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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 twentieth 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 twenty-first 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 Manuel Gómez Robledo Verduzco (Mexico) as Chairperson of the Working Group at its second meeting held on 9 March 2022.⁵

6. The Working Group met on 22 and 29 June 2022 to conduct its business as mandated by the Assembly, the first meeting was held in person and the second virtually. During its meetings the Working Group agreed to spare no effort for efficient discussions as well as openness and flexibility in the Group’s deliberations.

7. The Working Group also held a joint meeting with the Study Group on Governance on 21 March 2022. During that meeting, the Chef de Cabinet of the Presidency of the Court briefed the delegations on the history of discussions and facts in relation to rule 140*bis* of the Rules of Evidence and Procedure of the Court.

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, Twentieth session, The Hague, 6-11 December 2021* (ICC-ASP/20/20), vol. I, part III, ICC-ASP/20/Res.5, annex I, paras. 18(a) and (b), available at https://asp.icc-cpi.int/sites/asp/files/asp_docs/ASP20/ICC-ASP-20-20-vol-I-ENG.pdf.

⁵ Decision of the second meeting of the Bureau of the Assembly of States Parties, 9 March 2022, available at <https://asp.icc-cpi.int/sites/asp/files/2022-09/2022-Bureau-2-Agenda-Decisions.pdf>.

II. Consideration of proposals to amend the Rome Statute

8. 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 Depositary of the Rome Statute on 14 March 2014 and 15 August 2017.⁶

9. 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

10. At its first meeting held on 22 June 2022, 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, recalled that amendments 1 and 2 were adopted in the Kampala Review Conference in 2010 and amendment 3 was adopted by the Assembly at its fourteenth session in 2015. Belgium informed the Working Group that the process for Belgium's ratification of these amendments, together with the last adopted amendment to article 8 to include starvation as a war crime in non-international armed conflict was still ongoing, and emphasized that the Belgian domestic legislation is in conformity with these amendments. Belgium took the opportunity to encourage States Parties to consider ratifying all war crimes amendments, and all proposed amendments adopted so far.

11. Concerning the fourth amendment proposed, Belgium indicated that they had decided in the course of negotiations and in the spirit of compromise, to postpone the consideration of the proposal regarding the use of anti-personnel mines, and that it intended to continue working on the criminalization of anti-personnel mines since it presents clear added value to Belgium and the co-sponsoring States, while requesting that this proposal remain on the table and that Belgium continues to favor the adoption of the amendments by consensus. Belgium noted that at this stage it was preferable to continue bilateral discussions on the matter before resuming discussions in the Working Group, although this analysis may evolve and if it does, it would ask the Working Group to reexamine the proposal after the twenty-first session of the Assembly.

B. Mexico

12. At its first meeting held on 22 June 2022, 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 further stated that in this context, it would like to discuss its amendment proposal at a later stage in the Working Group.

C. Sierra Leone

13. No further updates were provided by Sierra Leone concerning its intention to present and amendment proposal during the intersessional period.

D. Trinidad and Tobago

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

⁶ 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 Depositary, 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.

E. South Africa

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

F. Kenya

16. 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

17. At its first meeting held on 22 June, the Chair of the Working Group reviewed the work done in 2021, and further explained that the outcome of discussions of the Study Group on Governance had not included amendment proposals at that stage, and therefore there was no need for the Working Group to review them during this session.

18. 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 and to receive their outcome in the form of amendment proposals. The Chair then recalled the recommendations allocated to it for the second half of 2022 (R202, R203, R215, R218 and R344).

19. The Chair recalled that the review of R206 was allocated to the Working Group under the Comprehensive Action Plan, and presented to the Working Group the text proposed by the Study Group on Governance to be introduced as rule 140*bis*. The Chair recalled the joint meeting of the Working Group and the Study Group on Governance held on 21 March 2022 on this matter, where the Chef de Cabinet to the President of the Court briefed both Groups on the history of the discussions and facts in relation to rule 140*bis*. The Chair also recalled the discussions of the delegations during this joint meeting. The Chair highlighted that the consideration of R206 belongs to this year’s programme of work, with the Working Group’s actions on this matter to be presented to the Assembly.

20. After assessing the views of the delegations, the Chair noted that delegations may need additional time to continue their consultations on the proposed article 140*bis*.

21. Following the consultations held by the Chair with the Chair of the Study Group on Governance and the Chef de Cabinet of the President of the Court, at its second meeting held on 29 June 2022, the Chair invited the Chef de Cabinet to the President of the Court to brief the Working Group on the background on the process and history of the drafting of proposed rule 140*bis*, and on the considerations of the judges at the time of drafting the proposed rule. Delegations expressed their support to proposed rule 140*bis* as drafted.

22. The Chair further proposed that the Working Group inform the Assembly of States Parties of its agreement to put forth for its consideration and decision rule 140*bis* as found in the Report of the Bureau on Study Group on Governance in relation to the amendment proposals to the Rules of Procedure and Evidence put forward by the Court (ICC-ASP/13/28, Annex I).

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

23. 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, Italy, Peru, Romania and Sweden had ratified the Kampala amendment to article 8; Italy, Peru and Sweden had ratified the Kampala amendments on the crime of aggression; Liechtenstein, Romania and Sweden 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 Liechtenstein, Luxembourg, Romania and Switzerland 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.⁷

24. As of 25 October 2022, the Kampala amendment to article 8 had been ratified by 44 States Parties;⁸ the Kampala amendments on the crime of aggression had been ratified by 44 States Parties;⁹ the amendment to article 124 had been ratified by 18 States Parties;¹⁰ 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 10 States Parties;¹¹ 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 10 States Parties.¹²

V. Decisions and recommendations

25. The Working Group recommends to the Assembly the adoption of a draft resolution on rule 140*bis* as contained in the report of the Bureau on Study Group on Governance in relation to the amendment proposals to the Rules of Procedure and Evidence put forward by the Court (ICC-ASP/13/28, Annex I) (annex I).

26. The Working Group recommends that regular meetings be held throughout 2023, including, if necessary, in expert meetings format.

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

⁷ 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.

⁸ https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10-a&chapter=18&clang=_en.

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

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

¹¹ 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.

¹² https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10-g&chapter=18&clang=_en.

Annex I

Amendment to the Rules of Procedure and Evidence of the International Criminal Court

The Assembly of States Parties,

Recalling the need to conduct a structured dialogue between States Parties and the Court with a view to strengthening the institutional framework of the Rome Statute system and enhancing the efficiency and effectiveness of the Court while fully preserving its judicial independence, and *inviting* the organs of the Court to continue to engage in such a dialogue with States Parties,

Recognizing that enhancing the efficiency and effectiveness of the Court is of common interest both for the Assembly of States Parties and the Court,

Recalling operative paragraphs 1 and 2 of resolution ICC-ASP/9/Res.2 and article 51 of the Rome Statute,

Further recalling paragraph 9 of annex I to resolution ICC-ASP/20/Res.5,

Taking note with appreciation of the consultations undertaken within the Study Group on Governance and the Working Group on Amendments,

Noting the report of the Working Group on Amendments¹³ and the report of the Bureau on the Study Group on Governance,¹⁴

1. *Decides* that the following rule 140 *bis* be inserted after rule 140 of the Rules of Procedure and Evidence:

“Rule 140 *bis*

Continuation of proceedings in the temporary absence of a judge for illness or other unforeseen urgent personal reasons

If a judge is, for illness or other unforeseen urgent personal reasons, unable to be present at any hearing, the remaining judges of the Chamber may exceptionally order that the hearing of the case continues in the absence of that judge for completion of a specific matter which has already commenced and can be concluded within a short timeframe, provided that:

(a) The Chamber is satisfied or, if it is not practicable to consult the absent judge, the remaining judges of the Chamber are satisfied that this arrangement is in the interests of justice; and

(b) The parties consent to this arrangement.

Annex II

Draft text for the omnibus resolution

1. Paragraph 164 of the 2021 omnibus resolution (ICC-ASP/20/Res.5) remains unchanged, reading:

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

2. Paragraph 165 of the 2021 omnibus resolution (ICC-ASP/20/Res.5) remains unchanged, reading:

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

3. Paragraph 166 of the 2021 omnibus resolution (ICC-ASP/20/Res.5) remains

¹³ ICC-ASP/21/22.

¹⁴ ICC-ASP/21/18.

unchanged, 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 2021 omnibus resolution (ICC-ASP/20/Res.5) 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-second session”.
