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**Assembly of States Parties**

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**Report of the Special Working Group on the Crime of Aggression**

**I. Introduction**

1. The Special Working Group on the Crime of Aggression of the Assembly of States Parties to the Rome Statute of the International Criminal Court held three meetings on 30 November and 1 December 2005. Ambassador Christian Wenaweser served as Chairperson of the Special Working Group.

2. The Secretariat of the Assembly of States Parties provided the substantive servicing for the Group.

3. The Special Working Group had before it the outcome of an informal intersessional meeting held in Princeton, New Jersey, United States, from 13 to 15 June 2005 contained in document ICC-ASP/4/SWGCA/INF.1. At the first meeting of the Group, the Chairperson presented an overview of the report of the intersessional meeting. In doing so, he expressed his regret that the delegation of Cuba had again, despite representations both by himself and by the President of the Assembly, been denied a travel permit by the host State and had therefore been unable to attend the informal intersessional meeting in Princeton. The Chairperson pointed out that the intersessional had again been held in English only, as had the intersessional meetings held in Syracuse, Sicily, in preparation for the Rome Conference. He expressed his willingness to arrange for translation services, if delegations had a very strong preference in this respect, but also made it clear that such arrangements would lead to a huge increase in the total costs of the meetings and that it would be difficult to secure the relevant funding. He requested the Special Working Group to adopt the report and use it as the basis for future discussions on the crime of aggression. In view of the limited time allocated to the question of the crime of aggression during the fourth session of the Assembly of States Parties, he emphasized the need for further intersessional meetings in the future, complemented by a significant increase in meeting time in the framework of the Assembly of States Parties. The Chairperson expressed his understanding of the fact that the agenda of the Assembly was overloaded yet again. However, he also mentioned that the decision taken by the Assembly at its third session on meeting time allocated to the Special Working Group had not been implemented. The Chairperson also expressed the view that the Special Working Group on the Crime of Aggression needed to establish a “road map” clearly outlining the process that could enable the Special Working Group on the Crime of Aggression to conclude its work successfully at least 12 months before the convening of the Review Conference. It was essential to make a reliable decision on meeting time allocated to the Special Working Group on the Crime of Aggression between 2006 and 2008.

## **II. Consideration of the report on the intersessional meeting of the Special Working Group on the Crime of Aggression**

4. The Special Working Group expressed its appreciation to the Governments of Finland, Germany, Liechtenstein, the Netherlands and Switzerland for providing financial support for the intersessional meeting, and to the Liechtenstein Institute on Self-Determination at Princeton University for offering an opportunity for holding the informal intersessional meeting. The Special Working Group welcomed the holding of the informal intersessional meeting as a positive step towards elaborating a definition of the crime of aggression. The importance of aggression as a crime within the Court's jurisdiction was stressed, as was the need to reach a consensus definition of the crime, so as to enable the Court to exercise jurisdiction over that crime. Several delegations took the opportunity to express their positions on points of substance contained in the report of the intersessional meeting. Concern was expressed that very little time had been allocated to the Special Working Group during the fourth session of the Assembly of States Parties, and the point was made that the Group should be allocated more time at subsequent meetings of the Assembly. Support was expressed for more intersessional meetings at a time to be determined by the Chairperson after consultations with delegations. In this regard, it was noted that every step should be taken to ensure the widest possible participation in such intersessional meetings. There was a general view that New York, as a venue for the Special Working Group, would enhance participation and in particular permit participation by States not parties to the Rome Statute, as provided for in Resolution ICC-ASP/1/Res.1 of the Assembly of States Parties. General support was also expressed for the establishment of a virtual working group to advance discussion by States outside regular and intersessional meetings by means of electronic mail. It was also noted that such a virtual working group was not intended to replace formal meetings of the Special Working Group or the informal intersessional meetings. Mention was made of the usefulness of the volume prepared by the United Nations Secretariat entitled "Historical review of the developments relating to aggression" (doc. PCNICC/2002/WGCA/L1 and Add.1).

5. As a result of its exchange of views the Special Working Group agreed that more time should be allocated to the Working Group, and decided to adopt the report of the intersessional meeting contained in document ICC-ASP/4/SWGCA/Inf.1 and to recommend to the Assembly of States Parties that it be annexed to the Proceedings of the fourth session of the Assembly.

## **III. Consideration of discussion papers introduced in the Working Group**

6. Paragraph 91 of the report on the 2005 intersessional meeting noted that the meeting had agreed in principle to establish a "virtual working group" that would allow states to advance their discussion outside regular and intersessional meetings, it being understood that such a working group communicating by electronic means would be open to all those interested. Three discussion papers produced as a result of the establishment of the virtual working group were introduced at the 2<sup>nd</sup> meeting of the Special Working Group.

7. Mr. Claus Kress (Germany), introduced discussion paper No. 1, entitled "The Crime of Aggression and Article 25, paragraph 3, of the Statute", which was informally distributed in the Special Working Group under the symbol number ASP/4/SWGCA/NP.1.

8. Mr. Pål Wrange (Sweden) introduced discussion paper No. 2, entitled "The Conditions for the exercise of jurisdiction with respect to the crime of aggression", which was

informally distributed in the Special Working Group under the symbol number ASP/4/SWGCA/NP.2.

9. Ms. Phani Daskalopoulou-Livada (Greece) introduced discussion paper No. 3, entitled "Definition of aggression in the context of the Statute of the ICC", which was informally distributed in the Special Working Group under the symbol number ASP/4/SWGCA/NP.3.

10. In their introductions the sub-coordinators summarized the contents of their respective discussion papers. Furthermore, they noted that the purpose of the discussion papers was further to analyse and reflect on some of the issues already covered in the report of the intersessional meeting, which deserved further consideration. The discussion papers listed questions intended to prompt participants to examine further those particularly complex issues and elicit from them comments and observations in preparation for further meetings of the Special Working Group.

11. There was general agreement on the value of the exercise undertaken by this electronic forum. Since there was a concern that responses in writing might necessarily be more formal than oral contributions, it was suggested that the Virtual Working Group be kept as informal as possible. After a preliminary exchange of views on the discussion papers, the Working Group recommended broad participation in the virtual working group on the understanding that it was not meant as a decision-making body or as a substitute for meetings of the Special Working Group. The Special Working Group on the Crime of Aggression agreed with the Chairperson that the main purpose of the virtual working group was to help prepare for future meetings of the Special Working Group on the Crime of Aggression either in the framework of the Assembly of States Parties or in an informal intersessional format. It also decided to recommend to the Assembly of States Parties that the documents introduced in the Special Working Group be annexed to the 2005 Proceedings of the Assembly, under the heading Discussion Papers No. 1, No. 2 and No. 3, on the understanding that they are subject to possible further refinements and revisions by their authors.

#### **IV. Road map to the Review Conference**

12. The Chairperson drew attention to paragraph 90 of the report of the informal intersessional meeting, which noted that the Special Working Group needed to conclude its work 12 months before the Review Conference at the latest. This would permit the necessary domestic consultations and generation of the political momentum needed for the adoption of provisions on the crime of aggression at the Conference.

13. In this connection, he circulated in the Special Working Group a proposed timetable for future sessions of the Assembly of States Parties, with a view to taking into account the concerns reflected in the preceding paragraph. The timetable proposed to allocate a total of 10 days of formal meetings to the Special Working Group, in the course of the forthcoming 2006, 2007 and 2008 sessions of the Assembly of States Parties, between June 2006 and November 2008, complemented by 7 ½ days of informal intersessional meetings. The Chairperson made it clear that a decision on timing and venue of future meetings fell within the mandate of the group considering the omnibus resolution, and that the circulation of the informal paper containing a proposed timetable was without prejudice to the discussions in that group.

14. The proposed timetable was the object of a preliminary discussion and found general support from delegations. Some delegations expressed the view that the time scheduled for dealing with the crime of aggression was the bare minimum, while the opinion was also

voiced that the meeting time allocated for work in New York might be excessive. It was also made clear that the timetable could be subject to further refinements in the light of progress achieved in the Special Working Group's mandate and of the overall organizational needs of the forthcoming sessions of the Assembly.

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