

**Twenty-third session**

The Hague, 2-7 December 2024

**Report of the focal point on the preparations for the review
of the amendments on the crime of aggression****I. Introduction**

1. On 22 August 2024, the Bureau appointed Ms. Elisa De Raes (Belgium) as focal point on the preparations for the review of the amendments on the crime of aggression.¹

2. The mandate entrusted by the Bureau was: “to gather the views of States Parties on the venue, format, dates and duration of the review of the amendments on the crime of aggression, and to report thereon to the Presidency of the Assembly by a date to be determined by the Presidency. The Presidency may thereafter also request the focal point to gather views on the scope and objective of the review.”²

II. Background

3. When the Rome Statute was adopted in 1998, article 5 included the crime of aggression as one of the four crimes under the jurisdiction of the Court. However, the exercise of the jurisdiction over the crime of aggression was subject to States Parties adopting a provision in accordance with articles 121 and 123 on the definition of the crime of aggression and on the conditions under which the Court would exercise jurisdiction with respect to that crime. Amendments to the Rome Statute were agreed at the first Review Conference in June 2010 in Kampala. It was also agreed that 30 States Parties would have to ratify the amendments defining the crime of aggression, and that the Assembly of States Parties to the Rome Statute (“the Assembly”) would need to activate the crime of aggression by at least a two-thirds majority of States Parties at an Assembly meeting after 1 January 2017. Furthermore, it was also decided “to review the amendments on the crime of aggression seven years after the beginning of the Court’s exercise of jurisdiction”.³

4. At its sixteenth session in December 2017, the Assembly decided to activate the Court’s jurisdiction over the crime of aggression as of 17 July 2018.⁴

5. At its twenty-second session, on 13 December 2023, the Assembly adopted resolution ICC-ASP/22/Res.3 (“omnibus” resolution), paragraph 157 of which reads as follows: “[r]ecalls the decision taken by the first Review Conference to review the amendments on the crime of aggression seven years after the beginning of the Court’s exercise of jurisdiction and notes that this review is to be prepared ahead of 17 July 2025”.

¹ Bureau decisions of 4 September 2024, annex.

² Bureau decisions of 5 June 2024, annex.

³ Resolution RC/Res.6, para. 4.

⁴ Resolution ICC-ASP/16/Res.5, para. 1.

III. Consultations

6. The focal point started bilateral consultations on this important topic at the end of August 2024. A background paper with six questions was disseminated to all States Parties on 3 September in order to allow them sufficient time to check with capital and prepare their replies. On 13 September, an additional paper was submitted with the tentative costs of some of the proposed venues (New York and The Hague).

7. Besides official communications, every State Party has been contacted bilaterally. During the past weeks, numerous conversations with delegations have taken place in person, on the phone, via message and via e-mail. While every State Party was approached multiple times, 86 of the 124 States Parties submitted responses to the questionnaire, mostly in person.

Key outcomes of the consultations

8. As regards the venue of the review, a clear majority of States Parties (44) preferred to meet at the United Nations Headquarters in New York. This was mainly due to inclusivity, as all States Parties are represented there, in addition to the lower budgetary implications. Some States Parties (20) indicated that they were flexible, did not have a preference or were open to the possibility of a third venue (5), while some States Parties (17) preferred The Hague as it is the seat of the Court and they are represented there. The States Parties which previously had indicated the possibility of hosting a Review Conference did not receive a final confirmation from their authorities. At this stage, there is no State Party formally still considering hosting a Review Conference at a third venue (i.e. not The Hague nor New York).

9. A majority of States Parties (40) preferred New York also as the venue for the preparatory work, with some States Parties (19) indicating that both New York and The Hague should be involved. While some States Parties (14) stated that they did not have a clear preference, some others supported the option of The Hague (13). A few States Parties mentioned that the experts in capitals would have to be involved as well.

10. As regards the format for the preparatory work, a clear majority of States Parties (53) preferred the “ASP”-format,⁵ where States Parties are the decision-makers, while Observer States, international organizations and entities dealing with the crime of aggression and related crimes, as well as non-governmental organizations, are participants to ensure inclusivity. The review itself would have a similar format.⁶ While some States Parties (15) preferred a States Parties only format, some States Parties preferred an all States on equal footing format (11) and others (7) were flexible or did not have strong views. Most States Parties emphasized the added value of non-governmental organizations being involved in the process.

11. With respect to the dates of the review, while some States Parties (27) expressed their wish to hold the meetings in December 2025 (right before or after the Assembly session – in The Hague or even in New York), the majority of States Parties (38) indicated a strong preference not to do so directly after the twenty-fourth session of the Assembly in December 2025. States Parties mentioned the need for a dedicated review on this topic, which would take place separately from the Assembly of States Parties. Some States Parties (19) were flexible regarding the dates as long as they did not overlap with other important processes.

12. More concretely, most States Parties preferred to avoid: the end of the summer of 2025, due to high level week preparations in New York as well as the planned Preparatory Commission for the entry into force of the Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction (BBNJ); the autumn, because of the United Nations General Assembly Sixth Committee meetings; and the mid-summer period due to the yearly leave of most delegates, the High Level Political Forum at UN Headquarters and the International Seabed Authority (ISA) meeting in Kingston. Thus, most delegations preferred the end of the second quarter of 2025. This would leave enough time for the preparatory process to take place from the end of 2024 through the first half of 2025.

⁵ Section XX, rules 92, 93, 94 and 95, of the Rules of Procedure of the Assembly of States Parties.

⁶ Article 123 of the Rome Statute.

13. As far as the duration of the review, a majority of States Parties opted for three days (41) or more (15), with many (22) expressing their flexibility on the matter and pointing out that it depended on the status of preparations and the substance of the review. A few States Parties (8) expressed the wish to have a short review of less than 3 days.

14. With regard to the optional question on views on the scope and objective of the review of the amendments on the crime of aggression, not all States Parties have given responses.

15. As for the group of States Parties that responded, a few have expressed reservations on amending the Kampala amendments, as this could possibly create division, while a significant number of States Parties indicated that their main goal is to have a dedicated review of the amendments on the crime of aggression with a focus on aligning its jurisdiction with the jurisdiction of the Court for the three other core crimes.

16. Several States Parties have shown openness to discuss any issue that (a group of) States Parties would like to bring to the table in relation to the review of the amendments on the crime of aggression.

17. In addition to the questionnaire, the following matters were raised by some States Parties. It was pointed out that the ratification of the Kampala amendments was taking more time than what was perhaps expected when they were adopted, and that a reflection on the universality of the amendments would be timely. Some States Parties indicated that they have started the parliamentary process to ratify the Kampala amendments, while others stated that they are trying to finalize the administrative phase in order to propose the amendments at the national political level.

IV. Conclusions and recommendations

18. The consultations showed clear trends and preferences of States Parties. After the Bureau confirms the venue, dates and duration, the Secretariat of the Assembly could then formally request the United Nations to reserve a large conference room for three or up to a maximum of five working days, preferably starting on a Monday.

19. A decision on the dates should also be linked to the availability of interpretation (tentative daily costs of €11,500 for six languages), which is to be provided by the United Nations. The latter requires advance payment for interpretation services. Therefore, shortly after the end of the twenty-third session of the Assembly in December 2024, the Secretariat of the Assembly would have to formalize the reservation of the conference room and the interpretation services for the specific dates the Assembly would have agreed, as well as make the requisite advance payment to the United Nations using the funds from Major Programme IV which the Assembly would have approved for 2025.

20. As regards the availability of conference rooms with interpretation, the United Nations has indicated the following periods: 30 June to 3 July (maximum of four days) and 7 to 11 July (maximum of five days). It is important to make a tentative reservation for a large conference room as soon as possible, given the possibility that the United Nations may have other requests.

21. A tentative costing of a five day meeting at the United Nations in New York in one of the periods indicated above has been prepared by the Secretariat of the Assembly.

22. In order to accommodate the wish of some States Parties to have colleagues from their missions in The Hague and/or colleagues from capital included in the preparatory work, the possibility to organize (some) hybrid meetings could be explored.

23. The focal point submits the draft resolution language contained in the annex to this report for the consideration of the Bureau.

Annex

Draft language for inclusion in the omnibus resolution to be adopted at the twenty-third session of the Assembly

Recalls the decision taken by the first Review Conference to review the amendments on the crime of aggression seven years after the beginning of the Courts exercise of jurisdiction and the decision by the Assembly that this review is to be prepared ahead of 17 July 2025;¹

Takes note of the report of the focal point on the preparations for the review of the amendments on the crime of aggression;

Decides that the review shall be held at United Nations Headquarters, from ... to ... July 2025, for a period of (three/four/five) working days;

Further requests the President of the Assembly of States Parties, with support of the Bureau, to continue the preparations for the review of the amendments to the crime of aggression, including practical and organizational issues.

¹ ICC-ASP/22/Res.3, para. 157.