004 Princeton report, contained in *Official Records of the Assembly of States Parties to the Rome Statute of the International Criminal Court, Third Session, The Hague, 6-10 September 2004* (International Criminal Court publication, ICC-ASP/3/25), annex II, paragraphs 20-27.