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Note by the Secretariat

The Secretariat of the Assembly of States Parties has received a communication from Liechtenstein on the outcome of an inter-sessional meeting held in Princeton, New Jersey, United States, from 21 to 23 June 2004. In accordance with the request in the communication, the outcome of the inter-sessional meeting is submitted to the Assembly.

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Informal inter-sessional meeting of the Special Working Group on the Crime of Aggression, held at the Liechtenstein Institute on Self-Determination, Woodrow Wilson School, at Princeton University, New Jersey, United States, from 21 to 23 June 2004

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A. Introduction

1. At the invitation of the Government of Liechtenstein, and after consultation within the framework of the Assembly of States Parties, an inter-sessional meeting of the Special Working Group on the Crime of Aggression was held at the Liechtenstein Institute on Self-Determination, Woodrow Wilson School, at Princeton University, New Jersey, United States, from 21 to 23 June 2004. Invitations to participate in the meeting had been sent to all States who have signed the Final Act of the Rome Conference as well as to some representatives of civil society. Ambassador Christian Wenaweser (Liechtenstein) chaired the meeting. A list of participants is included as annex II.

2. The agenda for the meeting was based on the preliminary list of possible issues relating to the crime of aggression contained in document PCNICC/2001/L.1/Rev.1. As a result of the discussions, this list was revised in order to reflect progress made since the preliminary list of issues had been drafted. The revised list of issues is included as annex I of the report.

3. The participants in the inter-sessional meeting expressed their appreciation to the Governments of Liechtenstein, the Netherlands and Switzerland, which had provided financial support for the meeting, as well as to the Liechtenstein Institute on Self-Determination at Princeton University for providing an opportunity for an informal exchange of views and dialogue among the participants and for its generous hospitality. The group expressed its hope that the Assembly of States Parties, if possible, may make provision for other such meetings, with the necessary arrangements in order to facilitate the debate in the different working languages of the Assembly.

4. The present document does not necessarily represent the views of the Governments of the participants. It seeks to reflect conclusions and opinions regarding different issues on the crime of aggression; it is understood that these issues would have to be reassessed in light of further work on the crime of aggression. It is hoped that the material in the present document would facilitate the work of the Special Working Group on the Crime of Aggression.

B. Summary of the proceedings

1. General comments

5. The point was made that the meetings of the Assembly of States Parties had not allocated enough time as would have been desirable for the discussion of the issue of aggression. It was also agreed that the inter-sessional meeting should seek to address technical aspects of aggression that had not been addressed previously without necessarily going into the core issues where significant progress was unlikely.

2. Jurisdiction *ratione temporis* (article 11)

6. The discussion focused on whether the Court should exercise jurisdiction over the crimes of aggression committed after the Statute's entry into force but before the adoption of a provision regarding the definition of aggression and the means whereby the Court would exercise its jurisdiction. Although article 11 did not deal specifically with such a situation, it was noted that article 5, paragraph 2, did not exclude such a possibility.

7. On the other had, some delegations were of the view that the existing provisions of the Statute, particularly article 5, paragraph 2, were clear enough to preclude the exercise of the Court's jurisdiction over the crime of aggression until such time as an agreement on the definition and the exercise of jurisdiction was attained. It was emphasized that strict adherence to the principle of legality was crucial and that therefore no criminalization could take place in the absence of a specific provision on the definition of aggression and the respective elements of crimes. Furthermore, even if a State were to refer a case to the Court, article 5, paragraph 2, would preclude the Court from exercising its jurisdiction.

8. Nonetheless, the point was also made that additional clarity could be useful and that an explicit provision precluding a retroactive application of the Statute was preferable. It was observed that article 11, paragraph 1, had been included precisely in order to eliminate any ambiguity about retroactivity and that article 5, paragraph 2, was linked with article 11. Other relevant provisions to be borne in mind included articles 12, paragraph 3, article 13, paragraph (b), article 24 and article 126.

Conclusions

9. There was agreement that:

- The provision on aggression to be adopted would be prospective in nature and not have any retroactive effect;
- The points raised merited being reconsidered once agreement on the substantive items was reached;
- There was no objection to specifying that the provisions on aggression would not have retroactive effect;
- The placement of the clarification could be dealt with in the aggression provision itself and cross-reference could be made to relevant articles, such as articles 11 and 20.

3. The incorporation and placement of the provisions on aggression in the Statute

10. At the outset, different views were expressed regarding the placement of the provision defining aggression and the provision setting out the conditions whereby the Court could exercise its jurisdiction.

11. The following options were mentioned for such placement:

(a) Integrating the new provisions into the existing text by:

- Inserting as much as feasible into article 5, paragraph 2, or other existing provisions; this would avoid complications arising from the need to renumber articles; in addition, the inter-relationship of the different elements of the provisions on aggression would best be preserved by maintaining them together;
- Inserting a new article 8 *bis* containing the provisions on aggression; the provision on definition could also include some principles of criminal law;
- Merging articles 9 and 10 so as to allow for such an insertion with minimum disruption to the numbering of the rest of the articles; nonetheless, some opinions were made against such merger since the issues dealt with by those articles were of a different nature and therefore should remain as distinct provisions;
- Including a reference in article 9 to the elements of crimes for aggression; the conditions for exercising the jurisdiction could be contained in a new paragraph to be inserted in article 12 or in article 5, paragraph 2;

(b) Inserting the new provisions as an annex to the Statute, though they would constitute an integral part of the Statute itself, along the lines of the Charter of the United Nations and the Statute of the International Court of Justice;

(c) Having the new provisions as a stand-alone protocol containing the new provisions. This option received limited support and it was pointed out that it raised problems regarding its entry into force.

12. Attention was also drawn to the fact that it was important that the time frame for the entry into force of the provisions on the definition of aggression and the conditions for the exercise of the Court's jurisdiction should be the same for a particular State; in this connection, reference was made to article 121, paragraphs 4 and 5.

13. The point was raised as to whether the provisions on aggression contemplated in article 5, paragraph 2, would be applicable to all States Parties once the requirements of article 121, paragraph 4, had been met or whether States could "opt out" of such amendments in accordance with article 121, paragraph 5. In this connection, mention was made of the need to avoid differential treatment of the different crimes under the jurisdiction of the Court listed in article 5, paragraph 1.

14. Furthermore, the point was made that article 5, paragraph 2, did not use the term "amendment", thus raising the possibility that the incorporation of the outstanding provisions on aggression did not amount to an amendment *per se*, but would constitute completion of a process started in Rome.

15. It was stated that there was no clear guidance on the matter from the literal language and that the preparatory work did not prove useful since article 5, paragraph 2, had emerged in the final phase of the Rome Conference, after work on the Final Clauses had been concluded.

16. Furthermore, it was pointed out that another complication could arise with regard to a State that became a party after the entry into force of the pending provisions on the exercise of jurisdiction over aggression. In such a case, it would seem that the State in question would become a party to the amended Statute. Some delegations were of the view that article 40, paragraph 5, of the Vienna Convention on the Law of Treaties raised the possibility that in such situation a State had a choice on acceptance of the amendments.

17. Divergent views were expressed regarding the applicability to a State of any novel provisions adopted with respect to aggression. On the one hand, several delegations felt that article 121, paragraph 5, would apply, thus requiring a State's acceptance of an amendment to article 5; this would be the same approach as required for amendments to articles 6, 7 and 8. It was stated that this had always been the understanding of States, since article 121, paragraph 5, had been drafted with the issue of aggression in mind. However, it was also noted that such an understanding had been appropriate when the provision was drafted only because at such time aggression had not yet been included among the crimes over which the Court had jurisdiction.

18. However, there was also a different view which posited that amendments to the Statute relating to the crime of aggression were subject to article 121, paragraph 4. According to this approach the amendments would be legally binding on all State Parties once the requisite number of ratifications or acceptances of the amendments had been received; no State Party could "opt out" of the amendments without withdrawing from the Statute in accordance with article 121, paragraph 6. The proponents of this view emphasized in particular that the crime of aggression needed to be treated in the same manner as the other crimes since this had been the intention when it was included in the Statute.

Conclusions

- A strong preference was voiced for integration in the Statute of the definition of aggression and the conditions for exercising the Court's jurisdiction over the crime, thus dispensing with the notion of having a separate instrument for that purpose.
- It was also agreed that only indispensable minimal modifications should be made to the Statute. Article 5, paragraph 2, would ultimately be deleted once those changes were made.
- In connection with those modifications to the Statute, two distinct possibilities were suggested: the provisions could either stand on their own within the Statute or they could be split and integrated into different provisions of the existing text.

19. There was, however, no agreement as to whether a State could "opt out" of the Court's jurisdiction over the crime of aggression; the views on this point were contingent upon the applicability of either paragraph 4 or paragraph 5 of article 121 to any new provisions on aggression.

4. Complementarity and admissibility with regard to the crime of aggression

20. The question had been raised regarding the applicability of the provisions of the Statute on complementarity to the crime of aggression and the possible need to modify them or to add new provisions.

21. There was general agreement that no problems seemed to arise from the current provisions being applicable to the crime of aggression.

22. It was emphasized that the issue of complementarity and admissibility was closely related to the definition of aggression and the role of the Security Council. In this connection, it was noted that only some States had national legislation criminalizing aggression. With regard to the role of the Security Council, the point was raised as to whether a State could look into a case when the Council was dealing with it.

23. It was stated that the crime of aggression was different from the other crimes under the Court's jurisdiction since it might require a prior determination by the Security Council that aggression had taken place; such a decision however would not be needed for the application of national legislation on aggression. Other delegations expressed the view that national legislation should be consistent with applicable international law.

24. A view was expressed that should a prior determination of an act of aggression be deemed necessary, it would then be up to the Court to decide on the responsibility of individuals for the crime.

25. A point was also made drawing attention to the possibility that some of the provisions of the Statute might be interpreted to give jurisdiction to the Court in situations in which a "victorious" State would prosecute individuals without due regard to their rights; another situation could arise when a "victim" State did not prosecute individuals out of fear of the aggressor State. Among the provisions that could be read from this perspective were article 17, paragraph 2(c), and article 53, paragraph 1(c). In addition, the view was expressed that the Court had never been conceived and should not be considered as a court of appeals for national decisions.

26. Nonetheless, it was stated that these concerns could be addressed through interpretation of the provisions of the Statute and therefore no amendments would be required.

Conclusions

27. There was agreement that:

- Articles 17, 18 and 19 were applicable in their current wording and the points raised merited being revisited once agreement had been reached on the definition of aggression and the conditions for exercise of the Court's jurisdiction.

5. *Ne bis in idem* with regard to the crime of aggression

28. In relation to article 20, the question was raised as to whether a person convicted or acquitted by the Court with regard to war crimes, crimes against humanity or genocide could subsequently be tried by the Court for the crime of aggression. Furthermore, a similar query was posed regarding the possibility of the Court convicting or acquitting a person for the crime of aggression and at a later point in time trying the same individual for war crimes, crimes against humanity or genocide.

29. The issue of how to incorporate the crime of aggression into article 20, paragraph 3, was also raised, since it currently refers only to conduct proscribed under articles 6, 7 and 8.

30. The point was made that the meaning of "conduct" in the phrase "conduct which formed the basis of crimes" contained in article 20, paragraph 1, was broader than the meaning given to the same word in other parts of the Statute, since in this case it seemed to include both the *mens rea* and the *actus reus*. It was also construed as referring to conduct which can be qualified as a crime, not as conduct enabling commission of a crime.

31. During the discussion, it was noted that paragraphs 2 and 3 of article 20 had to be understood in the context of complementarity and admissibility. The difference in wording between paragraphs 1 and 3 ("conduct") and paragraph 2 ("crime") was noted. Unless the conditions set out in article 20, paragraph 3(a) or (b), were met, the Court was precluded from trying an individual for conduct that a national court had previously prosecuted. However, an individual tried for a crime by the Court could be tried for a different crime, even if based on similar facts, at the national level.

32. A view was expressed that article 20, paragraph 3(b), could also be read from the perspective of a victorious power imposing its particular form of justice, possibly to the detriment of the rights of the accused.

33. Nonetheless, it was noted that the crime of aggression in the context of *ne bis in idem* was not unique vis-à-vis the other crimes falling under the Court's jurisdiction and that it was preferable to leave the matter for judicial interpretation, on a case-by-case basis, which would take into account the respective elements of the crime.

Conclusions

34. There was agreement that:

- The current provisions were adequate;
- Some of the points raised in discussion with regard to the interpretation of article 20 merited being revisited, but they were not specific to the crime of aggression;

- Once an agreement was reached on the provisions related to the crime of aggression, reference to the relevant provision should be incorporated in the chapeau of article 20, paragraph 3.

6. General principles of criminal law

35. The discussion focused on the content of paragraph 3 of the discussion paper proposed by the coordinator in July 2002,[1] which had suggested excluding article 25 (Individual criminal responsibility), paragraph 3, article 28 (Responsibility of commanders and other superiors) and article 33 (Superior orders and prescription of law) of the Statute from being applicable to the crime of aggression, since they were not deemed to fit with the preliminary definition of the crime contained in paragraph 1 therein. While article 25 was excluded due to the perceived overlap with paragraph 1 of the coordinator's paper, articles 28 and 33 were excluded due to the fact that the crime of aggression was a leadership crime.

36. The general view was expressed that the general principles of criminal law should be applicable to all crimes unless there were specific reasons for not doing so.

Article 25, paragraph 3

37. One of the arguments made for excluding article 25, paragraph 3, was that by doing so, the ordinary soldiers could not be held liable for aiding or abetting the crime. It was noted that article 25, paragraph 3 deals with accomplice liability, a subject matter incompatible with the leadership role required by the preliminary definition of aggression which refers to ordering or participating actively in an act of aggression. In this regard, it was stated that article 25, paragraph 3(a) to (d), should be excluded from being applicable to the crime of aggression. The concern was expressed that application of article 25, paragraph 3, might thus dilute the character of the crime as a leadership crime.

38. Others felt that the application of article 25, paragraph 3, to the crime of aggression was important. Specific reference was made to subparagraph (f), which deals with the concept of attempt. In this connection, it was noted that the difference between the concept of attempt, as contained in article 25, paragraph 3(f), and the concept of initiation, found in the preliminary definition, justified retention of the former. Mention was also made of the need to analyse whether the act had not been fully executed voluntarily or whether external factors had impeded completion of the crime. Furthermore, it was noted that liability for attempts to commit the other crimes under the Court's jurisdiction was already contemplated in article 25, paragraph 3(b), (c) and (d), and that aggression was an even graver crime than the others.

39. Others argued that a crime of aggression only existed when the act of aggression had in fact been carried out and therefore a mere attempt would not be covered by the preliminary definition. Consequently, should a prior determination of an act of aggression be deemed necessary an attempt to commit a crime would not be possible.

40. In addition, regarding the concept of attempt, mention was made of the need to differentiate between the collective act, where certain thresholds had to be established, and the individual act. For example, would massing troops on the border amount to an attempt or would they have to cross the border first. Although the preliminary definition required completion of the act, customary international law did not seem to have the same constraints. In relation to the individual act, it was not deemed advisable to cover attempts to order the commission of the crime of aggression.

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[1] See document PCNICC/2002/WGCA/RT.1/Rev.2.

41. A preference was expressed for dealing exhaustively with all the issues related to aggression in the definition, making it unnecessary to refer to the applicability of article 25, paragraph 3; the preliminary definition would thus reflect all the elements of the crime.

42. According to another view, aggression should not have a differential treatment in relation to the other crimes under the Court's jurisdiction and caution was urged on adding or extracting anything from the preliminary definition.

43. In this connection, it was noted that an analysis of the differences between the content of article 25, paragraph 3, and the preliminary definition would prove most useful in determining which elements of the former should be excluded. Such an analysis would also have to determine whether any differences were covered by customary international law.

44. The view was expressed that by retaining the applicability of article 25, paragraph 3(d), persons without direct control over the action of a State but who could still play a major role in carrying out an act of aggression, such as members of the intelligence community, could be held criminally responsible for the crime of aggression. This was an issue that perhaps might be best left for the judges to decide.

45. The view was also expressed that article 25, paragraph 3(a), should be retained to preserve the logical structure of the crime and to cover the leadership group.

46. However, others supported the view that article 25, paragraph 3, was applicable to the crime of aggression. It was noted that this had indeed been an understanding, which explained why complicity had not been included in one of the earlier proposals on the crime.

47. It was noted that by excluding the applicability of article 25, paragraph 3 there was the ensuing risk of not covering cases of joint exercise of leadership, such as that covered in subparagraph (d). In this respect, attention was drawn to the fact that other crimes under the Statute also entailed leadership and yet the provision in question was deemed applicable to those crimes; hence there was no rationale for following a diverse approach only with regard to the crime of aggression.

48. Nonetheless, the point was made that the crime of aggression was different from the other crimes because the preliminary definition included elements such as the reference to "intentionally and knowingly" or the issue of participation, which were already covered in the general principles; another unique feature was its leadership trait, though it remained to be determined whether the leadership could be limited to one person or to the upper echelons of the chain of command.

49. In this connection, it was also suggested that all persons in a position to exert decisive influence over the policies of the State should be held criminally responsible, so that political, social, business and spiritual leaders could be included within the leadership group. The point was made that the preliminary definition had been crafted in a manner broad enough to encompass most influential leaders. However, another view held that responsibility for the crime of aggression should be understood to be rather restrictive, basically limited to political leaders, excluding for example advisers who clearly would lack any effective control over the actions of a State.

50. In this connection, the responsibility for the crime of aggression could be limited to the upper hierarchy in the definition itself, thus avoiding the need to exclude the applicability of article 25, paragraph 3.

51. One of the suggestions formulated was to avoid the current situation posed by the preliminary definition which included both the definition of the crime of aggression and the elements of the crime; having two distinct provisions would provide the requisite clarity as to which individuals could be held criminally responsible.

52. As an alternative to mere exclusion or non-exclusion of applicability of article 25, paragraph 3, a third option was identified. This was to affirm that aggression was a "leadership crime", while still retaining the application of the broader types of individual criminal responsibility enumerated in article 25 by way of a new paragraph 3 *bis* which would read:

> "3 *bis*
>
> Notwithstanding paragraph 3 above, a person shall be criminally responsible and liable for punishment for a crime of aggression within the jurisdiction of the Court if that person, being a person in a position effectively to exercise control over or to direct the political or military action of a State:
>
> [Replicate paragraph 3(a) to (f)]"

Conclusions

53. (a) There was agreement:

- That aggression was a crime characterized by being committed by those in a position of leadership;
- That there was a broad overlap of article 25, paragraph 3, with the proposed definition of the coordinator,[2] Nonetheless, different conclusions were derived as to what should be done as a result:
  - Exclude article 25, paragraph 3, from being applicable to the crime of aggression, or
  - Retain article 25, paragraph 3, as applicable to the crime of aggression, either in its entirety or partially;

(b) There was disagreement on whether or not an attempt to commit the crime of aggression should be covered and was in fact possible.

(c) Alternatively, it was suggested that the issue should be clarified by incorporating new language in article 25 itself.

Article 28

54. The view was expressed that this article might be applicable to the crime of aggression because in some limited borderline situations a second-level commander might be the one assuming the leadership role not fully exercised by his/her hierarchical senior. In this connection, the importance of retaining the word "actively" in the definition was emphasized so as to exclude mere figureheads from taking all the responsibility, although some expressed a concern about the use of the word "actively" as it might be read to exclude situations similar to those envisaged in article 28 where a person in effective control allowed, by his/her omission, an act of aggression to be perpetrated. However, the prevailing view deemed article 28 to be inapplicable to the crime of aggression and that reference to it in paragraph 3 of the coordinator's paper should thus be maintained.

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[2] See paragraph 1 of document PCNICC/2002/WGCA/RT.1/Rev.2.

Article 30

55. It was stated that the use of the words "intentionally and knowingly" in the preliminary definition seemed to be a superfluous repetition of what was already contained in article 30 and that such wording might convey the erroneous impression that a specific intent was required for the crime of aggression. Although some favoured the deletion of the phrase, it was also noted that reference to intention was made several times in article 8 on war crimes. It was understood that the phrase could be deleted from the definition.

Conclusion

56. The words "intentionally and knowingly" could be deleted from the preliminary definition once agreement thereon had been reached.

Article 31

57. It was concluded that the discussion indicated that there was no particular difficulty posed by its application to the crime of aggression.

Article 33

58. It was noted that, with regard to the crime of aggression, different academic views existed as to whether this provision would permit relying on superior orders as a defence or whether it would actually exclude such a possibility. It was recalled that in many cases superiors were also simultaneously subordinated to other individuals and that this fact had to be borne in mind in the discussion. The point was also made that should a prior determination of an act of aggression by a third party such as the Security Council or the International Court of Justice be deemed necessary, it would not be feasible to foresee such a determination and consequently an act of aggression could not be "ordered".

59. Some considered that article 33 was not suitable for the crime of aggression, particularly because its applicability could dilute the fundamental responsibility of the political leadership; according to this view, it was clear that military commanders could not be placed in a situation of casting doubt on the orders received from the political leadership since this could undermine the chain of command. A military commander in a position to effectively exercise control would, however, already be covered by the definition. On the other hand, it was also felt that high-ranking military commanders were indeed in a position to form their own opinions of a complex situation and that it was therefore preferable to allow the judges to analyse their responsibility in a given case; article 32 on mistake of fact or law would be relevant in some situations.

60. Nonetheless, the view was also expressed that article 33 merited retention in order to emphasize the individual responsibility of persons in leadership roles; by excluding its applicability an argument could be made that the individual was simply following superior orders.

61. As an alternative to the exclusion of article 33, it was suggested that the crime of aggression could be incorporated in paragraph 2 of article 33; nonetheless, some doubts were expressed about this insertion. It was pointed out that a direct order to "commit aggression" or any other crimes envisaged under article 33, paragraph 2, would rarely be given in practice. However, the view was also expressed that an order which might amount to an act of aggression might not necessarily be "manifestly unlawful" as required under article 33, paragraph 2.

62. It was noted that the meaning of a redrafted article 33, paragraph 2, would not seem to be the same as the phrase "flagrant violation of the Charter of the United Nations" contained in the preliminary definition. It was therefore suggested that the issues discussed be taken up within the definition itself.

Conclusion

63. There was agreement that further consideration was required in light of the divergent views regarding the applicability of article 33 to the crime of aggression.

Overall conclusions on the general principles of criminal law

64. There was agreement that article 25, paragraph 3, and articles 28, 30 and 33 needed to be revisited at a later stage, while the other provisions contained in Part 3 of the Statute warranted no further discussion.

Annex I

List of issues relating to the crime of aggression

The following is a checklist of issues to be addressed in developing proposals for a provision on aggression in accordance with article 5, paragraph 2, of the Rome Statute and resolution F, paragraph 7, adopted by the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court.

N.B. This non-exhaustive list is intended to facilitate a thematic discussion of possible issues, most of which are closely interrelated. The list is based on the preliminary list of issues contained in document PCNICC/2001/L.1/Rev.1, which was revised by the inter-sessional meeting held at the Liechtenstein Institute on Self-Determination at Princeton University from 21 to 23 June 2004.

I. Issues relating to the Rome Statute

- **Definition**

- **Conditions under which the Court shall exercise jurisdiction**

- **Consistency with the relevant provisions of the Charter of the United Nations**

- **Complementarity and admissibility**

- ***Ne bis in idem***

The latter two issues were discussed and there was agreement that they posed no particular problems at this point. There was also an understanding that they should both be revisited in the light of an agreed definition of the crime of aggression and the conditions under which the Court would exercise its jurisdiction over the crime.

- **General principles of criminal law**

The following articles from Part 3 of the Statute need to be looked at anew in the light of an agreed definition of the crime of aggression and the conditions under which the Court shall exercise jurisdiction over the crime of aggression:

(i) Individual criminal responsibility (art. 25)
(ii) Responsibility of commanders and other superiors (art. 28)
(iii) Mental element (art. 30)
(iv) Superior orders and prescription of law (art. 33)

- **Investigation and prosecution**

  Consider the provisions concerning the investigation and prosecution of crimes with respect to the crime of aggression (e.g. initiation of an investigation (art. 53)).

- **National security information**

  Consider the provisions concerning the protection of national security information in relation to the crime of aggression (art. 57 (3) (c), art. 72, art. 93 (4) and art. 99 (5)).

- **International cooperation and judicial assistance**

  These provisions may require further consideration depending upon the applicability of the principle of complementarity to the crime of aggression.

- **Final clauses**

  Art. 121 in particular needs to be revisited.

II. Possible issues relating to the Elements of Crimes

- The elements of the crime of aggression are provided for in resolution F rather than in article 9 of the Rome Statute.
- Consider the structure and general provisions of the elements of the other crimes prepared pursuant to article 9 of the Rome Statute to ensure consistency.
- Adoption of the Elements of Crimes by the Assembly of States Parties or by the Review Conference.

III. Possible issues relating to the Rules of Procedure and Evidence

- Review the final text of the Rules of Procedure and Evidence prepared by the Preparatory Commission to determine whether there are provisions that require consideration in relation to the definition of the crime of aggression.

Annex II

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