

Annotated Agenda

1. List of issues relating to the crime of aggression

The inter-sessional meeting in 2004 revised the list of issues to be addressed in developing proposals for a provision on aggression in accordance with Article 5 (2) of the Rome Statute (Annex I of ICC-ASP/3/SWGCA/INF.1). Since it was understood that the list is non-exhaustive, participants might want to add further elements to the list or revise existing elements.

2. Issues discussed at the 2004 meeting requiring further consideration

The conclusions of the 2004 meeting can be broadly divided into three categories: a) On a number of issues the meeting concluded that the relevant provisions of the Rome Statute were adequate or did not pose problems specific to the crime of aggression; b) on some issues the meeting reached general agreement and in some cases also recommended that the issue be revisited once agreement had been reached on the definition of aggression; and c) on some issues divergent views were offered and there was no agreement, further consideration is thus required. Reference is made in particular to the following issues:

- possibility for a State to “opt out” of the Court’s jurisdiction over the crime of aggression (2004 report para. 19);
- retention, exclusion or adaptation of article 25, para. 3, for the crime of aggression (leadership crime, 2004 report para. 53);
- retention, exclusion or adaptation of article 33 for the crime of aggression (superior orders, 2004 report para. 63).

Furthermore, articles 28 and 30 were also identified as requiring further consideration.

3. Preliminary discussions on other issues relating to the Rome Statute

- International cooperation and judicial assistance

This issue figures on the list as requiring further consideration depending upon the applicability of the principle of complementarity. The 2004 meeting concluded that the provisions on complementarity would not need to be amended for the crime of aggression. Participants might therefore want to discuss if Part 9 of the Rome Statute warrants any changes.

- Investigation and prosecution (Part 5 of the Statute)
- National security information (art. 57 (3), 72, 93 (4) and 99 (5))

Participants might want to hold preliminary discussions on the potential need to adapt the relevant provisions.

4. Elements of Crimes and Rules of Procedure and Evidence

The list of issues refers to possible issues relating to the Elements of Crimes (a draft is contained in the Coordinator's text) and the Rules of Procedure and Evidence. Participants might want to discuss if and how these questions should be dealt with before agreement has been reached on the definition itself, or if they should be left for consideration at a later stage.

5. Definition

On the basis of the Coordinator's text (contained in PCNICC/2002/2/Add.2) participants might want to continue discussions on the definition of the crime of aggression.

6. Conditions under which the Court shall exercise jurisdiction

On the basis of the Coordinator's text (contained in PCNICC/2002/2/Add.2) participants might want to continue discussions on the conditions under which the Court shall exercise jurisdiction.

7. Other issues

Participants might want to discuss procedural questions relating to the work of the SWG, in particular allocation of time at formal ASP sessions and their venue, future inter-sessional meetings etc. It could also be discussed if a roadmap outlining the future work leading to the submission of proposals for a provision on aggression to the Assembly of States Parties for consideration at a Review Conference could be beneficial.