

Resolution ICC-ASP/18/Res.5

Adopted at the 9th plenary meeting, on 6 December 2019, by consensus

ICC-ASP/18/Res.5

Resolution on amendments to article 8 of the Rome Statute of the International Criminal Court

The Assembly of the States Parties,

Noting article 121, paragraphs 1 and 2, of the Rome Statute of the International Criminal Court which permits the Assembly of States Parties to adopt any proposed amendment to the Rome Statute after the expiry of seven years from the entry into force of the Statute,

Noting also article 121, paragraph 5, of the Statute which states that any amendment to articles 5, 6, 7 and 8 of the Statute shall enter into force for those States Parties which have accepted the amendment one year after the deposit of their instruments of ratification or acceptance and that in respect of a State Party which has not accepted the amendment, the Court shall not exercise its jurisdiction regarding the crime covered by the amendment when committed by that State Party's nationals or on its territory, and confirming its understanding that in respect of this amendment, the same principle that applies in respect of a State Party which has not accepted this amendment applies also in respect of States that are not Parties to the Statute,

Confirming that, in light of the provision of article 40, paragraph 5, of the Vienna Convention on the Law of Treaties, States that subsequently become States Parties to the Statute will be allowed to decide whether to accept the amendments contained in this resolution at the time of ratification, acceptance or approval of, or accession to the Statute,

Noting article 9 of the Statute on the Elements of Crimes which states that such Elements shall assist the Court in the interpretation and application of the provisions of the crimes within its jurisdiction,

Considering that the crime referred to in article 8, paragraph 2 (e) (xix) is a serious violation of the laws and customs applicable in armed conflict not of an international character,

Noting that the crime referred to in article 8, paragraph 2 (e) (xix) is without prejudice to the Second Additional Protocol of 8 June 1977 to the Geneva Conventions,

1. *Decides* to adopt the amendment to article 8, paragraph 2 (e), of the Rome Statute of the International Criminal Court contained in annex I to the present resolution, which is subject to ratification or acceptance and shall enter into force in accordance with article 121, paragraph 5, of the Statute;
2. *Also decides* to adopt the relevant elements to be added to the Elements of Crimes, as contained in annex II to the present resolution;
3. *Calls upon* all States Parties to ratify or accept this amendment to article 8;
4. *Urges* all States that have not done so to ratify or accede to the Rome Statute, and in doing so to also ratify or accept the amendment to article 8.

Annex I

Amendment to be inserted as article 8-2-e)-xix) of the Rome Statute

Intentionally using starvation of civilians as a method of warfare by depriving them of objects indispensable to their survival, including willfully impeding relief supplies.

Annex II

Elements of crime of new article 8-2-e)-xix) of the Rome Statute

1. The perpetrator deprived civilians of objects indispensable to their survival.
 2. The perpetrator intended to starve civilians as a method of warfare.
 3. The conduct took place in the context of and was associated with an armed conflict not of an international character.
 4. The perpetrator was aware of factual circumstances that established the existence of an armed conflict.
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